NELSON MULLINS

FinTech University:
Special Purpose Acquisition Companies

February 15, 2022

What is a SPAC?

- A SPAC is a special purpose acquisition company
- SPACs raise money through an IPO then hold that money in trust while looking for a qualified business to acquire
- By merging with or being acquired by a SPAC, a private company goes public

SPAC Snapshot

SPAC Capital & Public Listing

\+

Acquisition in a defined time period (12-24 months)

Target Private Company

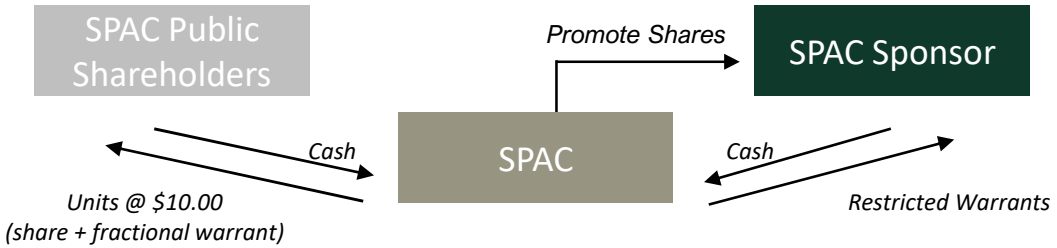
=

'Reverse merger IPO' of private company at transaction close

Publicly Listed Company

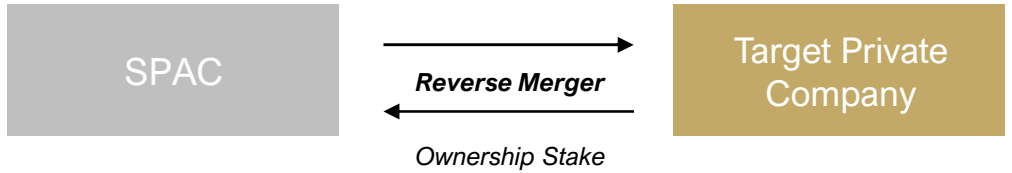
- A sponsor team (investors and/or operators) raises a pool of cash via an IPO to acquire a private operating company
- Public investors in the SPAC receive access to a top tier sponsor team that is highly incentivized to source a unique business combination opportunity
- The SPAC vehicle provides advantages that a traditional IPO is not able to provide

The SPAC IPO



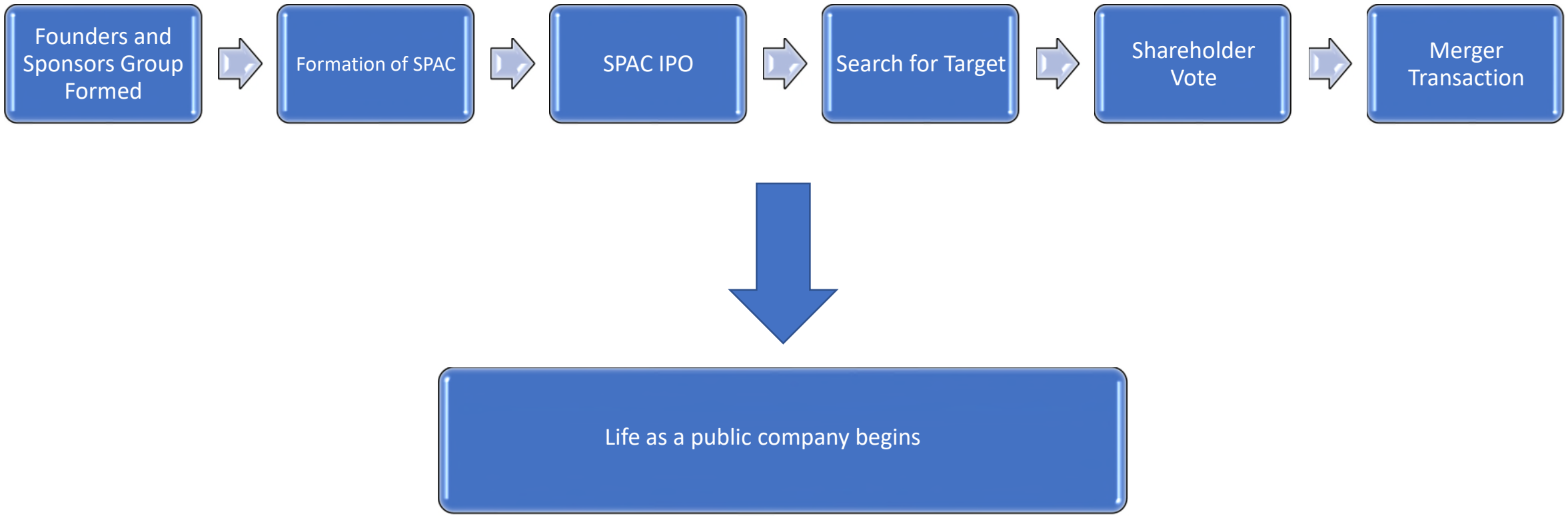
- Publicly traded units priced at $10.00 in an IPO with shares and warrants trading independently shortly after the offering (warrants strike at $11.50)
- Each share entitles its owner to vote on the acquisition, redeem their share for $10.00 plus interest at time of merger and participate in any liquidation
- Capital raised from the public and the Sponsor is held in a completely protected trust account to be used only for a business combination
- The Sponsor normally has between one and two years to complete a business combination, but if one does not occur, the SPAC will liquidate and shareholders will receive their pro rata share of the amount in trust

