



The “SPAC”

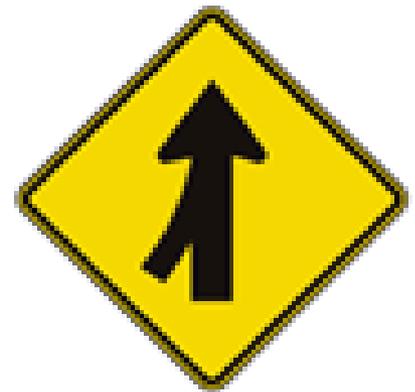
(*Specified Purpose Acquisition Company*)

*An Overview and Recent Trends and
Developments*

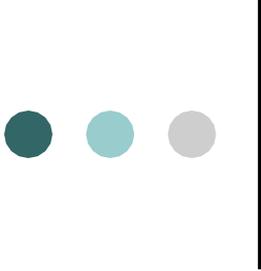


EGS
Ellenoff Grossman & Schole LLP

September 2017

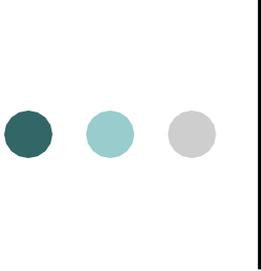


Merger Ahead



The SPAC Practice at Ellenoff Grossman & Schole LLP

During the course of the last 15+ years, Ellenoff Grossman & Schole LLP, or EG&S, has been involved at various stages in over 100 proposed/completed SPAC IPOs, raising nearly \$5,000,000,000. In addition to our IPO experience with SPACs, we have been involved with over 35 SPAC business combinations. EG&S has been involved in more than 10 SPACs in 2017 representing nearly 50% of all SPACs that priced [year] to date.



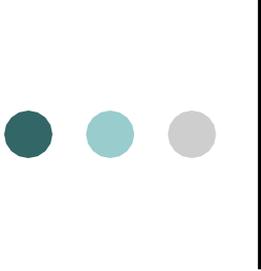
About Ellenoff Grossman & Schole LLP

Ellenoff Grossman & Schole LLP is a New York-based law firm with nearly 80 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, Mergers & Acquisitions, Broker-Dealer Regulations, Fund Formation, 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 70 public companies, and was recognized as one of the Top IPO law firms in the United States by Sagient Research.

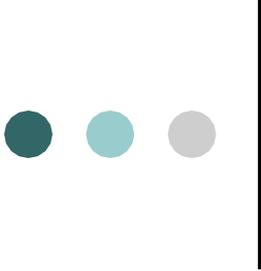
The Firm has over 35 corporate/securities professionals specializing in a range of activities, including:

- Public Offerings (IPOs and Secondaries) – Including SPACs
- Crowdfunding
- Mergers and Acquisitions
- Registered Directs and CMPOs
- PIPES (#1 Placement Agent Counsel in 2016 according to Placement Tracker)
- Exchange Act reporting (Form 10-Ks, 10-Qs and all other required filings)
- FINRA, NYSE, NASDAQ and OTC listing and compliance
- Broker-dealer regulations
- Rule 144 transactions
- Section 16 compliance
- Employee Benefits and Executive Compensation



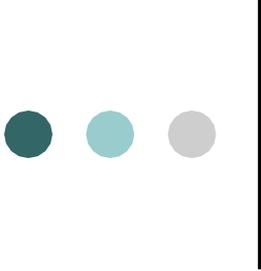
What is a SPAC?

- Newly formed corporation by a prominent and qualified sponsor/management team for the purpose of raising capital in an IPO in anticipation of identifying and consummating an unidentified business combination.
- No commercial operations until it consummates its initial acquisition, 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 if they do not want to stay invested.
- 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 whether they vote “yes” or “no” (even if the majority of holders approve the business combination).



