STAFF PAPER

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IFRS® Interpretations Committee meeting

Project	**Special Purpose Acquisition Companies (SPAC): Classification of Public Shares as Financial Liabilities or Equity (IAS 32)**
Paper topic	Initial Consideration

CONTACT	Zachariah Gorge	zgorge@ifrs.org
	Uni Choi	uchoi@ifrs.org
	Angie Ah Kun	aahkun@ifrs.org
	Riana Wiesner	rwiesner@ifrs.org

Introduction

1. The IFRS Interpretations Committee (Committee) received a submission asking whether, in applying IAS 32 *Financial Instruments: Presentation*, a Special Purpose Acquisition Company (SPAC) classifies public shares it issues as financial liabilities or equity instruments.

2. The objective of this paper is to:

   (a) provide the Committee with a summary of the matter;

   (b) present our research and analysis; and

   (c) ask the Committee whether it agrees with our recommendation not to add a standard-setting project to the work plan.

Structure of the paper

3. This paper includes the following:

   (a) background information (paragraphs 5–18);

   (b) staff analysis and assessment of whether to add a standard-setting project to the work plan (paragraphs 19–31); and

   (c) staff recommendation (paragraphs 32–33).

4. There are two appendices to this paper:

   (a) Appendix A—proposed wording of the tentative agenda decision; and

   (b) Appendix B—submission.

Background information

The question

5. The submitter describes a general fact pattern (of which variations could apply in practice) in which a SPAC issues two classes of shares: founder shares (Class A) and public shares (Class B). A SPAC is a listed entity established solely for the purpose of acquiring a target company to be identified in the future. The decision as to whether to acquire an identified target company is approved either by the shareholders or the management of the SPAC, depending on the terms and conditions of the SPAC's statutes. Once a target is identified and approved, the Class B shareholders individually have the right to require the reimbursement of their shares. In some SPACs, only shareholders voting against the acquisition have this right.

6. If no company is acquired within a specified period of time, the SPAC is liquidated unless the statutes of the SPAC allow for an extension of the SPAC's life and the shareholders vote in favour of the extension. Upon liquidation, the net proceeds of the SPAC's initial public offering (IPO) are distributed first to the Class B shareholders and

the remaining proceeds are then distributed to the Class A shareholders. The Class B shareholders will be reimbursed and, in some cases, they will also receive a minimum guaranteed return on an escrow account within which the IPO proceeds are typically held before the acquisition of a target company. The decision to extend the SPAC's life is either approved by (a) two-thirds of the shareholders in a shareholders meeting; or (b) two-thirds of the Class A shareholders and two-thirds of the Class B shareholders independently in two separate shareholders meetings.

7. The submitter has identified differing views as to whether a SPAC's Class B shares meet the requirements to be classified as equity instruments. The submitter asks whether the condition in paragraph 16(a)(i) of IAS 32—which requires the instrument to include no contractual obligation to deliver cash or another financial asset—is met. The submitter therefore seeks to clarity on whether, and under what circumstances, a SPAC classifies the Class B shares as financial liabilities or equity instruments. Specifically, the submitter asks about the effect of two features on the classification of the Class B shares:

   (a) Feature 1: the effect of the Class B shareholders' right to demand a reimbursement of their shares (in the event of the acquisition of a company) on the existence of an unconditional right to avoid delivering cash or another financial asset.

      (i) View 1—the SPAC has an unconditional right to avoid delivering cash or another financial asset.

      (ii) View 2—the SPAC has no unconditional right to avoid delivering cash or another financial asset.

   (b) Feature 2: the effect of the terms and conditions of the SPAC's liquidation after a specified period of time on the classification of the Class B shares.

      (i) View 1— the Class B shares are equity instruments.

      (ii) View 2—the Class B shares are financial liabilities.

Feature 1 – Shareholder's right to demand a reimbursement

8. Applying View 1, the SPAC concludes that it has an unconditional right to avoid delivering cash or another financial asset, notwithstanding Class B shareholders' rights to demand reimbursement of their shares on approval of the acquisition of a company. Proponents of View 1 note that the SPAC's management could decide to never present any potential acquisition target to the shareholders, in which case Class B shareholders would never be entitled to ask for a reimbursement of their shares. They say the definition of a financial liability in paragraph 11 of IAS 32 requires the existence of a contractual obligation. Therefore, in their view an entity would take no account of the following when determining the classification of the Class B shares:

   (a) a possible constructive (non-contractual) obligation to reimburse the Class B shareholders because of the lack of any practical ability to act in a manner inconsistent with the SPAC's main purpose.

