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PitchBook

BREAKING DOWN THE SPAC SURGE:

A REVIEW OF KEY TRENDS & ISSUES DEFINING THE PHENOMENON

// FOREWORD

Special purpose acquisition companies (SPACs) continue to dominate headlines in the financial press, and for good reason, as they consistently outstrip traditional IPO registrations after a staggering surge of formation in the past 14 months. But record formation rates are no longer the primary finding—the actual closure of mergers or acquisitions (M&A) by this massive pool of capital earmarked for acquisitive purposes, as well as ongoing and incipient evolution in the SPAC model itself, are now key topics of discussion. Analysis of datasets and research have uncovered the following key findings:

- With nearly $125 billion raised across hundreds of SPACs over the past 14 months, the extent of the fundraising frenzy is undeniable.
- 2020 saw 123 mergers with SPACs announced or closed for an aggregate $59.3 billion, representing a significant portion of all launched SPACs over the past few years.
- Multiple factors explain the rise in SPACs, including pent-up investor demand, record asset prices across much of equities, significant private investor dry powder, and a large number of potential target private companies.
- Although performance remains the ultimate arbiter for the longevity and utility of the SPAC model, its increased usage by sustainability-focused businesses and ongoing evolution implies an establishment of SPACs as a potentially better-suited avenue of liquidity and capital access for capital-intensive, longer-term company models.
- As competition intensifies, important considerations for SPAC sponsors and targets include flexibility in bases of valuation, agreeing to a form of merger agreement in the letter of intent (LOI), and operating control and governance alignment.

$124.7B

Nearly $125 billion has been raised by SPACs in the past 14 months in the US alone

Contents

// INFOGRAPHIC

536%

With $74.2 billion raised by 245 SPACs in 2020, that tally of aggregate proceeds represents a staggering year-over-year increase.

$1.5T

Over $1.5 trillion of private investment dry powder is helping fuel investor demand for exposure to and launches of SPACs.

SPACs

Can be faster, but they are no less complex than a traditional IPO, requiring audits under PCAOB standards, a registration statement/proxy statement with IPO-like disclosure, a Super 8-K and various SEC filings post-merger, all on an accelerated timeline.

$50.5B

2021's first two months have already seen over $50 billion raised by close to 200 SPACs.

123

A significant volume of de-SPACs were announced or closed in 2020.

Sources: Deloitte, PwC, Mintz

SPAC process

1 Formation

Founding investors form a SPAC, paying a nominal amount for an equity stake of approximately 20% post-IPO, often lending money to fund expenses and purchasing private placement warrants or units at time of IPO.

2 IPO

The SPAC entity raises capital by issuing units comprised of common shares and warrants (or fractions of warrants), with proceeds held in a trust until the target is acquired or the SPAC expires. Post-IPO, units are separated into shares of common stock and tradable warrants.

3 Search

Similar to a traditional M&A process, sponsors then vet potential targets on an accelerated timeline. Once a target is identified, closing conditions often require a simultaneous private investment in public equity (PIPE) to close the merger.

4 Vote

Founders vote their 20% interest in favor of a transaction, but other shareholders must also vote in favor.

5 M&A

Should an affirmative vote be obtained and the other closing conditions met, the target company and the SPAC complete the business combination and become a publicly traded entity.

