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Private-Company CFO Considerations for SPAC Transactions

Executive Summary

Although special-purpose acquisition companies (SPACs) have been used for decades as alternative investment vehicles, they have recently come into vogue as seasoned investors and management teams have turned to SPACs to mitigate the increased market volatility risk of traditional initial public offerings (IPOs). In fact, 2020 has been a record-breaking year for SPAC IPOs; the proceeds raised in the first eight months of the year have already more than doubled those raised in 2019. This surge has been driven by the influx of high-profile investors and management teams entering the SPAC space, coupled with an abundance of uninvested capital that had largely been sitting out in the first half of 2020. However, SPAC transactions come with their own set of unique challenges, and it is essential for entities to have (1) an understanding of the risks associated with these investment vehicles and (2) a comprehensive project management plan to meet the demands of an accelerated merger timeline.

Themes of this publication:

- Background — A brief look into the past and present of SPACs, including this year's record-breaking pace.
- Rise in SPAC Use — An examination of the conditions and trends driving the momentum of SPACs in 2020.
- Life Cycle of a SPAC — An overview of the life cycle of a SPAC, from inception through the consummation of a merger.
- Managing Ongoing Operations — A survey of the core competencies that should be examined and elevated after a target company is acquired.

> Recent market volatility, combined with the arrival of seasoned sponsors and management teams, has created a modern-day SPAC revolution. The abundance of funds held in trusts and the increased appetite for private investment in public equity (PIPE) transactions have thrust SPACs beyond the fringe of capital markets and into the mainstream as significant players for potential sponsors, investors, and target operating companies.

Background

Introduction

A SPAC is a newly created company that uses a combination of IPO proceeds and additional financing (PIPEs have been common in recent times) to fund the acquisition of a private operating company. The proceeds raised in the IPO are placed in a trust account while the SPAC's management team seeks to complete an acquisition of an existing operating company ("target"), generally in a specific industry or geography, within the period stated in the SPAC's governing documents (typically, 18 to 24 months). If the SPAC successfully completes an acquisition, the private operating company target succeeds to the SPAC's public filing status and, as a result, the target effectively becomes a public company. If the SPAC is unable to complete an acquisition in the allotted timeframe, the cash held in its trust account is returned to its investors unless the SPAC extends its timeline via a proxy process.

Past and Present

Entities with characteristics similar to those of SPACs have existed for decades in various iterations as "blank check companies" or "public shells." The term "SPAC" was coined in the 1990s, with sponsors focusing on the technology, media, and health care industries. Since then, the popularity of SPAC offerings has ebbed and flowed, depending on economic conditions, trends in capital, and the general health of the IPO market. For example, SPACs gained popularity in the oil and gas industry in the mid-2010s as depressed commodity prices drove investors toward experienced management teams that were increasingly likely to find existing operating companies or mineral rights for a discount. The number of SPAC IPOs has increased steadily since 2013, and 2020 has been a banner year in terms of the volume and size of SPAC IPOs.

SPAC IPO Issuances Since 2013

Year	Amount Raised ($ in billions)	Number of IPOs	Average Size ($ in millions)
2020 (to date)	33.1	81	408.7
2019	13.6	59	230.5
2018	10.8	46	233.7
2017	10.0	34	295.5
2016	3.5	13	269.2
2015	3.9	20	195.1
2014	1.8	12	144.9
2013	1.4	10	144.7
Data source: SPACInsider as of August 31, 2020.			

This momentum is not showing any signs of slowing down, and the first eight months of 2020 have already been filled with landmark SPAC records, including:

- The highest number of SPAC IPOs in a year (81).
- The highest amount of SPAC proceeds raised in a year ($33.1 billion).
- The highest average SPAC IPO size in a year ($408.7 million).
- The largest SPAC IPO on record ($4 billion).[1]

Rise in SPAC Use

The increase in the use of SPAC IPOs as alternatives to traditional IPOs is the result of a confluence of factors. First, unspent committed capital, or "dry powder," held by private equity was estimated to be near $1.45 trillion as of June 2020, which bolstered the supply of capital that had mostly been sitting on the sidelines in the first part of year. Second, while pricing for a traditional IPO is affected by market volatility and broader investor sentiment, which can vary significantly leading up to the time of pricing, SPAC mergers provide more certainty because of up-front pricing and

[1] See "The Biggest SPAC Ever Just Got Bigger: Pershing Square Tontine Holdings Ups Unit Offering Ahead of $4 Billion IPO," *Nasdaq*, July 13, 2020.

valuation that is in large part determined through negotiations that typically occur months before the transaction closes. The recent rise in market volatility, which is largely attributable to the coronavirus disease 2019 pandemic and the upcoming U.S. presidential election, has therefore prompted some companies to forego the traditional IPO route for the up-front price discovery and potential accelerated timeline offered by a SPAC transaction. Furthermore, SPAC mergers give sponsors the opportunity to raise additional capital through PIPEs to finance a significant portion of the target's acquisition price and to provide post-merger operating cash.