The Business Combination



- An acquisition is announced and detailed terms of the deal are disclosed to investors (Press release, investor presentation, proxy)
- In connection with the acquisition, shareholders may remain shareholder in resulting company, sell their shares in the open market or return their shares for the per share amount in trust
- Additionally public shareholders must also vote to approve the transaction (majority vote required)

A Typical SPAC Timeline



Advantages of a SPAC Merger vs. Traditional IPO

Benefits of a SPAC Business Combination vs a Traditional "Dual-Track" Process

- SPACs have become compelling and viable paths for many potential sellers seeking expeditious and flexible paths to liquidity
- With the advent of premier SPAC sponsors (who can bring true operational value-add and deliver additional PIPE capital), SPACs now offer a powerful value proposition for sellers

	SPAC	IPO	Sale
Increased flexibility to have a "structured" transaction, including non-traditional items (e.g. secondary shares)	✓		✓
Upfront price discovery / transparency	✓		✓
Private negotiation with a sophisticated counterparty	✓		✓
Less restriction on ability to provide forecasted data (i.e. stronger ability to craft the equity narrative)	✓		
Relative speed of execution (i.e. less timing risk)	✓		✓
Execute deal in sectors deemed by the capital markets as stale or out-of-fashion at the moment	✓		✓
Ability to wall-cross investors to gain early feedback and de-risk the process (increasing execution certainty)	✓		
Public currency to fuel growth along with a public valuation mark	✓	✓	
Distribute shares to limited partners without traditional lock-ups	✓		

Current SPAC Market Update (Week of February 1-7)

- SPAC listings increased with four pricings for $470 million versus two for $230 million the prior week
- SPAC listing terms were in line with the previous week
  - All four listings were for first-time sponsors
    - All four included at least 50% warrant coverage, 15 months or less duration, and overfunded trusts, while two included rights
    - The four ended the week with a median price of $10.03

SPAC Listing Commentary (February 1-7)

- SPAC filings slowed for the second week in a row with only two filings for $385 million in proceeds last week, the least number of filings since June 2020, versus three for $385 million the prior week
  - Seven Oaks II was for a repeat sponsor and filed wit 50% warrant converge, 18-month duration and 101% in trust
  - Global Robotic Drone filed with 100% warrant coverage, 12-month duration, and 101.5% in trust

SPAC Listing Commentary (February 1-7)

- Three SPAC filings withdrew this week versus four the prior week, and a total of 17 YTD and nine in all of 2021
  - Rocket Global Acquisition Corp.
  - Healthcare Merger Corp. II
  - Falcon Capital Acquisition Corp. II
- Eight SPAC listings filed S-1/As last week – none included anchor commitments, and all eight included wider terms

SPAC Merger Commentary (February 1-7)

- Eleven SPAC transactions announced or closed for $9.6 billion in enterprise value versus nine for $14.3 billion the prior week
- Announced mergers:
  - Five mergers announced for $1.8 billion in EV versus six for $8.0 billion the prior week
    - Three of the five announcements included a PIPE totaling $54 million in PIPE capital
    - Median price for the five mergers ended the week at $10.07

SPAC Merger Commentary (February 1-7)

- Closed mergers:
  - Six mergers for $7.8 billion in EV closed during the week versus three for $6.3 billion the prior week
    - Median price for the six closed deals ended the week versus at $7.39
  - Closed deals since the beginning of 2021 ended the week with an average and median price of $6.20 and $5.71, respectively, versus $5.89 and $5.20 the prior week
- Seventeen deals have closed in 2022 YTD versus nine in 2021 YTD
  - Thirteen of the seventeen ended the week trading below $10.00
- Since Q4 2021, closed deals with effective PIPE S-1s have an average and median price of $6.52 and $5.99, versus $6.19 and $5.56 last week

SPAC Merger Commentary (February 1-7)

- Notable SPAC merger events:
  - Longview II / HeartFlow terminated the transaction following an analysis of HeartFlow's financial projections
  - ECP Environmental / Fast Radius reduced valuation from $995 million to $750 million
  - Spring Valley / NuScale Power added an additional $30 million PIPE investment
- Three announced mergers have terminated YTD versus sixteen in all of 2021
- De-SPAC Index +10.2% last week (24.7%) YTD and (62.7%) LTM

SPAC Listing Activity (February 1-7)

