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SPACS TO REALITY: A COMPREHENSIVE ANALYSIS

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ABSTRACT

Special Purpose Acquisition Companies (SPACs) have emerged as the next big thing in the securities markets, attracting unprecedented attention in recent years as a means of bringing a company public. A SPAC raises money through an IPO and then has two years to find a private firm to merge and go public. When market volatility is high, private companies that want to go public usually avoid IPOs because it is difficult to predict if investor interest will remain constant long enough for the IPO to succeed. The volatility of the 2020 market, along with uncertainty about long-term valuations and PIPE capital availability, pushed corporations to consider special purpose acquisition company transactions as an alternative to typical IPOs. SPACs raised $83 billion in 2020, nearly double the ten-year total, and another $97 billion in the first three months of 2021.

Until recently, SPAC litigation was uncommon, but with the recent market increase, pre-closing strike suits have proliferated, and insurance premiums for SPAC directors and officers have skyrocketed. Post-closing litigation initiated after the merger with the target business has left plaintiffs and courts unsure whether to file claims under corporate fiduciary statutes or the applicable securities laws. This ambiguity derives from plaintiffs' and courts' inability to define and comprehend the functions of SPAC directors and officers. *In Re MultiPlan Corp. Shareholders Litigation*, given the scope of the ruling and the fact that the challenges raised in MultiPlan arise from common SPAC structures, represents a novel application of traditional fiduciary duty principles in the SPACs context. Several members of the International Organization of Securities Organization are evaluating their frameworks for regulating SPACs in response to these issues, exacerbated by worries about market integrity and investor protection posed by these sorts of organizations.

They spread so quickly that the public had no choice but to believe they represented a unique innovation, a type of infection against which American finance had previously been immune. These inventions gain popularity and cause the same problems the old regulations intended to address until the innovations invite new regulations and fresh skepticism. SPACs are taking an old cycle and making it new again by recreating many flaws and achievements of previous breakthroughs.

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I. INTRODUCTION

"The remarkable volatility of the equity markets during 2020, driven by uncertainty around the Coronavirus pandemic, seems to have also unleashed an equity product that had otherwise been very much in the background."[1] SPACs (Special Purpose Acquisition Companies) are companies formed and listed on an exchange with the intention of acquiring a growth company, created as a simple solution for firms to go public without going through a lengthy and sometimes complex quotation procedure. SPACs are not new, but they have grown in popularity recently. After the worst of the pandemic, sufficient market liquidity and the return of a pro-risk atmosphere have contributed to market expansion and the rising enthusiasm that has benefited SPACs. Following a record year in 2020, approximately 300 SPAC IPOs raised nearly $100 billion in the first quarter of 2021, exceeding the whole amount raised in 2020 and accounting for more than two-thirds of the total value of IPOs in the US market. However, the first half of 2022 experienced a slowdown in SPAC activity compared to recent years. Only 77 de-SPAC M&A deals were announced in the first half of 2022, compared to 167 de-SPAC transactions in the same period of 2021. In addition, only 69 SPAC IPOs were priced in the first half of 2022, compared to 362 SPAC IPOs in the first half of 2021.[2] Europe experienced a similar trend, with transaction counts remaining essentially stable through the end of the year. Even though the European SPAC IPO market has increased significantly in 2021, it remains a small fraction of the size of the US market SPAC activity. Although the pipeline of European SPACs was strong at the start of 2022, market momentum has slowed mostly, among various reasons, due to macroeconomic headwinds, which have created difficult conditions for launching deals.[3] The European markets have been so far primarily involved with U.S. SPACs acquirers. Nonetheless, a number of business combines involving European SPACs are beginning to emerge, such as the Italian Space completed business combination with FILA Group and Space2 completed business combination with Avio Group.[4]

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[1] *See* Ernesto Cruz, Niron Stabinsky, Rick Faery, *Making waves: The evolution of SPACs* (2020), https://www.credit-suisse.com/media/assets/investment-banking/docs/corporate-insights/csci-2020-q4-making-waves-spacs.pdf (last visited Aug 9, 2023).

[2] *See* Christopher M. Barlow, C. Michael Chitwood, Howard L. Ellin, *Despite slowdown in SPAC activity, opportunities remain: Insights*, SKADDEN (2022), https://www.skadden.com/insights/publications/2022/09/quarterly-insights/despite-slowdown-in-spac-activity-opportunities-remain (last visited Aug 14, 2023).

[3] *See* Antonio Coletti, Christopher Horton, James Inness, *Recent Trends for European SPACs*, BLOOMBERG LAW (2022), https://www.bloomberglaw.com/external/document/XCDK8CS000000/capital-markets-professional-perspective-recent-trends-for-europ# (last visited Aug 14, 2023).

