Special Purpose Acquisition Companies (SPACs): *An Introduction*

ROPES & GRAY

January 2021

Agenda

- **Introduction: What is a SPAC?**
- Regulation of SPACs
- SPAC Structure
- The Underwriting Process of a SPAC IPO
- Professional Biographies

Special Purpose Acquisition Companies – What is a SPAC?

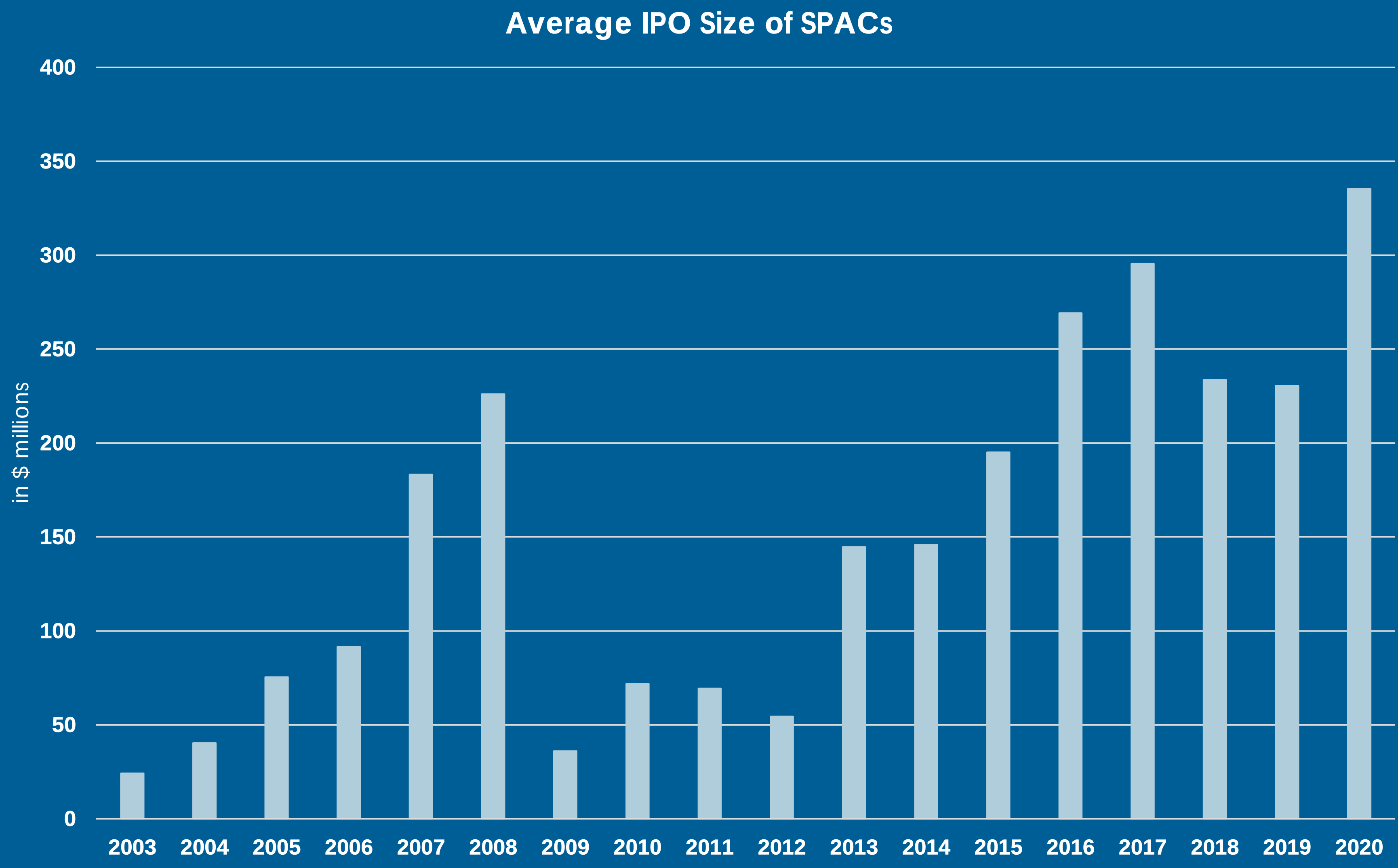
What is a SPAC?

