Special Purpose Acquisition Company (SPAC)

Boom of the shell companies
# Table of contents

1. Introduction  
2. Market Situation  
3. Structure  
4. Initial Public Offering  
5. Business Combination  
6. Liquidation
1. Introduction

Anleger kaufen den Sack sogar schon ohne Katze

The future of investment: SPAC

Börsengang: SPAC-takulär

Billionaire investor Bill Ackman offers new hints on possible targets for his record-breaking SPAC

Shaquille O’Neal, former Disney executives, and Martin Luther King Jr.’s son target $250 million SPAC launch

Sergio Ermotti schließt sich Spac-Hype an

Der unheimliche Boom des Börsengangs durch die Hintertür
1. Introduction

- SPACs = "Special Purpose Acquisition Vehicle Companies"
- Known as "blank check companies" (Blankoscheck Unternehmen), but with investor protection features
- Sole purpose of a SPAC is using capital raised in an Initial Public Offering ("IPO") to buy one or more operating businesses, which at the time of the IPO have not been identified
- SPACs are formed by well-known and experienced investors (so called "sponsors") who serve as the SPAC public face
- Decisive factor for the investment decision is the reputation, experience and track record of the management and sponsors
- To be distinguished from reverse mergers as a merger of a larger (non-listed) company with a (listed) smaller company to achieve a stock exchange listing (fungibility)
2. Market Situation

**USA**
- Known since 1980, "Revival" since 2017
- in 2020 more SPAC-IPOs than traditional IPOs
- Stability despite volatile environment
- Recent boom (transactions, among others Nikola, Immatics, Virgin Galactic, Canoo, Momentus, Vincera, Playboy, Chargepoint)

**Europe**
- Focus: UK, admission on the LSE
  - Recently cancellation of the IPO of Harvester Holding
- Outside UK currently only minor importance
  - FWB: Helikos SE, European Cleantech 1
  - In addition: Euronext (in particular, Amsterdam), Borsa Italiana Mailand
  - interest increased due to boom in the US
Some facts about the current SPAC boom in the USA:

- Around 55% of IPOs in total (450) were SPAC IPOs (248) in 2020; in 2019, it was 28% (59 SPAC IPOs of 213 IPOs in total).
- SPACs accounted for approx. 19% of IPO proceeds in 2019 and 46% of IPO proceeds in 2020.
- SPACs raised approx. USD 83 billion in 2020, and approx. USD 13.6 billion in 2019.
- 298 SPAC are currently seeking acquisitions.
3. Structure

- SPAC is a newly formed shell company, with no revenue or operating history
- Management team of the SPAC is typically a group of people affiliated with or on loan from the sponsor who dedicate part of their time to seeking an initial business combination
- Management team will incorporate the SPAC and provide the initial capital
- At the time of the IPO, the SPAC has no business operations or tangible assets
- If the SPAC needs additional capital to pursue the business combination or pay its other expenses, the sponsor may loan additional funds
3. Structure

SPAC foundation by sponsors

Initial Public Offering

Target and Evaluation phase

Announcement of the target

Voting of the shareholders

Approval by majority

Consenting shareholders

Business combination

Rejection by majority

Rejecting shareholders

Redemption

No target found by end of deadline

No target found by end of deadline

No business combination; new attempt possible

Liquidation of the SPAC
3. Structure

- Withholding tax
- Profits max. 95% tax-free
- Approval of the business combination by the general meeting
- Management participation including the issuance of warrants
- Restrictions on capital increase and capital reduction
- Minimum par value of shares EUR 1
- Restrictions on the acquisition of treasury shares (retransfer in case of rejection)
- Distribution of company assets and dissolution
- Why German legal forms have not been used so far.

