



# SPACs: Raising Capital and Liquidity

Venture Law Meetup Webinar

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# Presenters



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# Special Thanks to Our Co-Sponsors



## *What is a SPAC?*

### *Special Purpose Acquisition Company*

Formed for the purpose of effecting an acquisition of a traditional operating company.

- Has no business of its own.
- May identify a particular sector or strategy it will pursue to give SPAC investors alignment on goals.
- May also identify characteristics of a business it will acquire such as a focus on electric vehicles or minority ownership

# SPAC Ecosystem

Sponsors	Investment Bankers	Companies	Financial Backers
PE managers, executives, bankers, celebrities	Institutional bankers	Operating companies	Institutional Investors, hedge funds and lenders
Create SPAC vehicle and conduct Initial Public Offering	Represent companies (and SPACs) looking for a partner	Geographically diverse, sector diverse	Currently skews towards larger institutions
Typically receive 20% of the SPAC's founder shares	Earn a fee for a successful transaction	Opportunities for liquidity, capital publicly traded benefits	Earn an investment return

## SPAC Capital Structure

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- Capital Structure
  - Public Units
  - Public Shares
  - Public warrants
- Founder Shares (Sponsor “Promote”)
  - Typically, SPAC’s sponsors owning 20% of outstanding common stock post-IPO.
  - Founder shares are subject to lock-up for one (1) year following the merger.
  - The Class B common stock of founder shares automatically convert into Class A at the closing of the merger (*need to see the terms in the Founders’ Agreement*).



## SPAC Finance – the SPAC

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- SPAC Capital Raise and Trust Account
  - SPAC raises some capital in IPO
  - Typically, 100% of the cash raised in the 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.
  - At closing of merger, public shareholders may redeem their shares for a pro rata portion of the cash held in the trust account.
  - Balance of the trust account released to the company to be used in the merger transaction or thereafter for working capital purposes.

# SPAC Finance: The Investors

More Cash Needed for Acquisition of Operating Company	Sources:
	Forward Purchase Agreements from SPAC Sponsors
	PIPEs (private investment in public entity) from institutional investors.



## SPAC Finance: Using the Cash

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Cash generated in SPAC IPO and in fundraising for the acquisition of an operating company is used in three main channels and exact mix negotiated at time of acquisition of a target company:

- Redemption of SPAC IPO shares
- Cash purchase price to operating company owners
- Operating capital for operating company

## SPAC Target Size and Dilution

- Target Size and Dilution
  - Under NASDAQ rules, the merger transaction must be with one or more target businesses or assets that together have an aggregate fair market value of **at least 80%** of the assets held in the trust account at the time of signing a definitive agreement for the merger.
  - SPACs typically target business combination targets that are at least **two to three times** the size of the SPAC.

# De-SPACing Process

## The First Step

### SPAC and Target Negotiation

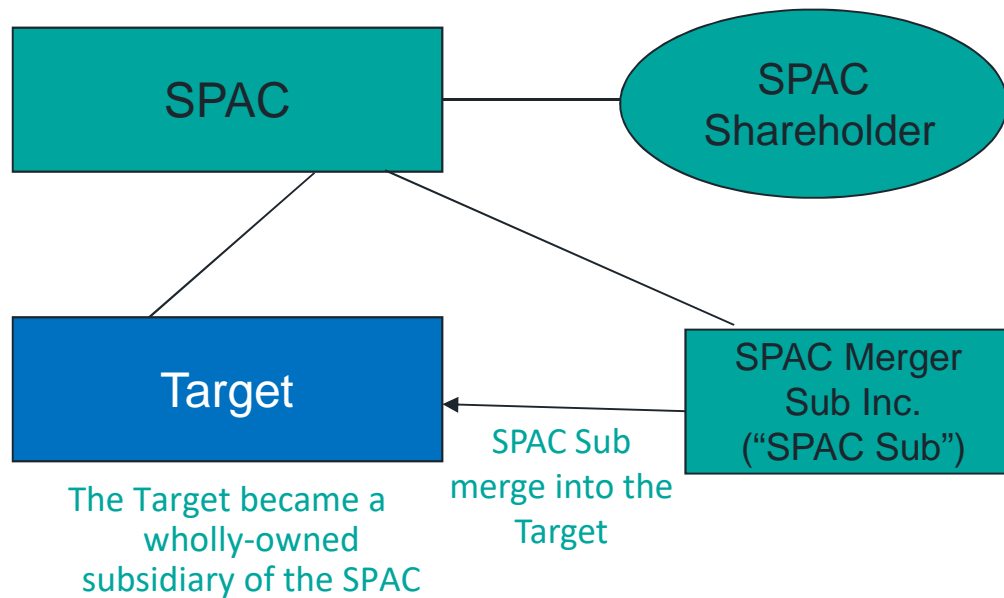
1. Identify SPACs
2. Sign letter of intent
3. Conduct Due Diligence
4. Negotiation
5. SPAC may arrange committed debt or equity financing. For example, a private investment in public equity ("PIPE") commitment
6. Prepare proxy statement
7. Sign merger agreement