[4] *Id*.

SPACs undoubtedly benefit companies seeking to go public and investors seeking investments with potential growth comparable to private-equity-type targets. Still, they also raise several risks that investors should address. SPACs have recently made headlines as their phenomenal rise has come under scrutiny. The fact that some SPAC acquisitions announced did not materialize as expected has put pressure on their performance, with the IPO SPAC index in bear territory (with losses above 20% from their peak), despite the overall market's favorable YTD[5] performance. The phenomenon of SPACs has now reached a critical point. The previously noted resetting of market performance comes when the Securities and Exchange Commission (SEC) is already warning investors and scrutinizing some SPAC practices. The SEC action is further stalling fresh IPOs and giving the overall SPAC business time to rethink its strategy.[6] The proposed rules, if implemented, would dramatically increase the regulatory burden on all SPAC participants. Indeed, several financial institutions that previously acted as both underwriters of SPAC IPOs and financial advisors in subsequent de-SPAC transactions have reduced their involvement in the SPAC market since the release of the proposed rules, which are not expected to be finalized until the end of this year.[7]

Part II describes the utility and the features of reverse mergers and special purpose acquisition vehicles, analyzing the business combination process that brings a target company to get listed on a public stock exchange. It further analyses the differences among the various listing procedures, allowing us to gasper the motive behind their popularity from a purely economic and financial perspective.

Part III outlines these companies' regulatory framework, from its origins to the current regulation on forward-looking statements and disclosure. It furtherly investigates Delaware's legal perspective on some debating topics such as director's fiduciary duties and shareholder approval in SPAC transactions, citing the high-discussed *In Re MultiPlan Corp.* case. Lastly, it briefly explores upcoming regulatory intervention on business combinations and its potential future consequences.

Part IV gives an overview of the development of the SPAC phenomenon in Europe, the market dynamics by which it became popular, and the regulatory framework that applies to these companies, their directors, and their investors.

[5] "YTD" stands for "Year-to-Date." YTD provides a snapshot of how an investment or metric has performed over the course of the year so far.
[6] *See* Cruz, *supra* note 1.
[7] *See* Erin Gordon, Rachel Mechanic, Matthew Riccardi, *SEC's Proposed SPAC Rules & Market Reaction*, BLOOMBERG LAW (2022), https://www.bloomberglaw.com/external/document/XADAEFPO000000/m-a-professional-perspective-sec-s-proposed-spac-rules-market-re (last visited Aug 14, 2023).

Part V narrows the analysis on the Italian experience, specifically looking at two successful SPAC transactions, the Space-FILA Group and the Space2-Avio combinations, that largely contributed to bringing the spotlight on the business combinations in Italy.

II. SPACS TO REALITY

A. Unveiling SPACs Dynamics

1. Alternative Routes to Public Listing: Exploring Reverse Mergers and SPACs

The external capital firms raise when they go public is of major interest to many growing businesses. Going public is also important for existing firm shareholders who may want to sell their holdings. Apart from the conventional method of initial public offerings (IPOs), firms may access public markets via a non-traditional route. The most popular non-traditional route is a reverse merger. As a result of this, private firms get listed not through their IPO but because they are acquired by publicly listed natural or cash-shell companies.[8]

In a reverse merger transaction, an existing public "*shell company*," which is a public reporting company with few or no operations,[9] acquires a private operating company – usually one seeking access to funding in the U.S. capital markets. Typically, the shareholders of the private operating company exchange their shares for a large majority of the claims of the public company. Although the public shell company survives the merger, the private operating company's shareholders gain a controlling interest in the voting power and outstanding shares of stock of the public shell company, and the private operating company's management takes over the board of directors and management of the public shell company.[10] The assets and business operations of the post-merger surviving public company are primarily, if not solely, those of the former private operating company.

[8] *See* Johannes Kolb, Tereza Tykvová, *Going public via special purpose acquisition companies: Frogs do not turn into princes*, 40 JOURNAL OF CORPORATE FINANCE 80–96 (2016).
[9] *See* Securities Act Release No. 8587 (July 15, 2005) [70 FR 42234, 42235 (July 21, 2005)].
[10] *See Investor Bulletin: Reverse Mergers*, SEC.GOV, https://www.sec.gov/investor/alerts/reversemergers.pdf (last visited Aug 9, 2023).