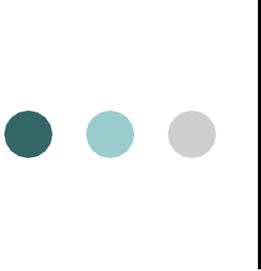
SPAC History

- 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 real 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 redemption percentage
 - opportunist investors and associated SPAC redemptions
 - focus on higher quality management teams
 - ½ or ⅓ warrant and/or right instead of full warrant
 - Concurrent warrant tender offer (Infinity/Chart)



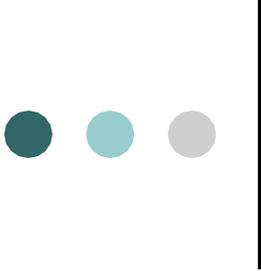
The SPAC Team

- Who are appropriate sponsors and why?
- Individuals with strong deal flow
- Who should sit on the board?
- Do SPACs have advisory boards?
- How many board members are required and are there related listing rules?
- What are the roles and responsibilities of board members?
- Trust Indemnitor – entity (funded or shell) or individual?
- Waiver Against Trust



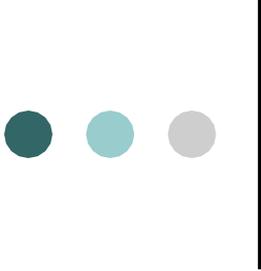
Where do SPACs Incorporate?

- U.S. – Delaware
- Foreign:
 - BVI
 - Cayman Islands
 - Marshall Islands
- Trust Account located in U.S. regardless



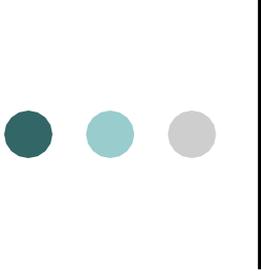
The Trust Account

- Where are funds held?
- What are permissible investments of the trust assets?
- Are there any permitted withdrawals of principal? Interest?
- What amount of funds is typically held out-of-trust?
- **Can you amend the trust agreement?**



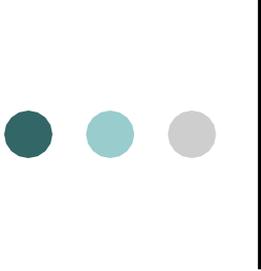
How to Get a SPAC Off the Ground?

- Select management team -- **when do you need the full team?**
- Selection of underwriter/syndicate members
- Determining deal size
- Selection of auditor
- Jurisdictional issues
- **Investor base – substantially all institutional**
 - **Bull-dog provisions**
- Timeline
 - SEC review and process
 - Exchange approval
 - FINRA approval
 - TTW meetings/Roadshow



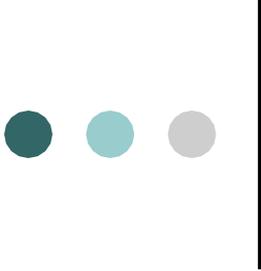
Risk Capital of Sponsor

- How much does sponsor invest in private placement?
- **Can it be syndicated?**
- **Do underwriters participate in risk capital?**
- Type of placement securities
- Founder promote shared with officers and directors
- **Reporting and disclosure**
 - **Beneficial ownership**
- What do sponsor investors receive and when?
 - **Allocation of founder shares and warrants/units**
 - **Lockups and registration rights**



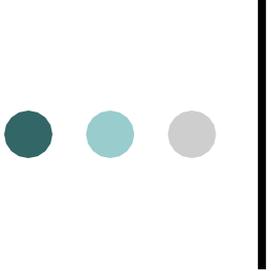
What are the Advantages to the Public Investor?

- Access to investments in acquisitions, buy-outs and turn-arounds typically otherwise restricted to private equity funds
- Investing with a SPAC sponsor and management team (often investing their own risk capital-up to 5% of IPO) who have industry expertise
- Structure and Limited Risk
 - Capital held in a trust account (U.S. Treasuries) pending approval of business combination via a shareholder vote (proxy statement) or return of capital via tender offer.
 - Benefits from liquidity of publicly-traded securities and ability to control timing of exit.
 - Pending business combination, there is typically 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, even if the investor elects to receive back its capital.
 - Provides a minimum liquidation value per share in the event no business combination is effected or the investor elects to receive back its capital.



