



SPACs: Generation III



EGS
Ellenoff Grossman & Schole LLP



Merger Ahead



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About The Moderator/Panelists

- **Douglas S. Ellenoff, Esq.**, a member of Ellenoff Grossman & Schole, LLP, a 40 lawyer New York-based firm, since its founding in 1992, is a corporate and securities attorney with a specialty in business transactions and corporate financings. Mr. Ellenoff has represented public companies in connection with their initial public offerings, secondary public offerings, regulatory compliance as well as general corporate governance matters. During his career, he has represented numerous broker-dealers, venture capital investor groups and many corporations involved in the capital formation process. In the last several years, he has been involved at various stages in numerous registered public offerings, including 75 financings and, with other members of his firm, over 200 private placements into public companies, representing either the issuers of those securities or the registered broker-dealers acting as placement agent. Along with other members of his Firm, Mr. Ellenoff has been involved at various stages with over 50 registered blind pool offerings (commonly referred to as "SPACs"; 15 of which have consummated their IPO's raising over \$1.5 billion). Mr. Ellenoff is counsel to 57th Street General Acquisition Corporation– the first Generation III SPAC. He also provides counsel with regard to their respective ongoing (SEC, AMEX and FINRA – formerly known as NASD) regulatory compliance.
- **Mark D. Klein** is the Sponsor of the first Generation III SPAC-- 57th Street General Acquisition Corporation, which raised \$54 million in an underwritten public offering by Morgan Joseph and Ladenburg Thalmann in April 2010. Prior to 57th Street, Mr. Klein was the sponsor of Alternative Asset Management Corporation ("AAMAC"), a SPAC he helped form in 2007 and which recently completed a merger with Great American Group LLC. Mr. Klein is also a registered representative at Ladenburg Thalmann & Co. Inc., a Managing Member of the LTAM Titan Fund, a fund of funds hedge fund and was one of the principals of Aldebaran Investment, LLC, a private fund investing in special purpose acquisition companies. From April 2007 until August 2008, Mr. Klein was the Chief Executive Officer of Hanover Group US LLC, an indirect US subsidiary of the Hanover Group. Prior to joining Hanover in 2007, Mr. Klein was Chairman of Ladenburg Thalmann & Co. Inc., a leading underwriter of blank check companies, which is engaged in retail and institutional securities brokerage, investment banking and asset management services.



About The Panelists

- **Clifford Teller** is the Executive Managing Director - Investment Banking of Maxim Group. Mr. Teller has spent more than 18 years in investment banking and private equity servicing emerging growth markets, middle market and large cap companies in a variety of industries, including technology, healthcare, shipping, media and China. Maxim has been one of the most active underwriters of SPACs, having been involved in over 100 SPAC IPOs. Maxim has also advised many of these same SPACs with respect to their SPAC Acquisitions. Recently Maxim innovated a smaller SPAC Program referred to as Mini SPACs or EMTs. Previously, he was a Partner at BlueStone Capital Partners, LP- managing the corporate finance group, focusing on emerging growth companies. Previously, Mr. Teller managed a leveraged portfolio in excess of \$2 billion in the leverage buyout group at Mitsubishi Banking Corporation. Mr. Teller began his career at Chase Securities Corporation, previously Chemical Bank, where he completed its management training program and worked in the corporate finance group servicing emerging growth and middle market companies.
- **Stuart Neuhauser**, a member of Ellenoff Grossman & Schole is a corporate and securities attorney with a specialty in business transactions and corporate financings. Mr. Neuhauser has represented public companies (both domestic and foreign) in connection with their public offerings, secondary public offerings, PIPE financings, 34 Act reporting requirements, regulatory compliance (including ongoing compliance with the SEC, AMEX, NASDAQ, FINRA and state securities laws) as well as general corporate governance matters. Mr. Neuhauser has also represented several investment banking securities brokerage firms in connection with private placements and public offerings, and has counseled both public and private companies regarding joint ventures, corporate restructurings, corporate finance, mergers and acquisitions (including "reverse mergers") and other aspects of corporate and securities matters. Mr. Neuhauser has extensive experience in the public offerings of SPACs (on behalf of issuers and underwriters) and has written articles on this area of practice.



About Ellenoff Grossman & Schole LLP

Ellenoff Grossman & Schole LLP is a New York-based law firm with over 40 professionals offering its clients legal services in a broad range of business related matters. The Firm specializes in many areas of commercial law: Corporate, Securities, Broker-Dealer Regulations, Hedge Funds, Real Estate, Litigation, Tax and Estate Planning.