A reverse merger can be performed In two ways. The first modality Involves the combination of a private company, the so-called target, and a public company that does run commercial operations and owns assets, namely a "*natural shell company*". Alternatively, a reverse merger can combine a non-listed company, the target, and a public company, which doesn't run any commercial operation and only consists of cash; such a company called a "*virgin shell company*", created with the sole scope of listing itself on the public market and merge the previously mentioned non-listed company,[11] is made up exclusively of cash (and the intangible value constituted by the promoters' reputation and expertise), does not possess any operational assets, does not operate in any business, and does not generate any revenue.[12]

A virgin shell companies Is commonly used to list a target company on the stock exchange through a special purpose acquisition vehicle (SPAC). This traded company raises capital through an IPO on a regulated market to acquire a private company, the target, via business combination. Once a target company is identified and a deal is reached, the vehicle acquires the private company, which thus becomes publicly listed. SPACs are often used for private companies to become publicly traded without the expense and time of a traditional IPO.[13] Consequently, these vehicles are often called "*blank-check companies*" or "*cash shells*".

2. SPACs and the De-SPACing Process: From Listing to Business Combination and Reward Mechanism

A special purpose acquisition vehicle's life begins with its initial public offering, which depends on three essential contributors: the sponsors, the underwriters, and the initial investors.

Sponsors constitute the vehicle, receive equity in the form of the so-called founder shares, and provide the capital that will be used to cover all managerial expenses until a merger with an operating target company is performed, the de-SPACing transaction. Direct participation in the vehicle's equity allows "the sponsor itself to be an investment vehicle in that the individual or organization behind the Sponsor obtains third-party investors who provide the seed capital."[14]

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[11] *See* David N. Feldman, *IPOs versus reverse mergers*, REVERSE MERGERS 21–35 (2015).

[12] *See* Anna Gervasoni; Fabio L. Sattin, Private equity e venture capital: Manuale di investimento nel capitale di rischio (2021), https://hdl.handle.net/11565/4034860 (last visited Aug 9, 2023).

[13] *See* Rupeshkumar Bomali, *Alternative financing : Reverse merger vs SPAC*, https://www.linkedin.com/pulse/alternative-financing-reverse-merger-vs-spac-rupeshkumar-bomali- (last visited Aug 9, 2023).

[14] *See* Maurice M. Lefkort, *The Lifecycle of a SPAC*, WHARTON MAGAZINE , 2021 (last visited Aug 9, 2023).

To successfully perform the listing, SPACs must comply, besides fulfilling the standard listing requirements for public firms, with additional regulations introduced after several cases of fraud involving shell vehicles during the 1980s. New-generation SPACs arose after the introduction of the Rule 419 Blank Check Offering Terms (Cumming et al., 2014), which aims to improve transparency, shareholder protection, and the alignment of interests between shareholders and SPAC sponsors. Whereas 1980s SPACs were often classified as "penny stock" shell companies, all new-generation SPAC offerings are larger than US$5 million, exempting them from the penny stock rule (SEC Rule 3a-51-1).[15]

Once the vehicle is publicly listed, the business combination with the target company must be performed within a specific timeframe. A business combination, or de-SPACing transaction, includes finding a suitable target company and obtaining capital for the transaction without leading to very high dilution levels in the target's company participation.[16] From the IPO date, SPACs typically have two years to complete an acquisition. This procedure moves along much like any M&A process does. The SPAC locates possible targets and performs due diligence on them. A majority of the SPAC shares must vote in favor of the acquisition agreement if the vehicle company enters into a contract to buy a target. The shareholders have the option to retain their warrants and have their shares redeemed at a price of $10 per share after the transaction is completed. After that redemption, any cash still in the trust is released to the original SPAC, a publicly traded company. Such a structure of the arrangement encourages the shell company's shareholders to vote in favor of the deal. The option to redeem their shares at $10 while keeping the warrants is still available if they object to the de-SPACing transaction. Obtaining only $10 and worthless SPAC warrants is preferable if there is no agreement. Alternatively, if they approve of the deal, they can vote yes and decide whether to keep their SPAC shares in the publicly traded firm or redeem them. The purchase agreement often calls for paying the target's owners cash or renegotiating the target's current debts. The target and the SPAC are unable to predict how much money will be left in the trust once the de-SPACing operation is complete due to the redemption feature of the shares issued. Alternative funding sources are then a crucial component of any de-SPACing transaction, as extra capital from investors in the form of private investment in public equity transactions (PIPE),[17] will reduce the risk of the potential burden of disputing shareholder

[15] *See Special Purpose Acquisition Companies, Shell Companies, and Projections*, SEC.GOV (2022), https://www.sec.gov/files/rules/proposed/2022/33-11048.pdf (last visited Aug 9, 2023).

