



Webinar

SPACs: The New Trend

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Proskauer»

Speakers



Lily C. Desmond
Senior Counsel
Proskauer



Luisa Ewing
Associate
Proskauer



Antonia Netiv
Partner
NatutaDutilh



Silvia Romanelli
Partner
BonelliErede



Federica Munno
Managing Associate
BonelliErede

What are SPACs?



SPAC stands for Special Purpose Acquisition Company

SPACs are an acquisition vehicle which allows an investor to co-invest “publicly” side-by-side with a sponsor.

SPACs have usually 24 months from listing to announce a business combination with a target.

SPACs are established by one or more sponsors whose equity’s contribution is used to cover most of the IPO’s costs and operating costs until the acquisition is completed.

All or almost all of the amounts raised in the IPO are put in escrow in one or more trust accounts until the business combination process.

The business combination enables the target company to become public without the need to go through a traditional IPO process.

SPAC Update: NYSE and Nasdaq

- SPACs accounted for half of all fees from IPOs in the United States in 2020.
- In 2020, \$82 billion was raised through SPACs— more than 6 times the amount raised in 2019 by these vehicles and an all-time high.
 - Banks made a record \$3.4 billion by advising on 210 SPAC IPOs in 2021 (Dealogic)
- SPACs led by European investors and targeting European companies have largely chosen to list in New York, where investors are more familiar with the product.

European Perspective

- SPAC rules vary from country to country, stock exchange to stock exchange.
- European SPACs were in some European markets hindered by less flexible regulatory environment compared to the United States.
- In general European SPACs often lacked features such as full proceeds being put into escrow and full redemption rights and trading of units, warrants and shares that are more typically seen in US SPACs.

SPAC Update: Dutch Update

- Have seen limited Euronext listed SPACs in 2007/2008 and a recurrence of SPACs in 2016-2020: these are different than the typical US SPAC.
- Currently we are seeing/expecting a wave of SPAC deals being prepared across EU several EU markets.
- SPACS now trying to mimic US characteristics in particular:
 - Full proceeds go into escrow
 - Redemption for deferring and non-deferring voters
 - Goal similar to US SPACs is merger and reversed listing rather than to end up with a majority stake
 - Point to contend with is the negative interest environment for a Euro SPAC

2011-2017: the golden period for the Italian SPACs



The 4 largest SPACs listed on the main market were promoted by the investment company Space Holding, assisted by our firm, which created a sort of “club deal” of high-profile Italian and European investors

The 4 combined entities were listed on the “premium segment” (Star) of the main market.
21 SPACs out of 25 have completed the business combination.



U.S. Process Overview: Initial Public Offering

- In order to raise capital, a SPAC will conduct an SEC-registered initial public offering (IPO) in which underwriters will sell the SPAC's securities to the public, often including both institutional and retail investors.
- The securities typically consist of units that are comprised of shares of common stock and warrants.
- An amount equal to the gross proceeds of the IPO is typically put into a trust account. Funds from the trust account are only released to the SPAC in connection with a business combination.
- This can be replicated in a European SPAC. The relevant regulator for the prospectus will depend on the country of incorporation of the issuer and the market where the SPAC is listed but the process is similar.

Concurrent Private Placement

- Alongside the IPO, there is a concurrent private placement of securities sold to the sponsor to raise additional funds for the SPAC. This is the sponsor's “at-risk capital” and is approximately 3% - 5% of IPO gross proceeds.
- These additional funds are used to pay the non-deferred portion of the IPO underwriting fee (2% of IPO gross proceeds) and also provide working capital for the SPAC (between \$750,000 and \$2,000,000).
- The securities sold in the private placement consist of either warrants or units (comprised of shares of common stock and warrants).
- This can be replicated in a European SPAC although the amounts mentioned above are less standardized in the US context.

The Sponsor

- The sponsor entity typically receives a 20% promote.
 - Initially, the sponsor owns 100% of the SPAC and purchases these equity interests for a nominal amount (\$25,000).
 - As a result of the IPO, the sponsor is diluted down to an approximately 20% interest in the SPAC.
 - In the event a business combination is not completed, the promote becomes worthless.
- The sponsor may enter into certain other arrangements with the SPAC, including providing indemnity for certain claims on the trust account.
- The sponsor also may provide administrative services and office space to the SPAC or extend working capital loans to support the SPAC's operations.
- European SPACs are still see a large variety of sponsor promote dynamics as the market is less standardized.