The Firm has over 20 securities professionals specializing in a range of activities, including:

- Public Offerings (IPOs and Secondaries) – Including SPACs
- Mergers and Acquisitions
- PIPEs
- Exchange Act reporting (Form 10-Ks, 10-Qs and Proxies)
- NASD, AMEX, NASDAQ and OTC compliance
- Broker-dealer regulations
- Rule 144 transactions
- Section 16 compliance



SPAC Practice

Ellenoff Grossman & Schole LLP

During the course of the last 8 years, Ellenoff Grossman & Schole LLP has been involved at various stages in over 50 proposed/completed SPAC IPOs. 20 of those financings were successfully consummated and resulted in the raising of over \$1,500,000,000. In addition to our IPO experience with SPACs, we have been involved with 20 SPAC M&A assignments. At present, we have 20 securities professional who are engaged in our SPAC practice. EGS was counsel to the first Generation III SPAC— 57th Street General Acquisition.



SPAC Statistics

- Since 2003, there have been 183 successful domestic and international SPAC IPO offerings (14 AIM and Euronext)
- Excluding Generation III SPACs, approximately 60% have successfully completed their acquisitions and the others have appropriately returned the trust capital to investors
- GSME was the only SPAC to be completed in 2009. GSME was underwritten by Cohen Brothers. GSME recently successfully completed its business combination with Plastec International Holdings
- In May 2010, 57th Street General Acquisition raised \$54 million and became the first SEC approved SPAC with a tender offer feature
- In 2010, there were a total of 7 Generation III SPAC IPOs completed raising nearly \$500 million
- The 2011 Pipeline has meaningfully increasing



SPAC History

- Although SPACs and their predecessors (blind pools) go back for decades, most of the public recognition of this program dates back initially to 1993 (Generation I) with the SEC adoption of Rule 419 and then with its rebirth after the dotcom mania in 2003 (Generation II).
- The program gained momentum after 2003 and really legitimacy after 2005 when
 - the “bulge bracket” underwriters became meaningfully involved (Citi, DB),
 - the sponsors were well-recognized investors and private equity managers (Hicks, Peltz, PWP)
 - the acquisitions are household names (Jamba Juice/American Apparel/Talbotts)
 - the size of the Generation II IPOs were routinely above \$100 million and we saw the first \$1 billion IPO in SPACs (Liberty Acquisition)
 - we also saw the beginnings of Corporate Sponsored SPACs (Dekania, United Refining) and the beginnings of Private Equity Sponsored SPACs (Camden Partners/Steel Partners)
- Evolving complexity of the SPAC program and changing features



SPACquisition Developments

- Notwithstanding the abrupt change in market conditions in 2008 (no SPAC IPOs in second half of the year) and general loss of appetite for alternative public offerings, approximately half of the 2008/2009 SPAC acquisitions were still consummated
- From September 2008 to April 2009, yield oriented investors entered the secondary trading of SPAC issues and purchased significant blocks of securities (with no intent to support any proposed business combination) to benefit from the discounted price of SPAC common shares versus the intrinsic value of the trust, which was backed largely by US Treasury securities
- SPAC sponsors, bankers and lawyers create new deal structures to respond



Structuring Trends

- Movement to smaller transactions in specific, niche sectors
- Increasing warrant strike out-of-the money
 - Approximately 115% – 125% of unit offering price
 - Concurrent increase to warrant call price of approximately \$5 - \$6 above strike price
- Promote subject to earn-out provisions or clawbacks
- Shorter time horizon: 18 – 24 months to find an acquisition
- Lower up-front fees by Issuer to Underwriter
- Modifications to shareholder vote features to lessen effect of “no voters”
 - Increasing redemption threshold
 - Shareholders can vote “Yes” and can still opt to get their money back
- Tender offer option: Stockholders have the opportunity to redeem their shares of common stock for cash upon consummation of business combination
- Commitment from sponsorship to purchase open market shares up to trust levels



Structuring Trends

- **6 SPACs priced in Q4 2010 alone**
 - 10 – 20 rumored to currently be in the registration process
- Deal size is significantly smaller than the SPACs of 2007/2008 allowing greater acquisition flexibility – current average size is \$74 million
 - Latest innovation is Maxim’s EMT or “Mini-SPAC” structure
- All current SPACs use a \$10.00 unit regardless of deal size
- All except 1 SPAC (Cazador) have warrant strikes out-of-the-money, most having a strike of \$11.50
- Management warrant purchases are trending higher again - the most recent 3 SPACs to price have all had management warrant purchases at \$0.75
- The majority of the management teams are seasoned SPAC issuers
- All have listed on the OTCBB - lack of retail investors is forcing even the larger SPACs to initially list on the Bulletin Board
- Outside of the U.S., SPACS have also been popular in Europe and Korea
 - 2 European SPACs have been IPO’d raising over €300mm
 - Korea has over 15 SPAC-like structures currently trading on the KRX*