   (b) any economic compulsion that might arise from the SPAC's objective to acquire a target company. They observe that the June 2006 IASB *Update* highlighted that a contractual obligation must be established through the terms and conditions of the instrument and that, in applying IAS 32, economic compulsion alone would not result in the classification of a financial instrument as a liability. They also observe that the IASB previously emphasised that, in classifying a financial instrument, IAS 32 requires an assessment of the substance of the contractual arrangement but does not require or permit an entity to consider factors outside the contractual arrangement.

9. Applying View 2, the SPAC has no unconditional right to avoid delivering cash or another financial asset because of Class B shareholders' rights to demand reimbursement of their shares on approval of the acquisition of a company. Proponents of View 2 say the sole purpose of a SPAC is to acquire a target company and that the SPAC's management is expected to diligently identify and acquire a target within a specified period of time. These proponents say the fulfilment of the sole purpose described in the prospectus could

be viewed as a contractual commitment of the SPAC towards the Class B shareholders. Therefore, management cannot exercise its discretion to never present a target to the shareholders.

10. In these proponents' view, a contractual obligation is established indirectly through the terms and conditions of the SPAC's statutes. Furthermore, some proponents of View 2 note that as the SPAC prepares its financial statements on a going concern basis, the SPAC is required to seek to fulfil its sole purpose of acquiring a target company and thus has no practical ability to avoid the reimbursement of Class B shares.

Feature 2 –terms and conditions of the SPAC's liquidation

11. Applying View 1, Class B shares would be classified as equity instruments. Proponents of View 1 say the SPAC has an unconditional ability to avoid the outflow of cash because the shareholders can prevent liquidation by extending the SPAC's life. Under this view, the shareholders' vote to extend the SPAC's life is viewed as an action of the SPAC and not as an action of shareholders in their capacity as holders of the Class B shares.

12. In support of this view, proponents of View 1 note the requirements in paragraph 17 of IAS 32. Paragraph 17 states that 'although the holder of an equity instrument may be entitled to receive a pro rata share of any dividends or other distributions of equity, the issuer does not have a contractual obligation to make such distributions because it cannot be required to deliver cash or another financial asset to another party'. In their view, this implies that a decision to distribute dividends—made at a shareholders meeting—is the decision of the entity and, by analogy, a decision made at a shareholders meeting to extend a SPAC's life is also a decision of the entity. Moreover, proponents of View 1 say actions reserved for the shareholders in general meetings are effectively actions of the entity itself because they are part of the entity's decision making and corporate governance process.

13. Proponents of View 1 also say the requirements in paragraph 16C of IAS 32 do not apply because liquidation is not certain to occur and is within the SPAC's control. As noted

above, they view the shareholder decision to extend the SPAC's life as an action of the SPAC.

14. Proponents of View 1 have differing views on whether the approval required from the two classes of shareholders independently at two separate meetings indicates that shareholders' decision-making is that of the SPAC or of shareholders in their capacity as holders of the Class B shares:

    (a) Decision of the SPAC—some proponents of View 1 say requiring separate and independent approval from two classes of shareholders has no effect on the conclusion because these procedures reflect the SPAC's corporate governance process. Proponents of this view say Class B shares should be classified as equity instruments.

    (b) Decision of shareholders in their capacity as holders of the Class B shares—others say requiring separate and independent approval indicates that the particular interests of each shareholder group prevail. If separate and independent approval is required by Class A and Class B shareholders, proponents of this view say the process reflects that voting is the action of shareholders in their capacity as holders of Class B shares. The Class B shares should therefore be classified as financial liabilities.

15. Applying View 2, Class B shares would be classified as financial liabilities. Proponents of View 2 say actions of shareholders that result in irregular decisions cannot be considered as actions of the SPAC. Furthermore, they say there is an indirect contractual obligation to deliver cash or another financial asset because the SPAC will eventually either be liquidated or acquire a target company. The SPAC therefore has no unconditional right to avoid delivering cash to Class B shareholders.