The Sponsor (cont'd)

- The sponsor is typically a Delaware or Cayman/BVI LLC and there is considerable flexibility as to the allocation of interests and securities among LLC members.
- For investment firms, consideration should be given as to whether the sponsor would be a portfolio company of a fund or a subsidiary of the investment manager.
- Private equity, venture capital and other asset management firms typically will work with established operators in establishing the SPAC and consummating a business combination. The operators may receive equity incentives through interests in the sponsor entity.
- In European SPACs we have seen sponsors based in both on-shore and off-shore jurisdictions. The jurisdiction where the sponsor is based may influence some of the board/promote structuring due to tax constraints in on shore European jurisdictions.

Trust Account

- An amount equal to the gross proceeds of the IPO is typically put into the trust account.
- Amounts in the trust account may only be invested in eligible securities in order to avoid triggering investment company status.
- Cash from the trust account can only be released to the SPAC in connection with a business combination; interest may be used to pay certain taxes.
- If the SPAC is unable to complete a business combination, public stockholders receive their pro rata share of cash held in trust.
- Public stockholders may also elect to redeem shares for pro rata cash in connection with business combination or deadline extension votes.

Public Units

- In the IPO, the SPAC sells units which are typically comprised of:
 - One share of common stock (or ordinary share)
 - A warrant or fraction of a warrant to purchase one share of common stock (or ordinary share)
- Following the IPO, the units become separable and are separately listed and traded.
- We are yet to see a Euronext SPAC where Units, Shares and Warrants are all traded separately although it is a feature that is clearly of importance for investors and that is trying to be resolved.

Warrants

- The level of warrant coverage depends on the investors' confidence in the SPAC. Usually, larger SPACs with established sponsors are able to negotiate for lower warrant coverage.
- The warrants are struck out of the money and typically have an exercise price of \$11.50 per share with a five-year term.
- Warrants may only be exercised at the later of (i) 30 days after the business combination or (ii) one year after the SPAC IPO.
- The public warrants often include a company redemption feature.
- Note that the warrants pose potential dilution and overhang following the business combination and should be properly accounted for and considered in negotiations with targets.
- European SPACs can replicate the features set out above.

Founders Shares and Warrants

- The shares purchased by the sponsor constituting promote mirror the public shares, except that they may contain certain anti-dilution provisions to gross up to 20% if additional shares are issued in connection with the business combination.
- Founder shares are also typically subject to a post-business combination lock-up period of one year and may not be redeemed for any cash held in the trust account.
- Similarly, founder warrants mirror the public warrants except that they do not have a company redemption feature and have a cashless exercise feature.
- Depending on the country of incorporation in European SPACs you may need to structure around mandatory take-over rules in connection with the founder promote if there is a scenario (pre- or post business combination) where the founder could end up with more than 30-33% voting rights in the listed vehicle.

Directors and Officers

- SPACs are required to meet stock exchange listing requirements for corporate governance, including with respect to director independent and board committees.
- SPACs typically have three independent directors on a board and they are often compensated with equity from the sponsor.
- Industry operators are often given a role on the board and in leading the SPAC towards its business combination goals.
- Officers may be affiliated with the sponsor and/or can receive compensation and equity incentives from the sponsor.
- European SPACs have a lot of flexibility as to board composition depending on the country of incorporation of the listing vehicle, there are no hard and fast rules.

US SPAC IPO and Listing Process

- Prepare and file Form S-1 or F-1 with SEC:
 - SPACs may take advantage of SEC's confidential review process
 - Initial review period of 30 days – can go from initial submission to pricing in two to three months
 - SEC comments have been focused on disclosure relating to conflicts, investor rights and management track record and experience
- Testing-the-waters and roadshow meetings.
- Select listing exchange (Nasdaq or NYSE) and receive listing approval.
- FINRA review process.

Operating a SPAC

- Pre-IPO, sponsors should **not** identify or reach out to potential targets.
- After IPO, should ensure that:
 - Trust account proceeds are invested in eligible securities to avoid being deemed an “investment company”
 - All agreements include trust waiver
 - Sufficient funds are available to pay operating expenses, including those necessary to complete business combination
- Should have majority independent board.
- Subject to Exchange Act reporting regime.

Sourcing and Signing the Business Combination

- As soon as the IPO closes, the SPAC will begin sourcing and vetting targets.
- The SPAC will then engage in discussions with select targets.
- Upon the signing of a business combination agreement, the SPAC is required to announce the transaction to the market.
- The fair market value of the business combination must be at least 80% of the value of cash in the trust account.
- If the business combination is with an affiliate of the sponsor, then an independent fairness opinion required.

Completing the Business Combination

- The SPAC will more often than not require a stockholder vote to approve the business combination.
- In connection with the vote, public stockholders have the ability to redeem their shares pro rata for cash held in trust, whether or not they support acquisition or the trust liquidates.
- If stockholders approve of the business combination, the transaction closes within a matter of days (assuming no other regulatory approvals needed).
- Following the business combination, the combined company files a Super 8-K with the SEC announcing the closing and provides significant disclosure about the new combined company.
- In a Euronext SPAC Euronext will require a shareholder circular at the time of the business combination vote setting out material information on the business combination.