[16] Part of the cost to the target is the dilution resulting from the founder shares and the SPAC warrants. To reduce the dilution, the target owners will often negotiate that a portion of the sponsor's equity is forfeited or subject to vesting based on the performance of the public stock.

[17] "A PIPE investment refers to any private placement of securities of an already public company that is made to selected accredited investors (usually to selected institutional accredited investors) wherein investors enter into a purchase agreement committing them to purchase securities." *See* Anna T. Pinedo, James R. Tanenbaum, *Frequently Asked*

repayments before the de-SPAC transaction and will contribute to satisfying any fund deficit confronted by the vehicle.[18]

If a target is successfully identified, a binding agreement between the SPAC and an acquisition target marks the conclusion of the selection process,[19] and the shell company can merge with the target. Once the combination is complete, the SPAC changes its name and exchange ticker to new ones reflective of the acquired target, and the de-SPACing process is complete. The shares then freely trade, just like any other public company.[20] Suppose there is no de-SPACing transaction within the period specified in the SPAC's governing documents. In that case, the holders of SPAC shares will redeem them for $10 per share, the SPAC will be dissolved, the founder will have lost their seed capital, the SPAC warrants will be worthless, and the underwriters will not receive their deferred fees.

Following the conclusion of a SPAC transaction, it's essential to examine the various stakeholders involved and the rewards they stand to gain. SPACs present a unique opportunity for these participants, each with its own set of incentives and potential returns, contributing to the complexity and dynamism of these financial vehicles.

Firstly, sponsors, who play a pivotal role in initiating and shepherding the SPAC process, stand to reap significant rewards for their relatively low upfront cost commitment. Their compensation typically includes pro-rata shares based on their contributed capital and the issuance of free warrants, which can be converted into additional shares. This compensation structure aligns their interests with the success of the SPAC, as the value of their shares and warrants appreciates alongside the performance of the acquired company. Such potential for substantial upside is a key motivator for sponsors to engage in SPACs as a vehicle for capital formation and business combination activities.

Institutional investors, another integral group of participants, are driven by the potential returns offered by SPACs, contingent on the successful execution of the transaction. These returns

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Questions about PIPEs, SEC.GOV, https://www.sec.gov/info/smallbus/gbfor25_2006/pinedo_tanenbaum_pipefaq.pdf (last visited Aug 9, 2023).

[18] "It is customary for a business combination to be accompanied by a PIPE transaction in which institutional investors, simultaneously with the signing of the de-SPAC documentation, oblige themselves to provide additional capital. If PIPE is already committed to the IPO, it is laid down in a forward purchase agreement. The "PIPE process" is started after a potential takeover candidate has been identified but before the de-SPAC transaction has been announced, and the PIPE is generally a condition for performing the business combination, whether or not together with a minimum cash condition. A PIPE can finance an acquisition for which more must be paid than the SPAC has available financial resources. As described above, there is also a good chance that many shareholders will exercise their redemption right in the context of the business combination. The PIPE gives investors additional certainty and confidence that there will be sufficient cash if the business combination is entered into." *See* J. S. Kalisvaart, C. F. C. Sutherland*, A brief history of the SPAC and the development of its characteristics* (2022) (last visited Aug 9, 2023).

[19] *See* Douglas Cumming, Lars Helge Ha, Denis Schweizer, *The fast track IPO – success factors for taking firms public with SPACs*, 47 JOURNAL OF BANKING FINANCE 198–213 (2014).

[20] *See* Feldman, *supra* note 11, at 23.

can materialize through the common shares they acquire or the warrants they receive, but only if the transaction proves to be successful. If the chosen target company does not align with their investment objectives, institutional investors have the option to withdraw their capital, along with any interest accrued, that was held in the trust. [21] Conversely, when the selected target aligns with their investment strategy, they can exercise the warrants they acquired during the listing stage, positioning themselves to benefit from any subsequent share price appreciation. However, it's important to note that, unlike institutional investors, retail investors may have limited influence on the target company that the SPAC decides to acquire and are also subject to the sponsors' ability to successfully complete the operation. Retail investors, on the other hand, have their own distinct advantages and considerations. They have the opportunity to invest in the SPAC even before the target selection is announced, allowing them to potentially capitalize on the anticipated increase in share price once the merger is publicly disclosed. This early entry into the investment process can offer a high potential return, albeit accompanied by the risk of having limited influence on the target company, which differs from the greater influence that institutional investors may exert, and reliance on the sponsors' successful completion of the operation.