- A special-purpose acquisition company (or SPAC) is a corporate entity formed to raise capital through an initial public offering (or IPO) and use the proceeds from the IPO to fund one or more business combinations.
- A collective investment structure/entity that allows public stock market investors to invest in private equity type transactions.
- Typically, a SPAC will be founded by a small group of individuals (the Founders) affiliated with an asset manager or other sponsor.
  - Historically referred to as Blank Check Companies (pre-2008), a SPAC is a type of blank check company.
  - SPACs are shell companies (they do not have operations).
- If a business combination is not effected before a deadline, typically 18-24 months from the IPO (subject to extension upon a vote of shareholders), the SPAC liquidates and public investors receive 100% of their capital back, plus accrued interest.

Special Purpose Acquisition Companies – What is a SPAC?

- Following completion of the IPO, the Founders typically serve as executive officers and directors of the SPAC (along with independent directors).
  - Following the initial business combination, typically target management stays on and the board is reconstituted, generally with select directors designated by the Founders.
- The is essentially selling the ability of the sponsors and management team to source and consummate an attractive business combination, often in a targeted sector.
- SPACs have become more popular in recent years due to stock market volatility, the downside protection they provide to public investors and offering a "free" option.
  - In 2019, approximately 25% of IPOs were for blank check firms; in 2020, this percentage doubled to approximately 50%.
- SPACs have sprung up as general vehicles or with a myriad of different focuses, including the following:
  - Healthcare
  - Energy
  - Industrials
  - TMT
  - Financial services / fintech
  - Travel and leisure
  - Consumer goods
  - Real estate
  - High growth emerging markets, such as Asia

