THE REVIEW OF
SECURITIES & COMMODITIES REGULATION
AN ANALYSIS OF CURRENT LAWS AND REGULATIONS AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 54 No. 16 September 22, 2021

SPAC BUSINESS COMBINATIONS: AN ALTERNATIVE TO TRADITIONAL IPOS

SPACS are blank-check companies formed for the purpose of raising capital for use in a business combination with a company seeking to go public through a "de-SPAC transaction" as an alternative to a traditional IPO. In this article the author gives an overview of such transactions, focusing on the differences, processes, and challenges compared with a traditional IPO.

By Jeffrey A. Letalien *

KEY DIFFERENCES BETWEEN BUSINESS COMBINATIONS AND TRADITIONAL IPOS

A special purpose acquisition company ("SPAC") is a blank-check company formed for the purpose of effecting a business combination with one or more businesses (such as a merger or share exchange). SPACs are formed to raise capital in an initial public offering ("IPO") with the purpose of using the proceeds from the IPO to acquire an unspecified business after the IPO. The net SPAC IPO proceeds, a portion of the underwriting discount, and a portion of the concurrent private placement proceeds are held in a trust account until released to fund the business combination (as defined below).

After the IPO, the SPAC will pursue an acquisition opportunity and negotiate an acquisition of an operating business (the "Target") in a transaction commonly known as a "business combination" or "de-SPAC Transaction." As a result of the de-SPAC Transaction, the Target becomes a publicly traded company, most commonly listed on Nasdaq or the NYSE.

Although SPACs have been around for decades, they have grown in size, as well as in the prominence of the sponsors and underwriters, in recent years. In 2020, 237 SPAC IPOs raised approximately $80 billion[1] compared to 59 SPAC IPOs raising $13.5 billion in 2019.[2]

Despite recent SEC pronouncements creating challenges for SPACs, going public through a de-SPAC Transaction remains a popular alternative to a traditional IPO by the Target. Advantages of a de-SPAC Transaction include earlier certainty of valuation, confidentiality of the transaction until executed and publicly announced, greater ability to use financial projections, and faster execution. However, the disclosure required to be prepared by the Target is no less complex and detailed than the disclosure required for a traditional IPO.

In a traditional IPO, the operating business submits a registration statement to the SEC (which may be submitted confidentially), engages in testing-the-waters meetings with institutional investors to gauge investor

* *JEFFREY A. LETALIEN is Of Counsel at Morgan, Lewis & Bockius LLP in their New York City office. His e-mail address is jeffrey.letalien@morganlewis.com.*

[1] "2020 Has Been the Year of SPAC IPOs: Here Are the Prominent 4," NASDAQ (Dec. 28, 2020).

[2] Tomio Geron, "SPACs Offer Quick Exits for Venture Firms, but Potential Perils as Well," THE WALL STREET JOURNAL (Oct. 30, 2020).