As the use of SPACs increased, a number of well-known investors and hedge fund managers entered the SPAC space, and some high-profile SPAC acquisitions lent credibility to the structure as a reputable investment vehicle. In many cases, these sophisticated sponsors have remained involved with the target company to provide ongoing support after the merger was consummated. The influx of seasoned managers with proven track records, coupled with better alignment of sponsor incentives with investor returns, has increased investor confidence in SPACs, enabling them to raise significant capital to be used in targeting larger and more mature companies. In addition, the SPAC market has benefitted from the entrance of retail investors that have looked toward post-IPO SPACs as a means of finding suitable returns in the recently volatile market.

Life Cycle of a SPAC

A SPAC's life begins with its initial formation, followed by its IPO, its search for a target, a shareholder merger vote, and, finally, the close of an acquisition (or the return of the SPAC's proceeds to investors). The SPAC process differs from that of a traditional IPO in that the target company (which eventually becomes the public company post-acquisition) is not involved in the formation of the SPAC or the IPO phases. However, the terms of the units offered in a SPAC IPO and the agreements the SPAC has with its sponsor and management team ultimately influence the value that target company investors extract from a SPAC merger.

The phases of a SPAC's life cycle are outlined below.

Formation

When a SPAC is launched, the sponsor, and often its management team, pays a nominal amount for an equity stake in the SPAC, which is often referred to as "founders' stock" or the "promote." The founders' stock that the initial investors receive generally represents approximately 20 percent of the stock in the SPAC after its IPO. The founders' stock is intended to compensate the initial investors for identifying a promising target and consummating a merger. During this stage, the sponsor typically lends the SPAC money to fund ongoing expenses. In addition, the SPAC selects legal counsel and underwriters and establishes its governing documents.

IPO

After formation, a SPAC begins the process of making its public offering. At this point, the SPAC files an initial registration statement with the SEC and responds to SEC comments. The SPAC then raises capital by issuing units (which individually consist of a common share and a warrant[2]), and the proceeds raised are held in a trust until a target is acquired. After the IPO, the units are separated into shares of common stock and tradable warrants. The warrants are designed to provide additional compensation for the initial investment and are usually exercisable shortly after a merger is consummated. The initial price per unit and the warrant pricing may vary. For instance, although unit prices have largely been close to

Key Terms

Sponsor — Founding investors that lead the SPAC process.

Target — Private company that is the target of an acquisition and ultimately becomes a public company after the merger is consummated.

De-SPAC — The process that begins after a letter of intent is executed and ends when the shareholders approve the transaction and the merger into the SPAC is consummated.

PIPE — A means of raising additional capital after a target is identified to finance a significant portion of the acquisition price.

Lock-up period — The period after an IPO in which certain shareholders are restricted from selling shares. The lock-up period for a SPAC IPO is typically longer than that for a traditional IPO.

[2] May be a whole warrant or a fraction of a warrant.

$10 per share, the recent IPO of Pershing Square Tontine Holdings, Ltd., Bill Ackman's most recent venture, had some unique terms; it was priced at $20 per share and raised approximately $4 billion. We expect the evolution of deal terms to continue as larger and more sophisticated players enter the market.

Target Search

The search for a suitable acquisition is similar to the process used in a typical M&A transaction, with sponsors vetting potential targets through an accelerated financial, legal, and tax due diligence process. Although SPACs have historically been focused on positive EBITDA companies, 2020 has seen a divergence from the norm with pre-revenue "story-stock" companies entering the fray.

The timeline to close a SPAC acquisition depends on multiple factors. Because dissenting SPAC shareholders have the right to redeem shares, there can be uncertainty regarding the amount of cash available to pay target shareholders and for post-close operations. Therefore, SPACs and targets often negotiate a "minimum cash" closing condition and, for this reason, SPAC acquisitions often include a simultaneous PIPE investment upon consummation of the merger.

