The "SPAC"

(Specified Purpose Acquisition Company)

An Overview and Recent Developments

Ellenoff Grossman & Schole LLP

Merger Ahead

The SPAC Practice at Ellenoff Grossman & Schole LLP

During the course of the last 10+ years, Ellenoff Grossman & Schole LLP, or EG&S, has been involved at various stages in over 80 proposed/completed SPAC IPOs, raising nearly $3,000,000,000. In addition to our IPO experience with SPACs, we have been involved with over 30 SPAC business combinations. At present, we have more than 35 securities professionals who are also engaged in our SPAC practice. EGS was counsel to the first Generation III SPAC – 57th Street General Acquisition Corp., and we represented 57th Street in its acquisition of Crumbs Holdings. EG&S has been involved in nearly 30% of all of the SPAC Issuers in Generation III and was involved in 50% of SPACs that priced in 2014.

About
Ellenoff Grossman & Schole LLP

Ellenoff Grossman & Schole LLP is a New York-based law firm with nearly 70 professionals offering its clients legal services in a broad range of business -related matters. The Firm specializes in many areas of commercial and regulatory practice: Corporate, Securities, Broker-Dealer Regulations, Hedge Funds, Real Estate, Intellectual Property, Litigation, ERISA, Tax, Labor and Employment and Estate Planning. The Firm is nationally recognized as one of the leading firms representing investment banks and institutional investors in private equity transactions of all types, including registered direct (RD) and confidentially marketed public offerings (CMPO) transactions, PIPES (private investment in public equities) and equity lines of credit, as well as more traditional underwritten public offerings.

The Firm currently represents over 60 public companies, and was recognized as one of the Top IPO law firms in the United States by Sagient Research.

The Firm has over 35 corporate/securities professionals specializing in a range of activities, including:

- Public Offerings (IPOs and Secondaries) – Including SPACs
- Crowdfunding
- Mergers and Acquisitions
- Registered Directs and CMPOs (#1 Placement Agent Counsel in 2014 the US according to Placement Tracker)
- PIPEs
- Exchange Act reporting (Form 10-Ks, 10-Qs and Proxies)
- FINRA, NYSE MKT, NASDAQ and OTC listing and compliance
- Broker-dealer regulations
- Rule 144 transactions
- Section 16 compliance
- Employee Benefits and Executive Compensation

What is a SPAC?

- Newly formed corporation by prominent and qualified sponsor/management team for the purpose of raising capital in an IPO in anticipation of identifying and consummating a business combination.
- No commercial operations until it consummates its initial acquisition, which has not been pre-identified, at which time the target business becomes publicly-traded.
- A SPAC seeks to leverage the strength, recognition and network of the sponsor/management team within an industry or geographic location to secure proprietary deal flow and identify attractive acquisition candidates.
- Provides public company transparency to investors with full disclosure and the ability to receive their investment back in connection with a proposed business combination.
- Public shareholders are able to sell their securities in the open market
  - Structure permits an investor to:
    - Approve or disapprove the business combination, and/or
    - Elect to receive a pro rata portion of the amount held in the trust account (even if the majority of holders approve the business combination).

What are the Advantages to the Investor?

- Access to investments in acquisitions and buy-outs typically otherwise restricted to private equity funds

- Investing with a SPAC sponsor and management team (often investing their own capital-up to 5% of IPO) who have industry expertise

- Structure and Limited Risk

  - Capital held in a trust account pending approval of business combination via a shareholder vote or return of capital via tender offer.

  - Benefits from liquidity of publicly-traded securities and ability to control timing of exit.

  - Pending business combination, no cash compensation to sponsor/management team.

  - Warrants included in Units offered in IPO enable holder to invest more capital at a pre-determined price (premium to the IPO price) and leverage initial investment.

  - Provides a minimum liquidation value per share in the event no business combination is effected.

What Are Advantages To Sponsor/Management?

- Pre-funding an acquisition strategy
- Greater flexibility than with traditional private equity
- Better economics for sponsor/management (up to 20% promote)
- More credibility with seller with cash in trust
- Ability to leverage cash in trust and fund larger acquisitions

What Are Benefits to Seller?