- We expect SPAC listings to continue to slow as the number of SPACs seeking near 600
  - 27 SPAC listings have priced YTD versus 121 2021 YTD
  - 27 SPAC listings have outpaced 15 announced deals YTD
  - Of the last 25 first time issuers, 15 are trading below $10.00
  - Of the 25 SPAC listings, seven priced with founder share commitments and two included an FPA
- 240 SPAC listings are eligible to price this week
  - 210 of 240 have been on file for 60 or more days (87%) with an average of 279 days on file

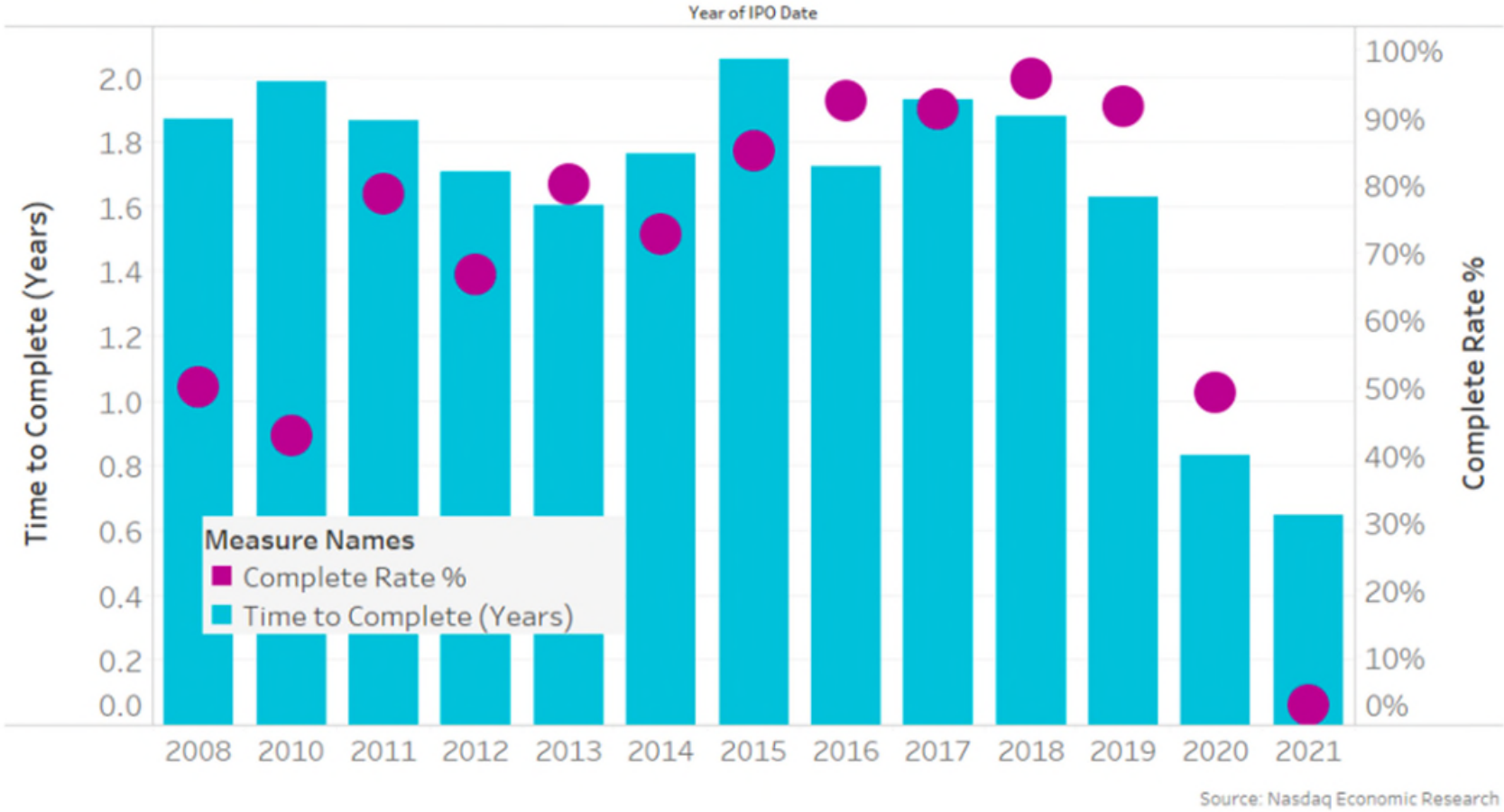
SPAC Listing Market Overview

- 93% of SPAC sponsors have overfunded trust and 93% have priced with ½ warrant coverage or more and/or rights YTD
- 27 SPAC listings have priced in 2022 for $5.6 billion in proceeds
  - SPACs represent 77% of the total IPO market in 2022 YTD versus 63% of 2021
- 590 SPACs listings with $160.2 billion in trust are seeking acquisitions
  - 90% are trading below $10.00
  - Median price is $9.80 versus $9.78 the prior week
- 246 SPACs are on file publicly for $52.0 billion in proceeds
- 17 SPACs have filed publicly in 2022 for $2.1 billion in proceeds
- There are 836 SPACs seeking and on file publicly for $211.8 billion in proceeds