16. Proponents of View 2 also note that the Class B shares fail to meet the conditions for the exception in paragraph 16C of IAS 32 because they are not the most subordinated instruments of the SPAC.

Outreach

17. The purpose of any outreach we perform is to understand

    (a) the prevalence of the transaction or fact pattern submitted; and

    (b) the accounting applied to that transaction or fact pattern.

18. We decided not to perform outreach on this submission for the following reasons:

    (a) We are aware that the number of SPAC and similar mechanisms—and the amount of funding raised through such mechanisms—have increased significantly in recent years in many jurisdictions. The submitter says it observed the fact patterns described above for several entities in different European jurisdictions. In addition, the matter raised in the submission is part of a broader practice issue about classifying financial instruments as financial liabilities or equity when the financial instruments include a contractual obligation to deliver cash at the discretion of the entity's shareholders. Many respondents to the 2018 Discussion Paper *Financial Instruments with Characteristics of Equity* (2018 FICE DP) highlighted this broader issue as an application challenge for the International Accounting Standards Board (IASB) to consider. The issue was also discussed by the Committee in March 2010.

    (b) We are aware of differing views about how to classify the shares issued by SPACs and other instruments for which settlement in cash is at the discretion of the entity's shareholders. Feedback on the 2018 FICE DP highlighted diversity in the classification of such financial instruments. In its March 2010 agenda decision on shareholder discretion, the Committee acknowledged that there is no principle in IFRS Accounting Standards on how to reflect the actions of an entity's shareholders in the entity's financial statements. Published guidance in the accounting manuals of large accounting firms describe the differing views on this matter. The submitter has also observed differing views on the application of IAS 32 in relation to the classification of shares issued by SPACs.

Staff analysis and assessment of whether to add a standard-setting project to the work plan

Assessing the effect of shareholder discretion

19. The submitter describes a specific fact pattern—ie a class of shares issued by a SPAC for which the shareholders of that class:

    (a) can demand reimbursement of their shares on approval of an acquisition target; or

    (b) are reimbursed in the event of the SPAC's liquidation, unless all classes of shareholders vote to extend the SPAC's life.

20. Based on the staff's research, discussions with stakeholders and feedback on the 2018 FICE DP, it is evident that questions arise about assessing whether an entity has an unconditional right to avoid delivering cash or another financial asset when its shareholders have discretion in other circumstances. Examples of other circumstances include the following:

    (a) an entity issues a preference share that requires the entity to pay coupons only if the entity pays dividends on its ordinary shares. Dividend payments on ordinary shares require shareholders' approval via a simple majority vote at a general meeting.

    (b) a financial instrument that requires the entity to redeem it in cash if a change of control of the entity occurs. Change of control must be approved by a simple majority of ordinary shareholders in a general meeting.

    (c) an entity receives venture capital funding from investors by issuing preference shares convertible to ordinary shares. The preference shareholders are entitled to priority payments and to vote on particular decisions of the entity. These preference shareholders also share in the proceeds of a sale of the business through various exit mechanisms (trade sale, share sale or IPO). Decisions about the sale of the business are voted on by all shareholders with voting rights, including preference shareholders.

21. Based on this feedback, the staff think the matter raised in the submission is part of a broader practice issue. In our view, the specific fact pattern described in the submission should not be analysed in isolation. Instead, it should form part of a comprehensive analysis of the effect of shareholder discretion on an entity's ability to avoid payment in cash or another financial asset or in such a way that the instrument would be a financial liability. Analysing this specific fact pattern in isolation could have unintended consequences for fact patterns that raise similar questions about the application of IFRS Accounting Standards.

Applicable requirements in IFRS Accounting Standards

22. The fundamental principle in IAS 32 for distinguishing a financial liability from an equity instrument is in paragraph 19 of IAS 32, which states that:

> If an entity does not have an unconditional right to avoid delivering cash or another financial asset to settle a contractual obligation, the obligation meets the definition of a financial liability […].