Shareholder Vote

Company bylaws and SEC proxy rules typically require SPAC shareholder approval before the completion of the de-SPAC process. Therefore, the consummation of a merger typically requires entities to file a proxy with the SEC, obtain and respond to the SEC's comments, mail the proxy to the SPAC's shareholders, and hold a shareholder meeting. The sponsor and other founder shareholders typically commit at founding to vote their interest (generally representing 20 percent) in favor of a transaction, which decreases the number of additional common shares needed to vote in favor of the merger.

Spotlight on Financial Reporting

Representative Timeline

Although the amount of time between the deal announcement and the deal closing can vary greatly on the basis of the readiness of the operating company, it can be as short as four to six months, as illustrated in the timeline below.

Transaction announced — File merger proxy — Transaction closes — File Super 8-K — File 10-Q (45 days)/ 10-K (90 days)

Diligence/ Negotiation	Registration statement preparation*	SEC comment period and shareholder notice period		SOX implementation period
1–2 months	2–4 months	2–4 months	4 days	Up to 5 years (depending on EGC status)

* This is an illustrative timeline for a nonaccelerated filer. The actual timeline will depend on specific facts and circumstances.

The financial reporting requirements for a target in a SPAC merger are voluminous and must be completed in a compressed SPAC merger timeline leading up to the proxy statement or Form S-4 filing. The reporting requirements include preparation of the following:

- Annual financial statements for the required periods in compliance with public company GAAP and SEC rules and audited under PCAOB standards. Entities may be required to provide three years of annual historical financial statements in certain circumstances.
- Interim financial statements for required periods.
- Pro forma financial information.
- MD&A and market risk disclosures.
- Other nonfinancial information for a Form S-4 or proxy statement and a special Form 8-K ("Super 8-K").

Furthermore, to meet these requirements, an entity should have a deep understanding of complex accounting and SEC reporting rules and regulations in order to:

- Determine the historical periods for which target company financial statements are needed in the proxy statement or Form S-4, while giving consideration to staleness dates.
- Apply public company accounting standards and public company adoption dates for new standards, if required, and reflect their impact on the entity's financial statements.
- Determine the "acquirer" for financial reporting purposes.
- Determine the impact of historical acquisitions and dispositions, which may involve additional financial reporting requirements, and consider potential consultation with the SEC.
- Successfully respond to SEC comments.

Acquisition Close

If an affirmative vote is obtained from the proxy process, the target acquisition can close by merging into the SPAC, and the target company becomes a publicly traded entity. A Super 8-K must be filed within four days of the acquisition and must contain substantially the same information that would be required in a registration statement for companies that go through a traditional IPO. Further, the sponsor's founders' shares and warrants are locked up for a specified period (the "lock-up period") starting from the date of the Super 8-K filing. The lock-up period is typically one year, subject to negotiation at the inception of the SPAC.

Managing Ongoing Operations

Closing the acquisition is just the beginning of the new, public phase of the operating company. On the date of the closing, the formerly private operating company must be able to meet public company reporting obligations. At that stage, it is imperative that the company make a focused effort to elevate people, processes, and technology to support the demanding reporting schedule of a public company.

An assessment of capabilities should include, at a minimum:

- *Budgeting, forecasting, and investor relations* — The FP&A and investor relations functions should be a focal point so that the entity can ensure that accurate and transparent forecasts are communicated to investors and analysts.
- *Financial reporting* — Finance and accounting professionals should have a strong skill set in SEC reporting and be disciplined in meeting monthly and quarterly close and reporting deadlines.
- *Internal controls over financial reporting* — Finance and accounting personnel should be well versed in maintaining effective disclosure processes and controls, including effective internal controls over financial reporting.
- *Tax planning and strategy* — Tax planning and strategy is a key element of cash management and budgeting. In addition, SPAC transactions may be accompanied by an "UP-C" tax structure and a tax receivable agreement to allow the former target shareholders to receive certain tax benefits.
- *Governance* — The board of directors and related committees are required to meet the governance requirements of either the NYSE or Nasdaq, both of which require a majority of independent directors, an independent audit committee, and an independent compensation committee, and may require an independent nominating or corporate governance committee.
- *Information technology* — A well-structured ERP suite is needed to sustain all of the business objectives discussed above. In addition, the board and CIO should have an enhanced focus on cybersecurity and the protection of sensitive information.

Other key processes that should be assessed include treasury, executive compensation, internal audit, legal and compliance, and human resources.