SPAC Timelines

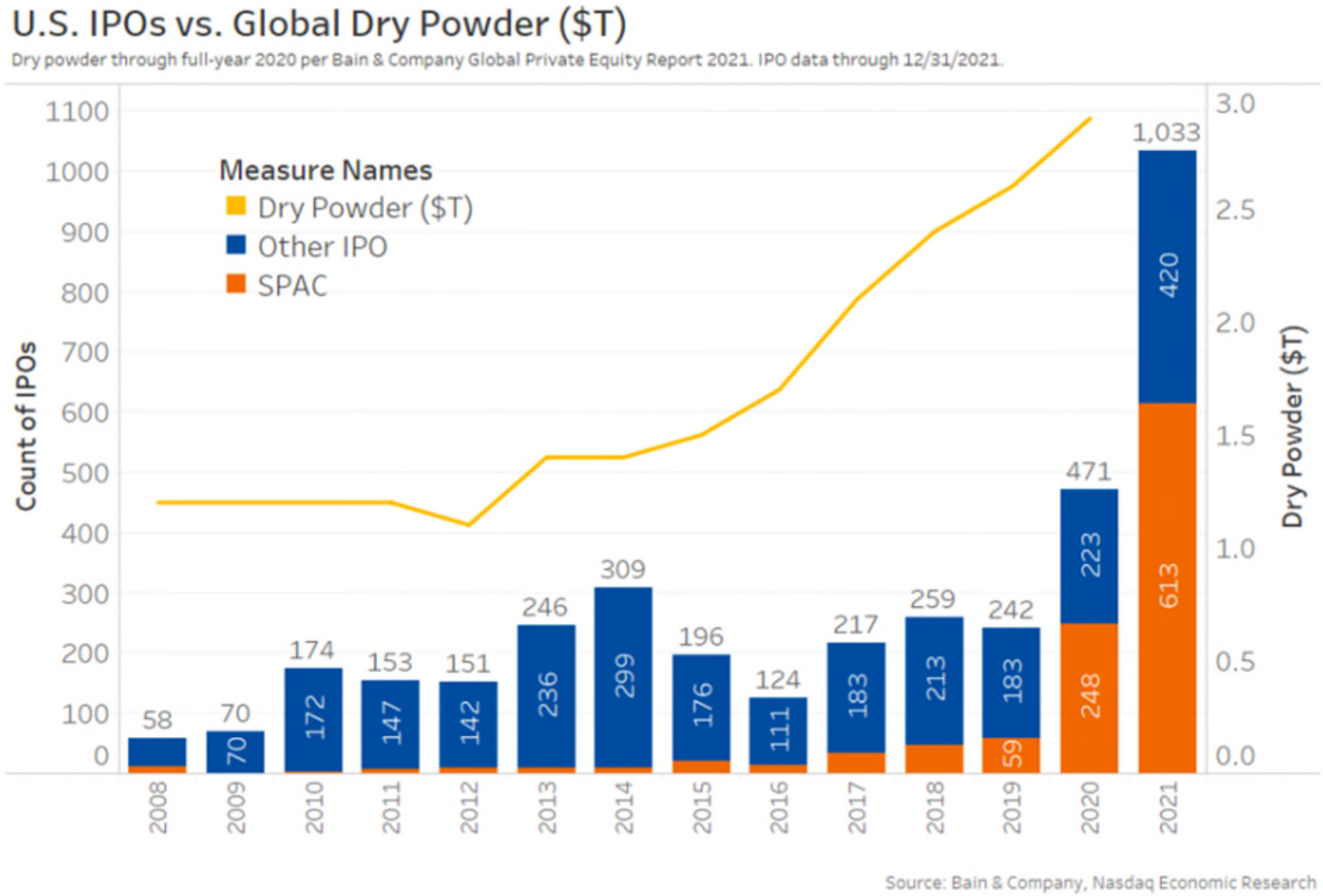
SPAC Time to Completion

Note: Based on SPACs IPOed between 2008 and the present that successfully completed a SPAC merger and listed on Nasdaq/NYSE/AMEX. Time to completion measured as completion date minus SPAC IPO date normalized for years. Data through October 2021. Chart reflects average.