Foreign legal forms more flexible and therefore more suitable for SPACs
4. Initial Public Offering

- Major contents of the securities prospectus:
  - Risk Factors
  - Current financial information of the SPAC (incl. audited statements)
  - Detailed description of the SPAC structure
  - Description of the expertise of the sponsor
  - Description of industry and geography on which the SPAC will focus

- Due to their short business history, SPACs are regularly qualified as start-ups
  - According to ESMA, a start up issuer is a company that has been operating in its current sphere of economic activity for less than three years
  - even if the issuer was incorporated more than three years ago, the recommendations would be applicable if the company completely changed its business less than three years ago
4. Initial Public Offering

- ESMA information requirements for specialist issuers, such as start-up companies, are amongst others:
  - Business plan with strategic objectives for the next two years
  - Information about the extent to which the issuer’s business is dependent upon any key individuals,
4. Initial Public Offering

- SPAC raises capital by selling public units composed of shares (Aktien) and warrants (Optionsscheine) to investors
- Following the IPO, the units become separable, such that the public can trade units, shares, or whole warrants, with each security separately listed in the securities exchange
- Warrants become exercisable
  (a) upon completion of a business combination and
  (b) one year after the IPO, whichever event occurs later.
- They entitle the holder to acquire further shares at a fixed issue price
- The term of a warrant is usually four years
- If the SPAC is liquidated, the warrants expire worthless
4. Initial Public Offering

Typical capitalization of a SPAC upon consummation of an IPO:

- 20% founder shares are issued for a nominal amount to the sponsor(s)
- 80% of the SPAC shares are issued to the public in the IPO as part of a unit (consisting of shares and warrants)
- The sponsor also purchases warrants to fund the IPO costs such that there are enough funds in the trust account to repurchase shares at the offering price of a unit upon redemption (so called sponsor’s “at risk capital”, because upon a liquidation, founder shares and warrants become worthless)
4. Initial Public Offering

- 85% to 100% of the IPO proceeds are deposited in a trust account for the purpose of investor protection.
- Offering expenses, including the up-front portion of the underwriting fee, and a modest amount of working capital will be funded by the sponsor. The remaining expenses are only paid upon the consummation of an initial business combination.
- Typical structure for the underwriting fee:
  i. 2% of the gross proceeds to be paid at the closing of the IPO, and
  ii. 3.5% of the gross proceeds deposited into the trust account and payable to the underwriters on closing of the De-SPAC transaction; in case no De-SPAC transaction occurs, the 3.5% discount is never paid to the underwriters and is used with the rest of the trust account balance to redeem the public shares.
4. Initial Public Offering

Public Offering of Units consisting of:

- ordinary share
- warrant

Investors

Proceeds

Use: Running costs

Use: Business Combination

approx. 95% in fiduciary custody by third parties

Access of the management to approx. max. 5% to cover running costs

Ordinary Share

Warrants

Separate trading after listing

Interest-bearing investment, usually government bonds
5. Business Combination

- The SPAC usually has a limited period of time, i.e. 18 to 24 months, to identify a potential target company and execute the business combination
  - in case a business combination does not occur prior to the deadline, the SPAC will be dissolved, and shareholders will receive their pro rata share of the amount in trust
  - Holders of founder shares are not entitled to receive funds on such a dissolution
- The period may vary depending on the company and industry
- Once a target company or group is identified and an agreement is reached with its shareholders, the SPAC requires shareholder approval to complete the proposed acquisition
- If a business combination is not approved, the SPAC management is free to present new business combination transactions to the shareholders' meeting, provided that the deadline has not yet expired
- The SPACs often arrange committed equity financing, such as a private investment in public equity ("PIPE") commitment, to finance a portion of the purchase price for the business combination
Shareholder approval process:
- The management/sponsor is not entitled to vote
- In general, only a simple majority is required for voting
- Upon approval, the balance in the trust account will be released for the business combination and the satisfaction of the shareholders that have requested a redemption of their shares
5. Business Combination