SPAC– 2011 Capital Markets

- 2010's 7 SPACs - substantiates interest
- 1st Half of 2011 likely to see a surge
- Investor's issues and concerns
- Will one of the 2010 Generation III SPACs announce a well received transaction
- Will the SEC approve revisions to listing rules for AMEX and NASDAQ

SPAC– 2011 Capital Markets

- Average deal sizes are trending smaller again

Year	# of SPACs	Avg. Deal Size (\$mm)	Gross Proceeds (\$mm)
2010	7	\$71.7	\$502.0
2009	1	\$36.0	\$36.0
2008	17	\$226.0	\$3,842.0
2007	66	\$183.2	\$12,093.0
2006	37	\$91.5	\$3,384.0
2005	28	\$75.5	\$2,113.0
2004	12	\$40.4	\$485.0
2003	1	\$24.2	\$24.0
Total	169	\$133.0	\$22,479.0

SPAC– 2011 Capital Markets

Completed IPO

SPAC	Common Symbol	% Held in Trust	IPO Unit Price	Strike Price	Mgmt Warrant Purchase Price	Mgmt Invest. % of deal	Mgmt Promote
GSME Acquisition Partners I	GSMXF	100.0%	\$10.00	\$11.50	\$0.50	5.0%	25.0%
57th Street General Acquisition Corp.	SQTC	100.0%	\$10.00	\$11.50	\$0.50	3.7%	10.0%
Cazador Acquisition Corp. Ltd.	CAZA	100.8%	\$10.00	\$7.50	\$0.50	5.4%	20.0%
Hicks Acquisition Company II Inc.	HKAC	99.5%	\$10.00	\$12.00	\$0.75	3.3%	12.5% ⁽¹⁾
Australia Acquisition Corp.	AAC	101.0%	\$10.00	\$11.50	\$0.50	6.3%	25.0%
L&L Acquisition Corp.	LLAQ	101.0%	\$10.00	\$11.50	\$0.75	5.7%	20% ⁽²⁾
JWC Acquisition Corp.	JWCA	100.0%	\$10.00	\$11.50	\$0.75	3.2%	14% ⁽³⁾
Flatworld Acquisition Corporation	FTWA	102.0%	\$10.00	\$11.00	\$0.75	6.8%	20.0%

(1) 2.5% subject to clawback w/in 24 months if stock price does not exceed \$12.00 within 20 of 30 trading days

(2) Subject to clawback w/in 5 years if stock price does not exceed \$18.00 within 20 of 30 trading days

(3) 2.0% subject to clawback w/in 24 months if stock price does not exceed \$12.00 within 20 of 30 trading days

High	102.0%	\$0.75	6.8%	25.0%
Average	100.5%	\$0.63	4.9%	20.0%
Median	100.4%	\$0.63	5.2%	20.0%
Low	99.5%	\$0.50	3.2%	10.0%



Learning and Improving— 57th Street General Acquisition

- SEC approval of new disclosure process
- Tender Offer
 - Timing
 - Disclosure
 - Process
 - Deal certainty
- Reduced dilution
 - Sponsor promote
 - Warrant exercise price
- Attractiveness of structure to Private Equity Firms and Targets



Revised Sponsor Promote

- Since 57th Street sponsors and underwriters have structured sponsor incentive packages differently
 - 10% with no additional
 - (Citi) 12.5% with additional milestone reverse vesting
 - (Cohen Brothers) 5% with additional milestone vesting



Revised “At Risk” Commitment

- Since the vast majority of the Generation III SPACs have approximately 100% held in trust structures, the At Risk Capital that needs to be committed by a sponsor is in the range of 4-6% of the IPO raise– which funds the underwriter discount, legal, accounting and the amount reserved for working capital for the transactional costs associated with the business combination



Listing Options and Decisions

- OTC Bulletin Board
 - No 20% Shareholder Approval Rule
- NYSE/AMEX and NASDAQ
 - Approved Rule Change
 - TO and Shareholder Approval
 - Rule Pending Approval
- Foreign Private Issuers