Source: Nasdaq Economic Research

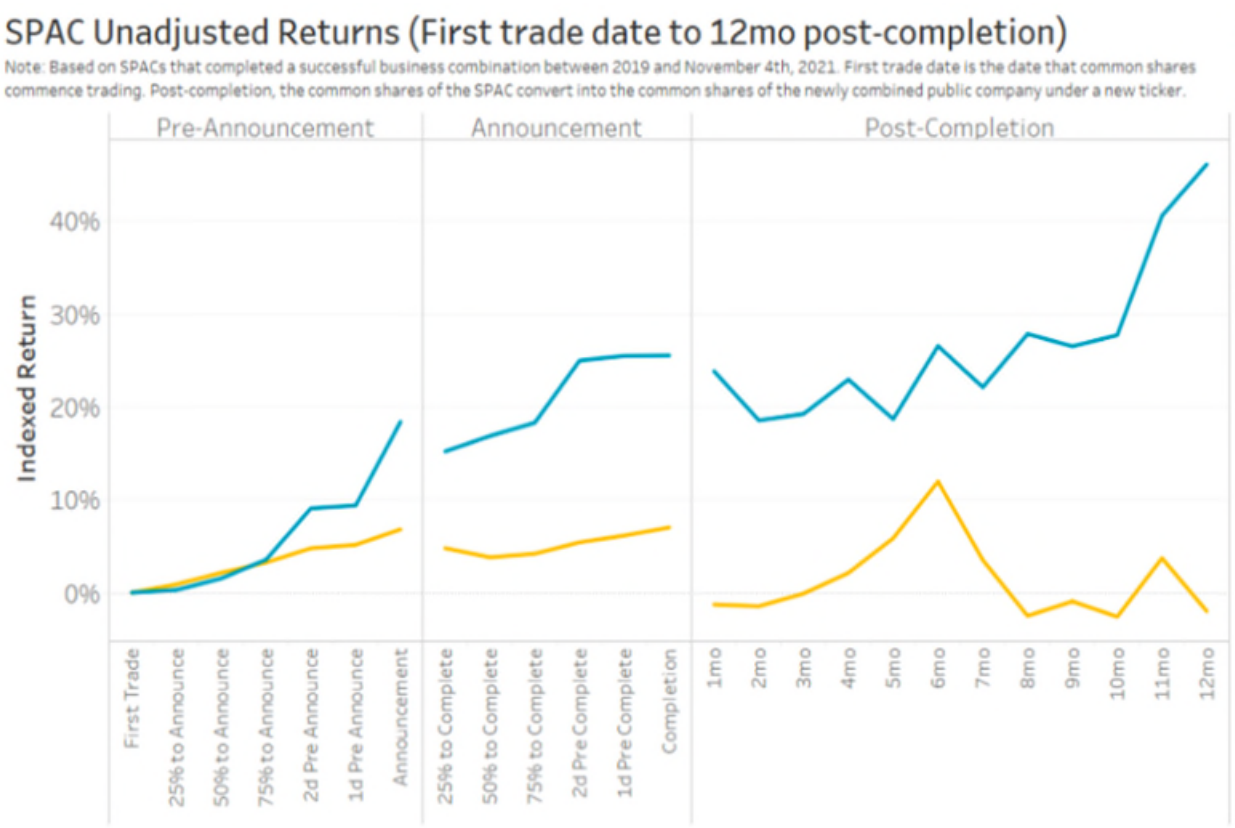
SPAC Timelines

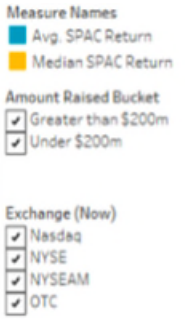


SPAC Timelines

SPAC Unadjusted Returns (First trade date to 12mo post-completion)

Note: Based on SPACs that completed a successful business combination between 2019 and November 4th, 2021. First trade date is the date that common shares commence trading. Post-completion, the common shares of the SPAC convert into the common shares of the newly combined public company under a new ticker.



