Introducing SPACs: The case for Special Purpose Acquisition Companies in Singapore

April 2021

This article discusses the key features, trends and main regulatory requirements in respect of special purpose acquisition companies, or "**SPACs**", as they are popularly known. The article will also touch briefly on a few points for consideration as Singapore seeks to develop a market for SPACs in light of the popularity of SPAC listings in other markets.

What are SPACs?

Put simply, SPACs are companies formed to raise capital in an initial public offering ("**IPO**") with the purpose of using the proceeds for a transaction to be identified after the IPO. At the time of IPO, SPACs do not have any existing business operations or stated targets for acquisition, which is why they are often referred to as "blank-check" companies. Generally, monies raised during the IPO are placed in an interest-bearing trust account to be used at a later date for a transaction in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganisation, or similar business combination with one or more operating businesses or assets (a "**Business Combination**").

Given the nature of its set-up, investors are heavily reliant on sponsors, also known as SPAC pre-IPO investors, when investing in a SPAC at IPO. Sponsors in turn are usually firms and/or individuals with demonstrated success in identifying, acquiring and operating growth businesses and with experience in managing public companies, such as affiliates of private equity funds or financial institutions.

There are a number of reasons which underscore the current popularity of SPACs as a fundraising vehicle. The SPAC IPO process – which can complete as quickly as eight (8) weeks in case of SPACs listing on NYSE or NASDAQ – is perceptibly shorter compared to a "traditional" IPO. Some have pointed out that this reduced time to market in turn reduces deal uncertainty, which is particularly attractive in a market marked with volatility. The SPAC deal is also marketed using forward-looking projections which growth-stage companies may appreciate as they may not yet be profitable. From an investor's perspective, an opportunity to participate in SPACs is also an opportunity to co-invest with successful sponsors and diversify their investment strategies.

Recent trends

SPACs are hardly new to the market – while there was brief interest in SPACs in the early 2000s, SPAC activity had only taken off in 2020, with a record number of 248 SPAC IPOs noted and over US$83 billion worth of funds raised. In fact, proceeds raised by SPACs in 2020 outpaced that of "traditional" IPOs in the U.S..

SPAC IPOs have also become some of the most high-profile fundraising deals in recent history. In December 2020, 25 year old Austin Russell, founder and CEO of Luminar Technologies, a company developing technology for self-driving vehicles, became the youngest self-made billionaire after his company went public in a SPAC. More recently in April 2020, Southeast Asia's Grab Holdings had also confirmed its US$40 billion Business Combination with Altimeter Capital, which would make Grab the world's biggest SPAC merger as well as the largest U.S. equity offering by a Southeast Asian company to date.

Many established private equity firms and financial institutions are also eagerly participating in this space. It was recently reported that a SPAC backed by private equity firm KKR & Co had raised US$1.2 billion and that Warburg Pincus had raised US$750m through the IPO and listing of two SPACs on the NYSE.

While there are proponents who extol the virtues of SPACs, it bears reminding that SPACs are not without their own set of problems. Many SPACs have been noted to have performed badly post-Business Combination – as many as 14 out of 24 companies that went public as a result of a Business Combination with a SPAC (between 1 January 2019 to 10 February 2021) reported a depreciation in value as of one month following the completion of the Business Combination.

Key regulatory requirements for SPAC listings

To date, the U.S. (and, in particular, NASDAQ and NYSE) remains the primary listing venue for SPACs as the regulatory regime has been tailored to accommodate the listing of SPACs. For the purposes of this section, we will therefore examine in detail the key regulatory requirements for listing SPACs in the U.S..

<u>Disclosure</u>
Similar to companies raising funds via a "traditional" IPO in the U.S., SPACs are required to file a registration statement (i.e. Form 1) with the Securities and Exchange Commission ("**SEC**"), and take into account disclosure obligations pursuant to prescribed regulations, forms and schedules. However, unlike companies raising funds via the "traditional" IPO route, the business risk factors disclosed are minimal due to the lack of any operating history. The financial statements in a SPAC's IPO registration statement are also notably shorter as the SPAC has no historical financials. Generally speaking, save for information on the directors and the management, the bulk of a SPAC's registration statement comprises boilerplate language which can be prepared in a matter of weeks.