## The Second Step

### SPAC Shareholder Approval and Closing

1. Submit Form 8-K to the SEC to announce the merger agreement
2. Submit a preliminary shareholder proxy statement to the SEC
3. The SPAC obtains approval from its shareholders for the merger transaction
4. Public shareholders who choose to redeem their shares redeem their shares
5. Complete the merger transaction
6. Submit the Super 8-K form to the SEC

# An Example of De-SPAC Merger Structure



# Corporate Governance of the Combined Company Post-Merger

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- Corporate Governance Structure
  - Board of directors – numbers
    - Majority of board will be independent directors unless controlled company exemption
  - Compensation committee
  - Audit committee
    - All independent members
  - Nominating committee

# De-SPAC Merger vs. Traditional IPO

	De-SPAC Merger	Traditional IPO
Timing	Typically 3-4 months after the LOI is signed	Generally 4-6 months
Costs	legal, accounting and other costs are high, maybe comparable to, or even high than a traditional IPO	Legal, accounting, underwriting and other fees are high.
Pricing and Valuation	Negotiated value and pricing; more certainty	Valued through market-based pricing discovery. Volatile



# De-SPAC Merger vs. Traditional IPO

	De-SPAC Merger	Traditional IPO
Financial Statements Requirements	<ul style="list-style-type: none"> <li>• Target will be required to have the same types of f/s required in connection with an IPO</li> <li>• Target may have to provide pro formas and restate f/s following completion of the merger</li> </ul>	Emerging Growth Company (EGC) benefits
Road Show	<ul style="list-style-type: none"> <li>• Target will be required to engage in presentations to the SPAC sponsors</li> <li>• Target will usually hold investor meetings for potential PIPE investors</li> <li>• SPACs cannot rely on the communications safe harbors available to operation companies</li> <li>• SPACs cannot use FWP's or rely on the taped road shows</li> <li>• SPACs can use Rules 165 and 425 to do taped meetings, as long as the materials and script are filed with the SEC</li> </ul>	<ul style="list-style-type: none"> <li>• Road show presentations</li> <li>• A taped road show</li> <li>• provide useful feedback from institutional investors</li> </ul>
Forecasts	<ul style="list-style-type: none"> <li>• Target will include projects in the proxy statement. These projections are also shared with potential PIPE investors.</li> <li>• Projections for the Target are included in the proxy/prospectus</li> </ul>	Forecasts/Projections are not allowed