23. Paragraph AG26 of IAS 32 explains that:

> When preference shares are non-redeemable, the appropriate classification is determined by the other rights that attach to them. […] When distributions to holders of the preference shares, whether cumulative or non-cumulative, are at the discretion of the issuer, the shares are equity instruments. […].

24. Paragraph 25 of IAS 32 explains that the occurrence or non-occurrence of uncertain future events that are beyond the control of both the issuer and the holder of the instrument may require the entity to deliver cash or another financial asset, or otherwise to settle a financial instrument in such a way that it would be a financial liability. If that is the case, the issuer does not have the unconditional right to avoid such settlement and the

instrument is classified as a financial liability unless one of the specified exceptions applies. Paragraph 25 of IAS 32 gives examples of future events that are beyond the control of both the issuer and holder of the instruments, such as a change in a stock market index, consumer price index, interest rate or taxation requirements, or the issuer's future revenues, net income or debt-to-equity ratio.

25. IAS 32 includes no requirements on classifying a financial instrument when a contractual obligation to deliver cash is at the discretion of the issuer's shareholders. It also includes no application guidance on determining which decisions are beyond the control of the entity and which are treated as decisions of the entity.

26. The topic of the entity and its shareholders—in particular the notion of 'owners acting in their capacity as owners' of the entity—is discussed in other Accounting Standards, albeit not with the intention of classifying financial instruments.

27. As mentioned above, stakeholders have informed us that, because there are no requirements in IAS 32 for assessing the effect of shareholder discretion on classification, it is unclear whether the entity has the unconditional right to avoid delivering cash or another financial asset in many cases of which some examples are described in paragraph 20 of this paper. In practice, it is generally accepted that judgement is required depending on the specific facts and circumstances in each case.

The FICE project

28. Based on the feedback described above, assessing whether an entity has an unconditional right to avoid delivering cash if a contractual obligation is at the discretion of the entity's shareholders has been identified as one of the practice issues the IASB will consider in its FICE project. The FICE project is a standard-setting project on the IASB's work plan. In fact, the IASB discussed this topic at its September 2021 and February 2022 meetings.

29. In the FICE project, the IASB is focusing on clarifying some underlying principles in IAS 32 and adding application requirements to facilitate consistent application of the principles. Where there is no implicit or explicit principle underpinning a particular

IAS 32 requirement, the IASB could decide to develop a principle. In addressing this particular practice issue, the IASB has tentatively decided to consider providing application guidance on factors an entity could consider in assessing whether a particular decision of shareholders is treated as a decision of the entity. This approach is broader than the work the Committee could undertake and thus reduces the risks outlined in paragraphs 19-21 of this paper.

Whether to add a standard-setting project to the work plan

Can the matter be resolved efficiently within the confines of the existing IFRS Accounting Standards and the Conceptual Framework*?* [1]

Is the matter sufficiently narrow in scope that the IASB or the Committee can address it in an efficient manner, but not so narrow that it is not cost-effective for the IASB or the Committee and stakeholders to undertake the due process required to change a Standard? [2]

30. Based on our analysis in paragraphs 19-29 of this paper, the staff conclude that the matter described in the request is, in isolation, too narrow for the IASB or the Committee to address in a cost-effective manner and to undertake the due process required to change an Accounting Standard. As described in paragraph 20 of this paper, similar questions arise in other circumstances and the staff think the matter raised in the submission is part of a broader practice issue and therefore should not be analysed in isolation.

31. Additionally, the staff think the matter cannot be resolved efficiently within the confines of the existing Accounting Standards and the *Conceptual Framework*. The IASB has tentatively decided—as part of the FICE project—that standard setting would be

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[1] Paragraph 5.16(c) of the *Due Process Handbook*.

[2] Paragraph 5.16(d) of the *Due Process Handbook*.

necessary to address the broader practice issue of how to assess whether a decision that is subject to shareholder discretion is treated as a decision of the entity.

Staff recommendation

32. Based on our assessment of the work plan criteria in paragraph 5.16 of the *Due Process Handbook* (discussed in paragraphs 30-31 of this paper), we recommend that the Committee does not add a standard-setting project to the work plan. Instead, we recommend publishing a tentative agenda decision that explains that the matter is:

    (a) too narrow for the Committee to consider in isolation because it is part of a broader practice issue;

    (b) cannot be resolved efficiently within the confines of the existing Accounting Standards and the *Conceptual Framework;* and

    (c) is better suited to be addressed as part of the IASB's FICE project.