<u>Other key requirements</u>
There are also several other exchange-mandated requirements under the NYSE Listed Company Manual and the NASDAQ Stock Market LLC Rulebook in respect of the listing of SPACs. These include:

a. **Trust Account:** At least 90% of the IPO proceeds, together with the proceeds of any other concurrent sales of the SPAC's equity securities, must be held in a trust account controlled by an independent trustee.

b. **Deadline for Business Combination:** Within three (3) years of the effectiveness of the IPO registration statement (or such shorter period as specified within the IPO registration statement), a SPAC must consummate a Business Combination or be liquidated.

c. **Business Combination Condition:** The Business Combination must be with one or more target businesses or assets that together have an aggregate fair market value of at least 80% of the assets held in the trust account (excluding the deferred underwriting discount and taxes payable on the interest earned on the trust account) (the "**Business Combination Condition**").

d. **Board Approval:** Until the Business Combination Condition above has been satisfied, each Business Combination must be approved by a majority of the SPAC's independent directors.

e. **Shareholder Approval and the Right of Redemption:** If the SPAC holds a shareholder vote on the Business Combination, the Business Combination must be approved by a majority of the votes cast, and each public shareholder voting against the Business Combination ("**Dissenting Shareholders**") must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account. Conversely, if the SPAC does not hold a shareholder vote on the Business Combination, the SPAC must provide all shareholders with the opportunity to redeem all their shares for cash equal of the pro rata share of the aggregate amount then in the trust account.

SPACs in Singapore

It is arguable that there is scope for SPACs to take root in Singapore given investors here have become familiar with the subject matter due to the recent spate of Asian-sponsored SPACs listing in the U.S.. To this end, the Singapore Exchange ("**SGX-ST**") has recently launched a public consultation to seek market feedback on a proposed regulatory framework for SPAC listings in Singapore (the "**2021 Public Consultation**") in view of the renewed interests and appetite among businesses and investors.

At the outset, it should be noted that the 2021 Public Consultation had proposed requirements that are largely consistent with the five key regulatory requirements in NYSE and NASDAQ as highlighted above. The 2021 Public Consultation however had also highlighted several proposals which are in addition to the requirements for the listing of SPACs in other established regimes. For one, it is proposed that warrants or convertibles which may be issued with the SPAC shares at IPO be non-detachable from the underlying SPAC share, and that upon the exercise of the Right of Redemption by Dissenting Shareholders, such warrants or convertibles be nullified. This proposal arose out of concerns that the shareholders remaining post-Business Combination may be subject to significant dilution. Where the SPAC's shares and warrants trade separately as seen in the U.S., shareholders who have already exercised their Right of Redemption are observed to have benefited economically from the subsequent exercise of warrants when the SPAC's shares later outperform, at the expense of non-redeeming shareholders by further diluting their shareholding interests.

In addition, it is proposed that a moratorium on shareholding interests be observed by certain key parties at various junctures to ensure that the interests of key persons involved in the establishment and management of the SPAC are aligned with that of independent shareholders. In particular, SGX-ST has proposed that (a) founding shareholders, the management team, controlling shareholders ("**Key Persons**") and their respective associates observe a moratorium on the transfer or disposal of their shareholding interests as at the SPAC's listing until the completion of the Business Combination; and (b) Key Persons and executive directors with an interests in 5% or more of the resulting issuer, as well as their respective associates observe a similar moratorium for at least 6 months from the completion of the Business Combination.

Further, it is proposed that SPACs to be listed on the SGX-ST must meet a minimum market capitalisation requirement of at least S$300 million at IPO. The rationale for the higher market capitalisation requirement is to ensure a SPAC is backed by experienced and quality sponsors and/or management team with proven track record and repute, while also allowing for the consummation of a quality and sizeable Business Combination.

Other considerations and concluding thoughts

Allowing for SPACs will undoubtedly create a more vibrant investment and wealth management ecosystem in Singapore. The safeguards embedded in the regulatory framework and listing rules proposed by the SGX-ST, which have generally taken into account the regulatory framework from the established SPAC regimes (e.g. U.S.), should go some way in ameliorating the concerns raised in relation to SPACs. That said, the viability of Singapore's SPACs regime will ultimately depend on continued efforts to balance the regulatory objectives of maintaining market integrity and investor protection while meeting the capital-raising needs of the market.

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