Briefing note on SPACs

10th May 2021

Introduction

Instruments to facilitate the listing of private companies by merging them with existing listed companies were already used more than a century ago. Special Purpose Acquisition Companies (SPACs) in their current form, have been in existence since the early 2000s. The issuance of SPACs in the US started in mid-2005 and increased in 2008, following the adoption of new listing rules approved by the SEC. In Europe, SPAC listings date from around 2005.

SPACs are acquisition vehicles that raise capital on public markets to later acquire operating companies. A SPAC is led by a dedicated team ('Sponsors') that raises money from investors following a sale of shares and warrants (often combined as "units"). Being acquired by a SPAC can be an alternative to a traditional IPO for a company contemplating a public listing.

The proceeds from the initial SPAC listing are held in an account to fund the business combination. After the listing, the SPAC seeks to combine with an identified (often non-listed) target to form a listed operating company. During the acquisition/merger the SPAC may seek extra funds via e.g. debt or equity financing.

The re-emergence of SPACs is beneficial for EU public markets as they are attractive vehicles typically embedding investor protection features. SPACs allow retail investors to participate early in acquisition projects, traditionally limited to institutional investors, thereby democratising these types of operations using capital markets.

1. Attractiveness and democratisation of EU Capital Markets

To be listed in the EU's capital markets, a company can either undertake an IPO or be bought by a SPAC. At the listing stage of the SPAC process, SPAC acquisitions allow companies to access capital from private equity investors and then list on public capital markets. Companies can benefit from the price formation process provided by capital markets and increased visibility towards institutional or retail investors.

A SPAC's success is based on its ability to acquire quality businesses. It is considered ideal for the acquisition of a single business entity which can then list in the capital market where it has a strong customer base. The EU should welcome the emergence of SPACs on its capital markets as this would lead to an increase of company listings.

In the absence of SPACs listings in the EU, there is a risk that non-EU SPACs listed in third country capital markets would have the purchasing power to target and buy growing non-listed EU companies. In this case, the targeted EU-companies would be listed in the non-EU capital market where the SPAC is located. It is therefore important for the EU to support the SPAC listing process in its capital markets.

Shareholder base support is a key feature in the success of a SPAC. It builds on the expertise and reputation of the SPAC manager who is someone with experience in a certain sector and a trusted business reputation.

The securities of a SPAC are freely transferable. An investor has the option to buy and sell in a transparent and liquid environment at any given moment plus the added value of a redemption (minus costs), should the acquisition not occur (see more details below).

2. Investor Protection

SPACs are transparent, liquid and present elements to safeguard the interests of the shareholders by the following methods:

- **Voting rights over the intended acquisition**. There are two approaches for a SPAC acquisition. Either the intended acquisition occurs i) after a meeting of shareholders approves the acquisition, or ii) after the Board (a Sponsor who remains involved throughout the listing until acquisition and an Extended Independent Board) approves the acquisition. If the vote is successful, the acquisition will be completed, and the SPAC and the acquired business will combine into a publicly listed entity.

- **Redemption right -** Individual investors have a redemption right should they not agree with the purchase. This also applies after the approval of the shareholders or the board.

- **An exit opportunity** – Once the SPAC and the acquired business combine into a publicly listed entity, its securities - which are often a combination of shares and convertible warrants - become separable allowing investors to trade common shares and warrants separately and freely.

- **A 'refund' -** as the deal is structured to lead to the liquidation of the SPAC if it does not reach its target acquisition within a period pre-determined in the prospectus (often within 18-24 months);

SPACs comply with the EU legal framework on investor protection when listing across jurisdictions (for Regulated Markets these include e.g. the Prospectus Regulation and Transparency Directive) and respect the different national regulatory frameworks on company and stock law. It should be noted that for SPACs listed on MTFs, the Transparency Directive is not and the Prospectus Regulation is not necessarily applicable. However, MiFID requirements regarding 'admission to trading' and the MAR regime apply. In addition, specific listing requirements and ongoing disclosure requirements apply based on Exchanges' individual rule books. Exchanges are continuously updating their rulebooks to reflect developments in their markets and ensure investor protection. It may be worth considering alleviating certain legal requirements at national level which could negatively impact the possible set-ups and designs of European SPACs. SPACs are tools that give start-ups flexibility to enter the market, when some of the rules, e.g. on track record, would not permit this. At the same time, it is important that applicable rules ensure investor access to the usual due diligence and information via a prospectus as in ordinary IPOs.