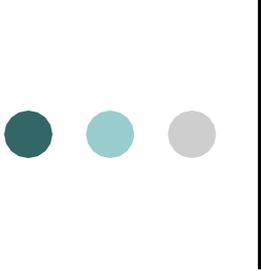
What Are Advantages To Sponsor/Management?

- Pre-funding an acquisition strategy
- Reduced reliance on debt issuance
- 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 public equity to fund larger acquisitions



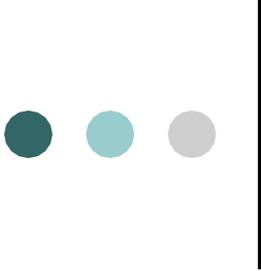
What Are Benefits to Seller?

- Fast track IPO
- Ability to partner with well-known sponsor team
- Potential for Seller to retain upside by being paid in stock
- Less disruption to seller/company and employees than traditional IPO
- Flexibility on post-transaction structure
- Provides growth capital without PE partnership
- Public currency for future acquisitions



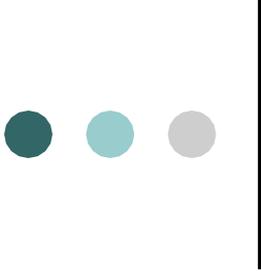
Back-End – NDA's, LOI's and Engagements with Advisors

- NDA's
- **All agreements, including NDA's need to include customary and standard Waivers Against the Trust account - it is critical that the trust account be protected to ensure investor faith in the SPAC product - Sellers have limited recourse for breach**
- Given the often significant amount of tire-kicking on potential transactions, employee non-solicits and non-hires can cause administrative headaches for the post-closing company and it is advisable to try to limit them
- The target and its representatives should generally not be trading in the SPAC's securities, since the SPAC's acquisition activities is its primary material non-public information
- **SPAC needs to be wary against agreeing to exclusivity, given its limited life**
- Given the limited life of a SPAC, and the need to get shareholder approval for an extension, there may occasionally be a need to disclose an LOI publicly in connection with obtaining an extension of the SPAC's life
- **Management should consider "wall crossing" after LOI and before a Definitive Agreement is executed**



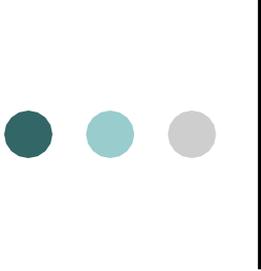
Back-End – Deal Documents and Other Deal Considerations

- The amount of cash left in trust is never known until the closing occurs since SPAC public shareholders have the right to redeem their shares in connection with the closing of the business combination
- SPAC sponsors may agree to certain forfeitures, transfers and/or earn-outs (usually based on post-closing stock price performance) of sponsor shares or warrants in order to entice target company shareholders
- Need to consider whether there is a minimum cash condition for money left in trust after redemptions plus the proceeds from any PIPE transactions conducted in connection with the deal
- The SPAC business combination is a mixture of a private equity financing and an initial public offering and the deal documents often contain a mix of both elements, including non-competition obligations and lock-ups from principal target shareholders
- **Continued Listing Requirements**
- **Deals may be contingent on maintaining listing on Nasdaq or NYSE, but sometimes there can be difficulties with continuing to meet the minimum shareholder requirements (Round Lot requirement) prior to the closing of the business combination**
- The parties should consider post-closing board structure as part of the transaction to ensure compliance with listing requirements and the general qualifications of the directors to serve on the board of the post-closing public company



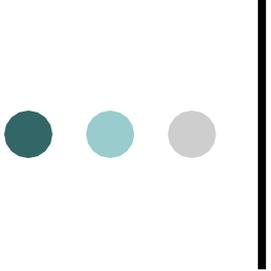
Back-End – Deal Documents and Other Deal Considerations