European SPACs

- SPACs headquartered in Europe have listed on both Nasdaq and NYSE
- SPACs focused on European acquisitions and SPACs with European sponsors also listed
- European-focused SPACs and European founders list in the U.S. because of investor familiarity with the product.
- We are currently seeing lot of investor education in Europe on European listed SPACs with characteristics mimicking those more typically seen in the U.S.

Dutch SPAC Overview: Pros

- Pros of Dutch SPACs
 - Possibility to largely mimic US characteristics due to flexible Euronext rules and Dutch Corporate Governance Rules
 - Choice of listing vehicle (off-shore/on-shore)
 - If the SPAC is seeking a business combination with an EU target it is more efficient to merge with a Dutch entity
 - Not all EU target entities want to become US listed, for certain entities a EU listing post-business combination may be more attractive
 - Potentially reach different (additional) investors than in the US SPAC market

Dutch SPACs Overview: Cons

- Smaller SPAC market than the US.
- European investors and targets are less familiar with the product potentially than parties in the US - but a lot of potential/interest.
- Delicate balance between the sponsor/market/entrepreneur's interests
 - Structure too rigid, rendering it difficult to find right target
 - Too expensive for entrepreneur (dilution)
 - Market scepticism

Main features of Italian SPACs



SPACs are listed either on the main market (MIV – dedicated to investment vehicles) or on a multilateral trading facility (AIM Italia). SPACs listed on the main market raised from 150 up to 400 million each, while SPACs listed on the AIM raised between 30 and 70 million each.



SPACs are established by one or more sponsors (usually M&A experts or Funds of PE) whose equity's contribution (through the subscription price of special shares) is used to cover most of the IPO's costs and for the scouting activities of a target company. The business combination is usually carried out through the merger by incorporation of the target company into the SPAC. SPACs have generally 24 months from the listing to announce a business combination; the scouting activities start only after the publication of the prospectus.



The merger of the target company into the SPAC usually follows the acquisition by the SPAC of a shareholding in the target company. The acquisition can be a response to a wide range of needs (including certain pre-merger target company's shareholders' immediate need to liquidate or a technicality to reduce dilution following the merger).