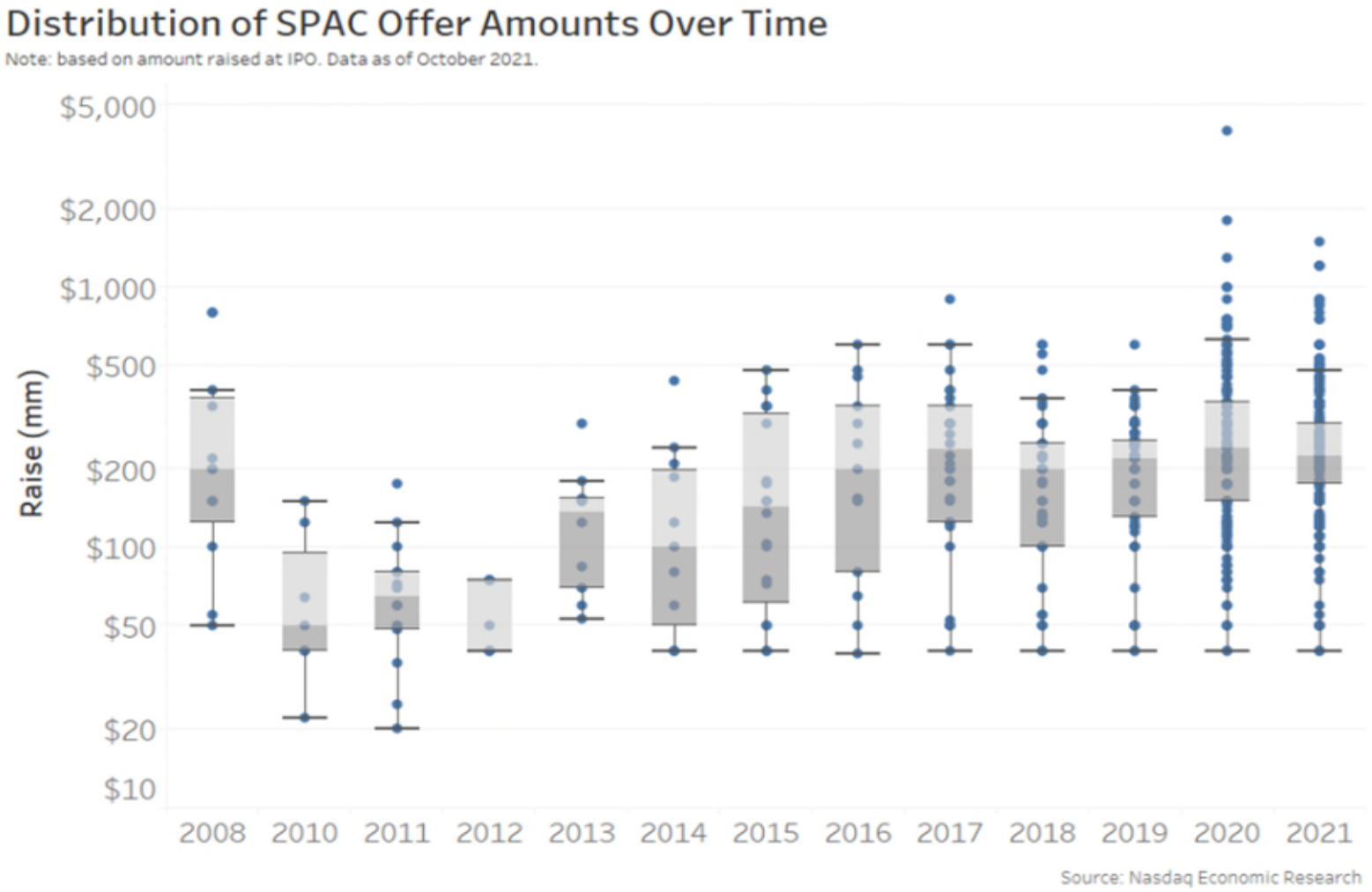


Count of SPACs in Sample

Pre-Announcement							Announcement						Post-Completion											
229	228	228	227	222	226	228	229	229	229	229	229	229	226	209	187	160	131	105	99	94	87	78	68	51

Source: FactSet, Nasdaq Economic Research

SPACs


Distribution of SPAC Offer Amounts Over Time
Note: based on amount raised at IPO. Data as of October 2021.
Raise (mm)
$5,000
$2,000
$1,000
$500
$200
$100
$50
$20
$10
2008
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Source: Nasdaq Economic Research

Recent SEC Issues

- Warrants – equity or derivative liability treatment
  - Private warrants: Can be fixed by restricting transfers
  - Public warrants: Can be fixed with new language
- Projections – no reliance on “safe harbor” under PSLRA, but can still get protection
- Common Stock is Temporary Equity – Effect on listing

How is a SPAC Formed?

- Example:
  - Founders raise $6 million
  - Form LLC
  - LLC invests $6 million in SPAC in exchange for $50 million in Units vesting at time of qualifying acquisition
  - IPO $200 million in sale of Units
  - Upon IPO $4 million paid to investment bank and $2 million used to run SPAC

Legal Formation

- Consideration of selecting a jurisdiction for the SPAC
- Delaware vs. the Cayman Islands?
- Sponsors only looking for a domestic target will generally form a domestic SPAC for a domestic-to-domestic transaction
- Sponsors only looking for a foreign target will generally form a foreign SPAC for a foreign-to-foreign transaction
- Sponsors need to manage various tax issues if a domestic SPAC finds a foreign target or a foreign SPAC finds a domestic target

Initial Corporate Organization Considerations

- Finite life considerations
- Trust account considerations – use of funds
- Classes of equity:
  - Founders
  - Public shareholders
  - Stock and warrants
  - Potential accounting considerations – warrants as debt
- Requirement to redeem shares
- Target company industry/size considerations

What is a De-SPAC Transaction?

- A de-SPAC transaction is the acquisition by a SPAC of a qualifying business
- A merger or acquisition with a SPAC
- Result: Private target company becomes public company

What is the De-SPAC Process?

1. Identify targets
2. Sign letter of intent
3. Sign definitive merger agreement
4. Raise funds in PIPE
5. Secure financing
6. File Form S-4 (Joint Proxy Statement/Prospectus)
7. Hold SPAC shareholder vote
8. Consummate acquisition transaction

What is the Pro Forma Post De-SPAC Capital Structure?