SPAC Market – Overview



* Average deal size refers to size of SPAC IPO

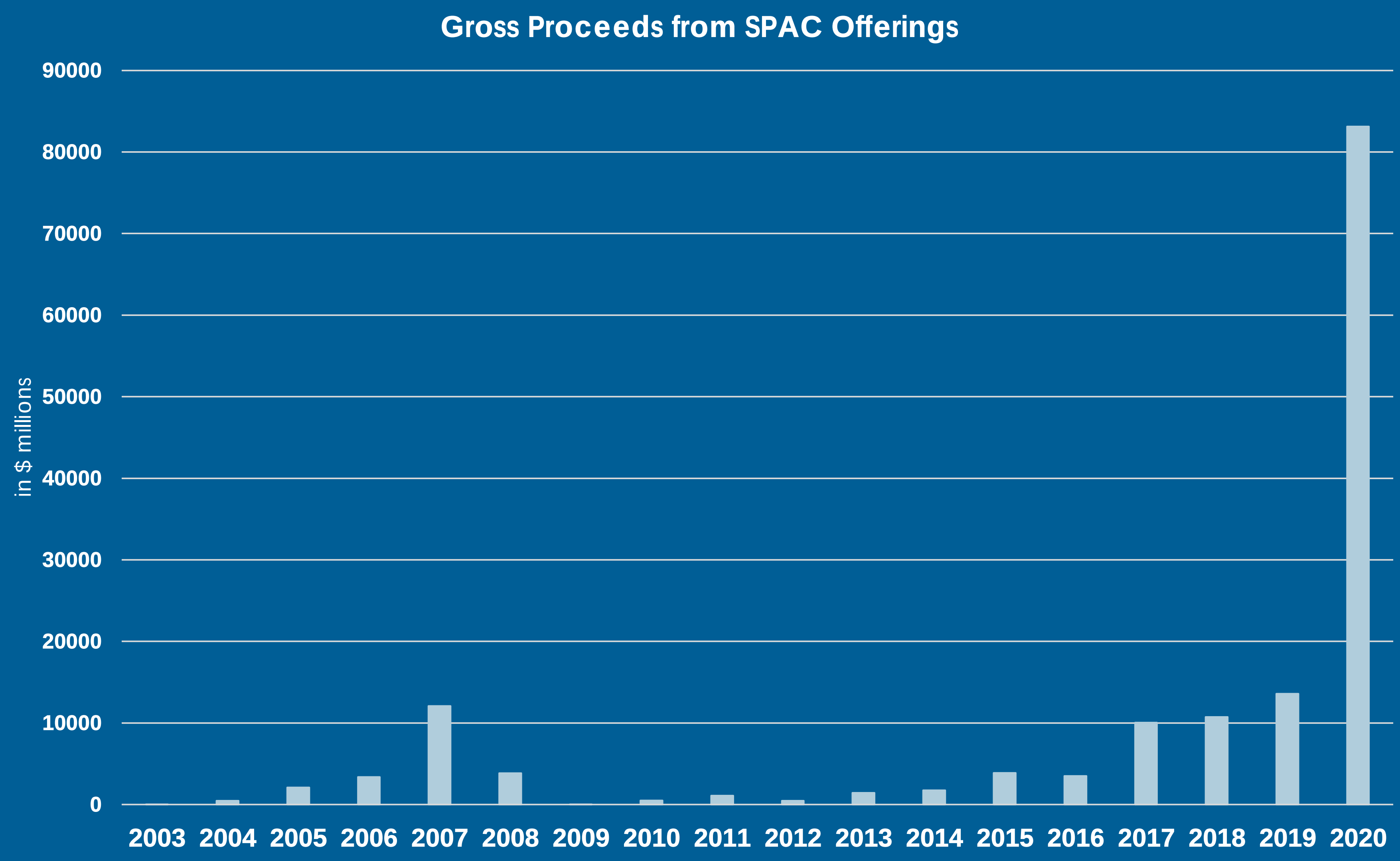
SPAC Market – Overview

	Number	Gross Proceeds (M)
SPACs that have gone public and are currently looking for an initial business combination	236	$75,077
SPACs that have gone public and announced an acquisition target	54	$15,440
SPACs that have gone public and completed an acquisition	270	$52,417
SPACs liquidated without an acquisition	90	$12,451
Total	**650**	**$155,385**

**As of January 7, 2021*

Year	Number of SPACs	Average IPO Size (M)	Gross Proceeds (M)
2020	248	$335.3	$83,161
2019	59	$230.5	$13,600
2018	46	$233.7	$10,750
2017	34	$295.5	$10,048
2016	13	$269.2	$3,499
2015	20	$195.1	$3,902
2014	12	$145.8	$1,750
2013	10	$144.7	$1,447
2012	9	$54.5	$491
2011	15	$69.4	$1,110
2010	7	$71.8	$503
2009	1	$36.0	$36
2008	17	$226.0	$3,842
2007	66	$183.2	$12,093
2006	37	$91.5	$3,384
2005	28	$75.5	$2,113
2004	12	$40.4	$485
2003	1	$24.2	$24

SPAC Market – Overview



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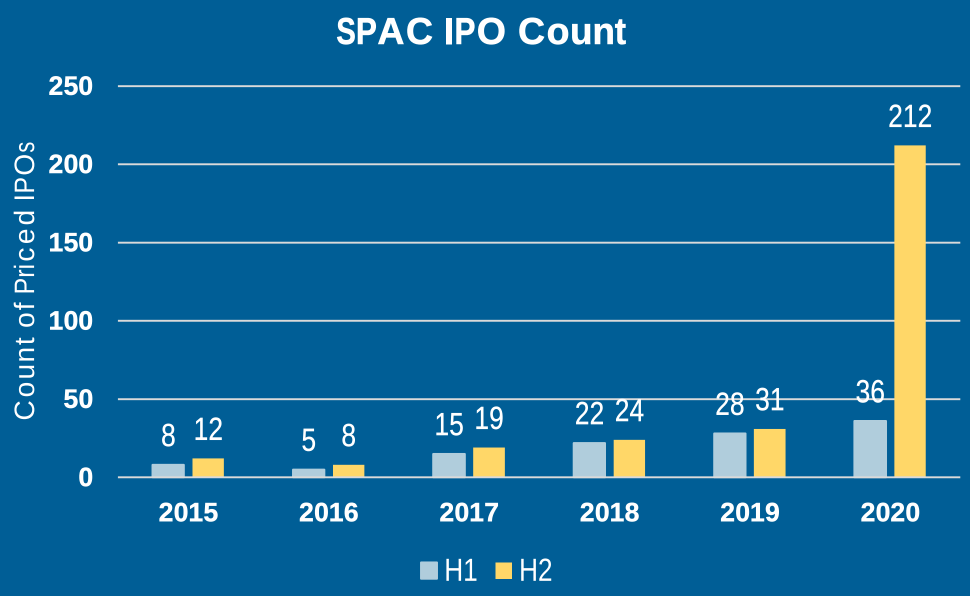
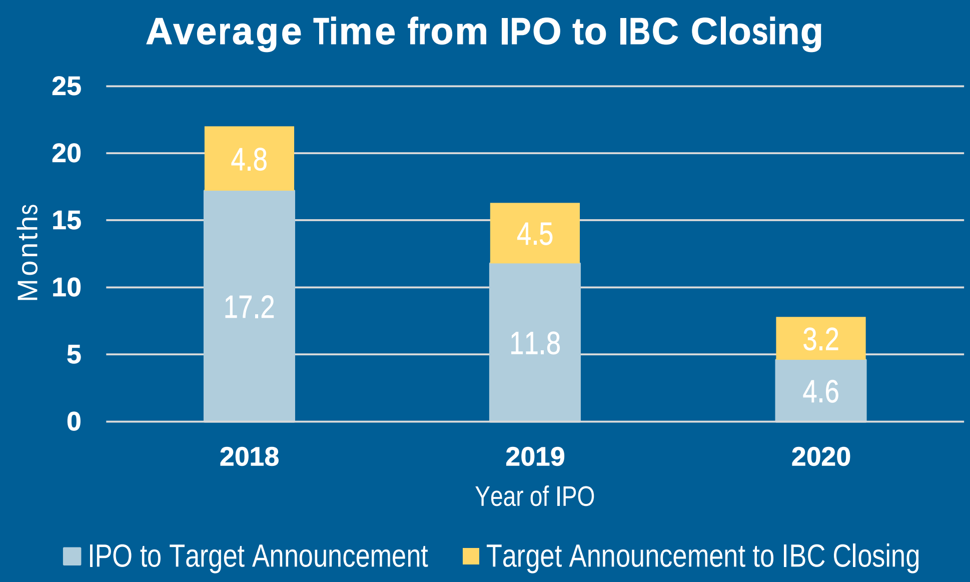
SPAC Market – 2020 In Review