# De-SPAC Merger v. Traditional IPO

	De-SPAC Merger	Traditional IPO
Corporate Approvals	<ul style="list-style-type: none"> <li>Target may need to get its existing shareholders' approval for the de-SPAC merger</li> <li>The SPAC must obtain its shareholders' approval</li> </ul>	Generally, companies will have addressed the mechanics for preferred stock conversion upon occurrence of a qualifying IPO.
Rule 144	Will not be available for one year following filing the super 8-K with Form 10 information.	Available to stockholders subject to compliance with applicable conditions.
Committee on Foreign Investment in the United States (CFIUS) Consideration**	<ul style="list-style-type: none"> <li>The ownership and governance rights of all prospective <b>foreign investors</b>, including SPAC sponsors, PIPE investors and warrant holders</li> <li>Both the SPAC sponsor and target must understand whether the target business raises CFIUS considerations, particularly as they relate to mandatory filings</li> <li>**CFIUS is a U.S. government interagency committee charged with (1) reviewing foreign acquisitions of, or investments in, U.S. businesses and (2) identifying and mitigating any risks to national security raised by those transactions</li> </ul>	Typically a traditional IPO has no CFIUS considerations.

# What Makes a Successful De-SPAC Merger

- Alignment with SPAC Sponsor
- Quality Board of Directors
- Sufficient operating capital
- Sufficient liquidity, market and commitment to long holding period – can be negotiated
- Business performance of operating company

# State of the Market

- SPACs very active in 2020 and Q1 of 2021
  - Pausing currently
- Commitment to long-term market for stock
  - Long-term SPAC stock declining v. increasing for IPOs
  - Price of operating company and ability to meet projections
  - Negotiated commitments to hold stock from SPAC IPO Investors, Sponsors and Institutional Investors
  - Quality matters
- Company valuation and Sponsor 20% carried interest also subject to negotiation
  - Companies can negotiate for Sponsor to release some of its 20% ownership which reduces opportunity cost to the company.
  - Companies can agree to receive additional shares of stock in the future if company performs well (Earn-Out).
  - Sponsors can agree to lose or receive shares of stock based on company performance

# SEC Compliance Post-Merger

- Periodic reporting obligations
  - File annual report on Form 10-K
  - File quarterly report on Form 10-Q
  - File Form 8-K
    - Form 8-K is the “current report” companies must file with the SEC to announce major events that shareholders should know about, including departure of directors.
    - Companies have four business days to file a Form 8-K for the events specified in the items on the Form 8-K.

# SEC Compliance Post-Merger

## ■ Form 3, 4, or 5 filings

- Company's insiders, i.e., a company's officers and directors, and any beneficial owners of more than ten percent of a class of the company's equity securities must file with the SEC a statement of ownership regarding those securities
- The initial filing is on Form 3
  - An insider of an issuer that is registering equity securities for the first time under Section 12 of the Exchange Act must file this Form no later than the effective date of the registration statement.
  - The insider must file a Form 3 within ten days of becoming an officer, director, or beneficial owner.
- Changes in ownership are reported on Form 4 and must be reported to the SEC within two business days
- Insiders must file a Form 5 to report any transactions that should have been reported earlier on a Form 4 or were eligible for deferred reporting. If a Form must be filed, it is due 45 days after the end of the company's fiscal year.

# SEC Compliance Post-Merger

- Schedule 13D/13G filings
  - Schedule 13D is a beneficial ownership report
  - Any person who has acquired, either directly or indirectly, more than 5% of the beneficial ownership of a reporting company's equity securities, must file a Schedule 13D or a short-form report on Schedule 13G if qualified, within 10 days after the acquisition
  - The Schedule 13D must be amended "promptly" to report any material change in the information provided, including any acquisition or disposition of 1% or more of the class



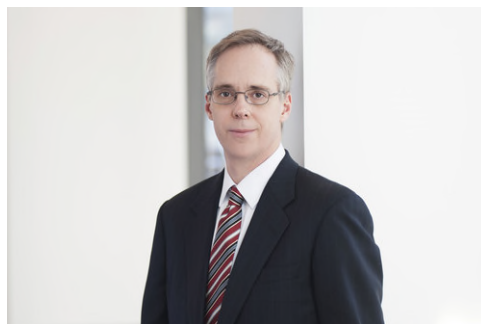


## Questions & Answers

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# May Venture Law Meetup Webinar