// FUNDRAISING

The SPAC fundraising frenzy

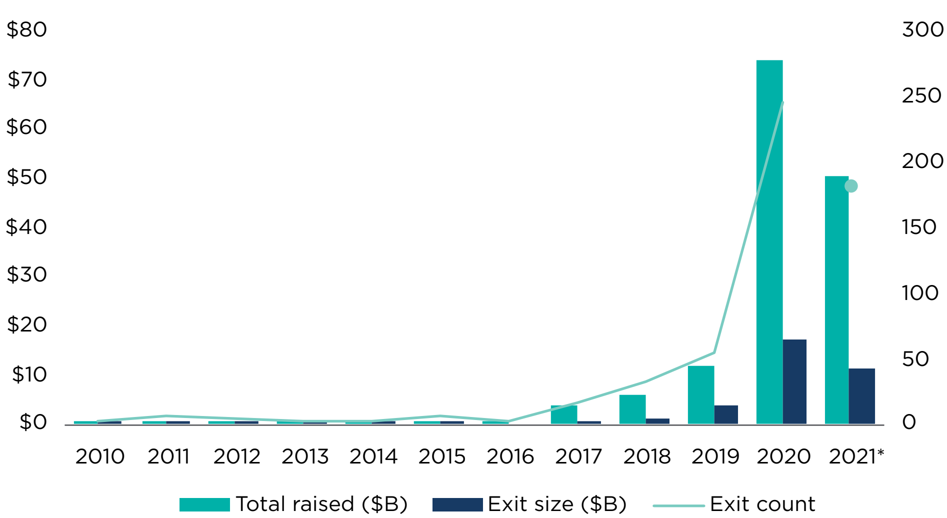
2020 was unprecedented in many ways, but the sheer bewildering variety of financial markets phenomena that gripped the industry stands prominent. Perhaps chief among these was the SPAC fundraising frenzy. Although invented decades ago, SPACs were quite rare since their inception, with barely a handful closed per year throughout the 2010s. However, modest growth from 2017 and 2019 swelled into a true exponential surge in 2020, with hardly any slowdown in 2021 through late February. 245 SPACs completed their IPOs in the US last year, raising just over $74 billion in proceeds—that latter figure represents a 536% year-over-year increase. But 2021 may outdo even that staggering sum, with $50.5 billion raised by 178 vehicles so far in the year, already 68% and nearly 73% of 2020 tallies, respectively.

While the intensity and acceleration of the frenzy is evident, its many drivers are not necessarily as well-established.

Unpacking the drivers of the SPAC boom: Investor demand

We can attribute any explosive phenomenon, such as the rise in SPACs, first to a demand curve sliding up a nearly limitless supply trendline. In the case of 2020, a majority of analyses point toward the unique shock of the COVID-19 pandemic—in economic, market, and policy terms—as ultimately encouraging record rises in equity markets due to an unprecedented combination of fiscal stimuli and monetary policies. Assets are expensive nearly across the board, so both retail and institutional investors are looking for any potential arbitrage or source of value, even if speculative, and the specific features of SPACs can offer a suitable destination. However, other

SPAC REGISTRATION ACTIVITY



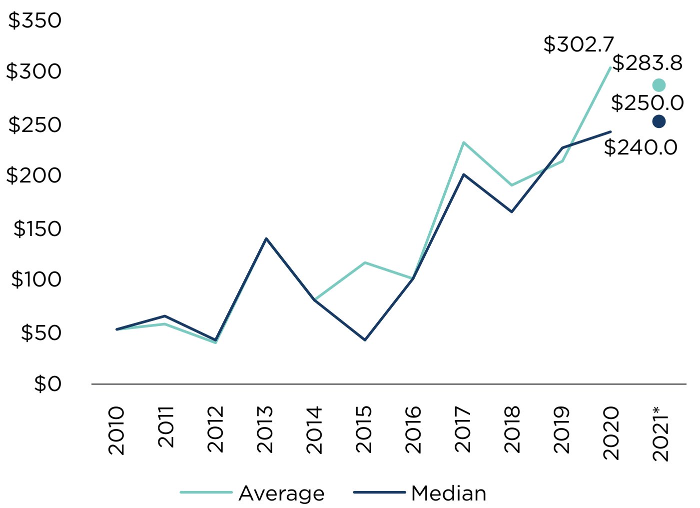
Source: PitchBook | Geography: US
*As of February 26, 2021

TOP 20 SPACS BY SIZE*

Company name	Deal size ($M)
Pershing Square Tontine Holdings	$4,000.0
Soaring Eagle Acquisition	$1,500.0
Churchill Capital Corp VII	$1,200.0
Social Capital Hedosophia Holdings Corp. VI	$1,000.0
Jaws Mustang Acquisition	$900.0
Thoma Bravo Advantage	$900.0
Ares Acquisition	$870.0
Ajax I	$750.0
Apollo Strategic Growth Capital	$750.0
Compute Health Acquisition	$750.0
CONX Corp	$750.0
CC Neuberger Principal Holdings II	$720.0
Cohn Robbins Holdings	$720.0
GS Acquisition Holdings Corp II	$700.0
Apollo Strategic Growth Capital	$600.0
Austerlitz Acquisition I	$600.0
Avanti Acquisition	$600.0
Pontem Corporation	$600.0
Bluescape Opportunities Acquisition Corp.	$575.0
Bridgetown Holdings	$550.0