- A record-setting H2 2020, after steadily growing IPO volume in recent years
  - 249 SPACs are currently pursuing an acquisition target, more than in any previous year
- Timelines continue to shorten from IPO to target announcement, and from target announcement to IBC closing
  - Ten SPACs completed an IPO, announced a target and completed an IBC within 2020, averaging 4.6 months to announce a target, and an additional 3.2 months to complete the business combination





As of January 8th, 2021

History

- Prior to 2005, domestic SPACs were only permitted to trade on the Over-the-Counter Bulletin Board.
  - “Blank check” companies became popular and notorious in the 1980s.
    - Prominent vehicles for fraud and abuse in the penny stock market (~70% of all penny stock issues offered between the beginning of 1988 through the third quarter of 1989 were blank check companies).
    - Perpetrators of penny stock fraud orchestrated their schemes through the marketing of public shell corporations, often referred to as "blank check" companies.
    - These companies largely disappeared as a result of regulatory backlash in the 1990s (Penny Stock Reform Act of 1990), particularly with respect to the enactment by the SEC of Rule 419 regulating blank check companies.
  - The first of the new crop of blank check companies went public on August 23, 2003.
    - In 2003, the lack of opportunities for mid-market public investors combined with the trend of upsizing private equity funds pushed entrepreneurs to directly seek alternative means of securing equity capital and growth financing.
- SPACs historically have listed on NASDAQ, but following the NYSE’s rule change to encourage listing of SPACs, SPAC listings on NYSE have increased during the past few years.
- SPACs became very popular in the U.S. before the recent financial crisis, accounting for approximately 25% of IPO volume in 2007. The SPAC market experienced a significant decline in activity during the financial crisis.
  - 139 SPACs made initial public offerings between 2003 and 2008.

History

- Market has re-emerged and 46 SPACs completed IPOs in 2018, 59 completed IPOs in 2019 and 248 completed IPOs in 2020.
- SEC approves new regulations geared towards mandating enhanced disclosure of public shell companies (Securities Reform of 2005).
  - Public Shell Company = A registrant with no or nominal operations and no or nominal assets, assets consisting solely of cash or cash equivalents, or cash and only nominal other assets.
    - SEC requires operating companies merging with public shell companies to provide the same level of disclosure required in a traditional IPO, effectively removing some of the incentive for "going public" through a SPAC.
    - The SEC’s differential treatment of SPACs became evident when the SEC adopted rules expanding the availability of Rule 144, but confirmed that Rule 144 is not available for the resale of securities of an operating company that merges with a SPAC for one year following the business combination.
- High profile asset managers have been sponsoring SPACs including Goldman Sachs Asset Management, TPG, Pershing Square, The Gores Group, Kayne Anderson, Chin Chu, Neuberger Berman, Carlyle, T.H. Lee, PIMCO, Oaktree, Cerberus, Bain.

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- Introduction: What is a SPAC?
- **Regulation of SPACs**
- SPAC Structure
- The Underwriting Process of a SPAC IPO
- Professional Biographies

Regulation

- Rule 419 under the Securities Act imposes limitations on SPAC IPOs and operations prior to the consummation of the initial business combination.
- The restrictions of Rule 419 are generally not applicable to SPACs in the market today, which are structured to fit within an exemption from the application of Rule 419 set forth in Rule 3a51-1 of the Exchange Act for issuers with less than three years of operations who have a minimum of $5 million in net assets.
  - SPACs generally have a provision that they may not redeem a number of public shares such that their net tangible assets will fall below $5,000,001 for this reason.
  - Rule 419 imposes stringent limitations on activities of blank check companies. For instance:
    - Gross proceeds from the issuance of securities (less allowable underwriting commissions, expenses and deductions) must be placed in escrow;
    - The fair value or net assets of a target business must represent at least 80% of the maximum offering proceeds; and
    - The securities cannot begin trading until the completion of a business combination.
  - However, SPACs in practice adopt many of Rule 419's limitations with some differences. For instance:
    - A certain portion of the IPO funds, usually 100%, are deposited in escrow until the completion of the initial business combination;
    - The fair value of the target business must represent at least 80% of the amount held in trust; and
    - The securities offered in a SPAC IPO begin trading on the date of the IPO.

