

Developments in public company M&A and security law

Presented by the IBA Corporate and M&A Law Committee

A discussion of the ever-evolving landscape of public M&A around the world, including recent developments in securities law

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The Plaza Hotel – New York, United States



Panelists and moderators

<u>Panelists</u>	<u>Moderators</u>
<p>Harry Coghill <i>Macfarlanes, London</i></p> <p>Sergio González Galán <i>Garrigues, Madrid</i></p> <p>Arne Grimme <i>De Brauw Blackstone Westbroek, Amsterdam</i></p> <p>Haigreve Khaitan <i>Khaitan & Co, Mumbai</i></p>	<p>Bertrand Cardi <i>Darros Villey Maillot Brochier, Paris; Vice Chair, IBA Corporate Governance Subcommittee</i></p> <p>Melissa Sawyer <i>Sullivan & Cromwell, New York</i></p>



Multiple voting rights

- Increasingly popular with issuers – in 2021, 32% of all U.S. IPOs included MVRs
 - o Prominent issuers around the world:
 - Roche (Switzerland)
 - Facebook, Google, Berkshire Hathaway, Ford (USA)
 - Stellantis, Exor (the Netherlands)
- Investors remain critical and as a result some indexes have excluded new entries with MVRs (but have not excluded existing issuers with MVRs)
- Significant variation among forums – can be a key determinant in selection of jurisdiction of listing
 - o Relatively few or no restrictions
 - USA, Canada, Switzerland, the Netherlands
 - o Permitted but with restrictions
 - Hong Kong, UK, Australia
 - o Not currently permitted (although reform may be under consideration)
 - Germany, Spain, France
- Variations:
 - o Dilution or time-based sunset provisions
 - o Require approval of common shares for certain decisions
 - o Loyalty shares (France – double-voting rights can be acquired after 2 years; the Netherlands - high degree of flexibility)

SPACs: Summary of Recent Developments

- On March 30, 2022, the U.S. SEC proposed rules that would impose a range of new requirements on SPAC IPOs and de-SPAC transactions. Key aspects of the proposal include:
 - Enhanced disclosure requirements:
 - Expansion of the scope of and parties subject to liability in de-SPAC transactions:
 - Changes in the processes for SPACs:
- Represents the U.S. SEC's latest efforts to align the procedural and disclosure requirements for de-SPAC transactions more closely with those for traditional IPOs
- The SEC's proposal seems to have exacerbated slowing SPAC activity
- Preexisting SPACs are under a lot of pressure to find deals; for all SPACs searching for targets as of the end of Q1, ~12% were set to expire in 6 months or less, and ~60% were set to expire in 6-12 months

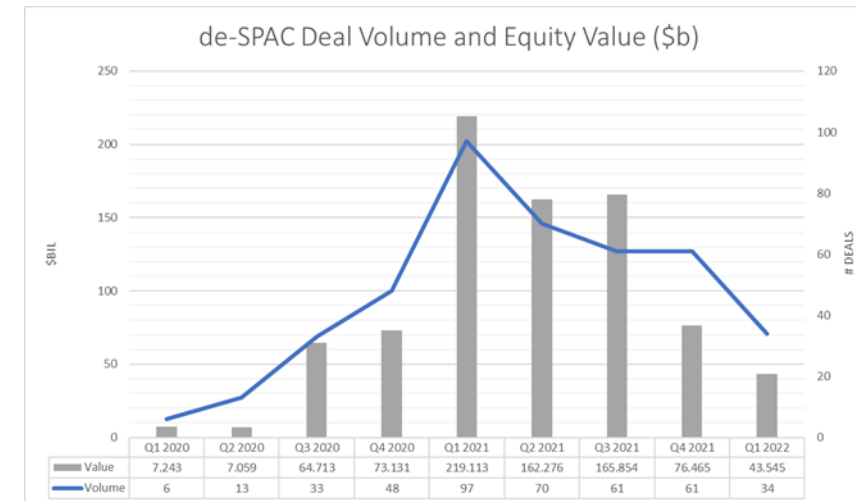
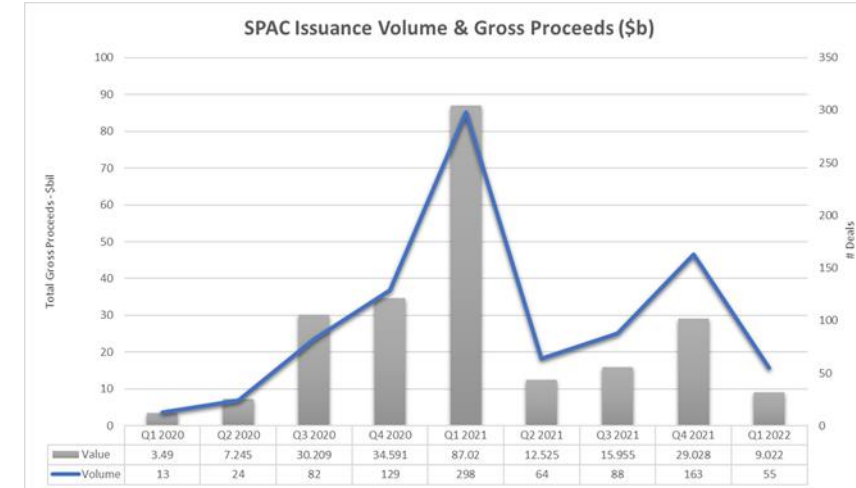