How Deloitte Can Provide Assistance

Deloitte has a team of professionals with experience advising companies throughout the life cycle of the SPAC process. We can advise and assist with the following:

- Seller assistance, vendor due diligence, or both.
- Implementation of public company GAAP.
- Preparation of quarterly financial statements.
- Preparation of pro forma financial statements.
- Responding to SEC comment letters.
- Drafting the MD&A and providing advice on non-GAAP measures.
- Evaluating the significance of business acquisitions and the resulting reporting requirements.
- Drafting SEC waiver requests (as applicable).
- Assessment and build-up of an internal control environment for public companies.
- Assistance with SOX implementation and certification.
- Designing automated solutions for financial reporting processes and controls.
- Tax planning/UP-C strategy and compliance.
- Information technology system assessment and implementation.
- Preparation for, and management of, additional audit procedures to conform to PCAOB standards.
- Corporate governance structuring and reporting.
- End-to-end project management.

About the Authors

Derek Malmberg | dmalmberg@deloitte.com
Derek Malmberg is an Audit & Assurance partner at Deloitte & Touche LLP and leads the US East region and the national SPAC team, both within Deloitte's Audit & Assurance Accounting & Reporting Advisory (ARA) practice, which focuses on advising companies with complex accounting, auditing, and reporting matters. He is an experienced partner who serves some of Deloitte's largest and most complex clients. Derek has deep technical knowledge of complex accounting matters and was a clearing partner in Deloitte's National Office Accounting and Reporting Services group.

Derek Gillespie | dgillespie@deloitte.com
Derek Gillespie is an Audit & Assurance partner at Deloitte & Touche LLP in Deloitte's ARA practice. Within ARA, he leads the Acquisitions and Divestitures service offering and is a leader of the national SPAC team. In those roles, Derek assists clients with the application of complex accounting and reporting matters. Derek was a Professional Accounting Fellow in the SEC's Office of the Chief Accountant and also spent several years as a partner in Deloitte's National Office Accounting and Reporting Services group.

Previn Waas | pwaas@deloitte.com
Previn Waas is an Audit & Assurance partner and the US Software Industry and US IPO Services Leader with more than 19 years of experience providing assurance, accounting, and other professional services to public and private companies in the software industry. He has extensive experience leading IPO engagements and advising on revenue recognition policies, share-based compensation, equity transactions, business combinations, and SEC preclearance filing and registration statements. Previn previously worked as a part of Deloitte's National Office Accounting and Reporting Services group, with a focus on revenue recognition and equity transactions.

Will Braeutigam | wbraeutigam@deloitte.com
Will Braeutigam is an Audit & Assurance partner at Deloitte & Touche LLP and leads Deloitte's US Central region IPO Services group for the ARA practice. He has extensive private equity experience, including auditing and advising portfolio companies regarding public exit strategies. Will also has extensive experience leading IPO engagements, including reverse mergers, SPACs, recapitalizations, UP-C structures, predecessor accounting, and SEC preclearance filings.

Doug Rand | dorand@deloitte.com
Doug Rand is an Audit & Assurance managing director at Deloitte & Touche LLP on the SEC Reporting team of Deloitte's national office. He is responsible for consulting on technical reporting matters, reviewing and advising on SEC filings, as well as advising on transactions and interpretations of SEC reporting literature. He has more than 15 years of experience providing assurance, accounting, and other professional services to public and private companies.

Vibhor Chandra | vibchandra@deloitte.com
Vibhor Chandra is an Audit & Assurance senior manager at Deloitte & Touche LLP in the ARA practice and a member of the national SPAC team. He has over 12 years of experience in accelerated public company readiness in connection with capital market transactions such as IPOs, acquisitions, and SPAC exits. He brings in deep technical knowledge in several complex areas, particularly the SEC registration process, revenue recognition, business combinations, segment reporting, equity instruments, stock-based compensation, convertible notes, earnings per share, and private equity exit strategies.

Jeremy Hurwitch | jehurwitch@deloitte.com
Jeremy Hurwitch is an Audit & Assurance senior manager at Deloitte & Touche LLP in Deloitte's ARA practice and a member of Deloitte's national SPAC team. In this role, he focuses on advising companies with complex accounting and reporting issues, including IPOs, business combinations, complex financial structuring, derivatives and hedging, and internal control readiness and compliance.

Mary Schmidlin | mschmidlin@deloitte.com
Mary Schmidlin is an Audit & Assurance senior manager at Deloitte & Touche LLP. She leads strategic growth-related activities for the practice, developing solutions for Deloitte to assist clients with relevant market issues. Mary brings a unique lens to the practice, with over 12 years of client service experience coupled with 3 years of strategy focus.

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