SPAC 101

WINSTON & STRAWN LLP

Structure and IPO

What is a SPAC?

- Blank check company formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses
- Formed by sponsors with experience and reputations to allow them to identify and complete a business combination with one or more target businesses that will ultimately be a successful public company
- Sponsors and management ideally are firms and/or individuals with demonstrated success in identifying, acquiring and operating growth businesses and with experience in the public company setting

Benefits of the SPAC Structure

Target Business and its Owners

- Go public during periods of market instability
- Access to public markets
- Access to public capital to fund operations or growth
- Ability to structure transaction, including cash-out to existing owners and earn-outs, not available in IPO
- Ability to include financial projections in proxy statement for approval of business combination, not available in IPO
- Ability of existing owners to share meaningfully in future growth via stock rollover, not available in exit via sale

IPO Investors

- Opportunity to co-invest with successful founders
- Liquidity of investment
- Downside protection until closing of business combination

SPAC Founders

- Broader base of potential investors/greater ease in capital raising vs. private vehicle
- Platform to monetize proprietary deal flow
- Potentially very attractive upside
- Possible serial SPACs

Evolution of SPAC Market

SPACs first appeared in the 1990s, but then disappeared with the surge in traditional capital markets activity for small-cap issues in the late 1990s

SPACs returned in 2003 for a strong run

In 2007, there were 66 SPAC IPOs raising a total of $12.1 billion (SPAC Analytics)

In early 2008, the SPAC IPO market closed, then returned in 2010 with significantly altered terms

In the 2010s, private equity firms emerged as frequent SPAC sponsors

In 2019, there were 59 SPAC IPOs raising a total of $13.6 billion; in 2020 through October, there have been 125 SPAC IPOs raising a total of $47.5 billion

Target Business Focus

Some SPACs focus on acquiring a target in a particular industry while others have no such focus. When focused on a particular industry, members of its management typically have significant experience and reputations in that industry

Until closing of the IPO, a SPAC cannot hold substantive discussions with a business combination target with respect to a business combination with the SPAC

SPAC Capital Raise

- SPAC conducts an IPO to raise capital primarily from institutional investors, and also from retail investors
- The cash raised in the IPO is placed in a trust account and not released until the SPAC completes a business combination or upon a specified outside date (typically between 18 and 24 months after the IPO closing) if the SPAC fails to complete a business combination by such date
  - A SPAC may hold a shareholder vote to approve an extension of its outside date to up to 36 months after the IPO closing, but must offer public shareholders redemption rights in connection with such vote
- In a concurrent private placement, sponsors purchase warrants (or sometimes units) for an amount equal to the IPO expenses plus a specified amount to be held outside the trust account for future expenses; this is the “risk capital”

SPAC Capital Structure

A SPAC generally offers units, each comprising of one share of common stock and a portion of a warrant (or a full warrant) to purchase common stock

The warrant portion of the unit is intended to compensate investors for agreeing to have their capital held in the trust account until the SPAC consummates a business combination or liquidates

SPAC Capital Structure Alternatives

- Depending on size, prominence/track record of sponsors, and investment bank leading IPO, units may consist of one share of common stock plus one full warrant or a fraction of one warrant
- Warrants are always struck "out of the money," typically at $11.50
- Warrants are redeemable by the SPAC post-business combination for $0.01 per warrant if the trading price reaches a specified threshold, typically $18.00
- Occasionally, other securities are included in the units, such as rights that automatically convert into a portion of a share of common stock at the time of the business combination
- In some SPACs, the trust account is "overfunded," i.e., more than 100% of the cash raised in the IPO and the sponsor private placement is placed into the trust account
  - This may allow the SPAC to not include warrants or other securities in its IPO or to offer a smaller number of warrants or other securities in its units or to have a longer period of time to complete a business combination

Warrants

The common stock and warrants included in SPAC units become separable shortly after the IPO, and the warrants and common stock can trade separately alongside the unseparated units

Warrants become exercisable only if the SPAC completes a business combination transaction before the specified outside date

Size and Dilution

In connection with the formation of the SPAC, the SPAC's sponsors acquire founder shares for nominal consideration

Typically results in the SPAC's sponsors owning 20% of outstanding common stock post-IPO

Generally subject to lock-up for 1 year following business combination (with potential earlier release under certain circumstances)

Trust Account

- IPO proceeds are placed into a trust account and are not permitted to be released from the trust account until the closing of a business combination or if the SPAC is unable to complete a business combination within a specified timeframe or if the SPAC seeks an extension of its timeframe
  - At closing of business combination, or in connection with an extension vote, public shareholders may redeem their shares for a pro rata portion of the cash held in the trust account; upon closing, balance of the trust account released to the company to be used in the business combination transaction or thereafter for working capital purposes
  - If the SPAC fails to complete a business combination in the required timeframe, all public shares are redeemed for a pro rata portion of the cash held in the trust account
- Proceeds held in trust account generate interest income, which can be used only to pay income and franchise taxes (and, in some cases, a limited amount of expenses) until the SPAC completes a business combination transaction

Size and Dilution

IPO raise is typically about 1/4 to 1/3 of expected enterprise value of target to minimize effect of dilution resulting from founder shares and warrants

SPAC may sell additional equity or equity-linked securities at time of business combination

SPAC may also raise debt financing at the time of the business combination

Listing and Regulation

IPO Process

- SPACs conduct their IPOs by filing a Registration Statement on Form S-1 with the SEC, just like other companies conducting IPOs
  - Emerging growth company under Section 2(a)(19) of Securities Act
  - Can make confidential submissions of draft registration statements under Section 6(e) of Securities Act
    - Must file S-1 publicly at least 15 days before roadshow
- At the time of its IPO, SPAC cannot have selected a business combination target; otherwise, it would have to provide disclosure regarding that target
- A SPAC is an "ineligible issuer" not entitled to use a free writing prospectus

Stock Exchange Considerations

- SPACs typically list on Nasdaq or NYSE
- Initial business combination must have an aggregate fair market value of at least 80% of the value of the trust account
- Nasdaq has historically been more popular for SPACs, as it has had slightly less rigorous listing standards
- In 2017, NYSE moved to increase its share of the SPAC market by amending its listing standards to more closely match those of Nasdaq, and has gained significant market share; in 2020, Nasdaq adopted amendments to its initial listing standards designed to improve liquidity
- SPACs must meet stock exchange initial listing standards at the time of their IPO as well as at the time of their business combination

Listing and Corporate Governance Requirements

	Nasdaq Capital Market	NYSE
Minimum Round Lot (100 share) Holders	300 (at least 50% must hold unrestricted securities with a market value of at least $2,500)	300
Number of Publicly Held Shares	1,000,000 (excluding restricted securities)	1,100,000
IPO Price per Share	$4.00	$4.00
Market Value of Listed Securities	$50,000,000	$100,000,000
Minimum Market Value of Publicly Held Shares upon Initial Listing	$15,000,000 (excluding restricted securities)	$80,000,000

Listing and Corporate Governance Requirements

	Nasdaq	NYSE
Board Composition	Majority Independent Directors	Majority Independent Directors
Audit Committee	Required, minimum 3 members, all members to be independent	Required, minimum 3 members, all members to be independent
Compensation Committee	Required, minimum 2 members, all members to be independent	Required, no size requirement, all members to be independent
Nominating/Corporate Governance Committee	Not required, nominations can be made by a majority of the independent directors on the Board	Required, no size requirement, all members to be independent
Code of Ethics/Conduct	Required	Required, must be posted on company website

Questions?

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