33. We note that such a decision would be consistent with previous decisions of the Committee when the IASB is considering an issue as part of an existing project. Appendix A to this paper sets out the proposed wording of the tentative agenda decision.

Questions 1 and 2 for the Committee
1. Does the Committee agree with our recommendation not to add a standard-setting project to the work plan? 2. Does the Committee have any comments on the proposed wording of the tentative agenda decision set out in Appendix A to this paper?

Appendix A—proposed wording of the tentative agenda decision

Special Purpose Acquisition Company (SPAC): Classification of public shares as financial liabilities or equity (IAS 32 *Financial Instruments: Presentation*)

The Committee received a request about the application of IAS 32 in relation to the classification of shares issued by a Special Purpose Acquisition Company (SPAC) as financial liabilities or equity. A SPAC is a listed entity that is established for the purpose of acquiring a target entity to be identified in the future.

The request described a SPAC that issues two classes of shares (Class A and Class B). The Class B shareholders:

(a) individually have the right to demand a reimbursement of their shares on approval by the SPAC's shareholders of the acquisition of a target entity. For some SPACs, only Class B shareholders who vote against the acquisition have this right.

(b) are reimbursed in the event of the SPAC's liquidation. The SPAC is liquidated if no target entity is acquired within a specified period of time and the SPAC's shareholders do not vote to extend the SPAC's life. A decision to extend the SPAC's life is approved by either (i) two-thirds of the shareholders; or (ii) two-thirds of the Class A shareholders and two-thirds of the Class B shareholders independently.

The request asked about the effect of the Class B shareholders' rights to be reimbursed and to vote to extend the SPAC's life on the classification of the Class B shares as financial liabilities or equity—in particular whether, because of those rights, the SPAC has the unconditional right to avoid delivering cash or another financial asset.

The Committee observed that IAS 32 contains no requirements for assessing whether a decision of shareholders is treated as a decision of the entity. The Committee acknowledged that similar questions about decisions of shareholders arise in other circumstances. Assessing whether a decision of shareholders is treated as a decision of the entity has been identified as one of the practice issues the IASB will address in its *Financial Instruments with Characteristics of Equity* (FICE) project. The Committee concluded that the matter described in the request is, in isolation, too narrow for the IASB or the Committee to address in a cost-effective manner. Instead, the IASB should consider the matter as part of its broader discussions on the FICE project. For these reasons, the Committee [decided] not to add a standard-setting project to the work plan.

Appendix B—Submission

1. We have reproduced the submission below.

…

Agenda Item Request: Classification of Shares Issued by a Special Purpose Acquisition Company (IAS 32)

…

In the context of ESMA's supervisory convergence work in the area of financial reporting, I would like to raise with you an issue related to the application of IAS 32 *Financial Instruments: Presentation*. ESMA has observed different views on the application of the requirements of IAS 32 in relation to the classification of shares issued by Special Purpose Acquisition Companies (SPAC) as liabilities or as equity instruments when a particular fact pattern is present.

Accordingly, ESMA kindly suggests that the IFRS Interpretations Committee (IFRS IC) considers clarifying the relevant accounting requirements. A detailed description of the case is set out in the appendix to this letter.

…

APPENDIX – DETAILED DESCRIPTION OF THE ISSUE

1. Description of the issue

1. The issue relates to Special Purpose Acquisition Companies (SPACs), listed entities that are established for the sole business purpose of acquiring a not yet identified target (one or more companies or operating businesses) in the future. SPACs typically have two typesof shares after the IPO: founder shares (Class A) and public shares (Class B). The decisionwhether to acquire a company identified by the founders is approved either by the shareholders or by the SPAC's management, depending on the provisions in the SPAC's statutes. In the analysis below, we do not take into account how this decision is made, as we believe that this has no influence on the outcome of the analysis.
2. If the acquisition is approved, Class B shareholders can (individually) demand a reimbursement of their shares (according to the statutes of some SPACs only the Class B shareholders who voted against the acquisition can claim reimbursement).