- Fast track IPO
- Ability to partner with well-known sponsor team
- Potential for Seller to retain majority of upside by being paid in stock
- Less disruption to seller/company and employees than traditional IPO

Structuring Trends

- Movement to specific, niche sectors
- Promote subject to earn-outs/clawbacks and/or structured lockup releases (20%/25% of post-IPO common stock)
- Sponsor's "At Risk" capital approximately 5% depending upon size of SPAC
- Increasing warrant strike out-of-the money– ½ Warrants (which significantly reduces overhang) rather than 1-1
  - Approximately 115% – 120% of unit offering price
  - Concurrent increase to warrant call price of approximately $5 - $6 above strike price
  - Warrant Package at $.50-$1.00 per warrant
- Few deals have added an automatic "Right" to acquire shares post-business combination (on 10-for-1 basis)
- 21-24 months to find an acquisition, including extensions
- Lower up-front fees by Issuer to Underwriter (2.0% - 3.0%), with remainder payable upon successful business combination
- 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

Structuring Trends

- No vote structure (UK Crash Shells/Committed Capital I and II) and impact to PE
- Deal size is significantly smaller than the SPACs of 2007/2008 allowing greater acquisition flexibility – current size is typically $50- $200 million
- Current SPACs use a $10.00 unit regardless of deal size
- 100%+ Held in Trust
- Vast majority of SPACs have warrant strikes out-of-the-money-- $11.50 ($5.75 for ½ Warrant)
- SPAC sponsor teams include repeat serial issuers (Jeff Quin, Jeff Sagansky, Nathan Leight and Lorne Weil) and high quality first time issuers (Wilbur Ross)
- Most have listed on NASDAQ
- First Generation IV SPAC effective in July 2014, with founder share anti-dilution and a guaranteed PIPE (Macquaire) upon a business combination built into the structure from the beginning. Second such SPAC (without anti-dilution feature) effective in October 2014. EGS counsel to both issuers.

** As of 6/29/2012*

Listing Options and Decisions

- OTC Bulletin Board
  - No 20% Shareholder Approval Rule
- NYSE MKT and NASDAQ
  - Approved Rule Change
  - Tender Offer or Shareholder Approval
- Foreign Private Issuers
  - Exempt from 20% rule for shareholder approval
  - Must do Tender Offer

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, CS, Lazard)
  - the sponsors were well-recognized investors and private equity managers (Hicks, Peltz, PWP, and Catsimatidis)
  - 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)
  - Corporate Sponsored SPACs (Dekania, United Refining) and Private Equity Sponsored SPACs (Camden Partners/Steel Partners) began to appear.

- Evolving complexity of the SPAC program and changing features include:
  - concurrent private placement;
  - emerging market SPACs, and non-US issuer SPACs;
  - business combinations with simultaneous PIPEs;
  - increased no-vote percentage to liquidate/tender offer;
  - opportunist investors and associated SPAC management redemptions;
  - focus on higher quality management teams ½ warrant or right instead of full warrant.
  - Concurrent warrant tender offer (Infinity/Chart)

- Outside of the U.S., SPACs have also been popular in the UK and Malaysia (Reach Energy)

Learning and Improving

- At EG&S, since we are extensively involved in both the IPO process and the M&A process with regard to SPACs, we seek to integrate our experiences from the M&A process into our IPO process, and anticipate certain business contingencies and disclosure issues that may arise later.

- As a result of these activities, there were several new features integrated "backward" into the IPO process in order to assist facilitate successful business combinations.

- Between EG&S and the several bankers with whom we work consistently, we routinely evaluate developments in the SPAC industry and strategize on how to avoid problems and issues which regularly come up, and work to structure improvements.

- We have seen new provisions and other approaches undertaken which were either naïve at inception or failed to recognize the regulatory history of SPACs.

- Our business observation is this: *if a management team brings back a business combination within its experience profile, and the deal is 2x/3x the money raised in the IPO, there is immediately a higher likelihood of approval, as well as avoidance of many stockholder concerns.*

Conversion Threshold

- Under the structure of all SPACs, if more than a set percentage of stockholders vote against approval of a proposed business combination and request their capital held in trust be returned ($5 million must remain in trust plus $ for deal expenses), the transaction cannot be approved– this is the "Conversion Threshold".
- Until the middle of 2007, the Conversion Threshold remained at 19.99%
- Without much SEC push back, the Conversion Threshold was raised from what was commonly accepted as an unalterable threshold of 19.99 to 29.99% and beyond. We have seen the threshold go as high as 90% ($5 million must remain in trust plus $ for deal expenses).
- In recent years, several SPAC sponsors were advised by their bankers during the proposed business combination process that a handful of hedge funds controlled more than the Conversion Threshold and were poised to vote "No" on the transaction.
- Where the market has responded by increasing the share price of the stock above the conversion value of the amount held in the trust account, this is unlikely to be a problem – the market has already voted in favor of the proposed business combination.
- On the other hand, if the stock is trading below this, since the typical business combination takes 1 to 2 months to structure and 4-5 months for SEC approval of the preliminary proxy – all the while incurring significant legal and accounting fees - sponsors struggled to negotiate arrangements with the funds to get them to approve transactions.

Charter Changes - Conversion Limitation

- To further discourage activist funds from over-reaching, SPAC's have adopted provisions appearing in their charter documents, and disclosed in their registration statements, which limit how much of an individual public stockholder's position may be converted into cash held in trust if they vote against a business combination in connection with a stockholder vote.