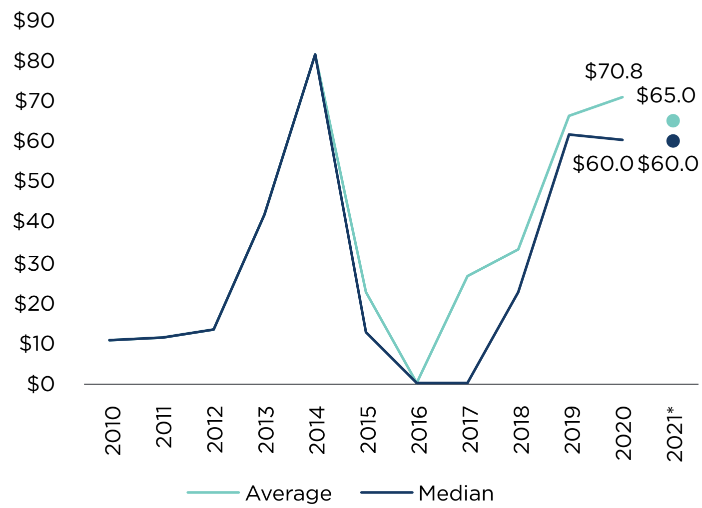
Source: PitchBook | Geography: US
*As of February 26, 2021

AVERAGE & MEDIAN CAPITAL RAISED ($M) BY SPAC



Source: PitchBook | Geography: US
*As of February 26, 2021

AVERAGE & MEDIAN PRE-VALUATION ($M) BY SPAC PRIOR TO OFFERING



Source: PitchBook | Geography: US
*As of February 26, 2021

tailwinds on the investor demand side have also contributed to SPACs' popularity. PE and VC dry powder is at or near all-time highs, the former exceeding $1.2 trillion and the latter $250 billion, both as of mid-2020. Given recent market volatility, firms across the private investment manager spectrum are seeking to deploy capital in more certain opportunities and look to them as an exit route for portfolio companies.

Unpacking the drivers of the SPAC boom: Supply and traits

Thanks to the rise of private financial markets over the 2010s, an unprecedented number of more mature businesses have stayed private. In addition, against the backdrop of significant policy changes and popularization of sustainability initiatives to combat climate change, there has been a marked proliferation of companies in sectors and business models that tend to be capital-intensive. These typically also involve longer timelines to reach product-market fit and even to post improving financials (for example, in sustainable mobility, renewable energy, or biotechnology). In short, SPAC fundraising is also predicated on the reality of a significant supply of potentially relevant acquisition targets. Given the maturation of private financial markets, experienced management teams are now more often recruited to SPACs or raising them of their own volition, which has heightened the appeal of the route for many private companies.

