

Practice Note 23 (PN 23) – Waivers from the application of Rule 26.1 of the Takeovers Code for De-SPAC Transactions

1. On 17 September 2021, The Stock Exchange of Hong Kong Limited issued a consultation paper on special purpose acquisition companies (**SPAC**). In the consultation paper, the Executive and the Takeovers Panel proposed that the application of Rule 26.1 of the Takeovers Code in relation to a De-SPAC Transaction which would result in the owner(s) of the De-SPAC Target obtaining 30% or more of the voting rights in a Successor Company should normally be waived (**De-SPAC Waiver**). Following market consultation and with almost unanimous support from respondents to the consultation, the proposal was adopted.
2. This Practice Note provides guidance to market practitioners on the formal application process for a De-SPAC Waiver. Where the context requires, terms in this Practice Note shall have the same meanings given to them in Chapter 18B of the Listing Rules.

The De-SPAC Waiver application

3. An application for a De-SPAC Waiver must be made in accordance with section 8 of the Introduction to the Codes. The application should be comprehensive and contain all relevant information, accompanied by the requisite fee and filing form which contains the certification required under section 8.3 of the Introduction. To the extent applicable, the information set out in section 8.1 of the Introduction should be included in the application. In addition, it should include details of the following:
 - (i) a full list of the owner(s) of the De-SPAC Target;
 - (ii) any holdings of the owner(s) of the De-SPAC Target and parties acting in concert with it/them in the shares of the SPAC at the time of the application and their expected holdings immediately after the completion of the De-SPAC Transaction;
 - (iii) details of any dealings by the persons in (ii) in the securities of the SPAC including:
 - (a) date of dealings;

(b) price and quantity involved;

(c) whether the dealings were made on-market or off-market; and

(d) reasons for the dealings;

If there is no such dealings, a negative statement to that effect;

(iv) relationship(s) between the owner(s) of the De-SPAC Target and the SPAC Promoter(s) and parties acting in concert with any of them or if none, a negative statement to that effect;

(v) where the De-SPAC Target has more than one owner, the relationship between each holder of an interest in the De-SPAC Target; and

(vi) a succinct summary of the material terms of the De-SPAC Transaction.

Relationships include any past, present or contemplated financial, business or otherwise, formal or informal relationships.

Timing and disclosure

4. A De-SPAC Waiver application should be made to the Executive well in advance of the expected announcement of the proposed De-SPAC Transaction. The Executive intends to normally grant the De-SPAC Waiver prior to the announcement of the De-SPAC Transaction so that no offer period will commence upon such announcement. If in doubt, market practitioners should consult the Executive at an early stage.
5. The relevant De-SPAC Transaction announcement should include the terms of the De-SPAC Waiver and it should be reviewed by the Executive before publication.

Voting issues

6. As noted in the consultation conclusion on SPACs issued on 17 December 2021, of particular concern to the Executive are situations where the owner of a De-SPAC Target or parties

acting in concert with it acquire SPAC Shares prior to or during the course of the De-SPAC Transaction to influence the outcome of the approval of the De-SPAC Transaction. The existence of parties acting in concert will not, in itself, cause a De-SPAC Waiver not to be granted. The concern arises where such concert parties may influence the outcome of the approval of the De-SPAC Transaction by voting at the relevant shareholders' meeting.

7. Market practitioners should be aware of the Executive's concerns as set out above and appropriate due diligence in this regard should be made.

Codes Consequences

8. The De-SPAC Waiver will be granted pursuant to section 2.1 of the Introduction to the Codes. Once a waiver is granted, no general offer is expected to be made by the owner(s) of the De-SPAC Target and no offer period will commence. Accordingly, the Codes will not apply to the De-SPAC Transaction.
9. If in any case the Executive does not consider it appropriate to grant a De-SPAC Waiver, Rule 26.1 of the Takeovers Code will apply to the relevant De-SPAC Transaction. Accordingly, an offer period may commence upon announcement of the De-SPAC Transaction, and if so the Codes will apply to the De-SPAC Transaction.

Commencement

10. This Practice Note will become effective from 1 January 2022.

17 December 2021