- Acquisition structures
  - Acquisition by cash and/or new shares in the SPAC
  - Merger or contribution of the shares in the target company by way of a capital increase against issuance of new shares
- The management team of SPACs is only interested in taking over operational functions in the target company in exceptional cases and therefore largely resigns after the completed business combination or withdraws to positions on the supervisory board
- The management of the target company normally remains in office of the combined company
5. Business Combination

Recent transactions on the NYSE

**NIKOLA**

**Purchase aspects**
Merger with VectoIQ Acquisition Corp. (DE)
USD 237 Mio. cash, USD 525 Mio. from PIPE-Financing

**Involvement SPAC-Management**
Founder Shares: 20% nach SPAC-IPO
SPAC-CEO Chairman of the Directors’ Board

**IMMATURES**

**Purchase aspects**
Merger with Arya Sciences Acquisition (Cayman I.)
USD 149 Mio. cash, USD 104 Mio. from PIPE-Financing

**Involvement SPAC-Management**
Founder Shares: 20% nach SPAC-IPO
SPAC-CEO member of the Directors’ Board

**VIRGIN GALACTIC**

**Purchase aspects**
Merger with Social Capital Hedosophia (Cayman I.)
USD 450 Mio.; 59% of the shares held by VG-existing shareholders

**Involvement SPAC-Management**
Founder Shares: 20% after SPAC-IPO
SPAC-CEO Chairman of the Directors’ Board

**CANOO**

**Purchase aspects**
Merger with Hennessy Capital Acquisition Corp. IV (DE)
USD 607 Mio., approx. USD 300 Mio. thereof from PIPE-Financing

**Involvement SPAC-Management**
Founder Shares: 20% after SPAC-IPO
5. Business Combination

- **Business Combination: Virgin Galactic and Social Capital Hedosophia Holdings Corp., Cayman Islands (SPAC)**
  - IPO Proceeds USD 690 million gross; USD 31 million underwriting discounts and commissions; thereof USD 24.15 million deferred underwriting commission payable only upon completion of business combination;
  - IPO of 69,000,000 Units (each unit consisting of one Class A ordinary share and one-third of one warrant) @ USD 10;
  - Separate trading of shares and warrants on 52nd day after date of Prospectus
  - SCH Sponsor Corp. (the sponsor) holds 20% of shares (class B shares); founder shares locked-up until one year after business combination (earlier after business combination, if good share price performance); only holders of the founder shares have the right to vote on the election of directors prior to the initial business combination; sponsor shares are protected by anti-dilution rights
  - Each whole warrant entitles to acquire one Class A ordinary share @ USD 11.50; exercisable 12 months after IPO or, if earlier, 30 days after the completion of the business combination;
  - Sponsor purchased an aggregate of 8,000,000 warrants (one warrant entitling to the acquisition of one share) @ USD 1.50 per warrant (USD 12,000,000 in the aggregate);
  - Founder warrants transferrable 30 days upon business combination
5. Business Combination

- **Business Combination: Immatics N.V. and ARYA Sciences Acquisition Corp., Cayman Islands (SPAC)**
  - IPO Proceeds USD 143.75 million gross; USD 7.5 million underwriting discounts and commissions; thereof USD 4.67 million deferred underwriting commission payable only upon completion of business combination;
  - IPO of 12,500,000 Unit (each unit consisting of one Class A ordinary share and one-half of one redeemable warrant) @ USD 10;
  - Separate trading of shares and warrants on 52nd day after date of Prospectus
  - ARYA Sciences Holdings (the sponsor) holds 20% of shares (class B shares); founder shares locked-up until one year after business combination (earlier after business combination, if good share price performance); only holders of the founder shares have the right to vote on the election of directors prior to our initial business combination; sponsor shares are protected by anti-dilution rights
  - Each whole warrant entitles to acquire one Class A ordinary share @ USD 11.50; exercisable 12 months after IPO or, if earlier, 30 days after the completion of the business combination;
  - Sponsor purchased an aggregate of 5,437,500 warrants (one warrant entitling to the acquisition of one share) @ USD 1.00 per warrant (USD 5,437,500 in the aggregate);
  - Founder warrants transferrable 30 days upon business combination
6. Liquidation