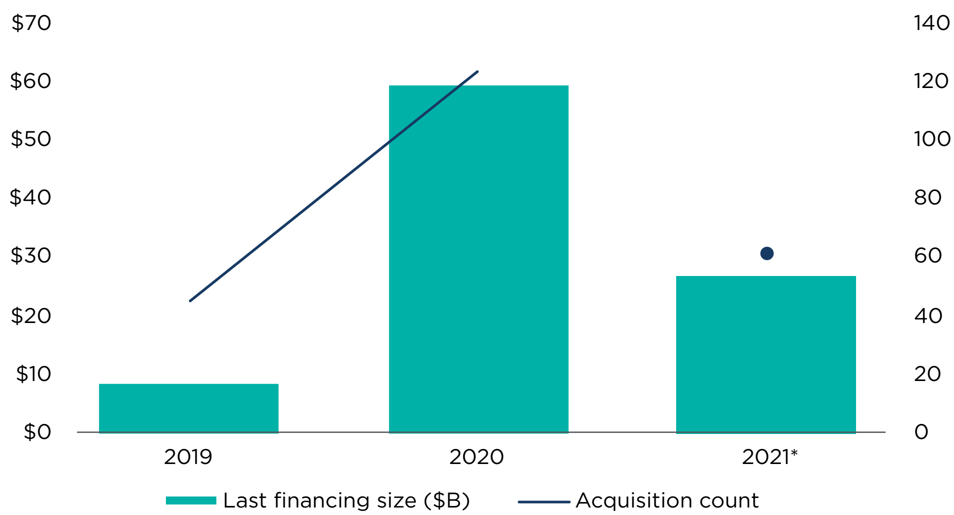
Lastly, the mechanisms and traits of SPACs represent considerable appeal. The speed often inherent in the SPAC timeline and greater certainty of valuation and closing are broadly favorable, especially relative to the duration of an IPO roadshow and the unpredictability of the IPO market. On the flip side, although speed is of the essence during a SPAC, they do not necessarily close much faster or cost less than a traditional IPO. However, via the PIPE that is often employed to raise additional capital post-identification of a target, more investors can gain additional exposure to a potentially valuable merger. As a result, a well-structured SPAC can potentially raise more capital than a traditional IPO. The ability to pre-set valuations for debuts on public markets can be quite attractive for companies as well. Additional advantages, primarily for early-stage companies, include access to capital at lower cost than available in private markets and marketable securities that can be used for accretive acquisitions and employee incentives.

// M&A

Initial success in de-SPAC activity—but ultimate verdicts are yet to be rendered

By normal terms, SPACs have a predetermined amount of time to find a target, often a maximum of two years. However, it does not follow that the blank-check shell companies that constitute formed SPACs will take that full duration of time to find a target company. In fact, given the volume of reporting and degree of complexity in completing the merger once the target has been identified, it is in the sponsor's best interest to find a target swiftly. Many have been able to do so; PitchBook data that includes both announced and completed de-SPACs tallies 123 mergers in 2020 for a tentative aggregate of $59.3 billion. Moreover, 61 have already occurred in the first two months of 2021, for a total of $26.9 billion. Those figures represent healthy proportions of the overall SPAC fundraising volume, by count, although a considerable portion of blank-check companies remain in the market for prospective targets. Interestingly, completed de-SPAC mergers span a broader array of sectors than may be supposed, though a plurality is concentrated in healthcare and B2C. Much as biotechs have utilized traditional IPOs in a unique fashion given their business models, more sustainability-focused, early-stage companies are considering a SPAC as the best route to the public capital markets to enable their potentially prolonged timelines of growth.

DE-SPAC ACTIVITY (ANNOUNCED AND CLOSED)



Source: PitchBook | Geography: US
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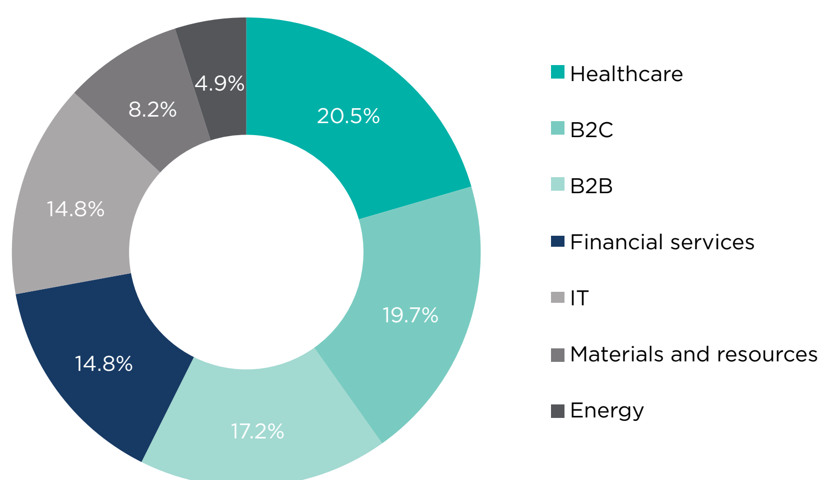
DE-SPACS (#) BY ACQUIRER SECTOR (CLOSED)*