- Example:
  - SPAC has $600 million in trust from IPO
  - SPAC buys $2.0 billion market value company
  - SPAC raises $550 million in PIPE
- Post de-SPAC pro forma capitalization:
  - $600 million SPAC shareholders
  - $150 million SPAC founders
  - $550 million PIPE investors
  - $1.75 billion target shareholders

Real Example of Pro Forma Post De-SPAC Capital Structure

ESTIMATED SOURCES & USES

Sources:	$ MM
Committed Common Equity PIPE	$500
Spartan Trust Equity[1]	569
Series C Investment	50
Stock Consideration to Existing Fisker Shareholders	1,750
Total Sources	**$2,869**

Uses:	$ MM
Stock Consideration to Existing Fisker Shareholders	$1,750
Estimated Fees & Expenses	79
Cash to Fisker Balance Sheet	1,040
Total Uses	**$2,869**

ILLUSTRATIVE PRO FORMA CAPITALIZATION[1]

(in millions)

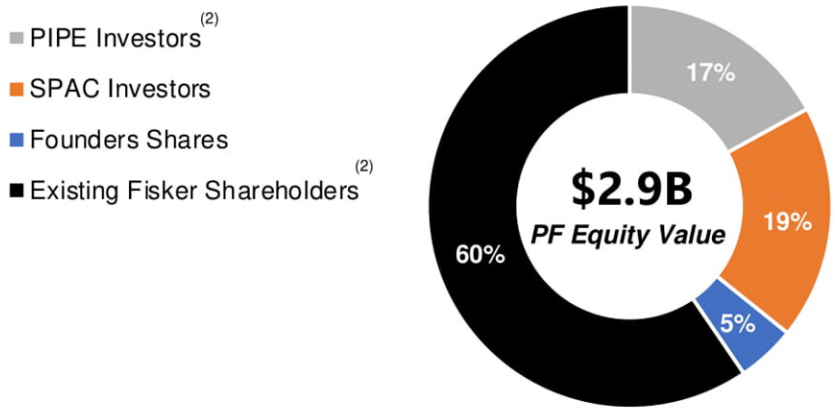
Pro Forma Ownership:	Shares	% Ownership
PIPE Investors[2]	50.0	17.0%
SPAC Investors[1]	55.2	18.8%
Founders Shares	13.8	4.7%
Existing Fisker Shareholders[2]	175.0	59.5%
Total Shares	**294.0**	**100.0%**

ILLUSTRATIVE PRO FORMA VALUATION

(in millions, except per share data)

PF Shares Outstanding[2][3]	294.0
Share Price	$10.00
Equity Value	**$2,940**
Plus: Debt	-
Less: Cash	($1,040)
Enterprise Value	**$1,900**

ILLUSTRATIVE PRO FORMA OWNERSHIP[1][2][3]



Source: Spartan Energy Acquisition Corp. Form 8-K filed July 13, 2020

Process Overview

- The process from announcement of a definitive agreement (and proxy/Form S-4 filing) to close may take between two and five months (*not all that different from an IPO process*)

Step 1: Identifying a partner

- Target prepares marketing materials
- Target may engage in auction process using a "teaser"
- NDA executed
- Marketing materials and management presentations made
- Potential SPAC partners submit indications of interest

Step 2: Preparation

- Negotiate LoI
- Draft merger agreement
- Develop investor outreach plan
- Wall cross investors
- Conduct testing the waters
- Initiate private investment in public equity ("PIPE") process *(if applicable)*
- Begin proxy/S-4 preparation

Step 3: Signing & Announcement

- Execute merger agreement and announce transaction
- Execute PIPE subscription agreements
- Announce transaction
- Conduct announcement conference call and investor meetings

Step 4: SEC review & marketing

- File proxy statement/S-4 with audited financials
- Receive and respond to SEC comments
- Continue investor outreach
- Hold analyst day
- Retain proxy solicitor
- Set stockholder record and vote date
- Mail final proxy (~3 weeks prior to vote)

Step 5: Closing process

- Conduct roadshow
- Regular calls with banks and advisors to track large shareholders
- Tabulate redemption requests (two business days prior to vote)
- Hold vote
- Close transaction

Considerations in Identifying Target Companies and Related Due Diligence

- Developing a process to find potential target companies:
  - Industry considerations
  - Industry limitations in formation documents?
- Role of sponsors and founders
- Use of outside advisors:
  - Original underwriters? Possible conflicts?
- Focusing and limiting the search
- Arrangements with IPO underwriters
- Dealing with potential conflict of interest issues for sponsors and founders – future liability?