3. If no company is acquired within a specified period of time (e.g. two years from the date of listing), the SPAC will be liquidated unless the statutes of the company (and also the listing regulations) allow for an extension of the SPAC and the shareholders vote to extend the SPAC's life. After liquidation, the holders of public shares will be "reimbursed" by the distribution of the IPO proceeds received (in some cases plus a minimum guaranteed return on the escrow account where the proceeds are typically held prior to the acquisition),less certain expenses, first to the holders of Class B shares and for the remaining part to the holders of Class A shares. With regard to the decision to extend the SPAC, we have observed the following cases in practice:
   a) the decision shall be approved by two-thirds of the shareholders in a shareholders' meeting;
   b) the decision shall be approved by two-third of the holders of Class A shares and two thirds of the holders of Class B shares independently in two separate shareholders' meetings.
4. As part of their monitoring and supervisory activities, ESMA and national enforcers have identified different views as to whether Class B shares fulfil the conditions set out in paragraph 16 of IAS 32 to be classified as an equity instrument. While the fulfilment of the conditions in (a)(ii) and (b) is fairly obvious, it is questionable whether the condition in (a)(i), which requires that the instrument does not include a contractual obligation to deliver cashor another financial asset, is met.
5. According to paragraph 19 of IAS 32, this condition is generally not met if the entity does not have an unconditional right to avoid delivering cash or another financial asset to settlea contractual obligation. It does not seem clear whether this unconditional right is present, given (a) the Class B shareholders' right to ask for a reimbursement of their shares if the acquisition is approved; and (b) the provision that the company must be liquidated if no target company is acquired within a specified period of time and the SPAC's life is not extended. As the Class B shares become effectively redeemable upon liquidation of the SPAC, there are differing views as to whether the company can avoid delivering cash or another financial asset to the holders of Class B shares in these circumstances.
6. Moreover, paragraph 16C of IAS 32 implies that a contractual obligation to deliver a pro rata share of the entity's net assets on liquidation meets the definition of a financial liability if the liquidation is either certain to occur and outside the control of the entity or uncertain to occur but is at the option of the instrument holder. As an exception, such an instrumentis classified as an equity instrument if it has certain characteristics. In particular, the instrument shall be the most senior instrument of the company, i.e. it cannot have priority over other claims to the assets of the company on liquidation. Since this condition is not met, because

holders of the Class B shares have priority over the claims of holders of Class A shares in the event of liquidation, the classification of Class B shares as liabilities as a consequence of the requirement in paragraph 16C is questionable.

7. In addition, as paragraph 20 of IAS 32 explains that a contractual obligation to deliver cashor another financial asset need not be explicit and may be established indirectly through terms and conditions of the financial instrument, an important question is whether the legalsetup of the SPAC implies the existence of such an indirect obligation. The SPAC will eventually either acquire a target or be liquidated, and because in both the acquisition andliquidation the reimbursement of Class B shares will be outside the control of the entity, considering paragraph BC 9 of Basis for Conclusions on IAS 32, it is not clear whether a contractual obligation to deliver cash or another financial asset is established indirectly (implicitly) through the terms and conditions of the SPAC's statutes.

8. The first section hereafter discusses the different views expressed on the consequences of the right of holders of Class B shares to ask for a reimbursement of their shares in the event of an acquisition in terms of the existence of an unconditional right to avoid deliveringcash or other financial assets. The second section presents the different views regarding the impact of the SPAC liquidation provisions on the classification of shares.

1.1 Effect of the Class B shareholders' right to demand a reimbursement of their shares, in the event of the acquisition of a company, on the existence of an unconditional right to avoid delivering cash or another financial asset

View 1: The SPAC has an unconditional right to avoid delivering cash or another financial asset

9. Proponents of View 1 argue that even though Class B shareholders can demand reimbursement of their shares if the acquisition is approved, the entity has an unconditional right to avoid delivering cash or another financial asset. They point out that the SPAC's management can decide to never present any potential acquisition to the shareholders' meeting, so that Class B shareholders will never be entitled to ask for a reimbursement of their shares. Proponents of View 1 note that, according to the definition in paragraph 11 of IAS 32, a financial liability is subject to the existence of a contractual obligation. Therefore, a possible constructive (non-contractual) obligation of the SPAC to reimburse the Class B shareholders due to the absence of a practical ability to act in a manner inconsistent with the SPAC's main business purpose should not be taken into account when determining the classification of Class B shares.