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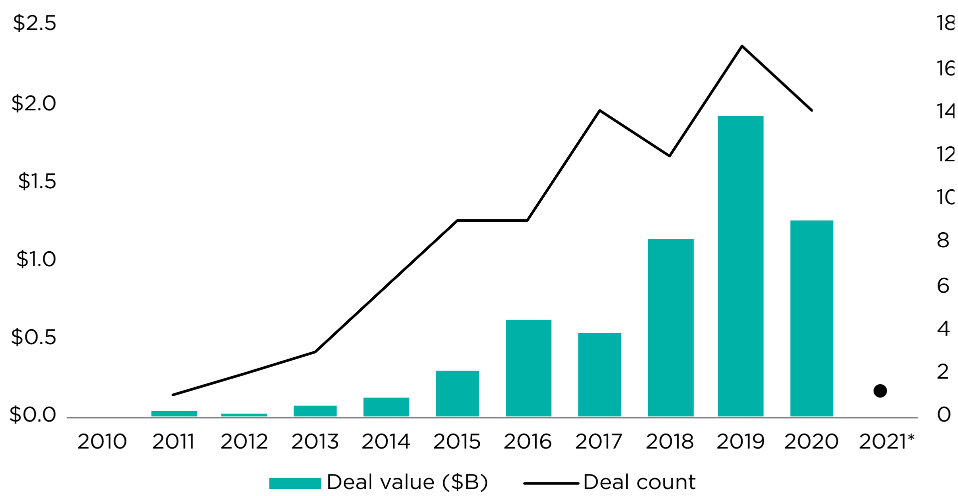
Granted, sponsors incur additional risk by targeting such companies as they are often pre-revenue, and experienced operators with sector-specific expertise are that much more critical. Hence, a blend of de-SPAC mergers between early-stage companies and more mature, potentially PE-backed portfolio companies will likely continue going forward.

A completed or agreed-upon merger does not represent a final verdict of success for the sponsor or target company. Although it represents an important step for a given business, the company's performance by traditional public equity measures, such as trading performance, will ultimately characterize the business's success over the coming years.

Contextualizing de-SPAC activity: Potential premia and litigation?

The extent to which SPACs are increasingly targeting emerging, pre-revenue companies can be seen in overall investment levels from both PE and VC firms of such businesses prior to completed mergers with SPACs. Just 14 financings for a total of $1.3 billion occurred in 2020, the second-highest tally of aggregate financing value of the past 10 years. That represents an average of $89.4 million per venture financing round. PE investment volume is minuscule by comparison, with only 2016 seeing an outlier five PE deals for an outlier $11.4 billion. Accordingly, although a handful of such businesses may attract significant PE or venture infusions of capital, many are emergent due to their specific business model or sector focus. Strikingly, when comparing the median de-SPAC size to the median size of overall M&A in the US, the de-SPAC events are several times larger. As impressive as these sums may be, they can be attributed to the unique dynamics of a de-SPAC merger; PIPEs provide an additional cash boost to secure the acquisition, and the companies that have been taken public thus far represent significant growth potential according to the SPAC sponsor and other investors. In addition, overall median M&A sizes in the US are skewed downward by the volume of small to medium-sized businesses that get acquired. With that said, the disparity hints at the potential for significant premia occurring across de-SPAC activity. This trend points to significant competition for private targets by SPACs, not just by offering more favorable valuations, but also by amending terms—for example, decreasing the number of founder

VC ACTIVITY IN COMPANIES PRIOR TO DE-SPAC ACTIVITY



Source: PitchBook | Geography: US
*As of February 26, 2021

AVERAGE AND MEDIAN FINANCING SIZES ($M) OF ANNOUNCED OR CLOSED DE-SPAC ACTIVITY

	2019	2020	2021*
Average	$1,065.0	$1,289.2	$1,923.6
Median	$672.3	$647.0	$1,580.0

Source: PitchBook | Geography: US
*As of February 26, 2021
Note: Values for 2019 and 2021 are based on non-normative sample sizes.

shares and/or private placement warrants as part of the merger agreement. Such competition will likely intensify given the ongoing flood of capital into SPAC formation.