Regulation

- SPACs register the securities issued in the IPO on a Form S-1 registration statement.
  - Registration statement is subject to 30 days review by the SEC and then subsequent review until comments cleared.
- SPACs are generally listed on a national securities exchange (units, shares and warrants), and they are subject to the listing rules of such exchange.
- Following completion of IPO, SPACs are subject to Exchange Act Reporting.
  - 10-Ks, 10-Qs, 8-Ks… etc.

EGC and SRC Status

- Typically, SPACs seeking to IPO will file as "emerging growth companies" (EGCs) under the JOBS Act and as "smaller reporting companies."
  - Confidential submission of draft registration statement with the SEC.
  - Reduced SEC disclosure requirements.
  - Not required to obtain auditor attestation of internal control.
- Note: SPACs are "ineligible issuers" for purposes of Securities Act Rule 405. As such, they are not permitted to issue "free writing prospectuses" or recorded net roadshows under Securities Act Rule 433.

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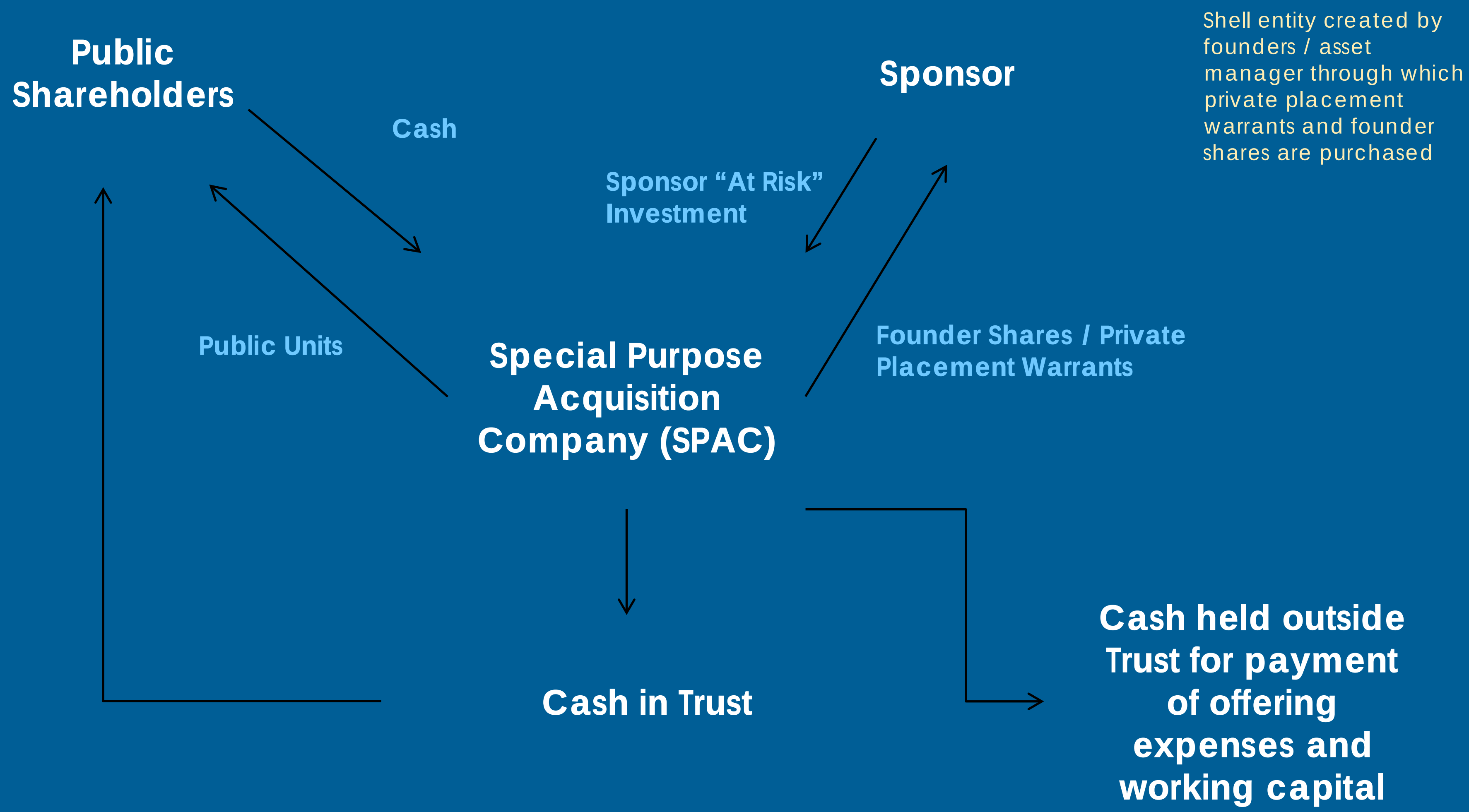
SPAC Structure