SPAC Market Overview

SPAC IPO and de-SPAC activity has slowed considerably since unprecedented levels in 2020 and 2021 H1, as shown below:

- 2020
 - 248 SPAC IPOs in the US with aggregate gross proceeds of approx. \$74B
 - 100 de-SPAC transactions closed with an aggregate equity value of approx. \$152B
 - 4 SPAC IPOs in the EU with an aggregate gross proceeds of approx. \$425mln
- 2021
 - 613 SPAC IPOs in the US with aggregate gross proceeds of approx. \$145B
 - 289 de-SPAC transactions closed with an aggregate equity value of approx. \$624B
 - 38 SPAC IPOs in the EU with aggregate gross proceeds of approx. \$7B
- 2022 Q1
 - 55 SPAC IPOs in the US with aggregate gross proceeds of approx. \$9B, as compared to nearly 300 with aggregate gross proceeds of approx. \$87B in 2021 Q1
 - 34 de-SPAC transactions closed with an aggregate equity value of approx. \$44B, as compared to 97 with an aggregate equity value of approx. \$219B in 2021 Q1

Source: LionTree

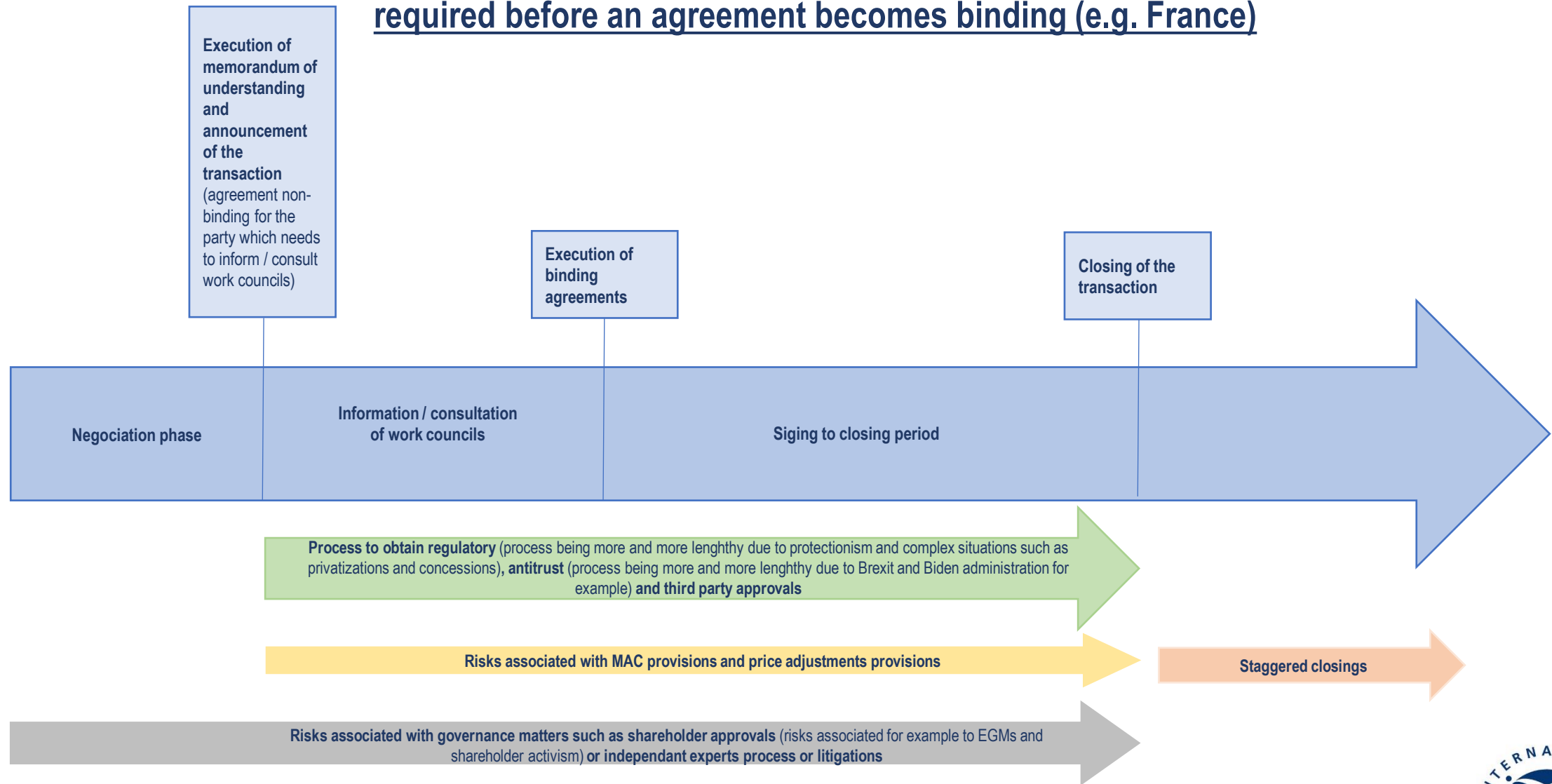


Poison pills: Overview of Suez's Dutch stichting foundation in the context of Veolia hostile takeover

- Mechanism to preserve the French water business
- On September 23, 2020, transfer to an independent Dutch foundation of one ordinary share of each of the two main subsidiaries involved in the French Water business of Suez (Suez Eau France and - in order to avoid a disposal of Suez Eau France through a transfer of its parent company – Suez Groupe)
- Foundation managed by 3 directors: a former employee of Suez, a member of Suez's employee representative bodies and a Dutch lawyer. Their decisions were taken by simple majority. The powers of the board of directors of the foundation are limited to preventing the sale of the French Water division
- Bylaws of the two companies concerned by the transfer of a share to the foundation (Suez Eau France and Suez Groupe) amended to provide for the need to obtain the unanimous approval of the shareholders (Suez SA or Suez Groupe – as applicable - and the foundation) for any contemplated transfer of the French Water business outside the Suez group for a period of 4 years, as well as for any decision that would have the effect of circumventing this obligation and result in the loss by Suez of control over its French Water business
- Mechanism not preventing the filing of a tender offer on Suez's shares (simply aims at ensuring that the said tender offer cannot jeopardize the integrity of the French Water business within the Suez group)
- Board of directors of Suez retained the possibility, at a simple majority vote, to deactivate the mechanism or instead to make it irreversible until September 2024 only in case of change of control of Suez SA; faculty used on March 20, 2022 to make the Foundation irrevocable until September 2024 subject only two exceptions (offer in excess of a minimum fixed price is announced and closed before certain dates or a friendly deal including a public offer on Suez SA (friendly characteristic being certified by Suez SA) is executed and closed before certain dates)



Lengthening deal calendars in particular in EU jurisdiction where work councils consultations are required before an agreement becomes binding (e.g. France)





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