Given the explosion of SPAC IPOs and follow-on de-SPAC transactions, we anticipate a corresponding uptick in SPAC-related litigation. Specifically, we envision a number of potential litigation and regulatory challenges. For example, SPAC officers and directors could face potential litigation concerning the discharge of their fiduciary duties in connection with the selection of potential acquisition targets or the failure to achieve a combination by the end of the target period. While the business judgment rule likely would offer a defense to such claims for directors, and a SPAC investor's redemption rights would reduce any potential damages, we expect to see some creative pleading by plaintiffs' counsel. Following a successful de-SPAC, the SPAC directors could also face duty of loyalty claims from SPAC shareholders questioning whether the directors acted in self-interest in promoting the combination. While post-merger litigation is not unique to the SPAC world, the high valuations attributed to SPAC deals coupled with post-SPAC share price declines could make de-SPAC companies targets for litigation.

SPAC combinations also may prompt litigation resulting from the target shareholder's exercise of appraisal rights under state law. A successful appraisal challenge could result in significant additional deal and litigation costs.

Like the majority of M&A transactions, SPACs are already attracting shareholder claims challenging the adequacy of disclosure in SEC filings related to the combinations, either via breach of fiduciary claims or alleged violation of Section 14 of the Securities Exchange Act of 1934. While such actions usually are settled via supplemental disclosure and a payment of plaintiff's attorney fees, there is no guarantee that some plaintiffs will not elect to continue litigating post-closing.

In addition, we already are seeing post-closing class actions alleging violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 for allegedly misleading pre-closing representations. Some recent examples of such litigation include: *Salem v. Nikola Corp. et al.*, No. 2:20-cv-04354-GRB-SIL (E.D.N.Y. 2020) (claims for violation of Section 10(b), Section 20(a), and Rule 10b-5); *In re Akazoo S.A. Sec. Litig*., No. 1:20-cv-01900-BMC (E.D.N.Y. 2020) (claims include violation of Section 10(b), Section 14(a), Section 20(a), and Rule 10b-5); *Welch v. Meaux et al.*, No. 2:19-CV-01260-TAD-KK (2019, W.D. La.) (claims for violation of Section 10(b), Section 20(a), and Rule 10b-5); *Pitman v. Immunovant, Inc., et al*., No. 1:21-cv-00918 (E.D.N.Y. 2021) (claims for violation of Section 10(b), Section 20(a), and Rule 10b-5); and *Kaul v. Clover Health Investments, Corp. et al.*, No. 3:21-cv-00101 (M.D. Tenn. 2021) (claims include violation of Section 10(b), Section 20(a), and Rule 10b-5).

Not surprisingly, the recent explosion in SPACs has engendered heightened SEC interest. In 2020, the SEC began focusing on the adequacy of disclosures in both SPAC IPOs and de-SPAC transactions. Former SEC Chairman Clayton twice discussed his concerns on CNBC in the fall of 2020, noting that the SEC wanted to ensure that ***all interests*** that might influence SPAC sponsors, directors, officers, and other insiders are clearly disclosed to retail investors. To this end, the SEC's Division of Corporate Finance recently introduced CF Disclosure Guidance: Topic No. 11 on December 22, 2020, setting forth the SEC's views regarding information that SPACs should disclose in connection with both IPOs and de-SPAC transactions. Specifically, Topic 11 encourages robust disclosure regarding potential conflicts, including: (1) insiders' fiduciary obligations to entities other than the SPAC; (2) any financial incentives for insiders to complete a business combination (including losses that may be sustained if a combination is not completed); (3) how a sponsor's security ownership may differ from the securities sold in the IPO; and (4) insider compensation that may be contingent upon completion of a business combination. Perhaps in response to the SEC's guidance, The *New York Times* recently noted that SPAC sponsors are taking it upon themselves to realign their interests with those of the SPAC IPO investors. We anticipate that the SEC will continue to maintain a heightened focus on SPAC disclosures, including risk disclosures, given the current popularity of SPACs with retail investors.

// LOOKING AHEAD

Are SPACs here to stay?