- Often the target company shareholders own a majority of the post-closing company and control it post-closing (including having a majority of the board and many of the key executive officers), so consider controls for any post-closing matters relating to the business combination (e.g., indemnification claims, earn-out determinations), such as appointment of a purchaser representative or a requirement that disinterested directors make any determinations on behalf of the post-closing company
- **Indemnification tends to be deal-specific, including whether the target company shareholders receive cash and whether the deal is marketed more as an IPO or as an M&A transaction – some SPAC deals have no or very limited indemnification**
- Indemnification often involves a limited amount of stock otherwise payable to the target shareholders held in escrow, which may serve as the sole remedy
- SPAC may obtain rep and warranty insurance in lieu of or to supplement indemnification coverage
- For earn-outs payable to target company shareholders, need to consider the effect of future acquisitions, as the objective of some SPAC deals is to help target company have public equity for future acquisitions
- Need to be wary of related-party transactions at the target company that may be acceptable for a private company, but viewed negatively for a public company
- The SPAC board may want to obtain a fairness opinion before approving the transaction



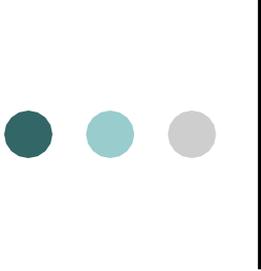
Back-End – Deal Closing

- A key gating item on closing deals is the filing of the proxy/registration statement to obtain SPAC shareholder approval and to permit SPAC public shareholders to redeem their shares – parties should consider whether to work on proxy/registration statement at the same time as negotiating deal documents
- **The parties may also want to amend the public company charter and/or approve a new equity incentive plan as part of the proxy/registration statement process**
- **SPAC shareholders tend to overwhelmingly approve the transaction since the SPAC sponsor is typically obligated to vote in favor of transactions presented for shareholder approval and SPAC public shareholders can vote in favor of the transaction and still redeem their SPAC shares and keep their SPAC warrants and rights – the SPAC warrants and rights have no value if the SPAC liquidates because it does not consummate a business combination prior to its expiration**
- Once a deal is signed, the parties work together to market the deal to the public and convince SPAC public shareholders to not redeem and recycle the public SPAC shares --- failure to meet minimum cash conditions is mainly a function of the public not liking the target company or the deal terms
- Management should consider the need for a PIPE or Backstop -- Some SPAC IPOs build in PIPE in form of forward purchase commitments
- ***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 shareholder concerns.***



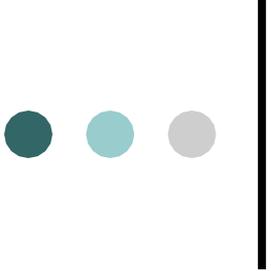
Structuring Trends

- Movement to specific, niche sectors (Energy, Healthcare, and recently, tech industry)
- SPAC sponsor teams include repeat serial issuers (Capitol, Terrapin, TPG, Hydra, Hennessey, Silver Run & KBL) and high quality first time issuers (Centerview, Draper, Matlin Patterson, Kayne Anderson)
- Several large Private Equity Sponsors and high profile teams (Centerview; Riverstone; TPG; Avenue Capital, WL Ross; Gores; Chinh Chu)
- Sponsor's "At Risk" capital approximately 3-5% depending upon size of SPAC (declines as size increases but subject to % in trust)
- Increasing warrant strike out-of-the money– $\frac{1}{2}$ or $\frac{1}{3}$ Warrants (which significantly reduces overhang) rather than 1-1
 - Approximately 115% – 120% of unit offering price
 - Concurrent increase to warrant call price
 - Warrant Package at \$.50-\$1.50 per warrant (depending on warrant coverage)
- Some SPACs have added an automatic "Right" to acquire shares post-business combination (on 10-for-1 basis)



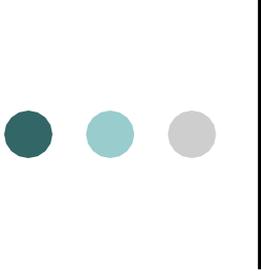
Structuring Trends (continued)

- 18-24 months to find an acquisition, plus extensions
- Some SPACs allow for shorter period and automatic extension if trust account is increased with sponsor money (1-6 months per extension)
- 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 (without a shareholder vote if 20% rule not triggered)