- In case the SPAC is unable to complete the initial business combination within the specified time frame, the SPAC will:
  
  i. cease all operations except for the purpose of winding up,
  
  ii. redeem the then outstanding public shares for cash at a per-share price equal to the aggregate amount then on deposit in the trust account, plus or minus interest, divided by the number of then outstanding public shares, and
  
  iii. as promptly as reasonably possible following such redemption, dissolve and liquidate, subject in each case to the SPAC’s obligations under applicable law, including to provide for claims of creditors.

- The sponsors waive their rights to liquidating distributions from the trust account with respect to any shares held by them prior to the IPO.
The challenges of today and tomorrow require courageous, independently thinking personalities who are as diverse in the community as the problems of our clients. As the world reinvents itself, becomes more complex and requires faster reactions, we stand up for your interests and shape them at your side.

More than 600 lawyers, tax consultants and notaries in eight offices develop legally compliant solutions for clients - from start-ups to medium-sized companies to multinational corporations. CMS's lawyers in Germany not only have the necessary specialist expertise in all areas of commercial law, but are also familiar with the market-specific requirements in all branches of industry and sectors.

Solution-oriented legal advice at the pulse of time, characterised by an extremely innovative team is CMS’s promise to you. Because we believe: If you want to design and accept challenges, you have to dare something and take on new perspectives. To develop new solutions for unexpected problems. To go further than ever before.

CMS is one of the largest commercial law firms in the world. More than 4,800 lawyers work together in cross-border teams. In all 71 cities and 43 countries where we are present, we represent our clients’ interests with the same dedication and commitment to quality.

This means that CMS is optimally positioned to provide you with the precise legal and tax-related know-how and regional market knowledge that you need to stay competitive and achieve your business goals – whatever locations your business is active in.

World Law Group
In countries where we do not have our own CMS offices, we have well-established relationships with local firms and concrete contacts via the World Law Group, of which we have been a member since 1988. This means we can guarantee that all firms we work with possess thorough technical knowledge and are of the highest quality.
CMS. First-class legal solutions, worldwide.

International reach

Facts & Figures about CMS

- 71 cities
- 43 countries
- > 4,800 lawyers
- > 1,100 partners
- > 8,000 staff
We are proud of the recognition that our services receive on the market. It shows that our daily commitment to the highest quality of service and advice is highly appreciated by our clients.

"The market is booming - and the IT practices with it. However, CMS Hasche Sigle was able to make the most of the upswing. [...] Not only did it prove that it can hold its own against competitors in the attractive fintech sector, which have always been regarded as established in the financial sector, it also demonstrated with the mandate how well its advice functions at the interface between corporate and banking law. But even beyond that, the IT practice showed how much it is keeping its finger on the pulse of the times - especially in digitalisation issues on which it had focused much earlier as a competitor[...]."

"Their high market penetration is unique. And CMS uses its immense size skilfully for innovations: The employment lawyers have followed their successful online tool for the deployment of external personnel with further tools, such as social selection. CMS relies on Legal Tech and thus offers its clients a much praised, fair hourly rate level. At the same time, the practice, which is used to success, can further increase the quality of its mandates and proves to be a motor for interdisciplinary work. [...] Employment lawyers are penetrating more and more into the consulting of DAX corporations."

"The expansion course is paying off. The practice headed by Dr. Christian Haellmigk has worked its way up to a higher-class consulting segment. In doing so, it can rely on well-known strengths that are flourishing in the current market environment [...] However, CMS is also one of the pros in other areas of the currently pronounced competition and is very well positioned for the new thematic requirements of the market. [...] The CMS team has also grown in personnel over the past few years, partly with experienced lateral entrants, and has become more closely networked internally. [...]Due to its broad technical spectrum, the team can also develop new, innovative topics, such as electric mobility."
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