SPACS

A PRIMER

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Allison focuses her practice on corporate governance, capital markets and strategic transactions. Her extensive experience includes advising public and private companies in connection with securities offerings, such as equity offerings, debt offerings and tender offers, and corporate transactions, such as mergers, acquisitions, dispositions and joint ventures.

Allison provides counsel to companies on a broad range of issues that management and directors face in connection with the many compliance aspects of securities laws, including governance rules adopted by the Securities and Exchange Commission (SEC) and stock exchanges. She advises boards and committees in matters related to internal investigations and the efforts of shareholder activists, and works closely with in-house counsel, financial personnel and outside auditors and advisors to help her clients prepare proxy statements and other reports to investors that meet complex disclosure obligations.

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SPAC IPO

- Special Purpose Acquisition Companies (SPACs) are companies formed to raise capital in an IPO and use the proceeds to acquire one or more unspecified businesses or assets
- Also known as “blank check” or “shell” companies
- Disclosure in SPAC IPO registration statement focuses on sponsor and management team of SPAC
- Key terms:
  - Units sold in IPO often include common stock and warrants
  - Most of the IPO proceeds (including deferred underwriting fee) are placed in trust account for purposes of initial acquisition
  - Holders of public shares will have redemption right in connection with initial acquisition
  - Initial acquisition must be completed within 24 months of IPO

De-SPAC Transaction

- SPACs are required to either consummate a business combination or liquidate within a set period of time after IPO, typically 24 months
  - If acquisition closing does not happen within specified time frame, SPAC would require charter amendment to extend outside date, accompanied by redemption offer to holders of common stock
- Company(ies) or assets acquired must have aggregate fair market value of at least 80% of assets of the SPAC trust account
- Acquisition target cannot be identified at the time of the IPO
- Industry or geographic focus often stated in IPO registration statement
- Most de-SPAC transactions require shareholder approval by SPAC shareholders
- Shareholders also given opportunity to redeem shares in connection with de-SPAC transaction

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Target Company Disclosures

- Proxy statement seeking approval of de-SPAC transaction
  - Includes disclosures similar to typical public company registration statement, including audited financial statements, MD&A, officer and director information, and corporate governance information
  - Subject to SEC review and comment
- "Super" 8-K to be filed within 4 days of de-SPAC transaction closing
  - Similar disclosures to proxy statement, and may require additional years of audited financial statements

SPAC – Target Company Considerations

- Is acquisition by a SPAC an attractive alternative to a traditional IPO?
  - May be portrayed as subjecting company to less exposure to market volatility
  - Can result in greater amount of cash added to target company's balance sheet than proceeds from traditional IPO
  - Can allow company to become public earlier in life cycle than stage that companies are currently doing IPO
  - Redemption feature of SPAC common stock and SPAC shareholder approval requirements may result in deal uncertainty
  - Combines M&A transaction with public company reporting requirements and special and complicated deal terms
  - Still requires company to be ready to be a public reporting company immediately following de-SPAC transaction