Considerations in Identifying Target Companies and Related Due Diligence

- Key issues to consider about potential targets:
  - Quality of management
  - Quality of systems
  - Ability to produce required information and forecasting
  - Use of public company U.S. GAAP versus private company accommodations
  - Auditor requirements – PCAOB registration issues
  - Potential need for re-audit or audit “upgrade” to PCAOB standards
  - Process go begin gathering required information for deSPACing filings, and
  - Process to build infrastructure for public company reporting

Considerations in Identifying Target Companies and Related Due Diligence

- Key information requirements:
  - Audited financial statements:
    - PCAOB registered auditor
    - Same periods as required in an IPO
    - Three years
    - Full public company disclosures:
      - May need to “unwind” private company GAAP

Considerations in Identifying Target Companies and Related Due Diligence

- May need financial statements of others:
  - Joint ventures
  - Recent acquisitions by target
- MD&A;
- Other 10-K disclosures – litigation, description of business

- Appropriate due diligence:
  - Balancing the need for a rigorous process versus time-line pressures

Considerations in Identifying Target Companies and Related Due Diligence

- Participants in the due diligence process
- Example process
- Risks of inadequate due diligence
- Project management considerations
- Many moving parts
- Time pressure
- Financial pressure

Considerations in Identifying Target Companies and Related Due Diligence

- Complex negotiations
- Who coordinates?
- Risks if process goes awry?
- Emerging litigation risks

Letter of Intent Process

- Some differences from non-SPAC M&A transaction
- Establishes a “basic agreement”
- Proposed terms
- Structure
- Price
- Due diligence to follow

De-SPACing

- However, there are key differences, such as:
  - Stockholder approval required through proxy statement or proxy/prospectus
  - Redemption opportunity for SPAC stockholders
  - Restrictions post-merger on stockholders under securities laws and regulations
  - Greater flexibility (and uncertainty) in purchase consideration
  - Limited recourse if de-SPACing fails

Letter of Intent Process

- Minimum Cash Condition:
  - SPAC must have a minimum amount of cash at closing;
  - Trust account:
    - Net of redemptions
  - PIPE transaction?
- Composition of post merger board of directors
- Restrictions on transfers of the founder shares and shares received by the sellers
- Registration rights for the Sponsor, sellers and PIPE investors

Drafting the Acquisition Agreement

- Similar to many acquisition negotiations
- Finalize provisions in the Letter of Intent
- Requires time and management resources
- Role of sponsors after the deal?
- Unique terms for SPACs:
  - Need for additional financing;
  - Issues if SPAC investors choose to redeem shares

Key Negotiating Considerations for Targets

- Structure of the transaction:
  - Most transactions involve Target merging into SPAC subsidiary (Target surviving)
  - A new holding company may acquire both the SPAC and Target:
    - Used often where reincorporating SPAC
  - Up-C Structure may be used where Target is LLC
- Consideration:
  - Consideration can be comprised of stock, or stock/cash (allows for existing Target stockholders to effectively obtain some immediate liquidity and sometimes referred to as a "secondary" component)
    - 53% of 2020 de-SPACings were stock only

Key Negotiating Considerations for Targets

- Consideration (cont.):
  - There may be a post-closing adjustment mechanism:
  - There may be an earn out:
    - Earnouts typically tied to stock price over one to five-year period
    - Will Target shareholders obtain registered stock or will they need registration rights?
- Treatment of Sponsor's equity:
  - Sponsors may be asked to forfeit all or a portion of the shares and/or warrants:
    - This impliedly transfers more of the consideration to Target's stockholders

Key Negotiating Considerations for Targets

- Sponsors may be asked to have all or a portion of their shares and/or warrants vest or have terms changed:
  - Typically based on stock price over 1-5 years post transaction
- Minimum Cash Condition:
  - Requirement that SPAC have specified minimum amount of cash at closing, which could come from the trust account, proceeds from a PIPE transaction, proceeds from forward purchase agreements, or any combination of these

Key Negotiating Considerations for Targets

- Lock-up agreements:
  - Generally, SPAC sponsor and affiliates will already be subject to a one year lock-up.
  - Depending on whether a proxy statement or a Form S-4 is used (affecting the transferability of the securities), Target's stockholders will be subject
    to a contractual lock-up with a term to be negotiated:
    - Typically six months to one year
  - Lock-ups typically end if post combination company's stock achieves specified price targets over specified periods of time

Key Negotiating Considerations for Targets

- Board of directors:
  - Total number of directors.
    - Will board be “staggered”?
  - SPAC sponsor will typically have 1-2 representatives on the board of the continuing company
  - PIPE investors typically do not require board representation
- Indemnities:
  - 70% of 2020 de-SPACings did not have representation survives closing or have post-closing indemnities

Other Deal Terms

- SPAC transaction agreements generally do not have “fiduciary out” if board of directors changes its recommendation
- Very limited deal protection:
  - Reverse break-up fee from SPAC rare
  - Reimbursement of Target’s fees and expenses inconsistent

Other Deal Terms

- The definitive agreement will be accompanied by various ancillary agreements, which may include:
  - Voting agreements
  - Support agreements
  - Lock-up agreements
  - Registration Rights agreements
- Listing:
  - Is existing listing appropriate for company or should it be moved to another exchange?

Market Communication Considerations

- Very similar to a typical roadshow
- May use projections
- Related risks

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