10. Proponents of this view also point out that the IASB discussed whether economic

compulsion should affect the classification of a financial instrument under IAS 32. The June 2006 IASB Update highlighted in this context that a contractual obligation must be established through the terms and conditions of the instrument and that economic compulsion by itself would not result in a financial instrument being classified as a liability under IAS 32. The IASB also emphasised that IAS 32 requires an assessment of the substance of the contractual arrangement but does not require or permit to consider factorsnot within the contractual arrangement when classifying a financial instrument as an equityor a debt instrument.

11. Proponents of view 1 therefore conclude that any economic compulsion that might arise from the SPAC objective to acquire a target company should not be taken into account in the classification of Class B shares under IAS 32. As management can avoid acquiring a company based on the contractual arrangement, the SPAC has an unconditional right to avoid delivering cash or another financial asset.

View 2: The SPAC does not have an unconditional right to avoid delivering cash or another financial asset

12. Proponents of View 2 believe that avoiding redemption of B shares by not presenting any acquisition targets to the shareholders would contradict the SPAC's main objective to acquire a target company. The acquisition of a target is the sole business purpose of the SPAC and the reason why Class B shareholders choose to invest in the SPAC. The management of the SPAC is expected to diligently pursue the purpose to identify suitable potential targets and to enter into negotiations to acquire (at least one of) such targets within the time limits defined in the prospectus and in some cases, also in the SPAC's statutes. The proponents of this view believe that the fulfilment of the sole business purpose described in the prospectus may constitute, from a legal perspective, a contractualcommitment of the SPAC towards the Class B shareholders.
13. Therefore, proponents of this view conclude that the SPAC's management cannot exerciseits discretion never to present any potential acquisition to the shareholders' meeting (or never to approve an acquisition, should that be a decision that the management has discretion to make). Thus, a contractual obligation (which goes beyond mere economic compulsion) is established indirectly (implicitly) through the terms and conditions of the SPAC's statutes, so that the SPAC does not have an unconditional right to avoid repayingthe Class B shareholders.
14. Furthermore, some proponents of this view point out that preparation of the SPAC's financial statements on a going concern basis requires that the SPAC seeks to fulfil its sole business purpose. Based on paragraph 4.33 of the CF they consider that the conclusion that

it is appropriate to prepare the SPAC's financial statements on a going concern basisimplies that the SPAC has no practical ability to avoid the reimbursement of Class B shares.

1.2 Effect of the provisions regarding the SPAC's liquidation on the classification of shares

15. This section presents alternative views on the classification of Class B shares under the assumption that the right of holders of Class B shares to demand the reimbursement of their shares in the event of an acquisition does not constitute an obligation to deliver cashor another financial asset (View 1 in section 1.1).

View 1: Class B shares are equity instruments

16. Proponents of View 1 point out that although the SPAC Class B shares become effectively mandatory redeemable upon liquidation of the company, the company has an unconditional ability to avoid the outflow of cash because liquidation can be prevented if ashareholders' meeting resolves to extend the life of the company. They argue that the voting of shareholders against liquidation should be seen as an action of the company andnot as a private action of shareholders in their capacity as holders of the particular instrument "Class B share".
17. In support of their view, proponents of View 1 refer to paragraph 17 of IAS 32, which states that although the holder of an equity instrument may be entitled to receive a pro rata shareof any dividends or other distributions of equity, the issuer does not have a contractual obligation to make such distributions because it cannot be required to deliver cash or another financial asset to another party. This implies that the decision of shareholders about the payment of dividends taken in the shareholders' meeting is the decision of the entity. By analogy, the decision of the shareholders' meeting to extend the life of the SPACshould also be considered decision of the entity.
18. Moreover, the proponents of View 1 refer to paragraph AG26, which states, with regard to distributions to holders of the preference shares, that the preference shares are equity instruments when distributions are at the discretion of the issuer. Noting that the standard does not provide an explanation of when distributions are at the issuer's discretion, proponents of View 1 argue that actions reserved for the shareholders in general meetingsare effectively actions of the entity itself (and therefore at its discretion) as those actions are part of the entity's decision making and corporate governance process. In their opinion, this reasoning should apply not only to distributions to holders of the preference shares, but also to all assessments of whether an entity has an unconditional right to avoid delivering cash

or another financial asset to settle a contractual obligation.