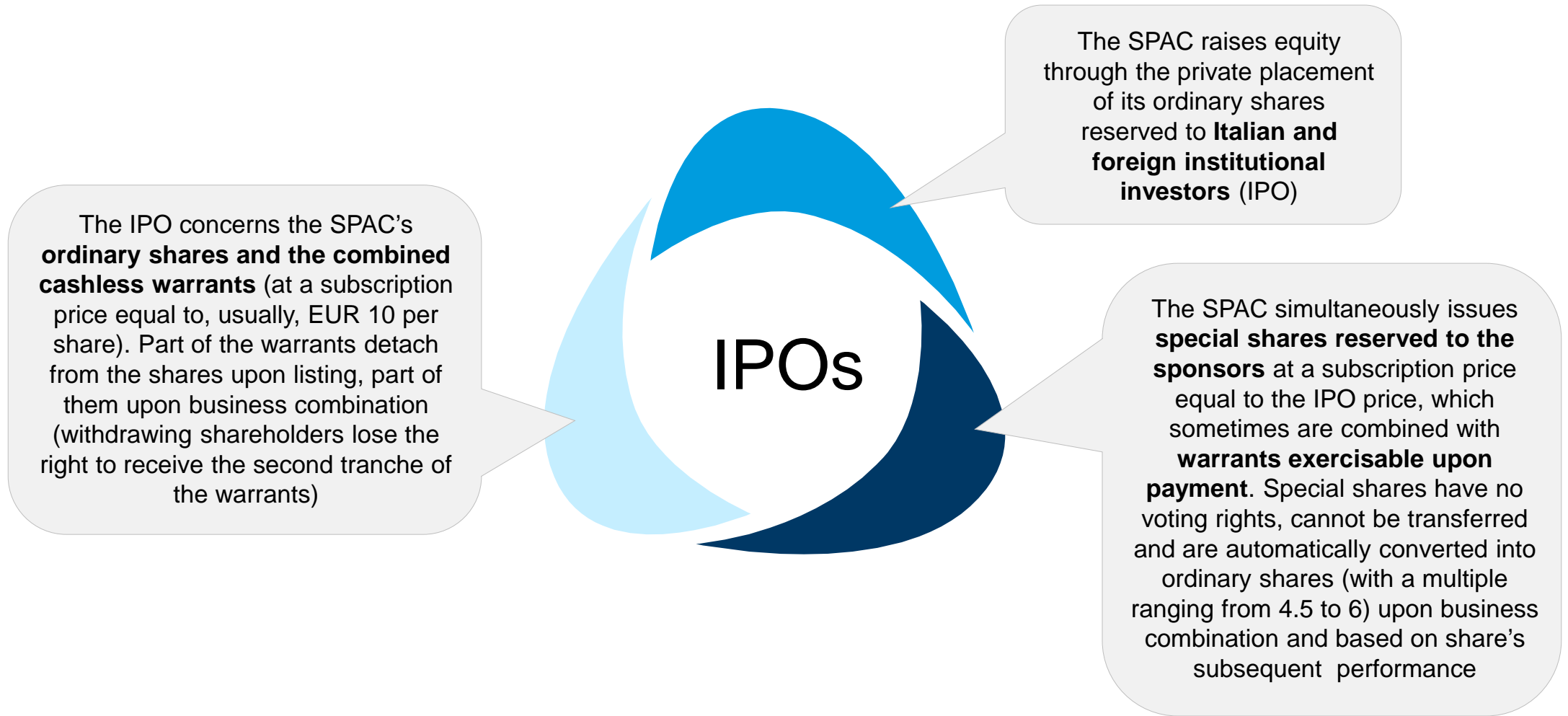


The business combination must be approved by the SPAC's shareholders' meeting. The shareholders' meeting's resolution is subject to the condition subsequent that shareholders (not having voted in favour of the business combination) representing more than a percentage (in the range of 30-33%) of the SPAC's share capital exercise their withdrawal right from the company.



In case of exercise of the withdrawal right, the liquidation amount is set as close as possible to the share's subscription price (i.e., the initial investment); if the SPAC's costs exceed the amount raised from the sponsors, an authorization from the shareholders' meeting must be obtained to use the market's equity contribution for scouting activities and other expenses (this would cause the withdrawal consideration be lower than the initial investment).

Italian SPAC IPO – Main financial instruments



Main PROs of Italian SPACs



All the SPAC's stakeholders may benefit of opportunities which are not comparable with a traditional IPO:

Ideal instrument for SMEs to become public without embarking in the traditional IPO process: **no execution/placement risk, no pricing risk, no placement fees to underwriting banks**

The entrepreneur (typically, a family-based company) may benefit of the **expertise and the network of the sponsors** that act as “anchor investors”, accelerating the internal processes of the target company to suit the stock exchange's requisites (possibility to achieve a better governance and IT/control systems, attract managerial talents and facilitate the generational transition)

The sponsors are remunerated through the **special shares** (characterized by high but also **challenging target multiples**) and sometimes warrants allowing to subscribe for ordinary shares.

The market shareholders are protected by a **fixed exit** (through the withdrawal mechanism which is put in the SPAC's by-laws) and **benefit of the warrants** (as they are detached in two tranches, withdrawing investors may partially keep them).

Main CONs of the Italian SPACs



Very **illiquid market**: the substantially only way to exit is the exercise of the withdrawal right, thus causing the business combination not to be approved

Delicate balance between the sponsors'/the market's/the entrepreneur's interests that in the last years tended to become weaker:

The entrepreneur started seeing the SPAC model as **too expensive in terms of dilution**; most of the entrepreneurs involved were family owned business keen to retain the control à the governance structure was sometimes rebalanced through the use of multiple voting shares attributed to the entrepreneur, but it remained the perception that the variety of financial instruments issued in the context of the deal – special shares, market warrants, sponsor warrants – was too dilutive and rewarding for the sponsors and the market.

The sponsors sometimes realized that the **structure was too rigid** and rendered it difficult to find the right target at the right timing à some SPACs ended up with a demerger, duplicating the transaction costs and not always being able to complete two successful business combinations; some others were “forced” to negotiate a deal with a very low contractual power (due to time ticking) and distribute extraordinary dividends to use all the capital raised, which was not a good message for the market.

The market shareholders started being **skeptical of investing in a “blank check” company** à certain institutional investors started adopting a speculative approach by investing in more SPACs, with the aim to exercise the withdrawal right and take the upside connected to the warrants.

The latest SPACs tried to mitigate this aspect by elaborating a less generalist investment policy (e.g., making it more focused on specific industries and targets' sizes), sometimes even disclosing the (potential) target name in the listing prospectus. The Italian stock exchange has also tried to revitalize the SPACs' market by proposing the so called **“reverse SPAC”** mechanism, i.e. a platform facilitating a matching between targets and potential sponsors that negotiate the agreements before the SPAC is listed and substantially “offer” the business combination to the potential investors of the SPAC. Only one business combination was completed following this reverse path.



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