



# SPACs

*(SPECIAL PURPOSE ACQUISITION COMPANY )*

*AN OVERVIEW AND RECENT DEVELOPMENTS*

EGS  
Ellenoff Grossman & Schole LLP



# THE SPAC PRACTICE AT ELLENOFF GROSSMAN & SCHOLE LLP

- For 25 years, members of the Firm have participated in alternative means of going public. In 2010, we innovated a new SPAC structure for 57th Street General Acquisition Corp. that is now the accepted convention. Since 2008 the Firm has been one of the leading U.S. law firms involved in each of the IPO, SPAC, Registered Directs/PIPEs and Reverse Merger industries. In 2019 and 2020, the Firm was **ranked #1 in the U.S. for number of SPACs** among all U.S. law firms (representing both issuers and underwriters).
- At present, we have more than 65 securities professionals who are engaged in our SPAC practice.
- Over the course of the last 15 years, the Firm's lawyers have participated in excess of:
  - 370 SPAC IPOs; including,
  - 80 SPACquisitions;

# ABOUT

# ELLENOFF GROSSMAN & SCHOLE LLP

Ellenoff Grossman & Schole LLP



**Ellenoff Grossman & Schole LLP** is a New York-based law firm with over 120 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 80 public companies, and was recognized as one of the Top IPO law firms in the United States by Sagient Research.

The Firm has over 65 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 2018 in 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.
  - Typically no cash compensation to sponsor/management team pending business combination.
  - 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 (Industrial, Healthcare, Oil, Gas & Fintech)
- Fixed % of promote or structured lockup releases (20%/25% of post-IPO common stock)
- Sponsor's "At Risk" capital approximately 5% depending upon size of SPAC
- Warrant strike out-of-the money –  $\frac{1}{2}$  or  $\frac{1}{3}$  Warrants (which significantly reduces overhang) rather than 1-1 ratio
  - Approximately 115% of unit offering price
  - Increase to warrant call price of approximately \$5 - \$6 above strike price
  - Warrant Package at \$.50-\$1.00 per warrant
- A few deals have added an automatic "Right" to acquire shares post-business combination (on 10-for-1 basis)
- 18-24 months to find an acquisition, including extensions (some deals at 12 months)
- 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



# STRUCTURING TRENDS

- Current SPACs use a \$10.00 unit regardless of deal size
- 100%+ Held in Trust
- SPAC sponsor teams include repeat serial issuers and high quality first time issuers (TPG, Centerview, Kayne Anderson, Third Point, Matlin-Patterson and Hennessy Capital)
- Forward Purchase Commitment (i.e., investor agrees to do a PIPE at merger) which guarantees a minimum cash threshold at closing

# LISTING OPTIONS AND DECISIONS

- NASDAQ and NYSE
  - 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 legitimacy after 2005 when:

- the “bulge bracket” underwriters became meaningfully involved (Citi, DB, CS, UBS and 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/Talbot's)
- 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 included:

- concurrent private placement;
- emerging market SPACs, and non-US issuer SPACs;
- business combinations with simultaneous PIPEs;
- increased no-vote percentage to liquidate/tender offer;
- focus on higher quality management teams - 1/2 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, Canada and Malaysia.

# 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.*

# 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%.
- 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.

# 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

<ul style="list-style-type: none"><li>• Composition of Units</li></ul>	<ul style="list-style-type: none"><li>• 1 common share</li><li>• 1 or <math>\frac{1}{2}</math> - <math>\frac{1}{3}</math> warrant</li><li>• Trade separately</li></ul>
<ul style="list-style-type: none"><li>• Warrant Strike Price</li></ul>	<ul style="list-style-type: none"><li>• \$11.50</li></ul>
<ul style="list-style-type: none"><li>• Warrant Exercise Period</li></ul>	<ul style="list-style-type: none"><li>• 5 year life from the date of the consummation of the business combination</li></ul>
<ul style="list-style-type: none"><li>• Call Provision</li></ul>	<ul style="list-style-type: none"><li>• <math>\geq</math> \$18.00 for any 20 trading days within a 30 day period, if underlying shares registered</li></ul>
<ul style="list-style-type: none"><li>• Liquidation Value per Share</li></ul>	<ul style="list-style-type: none"><li>• \$10.00 (+ accrued interest, less taxes)</li></ul>

# FEATURES

## Feature

## Significance

- |                                                                                                     |                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>▪ Third Party Escrow</li></ul>                                | <ul style="list-style-type: none"><li>▪ 100% + of cash held in trust, not released until business combination closes</li></ul>                                                                  |
| <ul style="list-style-type: none"><li>▪ Target Enterprise Value must be 80% of net assets</li></ul> | <ul style="list-style-type: none"><li>▪ Ensures that only targets of a minimum size are consummated</li></ul>                                                                                   |
| <ul style="list-style-type: none"><li>▪ Shareholder Approval/Tender offer</li></ul>                 | <ul style="list-style-type: none"><li>▪ Only well-received transactions get consummated</li></ul>                                                                                               |
| <ul style="list-style-type: none"><li>▪ Management Ownership and Concurrent Investment</li></ul>    | <ul style="list-style-type: none"><li>▪ Incentivizes management to find and close a deal in a timely fashion</li></ul>                                                                          |
| <ul style="list-style-type: none"><li>▪ Escrow of Insider's Shares</li></ul>                        | <ul style="list-style-type: none"><li>▪ Insiders do not participate in a liquidating distribution</li><li>▪ Shares held prior to IPO are locked up subsequent to business combination</li></ul> |
| <ul style="list-style-type: none"><li>▪ Deal Deadline</li></ul>                                     | <ul style="list-style-type: none"><li>▪ Limits the time capital is invested</li></ul>                                                                                                           |

# THANK YOU FROM THE TEAM AT ELLENOFF GROSSMAN & SCHOLE LLP

Click [here](#) for a complete list of our SPAC transactions

- ❖ **Douglas S. Ellenoff** ([ellenoff@egsllp.com](mailto:ellenoff@egsllp.com))
- ❖ **Barry I. Grossman** ([bigrossman@egsllp.com](mailto:bigrossman@egsllp.com))
- ❖ **Stuart Neuhauser** ([sneuhauser@egsllp.com](mailto:sneuhauser@egsllp.com))



## **ELLENOFF GROSSMAN & SCHOLE LLP**

1345 AVENUE OF THE AMERICAS, 11<sup>TH</sup> FLOOR

NEW YORK, NEW YORK 10105

TELEPHONE: 212-370-1300 FACSIMILE: 212-370-7889

[www.egsllp.com](http://www.egsllp.com)

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