

29 July 2021

## ESMA Public Statement on Special Purpose Acquisition Companies ('SPAC'): Investor Protection Considerations

### Background

In its Circular dated 21 July 2021, MFSA informed industry participants about the significant increase in SPAC activity which was noticed in the first half of 2021. To this effect, ESMA has issued a [Public Statement](#) in an effort to promote coordinated action by National Competent Authorities regarding the scrutiny of the disclosure included in prospectuses. ESMA's Public Statement also emphasizes the importance of the proper application of the Directive 2014/65/EU (MiFID II) product governance requirements by manufacturers and distributors of SPAC shares and warrants given that the sound implementation of the existing rules and careful scrutiny of such financial instruments in the Firms' product approval processes is fundamental to investor protection.

ESMA considers that SPAC transactions may not be appropriate investments for all investors due to their complexity and because of factors relating to: [i] risks related to dilution, [ii] incentives issues for sponsors, [iii] different ways costs of underwriting fees may be borne by SPAC redeeming investors and remaining investors and [iv] uncertainty as to the identification and evaluation of target companies. ESMA notes that SPAC shares and warrants are, amongst other things, subject to the MiFID II requirements on product governance. In the light of the risk and complexity of SPAC shares and warrants, ESMA expects that manufacturers and distributors of SPAC shares and warrants will carefully scrutinise such financial instruments in their respective product approval process in order to assess whether retail clients should be excluded from the positive target market or even included in the negative target market.

### Target Audience

The content of ESMA's statement should be considered by issuers when drawing up prospectuses concerning SPACs and by Investment Services Licence Holders acting in the capacity of manufacturers and/or distributors of SPAC shares and warrants.

### Way Forward

ESMA will continue to monitor SPAC activity within the European Union to determine if additional initiatives are necessary to promote coordinated supervisory action aimed at preserving investor protection.