

the legal profession

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# **SPACs**

#### Session / Workshop Chair(s)

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#### **Speakers**

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#### How does a SPAC work?



#### Process overview

The process from announcement of a definitive agreement (and proxy/S-4 filing) to close may take between two and five months (not all that different from an IPO process)

### **Step 1:** Identifying a partner

- Target prepares marketing materials
- Target may engage in auction process using a "teaser"
- NDA executed
- Marketing materials and management presentations made
- Potential SPAC partners submit indications of interest

### **Step 2:** Preparation

- Negotiate Lol
- Draft business combination agreement
- Develop investor outreach plan
- Wall cross investors
- Initiate private investment in public equity ("PIPE") process (if applicable)
- Begin proxy/S-4 preparation

# **Step 3:**Signing and Announcements

- Execute business combination agreement and announce transaction
- Execute PIPE subscription agreements
- Announce transaction
- Conduct announcement conference call and investor meetings

#### **Step 4:** SEC review & marketing

- File proxy statement/ S-4 with audited financials
- Receive and respond to comments from SEC
- Continue investor outreach
- Hold analyst day
- Retain proxy solicitor
- Set shareholder record and stockholder meeting date
- Mail final proxy (3-4 weeks prior to vote)

#### Step 5: Closing process

- Conduct roadshow
- Regular calls with banks and advisors to track large shareholders
- Tabulate redemption requests (two days prior to vote)
- Hold vote
- Close transaction
- Close PIPE

## deSPAC Regulatory Framework

- Proxy Statement / Registration Statement on Form S-4
  - SPAC must file proxy statement on Schedule
     14A
  - If SPAC intends to register new securities as part of transaction, SPAC must file a proxy/prospectus on Form S-4 (or F-4)
  - The continuing company may be able to qualify as a foreign private issuer (FPI)
- The type of information that is required of a target company is the same as what would be required if target company were to do an IPO

- Financial statements of the SPAC and the target are required.
  - At least 2 most recent fiscal years and possibly 3, if SPAC has filed a Form 10-K
  - Unaudited interim financial statements may be required based on age of financial statements
- Unaudited pro forma financial information reflecting the proposed acquisition
- Management's Discussion & Analysis for the SPAC and the target
- Selected financial information for the SPAC and the target
- Comparative per share information
- Financial Statements must comply with Regulation S-X and US GAAP requirements and be prepared in compliance with PCAOB standards

## Recent U.S. Regulatory Developments

- Various SEC Staff members have commented publicly on SPACs, including the Acting Director of the Division of Corporation Finance John Coates, cautioning private companies.
- SEC Office of Chief Accountant has provided guidance relating to SPAC warrants, and whether warrants containing certain provisions hould be treated as a liability for accounting purposes instead of as equity.
- On May 24, 2021 the House Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets held a virtual hearing titled: "Going Public: SPACs, Direct Listings, Public Offerings, and the Need for Investor Protection".
- In August 20201, SEC sanctioned its first SPAC, Stable Road Acquisition Company, its CEO, its sponsor, the target company and its former CEO, with penalties levied against multiple parties of approximately \$8.5 million, in the aggregate.

### Recent changes to the UK Listing Rules

New UK rules in force from 10 August 2021

Remove presumption that SPAC listing suspended where target identified

Seven conditions apply

1. Size threshold

2. Ring-fenced cash for acquisition

3. Time limit for making acquisition

4. Board and shareholder approval

5. Fair and reasonable statement

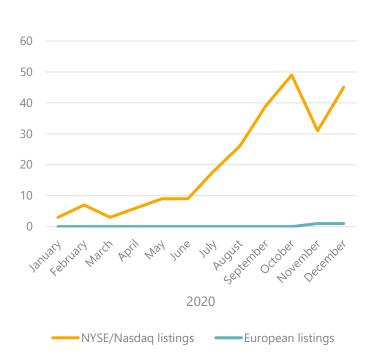
6. Redemption option for shareholders

7. Disclosure

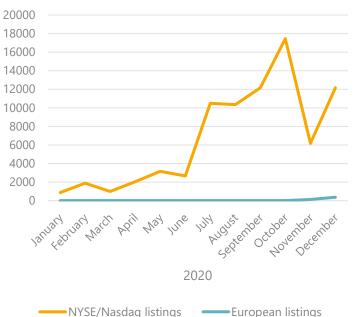
Next steps and developing market practice?

### SPAC IPOs in US and Europe in 2020

#### Number of SPAC IPOs in 2020



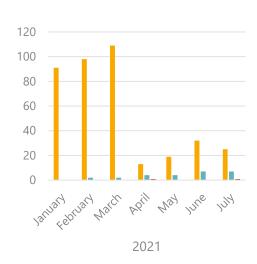
# Proceeds raised by SPAC IPOs in 2020 (US\$ millions)



Source: Refinitiv

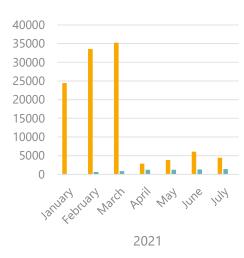
# SPAC IPOs in US, Mainland Europe and UK in 2021 (Jan-Jul)

#### Number of SPAC IPOs in 2021

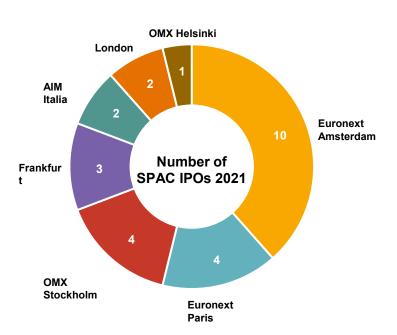


- NYSE/Nasdag listings
- European listings (excl. London)
- London listings

#### Proceeds raised by SPAC IPOs in 2021 (US\$ millions)



- NYSE/Nasdaq listings
- European listings (excl. London)
- London listings



Source: Refinitiv

### SPACs surge

- In the first quarter of 2021, there were 298 SPAC IPOs completed, which raised \$97.3 billion. 255 SPAC IPOs were filed/pending, valued at over \$64.2 billion.
- 24 SPAC mergers were completed, with an aggregate value of \$54.1 billion.
   Companies in the industrials, healthcare, technology and financial services led the charge on SPAC mergers in 2021Q1.
- As of the end of August there were 137 "live" SPAC mergers, with 577 SPACs actively seeking targets.

Pipeline Snapshot	Number	Value, \$billion
Pre-IPO	306	69.1
Active SPACs	577	171.6
- Searching for Mergers	440	131.5
- Live Mergers	137	363.4*
Mergers Closed	120	282.3*
SPACs Liquidated	0	0.0

Enterprise Value at announcement
 Data: SPAC Research, as of Aug 31, 2021