SPAC Structure

The SPAC raises capital by issuing units to public investors and warrants to the sponsor.

- Units
  - Each unit consists of one common share and one warrant (or more typically, a fraction of a warrant).
  - In recent deals, offering price for units is $10.00.
  - Underwriters are generally granted a 15% over-allotment option for 45 days.
- Public Warrants
  - Each whole warrant generally allows an investor to purchase one share (or a fraction of a share) for $11.50 per whole share in recent deals.
  - Exercisability: The warrants become exercisable on the later to occur of (i) 30 days after the completion of the initial business combination and (ii) 12 months after closing of the IPO.
  - Expiration: 5 years after completion of initial business combination or liquidation of SPAC or redemption of warrants by SPAC.
  - Redemption:
    - Once warrants are exercisable, SPAC may redeem outstanding warrants (i) in whole and not in part; (ii) at a price of $0.01 per warrant; (iii) upon 30 days prior written notice; and (iv) if and only if last reported sale price for common shares equals or exceeds $18.00 (sometimes $24.00) per share for any 20 trading days within a 30-day trading period ending three business days before SPAC sends notice of redemption.
    - Some deals have another redemption feature that permits redemption for $0.10 or permits the warrants to be exercised for common stock based on a table of fair values when the share price hits $10.00
  - Anti-Dilution (Crescent) Adjustment: Included in some deals that reset warrant strike price in the event of a dilutive PIPE.

SPAC Structure

- Private Placement Warrants
  - Sponsor makes "at risk" investment via purchase of warrants in a private transaction concurrently with closing of IPO.
  - These proceeds are used to pay upfront underwriting commission and offering expenses and operating costs.
    - Investment is called "at risk" because if the SPAC dos not complete the initial business combination the proceeds are used to fund the liquidation of common shares.
  - Generally purchased for \$0.50, \$1.00 or \$1.50 per warrant and proceeds equal to ~2.0-4.0% of the IPO proceeds contingent in part on up-front costs.
  - Generally subject to a lockup that expires 30 days after the completion of the initial business combination.
  - If no acquisition, private placement warrants expire worthless and sponsor loses money.

SPAC Structure

- Founder Shares
  - Prior to IPO, SPAC issues an amount of common shares to the Sponsor equal to 20% of the amount of common shares that will be outstanding after the IPO for nominal sum (~$25,000).
  - Founder Shares may be of same class as IPO shares, or SPAC may use a dual class structure.
    - In a dual class structure, Founder Shares convert to class A at the time of the initial business combination.
    - Founder shares are identical to IPO shares, except that founder shares are subject to certain transfer restrictions and have registration rights.
  - Charter generally includes an anti-dilution provision that will increase the number of Founder Shares in the event of a third-party equity investment at or prior to time of the initial business combination such that Founders retain 20% ownership on a pro forma basis.
  - Founders generally waive redemption rights and rights to liquidating distributions.
  - Founders generally commit at time of IPO to vote in favor of the initial business combination if a vote will be required (historically founders sometimes agreed to vote pro rata).
  - Founders generally agree to a lock up that expires at the earliest to occur of:
    - One year after completion of initial business combination; and
    - Following initial business combination (usually 150 or 180 days) if common shares exceed a designated price hurdle (e.g. $12.00 per share)
    - After business combination, liquidation or other event where other shareholders would have right to exchange their shares.

SPAC Structure

Use of Proceeds

- Amount equal to approximately 100% of the gross proceeds from the IPO is placed in trust to fund the initial business combination and deferred underwriter's compensation.
- Proceeds are typically invested in U.S. government treasury bills with a maturity of 180 days or less or in money markets funds meeting certain conditions under Rule 2a-7 under the 1940 Act. This is driven in part by 40 Act concerns.
- Interest earned on funds held in trust used to pay taxes and, in some deals, to fund working capital (may be subject to a cap).
- Remaining proceeds from the IPO and private placement of warrants are used to:
  - Pay the underwriters upfront commission;
  - Pay the offering expenses for the IPO (counsel, accountants, printer, roadshow… etc.); and
  - Fund working capital and search for a business combination target.
- In the event working capital funds are used prior to consummation of initial business combination, insiders may provide loans to fund additional working capital. A portion of these loans are often convertible into warrants.