Given the profundity of capital and prominence of firms engaging in SPACs on both the sponsor and target side, it would seem so. However, there are important nuances that must be mapped out. Although the odds of performance for many companies that have gone public via SPAC have likely improved given the much higher rate of experienced executives and sponsors involved with the SPAC formation and post-close operations of the de-SPAC business, future performance will have to align with the overall market. Past studies have indicated that post-SPAC companies exhibit mixed results at best—companies undertaking mergers with SPACs going forward will have to dispel this narrative with robust outcomes. Even with other factors in play, the overall performance by post-SPAC merger businesses will solidify the SPAC as a new mechanism for liquidity for private companies and additional means of exposure for investors.

Key risks that remain and the eventual evolution of SPACs

Should SPACs prove less of a one-time boom, we will likely see an evolution in the SPAC model. Some changes due to competition have already been observed, whether it is adjusting warrants' fractionality, eliminating warrants entirely, or modifying valuations to be more favorable for the target company. Given the complexity of the SPAC process, the rigor necessitated by its speed, and the additional filings required, such pressures will also likely induce swifter changes overall. These adaptations should ideally address not only points of contention but also key areas of risk. Some of the primary focus areas:

1. **Control:** Control of the operating company can often become a point of negotiation. Given that current SPAC models give the sponsor and other founder shareholders around 20% interest, the balance of ownership must be clearly understood. Especially as PE and VC firms consider taking portfolio companies public via SPACs, their exit plans should address this type of scenario and how post-SPAC merger controlling interests may change.

2. **Merger terms:** LOIs do not always address the full intricacies of valuations—for example, considering dilution of shares, underlying options, and warrants. Accordingly, the LOI should be sufficiently detailed to strike a fair compromise between basing valuations on outstanding shares and vested options that are in the money. In addition, a publicly filed merger agreement from another transaction can be identified at the LOI stage to streamline negotiations.

3. **Risk exposure:** As the SEC has outlined, sponsors generally purchase equity in the SPAC at more favorable terms than investors in the IPO or subsequent investors on the open market. Thus, agency risk can arise given that inherent incentive to complete the initial business acquisition even if terms are not quite as favorable as they could be. However, given the growing sophistication of PE- or VC-backed firms that could be sellers in the de-SPAC combination, varying risk exposures may be amended over time.

4. **Timelines:** Two years is currently the typical period for a SPAC to find a business and take it public. However, as competition intensifies and performance of higher-quality businesses begins bearing out the SPAC model overall, variance in that timeline will likely increase, as sponsors will opt for a longer period—three years is the maximum allowable—to give more flexibility and potential time to identify better prospects.

All in all, the appealing features of a SPAC are what also contribute to its sheer degree of complexity, as it blends elements of a merger, PIPEs, and IPOs together in a novel, potentially valuable mechanism for all parties concerned. With careful preparation and openness to eventual adaptation, sponsors, service providers, and target companies can collaborate to utilize the SPAC process to yield a successful listing and set up a company for robust performance.

MINTZ

BUILT ON EXCELLENCE, DRIVEN BY CHANGE

Mintz is a leading US law firm with a preeminent Securities & Capital Markets practice. Our team has been at the forefront of SPAC transactions and we are recognized as a pioneering firm in this space. Mintz handled the first New York Stock Exchange SPAC transaction, advised on the first deal with $100 million+ committed PIPE financing, and created AIMSPACs. In recent months, our team has worked on many SPAC deals for multibillion-dollar value companies, and our deep industry experience in life sciences, health care, energy & sustainability, and technology is aligned with the sectors where SPACs are most prominent. Mintz's SPAC practice is interdisciplinary and includes attorneys from our securities litigation team who regularly advise on corporate disclosures, financial projections, redemption of SPAC shares, and risks related to the de-SPAC process.

Learn more about Mintz and the firm's SPAC practice.

METHODOLOGY

SPAC fundraising refers to the actual initial public offering of the blank-check shell company. For de-SPAC activity, i.e. the reverse merger completed with the target company by the blank-check shell company, both completed and incomplete transactions were included and are denoted as such. Given the majority of SPACs are target sector-agnostic, only completed de-SPAC activity was able to be depicted by the target company's primary sector as tagged in the PitchBook Platform.