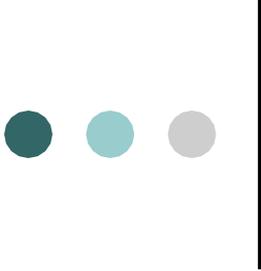
Structuring Trends (continued)

- Current SPACs use a \$10.00 unit regardless of deal size
- Unit separation
- 2 Class Structure (founder share adjustments)
- 100%+ Held in Trust
- All SPACs now have warrant exercise price out-of-the-money– e.g., \$11.50 (\$5.75 for ½ Warrant)
- Most have listed on NASDAQ; some recently on NYSE
- First Generation IV SPAC effective in July 2014, with founder share anti-dilution and a guaranteed PIPE via forward purchaser contract (Macquaire) upon a business combination built into the IPO structure. Second such SPAC (with out anti-dilution feature) effective in October 2014. EGS counsel to both issuers.
- With increased interest rates, many SPACs now give all accrued interest to redeeming investors (other than for amounts required to pay franchise or income taxes).



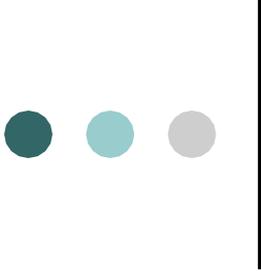
Listing Options

- NASDAQ and NYSE
- Uplisting rules affected reverse mergers due to seasoning requirements
 - Nasdaq Proposal to reduce to 150 holders
 - Tender Offer or Shareholder Approval
- Foreign Private Issuers
 - Exempt from 20% rule for shareholder approval
 - Must do Tender Offer
- OTC Bulletin Board
 - No 20% Shareholder Approval Rule
 - No recent SPACs listed on OTC
 - No minimum number of shareholders



Sample SPAC IPO Terms

Offering Size	\$100,000,000
Number of Units	10,000,000 units consisting of 1 share and ½ warrant. Unit separates after IPO over-allotment option is exercised or expires
Over-Allotment Option	15%
Listing	NASDAQ
Offering Price per Unit	\$10.00
Warrant Exercise Price	\$11.50 for 1 whole share of common stock
Warrant Redemption Price	\$18.00
Warrant Term and Exercisability Period	Warrants expire 5 years from the completion of business combination. Exercisable on the later of 30 days after the completion of a business combination or 1 year post-IPO
Percentage of Cash in Trust	100%
Amount of Cash in Trust / Per Share	\$100,000,000 / \$10.00
Amount Reserved for Working Capital	\$750,000
Up-Front Underwriting Fee	2.5%
Deferred Fees	3.0%



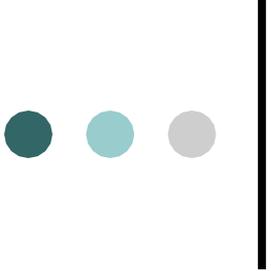
Sample SPAC IPO Terms

Management Promote	
Size of Promote	20% (can be dual class)
Number of Securities	3,125,000 shares
Consideration	\$25,000
Lock-up on Management Promote	1 year following business combination or earlier if the last sale price of the Company's common stock equals or exceeds \$12.00 for any 20 trading days within any 30-trading day period commencing at least 180 days after initial business combination
Management Warrant Purchase	\$3,750,000 total comprised of 3,750,000 whole warrants at \$1.00 per whole warrant, purchased prior to the initial public offering and placed in trust. Management warrants have provision for cashless exercise and are non-redeemable.
Lock-up on Management Private Placement	Lock-up until 30 days after the business combination
Deadline to Consummate Business Combination	24 months



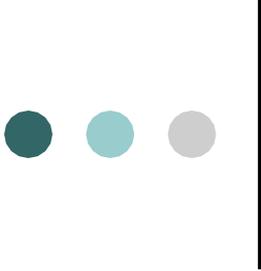
SPAC Regulatory History – Disruptive Events

- 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)
- 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

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