SPAC Structure

Indemnity

- The SPAC will have an indemnity provided to it to cover claims made by third parties against funds set aside in the trust account.
  - The indemnity does not cover claims by the underwriters or claims by third parties who have waived claims on the funds in the trust account.
  - In most recent deals the indemnity is provided by a newly formed sponsor entity, which generally has no assets other than the securities of the SPAC.

SPAC Structure

Sunset

- The SPAC generally has 24 months to consummate acquisition (some deals are shorter).
- Fair market value of target businesses in the business combination must exceed 80% of the SPAC's net assets held in the trust.
- The SPAC can use a combination of its shares, cash and debt to complete the business combination. Often, the enterprise value of a the target is larger than the size of the SPAC and business combination involves issuing shares of the SPAC and leverage. Often additional capital raised through a PIPE.

SPAC Structure

Public Shareholder Redemption

- SPAC provides public shareholders an opportunity to have their shares redeemed at the time that it completes the initial business combination.
- Redemptions are solicited via either:
  - Proxy solicitations, if SPAC must obtain a shareholder vote to approve the initial business combination; or
  - A tender offer.
- In practice, proxy solicitations are general method employed as shareholder votes often accompany a de-SPACing transaction.
- Must maintain $5,000,001 in net tangible assets in order to avoid classification as a "penny stock."
- Requirement to provide redemption creates execution risk for initial business combination due to uncertainty of cash SPAC will have.
- Excess shares limitation: SPACs typically have a "bull dog" provision which limits the amount of shares a shareholder or group of shareholders may redeem at the time of the initial business combination; limit is often times set at 15% or 20%. This limits "hold-up" opportunities by concentrated investors.

SPAC Structure

Listing

- Units begin trading at the time of the IPO.
- Common shares and warrants comprising units generally begin trading separately on the 52nd day following the pricing.
  - Clearance to commence separate trading of the common shares and warrants requires the SPAC to file an 8-K with an audited balance sheet reflecting receipt of the IPO and private placement proceeds.

Recent Trends

- Sponsors often syndicate a portion of the at-risk capital by bringing in third-party investors into the Sponsor vehicle.
- Certain recent deals include a stock forward feature whereby investors have committed at the time of the IPO to purchase SPAC securities at the time an initial business combination is consummated.
  - This provides IPO investors with greater certainty that the SPAC will have sufficient cash available to consummate a business combination. However in some deals, the entities providing the forward stock purchase have the ability to opt not to provide funding if they do not support the acquisition (may be subject to a break fee).
  - Lawyers should be consulted in advance of structuring a private placement as there are securities laws issues which can arise in trying to pursue a private placement while also engaging in testing the waters or otherwise around the time of the IPO.

Tax Considerations

Domicile

- Most SPACs are formed either as Delaware corporations or Cayman exempted companies. The choice generally depends on the domicile of the Sponsor and of potential targets for the business combination.
- Delaware corporations are subject to U.S. federal income tax. If a Delaware SPAC wants to acquire a non-U.S. business, the SPAC may seek to redomicile outside Delaware to avoid continued U.S. federal income tax on the combined business. This will involve potentially complex tax analysis at such time and may depend on specific facts about the Sponsor and Target for the business combination.
- Cayman SPACs may be subject to the "passive foreign investment company" rules, possibly depending on timing of the IPO and business combination. This may result in tax drag for U.S. holders, and particularly a U.S. sponsor.

Tax Considerations

Traditional Issues and Recent Trends

- The issuance of founder shares for a nominal sum carries certain risk that the valuation of such "cheap stock" is not respected for tax purposes. If the valuation of the "cheap stock" is not respected for tax purposes, the issuance might potentially be considered compensation, leading to ordinary income to the Sponsor and withholding obligations for the SPAC.
  - The market is generally comfortable that the "cheap stock" valuation would be respected. Nevertheless, sponsors typically seek to minimize risk by issuing any interest in founder shares to independent directors, or interests in the sponsor vehicle to sponsor employees or third-parties, as early in the IPO process as possible.
- 83(b) elections are generally filed with respect to profits interests in the Sponsor entity granted to sponsor employees. In certain situations, such profits interests may be subject to Section 1061, providing a longer, three-year holding period required to treat gains on disposition as long-term capital gains.
- Recent trends toward bringing in third-party investors to the Sponsor vehicles, as well as having investors (potentially affiliates of the Sponsor) enter into forward contracts to purchase SPAC securities at the time of an initial business combination, should be monitored for their tax effects.
  - Third party investment in the Sponsor vehicles might potentially raise issues around taxable capital shifts, particularly if they are not investing at the same price as the Sponsor.
  - Commitments by Sponsor affiliates to purchase SPAC units can sometimes have tax effects on such Sponsor affiliates, depending on how such right/obligation is structured.