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- **Topic:** *Perspectives on What Return To Work Could Mean to Your Business*
- **Date:** May 10, 2021
- **Time:** Noon – 1 PM EDT

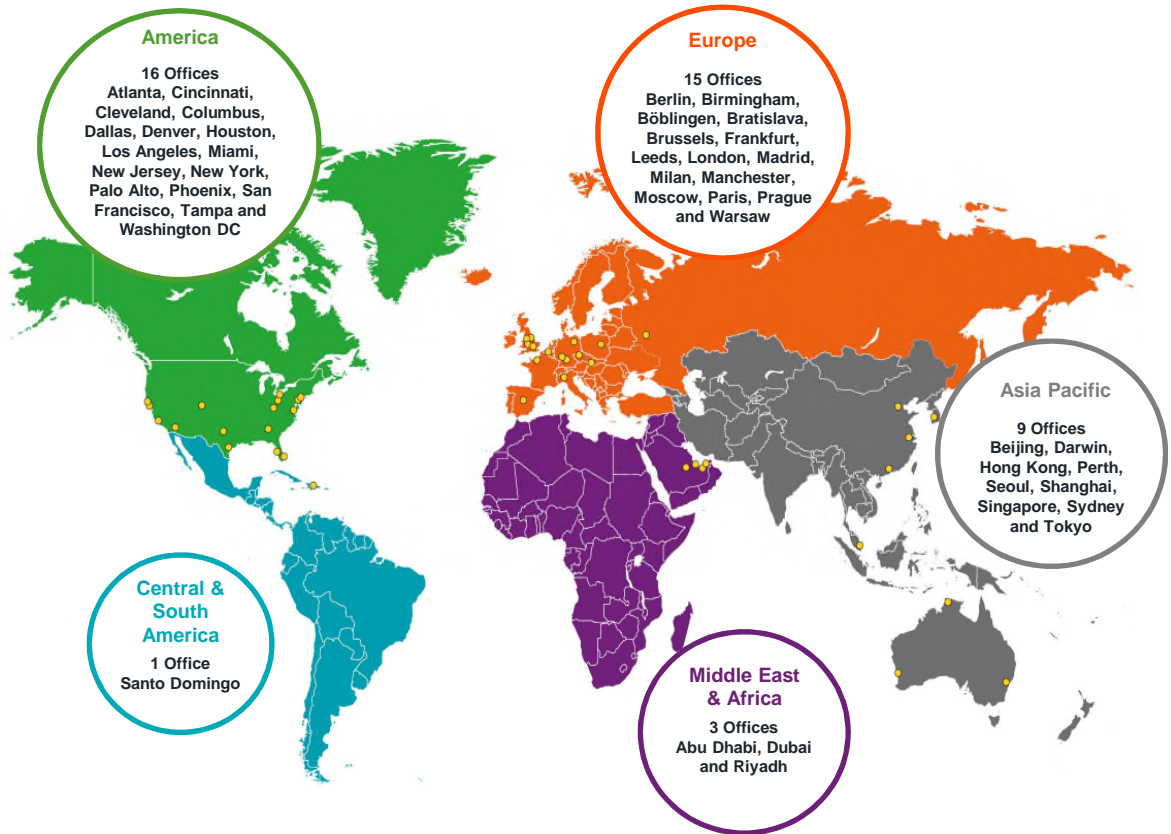


# References and Resources

# Squire Patton Boggs

- More than 2,600 employees
- 500 partners, 1,500 lawyers, 45 offices in 20 countries
- A seamlessly connected service that operates on any scale – locally or globally
- Top 35 firm globally by lawyer headcount
- Practice law in 140 jurisdictions speaking more than 40 languages
- Selected as a “go-to law” firm by in-house law departments at Fortune 500 companies
- Advise a diverse mix of clients, from long-established FTSE 100/Fortune 500 corporations to emerging businesses, start-ups and sovereign nations
- Recognising the impact of regulation/politics on business, we have a unique mix of highly experienced lobbying/political capabilities in the US, Europe and beyond

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