- For example, a public stockholder, together with any affiliate of his or any other person with whom he is acting in concert or as a "group", will be restricted from seeking conversion rights with respect to more than 10% of the shares sold in the IPO. Such a public stockholder would still be entitled to vote against a proposed business combination with respect to all shares owned by him or his affiliates. Many SPACs, however, have increased cap to 20%.

- EGS believes this restriction will prevent stockholders from accumulating large blocks of stock before a vote is held to approve a proposed business combination, and attempt to use the conversion right as a means to force the SPAC or its management to purchase their stock at a significant premium to the then-current market price.

- By limiting a stockholder's ability to convert to only 10% of the shares sold in the offering, a SPAC should be able to limit the ability of a small group of stockholders to attempt to block a transaction favored by its other public stockholders.

Co-Investment Rights

- In order to anticipate some percentage of the stockholder base wanting to sell their interest at the time of the announcement of the proposed business combination, EGS introduced the concept of sponsors agreeing to commit to pre-defined open market transactions to purchase more securities – typically this would only occur if the common stock trades below the amount held in trust.

- This "Co-Investment Right" was intended to have several benefits.

- The public stockholders take comfort in seeing sponsors put more money into a deal that they are recommending, particularly at the time of the transaction when there may be concern that capital committed at the time of the IPO was insufficient, since it may be lost even if the a bad deal was consummated just to get one completed before the expiry of the life of the SPAC.

- The co-investment also creates liquidity for those public stockholders wanting to sell prior to the business combination.

- To avoid insider trading concerns, the co-investment occurs under the auspices of a 10b-5(1) plan.

- Certain SPACs sought to tie the co-investment right to the closing of the business combination– which had the benefit of getting the sponsor to invest more capital but not assisting with the transferring of interests away from "No" votes – investors also thought that it created more dilution to EPS, unlike a co-investment right which maintained the amount of shares outstanding.

- Recent SPACs (Terrapin and Hydra) have added a committed co-investment obligation. Others provided option to co-invest.

Sample Structure of Offered Securities

Offerings consist of units comprised of common shares and warrants that are registered with the SEC and trade freely

Typical SPAC Structure $10.00 Unit

▪ Composition of Units	▪ 1 common share ▪ 1 warrant ▪ Trade separately
▪ Warrant Strike Price	▪ $12.00
▪ Warrant Exercise Period	▪ 5 year life from the date of the consummation of the business combination
▪ Call Provision	▪ ≥ $18.00 for any 20 trading days within a 30 day period, if underlying shares registered
▪ Liquidation Value per Share	▪ $10.00+

Features

Feature	Significance
▪ Third Party Escrow	▪ 100% + of cash held in trust, not released until business combination closes
▪ Target Enterprise Value must be 80% of net assets	▪ Ensures that only targets of a minimum size are proposed
▪ Shareholder Approval/Tender offer	▪ Only well-received transactions get consummated
▪ Management Ownership and Concurrent Investment	▪ Incentivizes management to find and close a deal in a timely fashion
▪ Escrow of Insider's Shares	▪ Insiders do not participate in a liquidating distribution for interests held prior to IPO, and are locked up subsequent to business combination
▪ Deal Deadline	▪ Limits the time capital is invested

SPAC Regulatory History – Disruptive Events

- Concern with identification of deal prior to IPO - International Shipping (February - July 2005)
- Warrant Purchase Obligation/Regulation M - Key Hospitality (EGS/Underwriter Counsel) (November 2005)
- Amending Charter-Great Wall Acquisition (January 2006)
- Delaware Dissolution-HD Partners (EGS - Issuer Counsel) (May 2006)
- Warrant EITF 0019 Cash Settlement Value of Warrants - Energy Infrastructure (EGS - Underwriters Counsel) (July 2006)
- Tender offer v. Shareholder Vote (EG&S – Issuer's counsel) (May 2010)
- Derivative liability treatment of public warrants (2012)

Disclaimer of Liability

- The information which is being shared with you today seeks and may answer some questions of yours related to SPACs but is not intended as a comprehensive analysis of the topic or situations directly impacting you and your existing operations or situation. In addition, this information should not be relied upon as legal advice– these are only our general observations. You are encouraged to seek the advice of your own securities counsel. Your counsel may analyze the same facts and rules differently and come to dramatically different conclusions and recommendations for you.

- This information is supplied from sources we believe to be reliable but we cannot guarantee its accuracy, nor do we undertake any obligation to update or revise such information.

- This presentation is made solely for general informational purposes and should in no way be relied upon or construed as legal advice. For specific information on particular factual situations, the opinion of your legal counsel should be sought.

Thank you

From the team at
Ellenoff Grossman & Schole LLP

Douglas S. Ellenoff *(ellenoff@egsllp.com)*
Stuart Neuhauser *(sneuhauser@egsllp.com)*

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas New York, NY 10105
Telephone: (212) 370-1300
www.EGSllp.com

Ellenoff Grossman & Schole LLP