19. Some proponents of this view believe that it makes no difference whether the Class A and Class B shareholders approve the SPAC's extension in one joint meeting or in two separate meetings, since both procedures comply with the legal or statutory requirements of the respective entities and as such also reflect the corporate governance process of these entities (View 1a).

20. Other proponents of this view, however, consider that the arguments presented above are only valid if the decision to extend the SPAC's life is approved jointly by all the SPAC's shareholders (View 1b). In contrast to this, a separate vote indicates that the particular interests of each group of shareholders prevail, and the voting process would reflect the private actions of the shareholders. Therefore, the outcome of the vote would not be within the control of the SPAC.

21. Regarding the requirements in paragraph 16C, the proponents of View 1 believe that this paragraph is not applicable in the case at hand. They argue that liquidation is not certain to occur and is under the control of the entity, which can extend its own life as explained above (the entity is not in substance a limited life entity).

22. As a result, proponents of View 1a believe that B shares meet the definition of an equity instrument. Proponents of View 1b are of the opinion that this definition is only met if the decision to extend the SPAC is approved jointly by all the SPAC's shareholders. Therefore,if the decision is approved in two separate meetings, the Class B shares should be accounted for as liabilities, according to View 1b.

View 2: Class B shares are debt instruments

23. Proponents of View 2 note at first that IAS 32 defines an equity instrument as a residual interest in the assets of an entity after deducting all of its liabilities. According to the standard, only instruments that do not meet the definition of a liability are classified as equity. Hence, the instrument is classified as equity only if it can be clearly demonstrated that it does not include a contractual obligation to deliver cash or other financial assets, and the exceptions narrowly defined in paragraphs 16A – 16D of IAS 32 do not apply.

24. Based on these initial considerations, proponents of View 2 believe that not all actions of shareholders can be interpreted as actions of the entity itself. In particular, the actions of shareholders resulting in decisions which are not regular decisions of the shareholders' meetings cannot be considered as actions of the entity.

25. Moreover, taking into consideration the reasoning set out in section 1.1 under View 2, it can be argued that there is an indirect (implicit) contractual obligation to deliver cash or another

financial asset. As the SPAC will eventually either be liquidated or acquire a targetcompany, the SPAC does not have an unconditional right to avoid delivering cash to Class B shareholders.

26. With this in mind and taking into account that the exception in paragraph 16C does not apply because Class B shares are not the most senior instruments of the company, the proponents of View 2 conclude that Class B shares should be accounted for as liabilities.

2 Request

27. ESMA seeks clarification on whether and under what circumstances Class B shares shouldbe classified as liabilities or as equity instruments. More specifically, ESMA suggests that the IFRS IC considers clarifying what impact the following features have on the classification of Class B shares:

    a) the existence of the Class B shareholders' right to demand reimbursement of their shares in the event of an acquisition, depending on how the acquisition decision is made (e.g. by the shareholders or by the management of the SPAC);

    b) provisions regarding the SPAC's liquidation, in particular the possibility to extend the life of the SPAC, taking into consideration the different modalities of how the decision to extend the SPAC's life is approved (e.g. in one shareholders' meeting or in two separate shareholders' meetings).

28. ESMA observed the relevance of the fact patterns described above for several issuers in different European jurisdictions. ESMA believes that given the existence of differing views and the increasing popularity of SPAC companies in several jurisdictions it is important to provide clarity on this issue in the short term.

29. ESMA notes that the IFRS IC has already discussed in 2010 how to assess whether an entity has an unconditional right to avoid delivering cash if the contractual obligation is at the ultimate discretion of the issuer's shareholders and that the IASB expects to address this issue as part of its current project on Financial Instruments with Characteristics of Equity (FICE project). ESMA considers, however, that the issue described in this Agenda Item Request is sufficiently narrow and should therefore be addressed outside of the FICE project.