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Underwriting Considerations

Underwriting Commission typically paid in two parts

In current market total commission ~ 5.5 – 6.0%

- 2.0% is typically paid at closing of the IPO.
- Remaining commission (the deferred discount) is placed into the trust account.
  - Deferred discount is paid to underwriters at the time the initial business combination is consummated.
  - If SPAC fails to effect a business combination and liquidates, the deferred discount is used, together with additional funds in trust account, to fund redemption of public shares (and is not paid to the underwriters).

Underwriters for the IPO often continue to assist SPAC through back-end mergers

- In certain deals, the SPAC will also appoint one or more financial advisers in connection with a business combination.
- Underwriters acting as financial advisers for the business combination can receive a separate fee for acting as such.
- In any event, underwriters typically assist SPAC in finding targets and assisting with capital structure matters for SPAC mergers.

Public shareholders may, depending on the transaction structure, need to vote to approve the business combination

- Shareholder vote is required when the SPAC is offering more than 20% of its voting securities as consideration in the business combination, changing the composition of the board of directors, and/or amending its charter/bylaws or otherwise based on transaction structure and governing law requirements of SPAC.

Public shareholders have the right to have the SPAC redeem their shares at IBC

- In effect, the SPAC investors make second investment decision with respect to the business combination.

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Professional Biographies

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Capital markets attorney Paul Tropp is co-head of Ropes & Gray's capital markets practice. He represents issuers and underwriters in a wide range of corporate finance transactions, including initial and follow-on public offerings; transactions involving convertible, high-yield and investment-grade bonds; debt tenders and consents; private placements; and selling-shareholder deals. In addition, Paul advises independent boards of directors and financial advisors.

Paul's practice has a particular focus on specialty finance enterprises such as special purpose acquisition companies (SPACs), business development companies (BDCs) and mortgage REITs, as well as asset managers.

Consistently recognized as a leading lawyer by sources such as Chambers USA, Chambers Global, IFLR and The Legal 500, Paul headed the New York capital markets practice of a global law firm before joining Ropes & Gray in 2018.

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Christopher is a partner in the securities & public companies group. He focuses his practice on the representation of issuers, underwriters and selling stockholders in a variety of debt and equity offerings and leveraged financings. In addition, he has extensive experience in connection with specialty finance capital markets transactions, including special purpose acquisition companies (SPACs), business development companies (BDCs) and mortgage REITs.

In addition, Christopher represents private equity sponsors in acquisition financings, as well as their portfolio companies in ongoing financing matters. He also advises clients on SEC reporting and compliance obligations, debt covenant matters, corporate governance and other general corporate matters.

Christopher is a certified public accountant in the state of New York and prior to his legal career, was an auditor at KPMG. Christopher was a senior associate in the New York and London capital markets practice of a global law firm before joining Ropes & Gray in 2018.

Professional Biographies

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Emily brings a leading transactional lawyer's perspective to mergers and acquisitions and the full range of capital markets transactions. Her insight into how to navigate challenging business issues and complex transactions has made her a trusted advisor for a diverse base of public and private companies, investment banks and private equity funds.

Clients involved in capital markets transactions benefit from Emily's broad perspective—she represents issuers and underwriters across industries, and draws on her extensive securities law experience to help clients manage complicated disclosure issues and execute successful transactions.

Emily's M&A experience is equally broad, and includes cross-border deals, divestitures and bolt-ons, as well as a variety of other complex strategic transactions.

Emily's practice covers the full SPAC lifecycle, representing issuers and underwriters in IPOs and advising on proposed business combination transactions.

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James R. Brown is a partner in the tax department, focusing on the tax aspects of complex investment fund transactions. He regularly advises sponsors of investment funds on tax structuring and operational issues relating to these funds, including the taxation of registered and unregistered investment funds (e.g., private equity funds, debt funds, hedge funds, commodities funds and regulated investment companies or mutual funds). He also advises on acquisitions, mergers, recapitalizations, joint ventures and other types of transactions involving funds, their portfolio investments and their sponsors.