Market-specific and deal-specific variables also come into play when assessing the decision to take a company public through a SPAC. Notably, SPACs often employ debt financing to acquire the target firm's shares, and thus, periods marked by low debt rates tend to coincide with a higher rate of SPAC acquisitions. Market volatility is another critical factor to consider, as a less turbulent market environment tends to enhance the chances of a successful SPAC transaction. Unlike traditional listing processes, SPAC acquisitions are less susceptible to market turbulence because they already possess liquidity during the acquisition phase. This liquidity allows existing shareholders to convert a more substantial portion of their shares into cash during the going-public process. In contrast, traditional listings frequently limit shareholders to partial exits due to lockup agreements, concerns related to negative signaling, and a lack of available cash. [22]

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[21] In this case, however, their incremental returns will be relatively low since the cash held in the trust is invested in short-term U.S. government securities (i.e., U.S. treasuries). *See Id* at 24.

[22] *See* Johannes Kolb, Tereza Tykvová, *Going public via special purpose acquisition companies: Frogs do not turn into princes*, 40 JOURNAL OF CORPORATE FINANCE 80–96 (2016).

B. Comparing Listing Approaches: IPOs, Direct Listings, and De-SPAC Mergers

In the context of initial public offerings (IPOs), a private company embarks on the journey to public ownership by issuing new shares. These shares are then offered to the public through the intermediary role of an underwriter, facilitating their sale on a public exchange. In sharp contrast, a direct listing represents a divergent path, where existing shares of the private company are directly introduced to the public exchange without the involvement of an underwriter. This alternative route to the public market has garnered attention for its distinctive characteristics, particularly its avoidance of the traditional underwriting process. Enter the de-SPAC merger, a process that has gained prominence in recent years. This method transforms a private company into a publicly traded entity by merging it with a pre-established listed shell company, which takes the form of a special purpose acquisition company.[23] The de-SPAC merger represents a fascinating hybridization of financial mechanisms, blending elements of both traditional listings and direct listings.

Crucially, the structural features specific to each of these processes become paramount considerations for a company when contemplating whether to embrace a reverse merger, such as the de-SPAC route, as opposed to pursuing a conventional listing. One compelling argument in favor of listings through shell companies, like SPACs, revolves around the notion of price certainty. In such transactions, the share price is pre-negotiated between the parties involved and is subjected to market testing before formal announcements. Institutional investors play a pivotal role in this pre-announcement phase by offering valuable feedback regarding the valuation of the target company. This pre-negotiation and market testing instill a sense of predictability in the share price, offering a measure of assurance to retail investors. Conversely, the offering price in traditional listings hinges on market conditions prevailing at the time of listing. It remains unspecified until the day preceding the initiation of trading in the issuer's shares. In reality, price certainty in traditional listings only crystallizes after the culmination of a final merger and the execution of private investment in public equity (PIPE) agreements.[24] These agreements, typically executed just a few weeks before the merger's finalization, introduce an additional layer of complexity. Even after the agreements are signed, the total cash amount the target company will receive hinges on the number of shares the SPAC reclaims through redemption rights exercised by investors.[25] Deal certainty is another pivotal

[23] *See* John Lambert, Sarmed Malik, *Why choosing SPAC over IPO - advisory*, https://advisory.kpmg.us/content/dam/advisory/en/pdfs/2021/why-choosing-spac-over-ipo.pdf (last visited Aug 9, 2023).
[24] These multi-party agreements include the shell company, the target, large public shareholders, and PIPE investors, whose signing requires lengthy procedures.
[25] The amount of net cash the target company will receive is just the price at which the target share will sell times the number of shares sold.

aspect that diverges between these listing methods. It is contingent on the risk that the price negotiated may not meet the expectations of the issuer or the target company. In many instances, agreements include provisions that permit the target company to abandon the deal if an inadequate amount of cash is garnered from the transaction post-redemption rights redemption. To address this uncertainty, sponsors can play a pivotal role in bolstering deal certainty by committing to replace the cash lost due to redemptions or by attracting additional investments to compensate for any shortfall. [26]

Furthermore, as public listing operations in general are very time-sensitive, and since these shell companies are already public, the process for a private target company to go public by reverse merger is, on average, shorter (3-5 months) than a traditional IPO (4-6 months). Even if the time differences between business combinations, traditional listings, or direct listings, are not meaningful, the practical differences do play a more significant role. For example, companies preparing for an IPO or a direct listing often begin preparing for the financial statements, internal and financial controls, and any other requirement, earlier than those companies who decide to go for a business combination with a SPAC.[27] The figure shown below provides a visual representation of the timeframe of the processes.

Reverse mergers are also a viable option for small companies that don't qualify for traditional listings, which are still characterized by significant growth potential, or those who cannot afford substantial legal fees, marketing expenses, or financial consulting fees. Flexibility is often well-seen in the dynamics of a listing procedure. Within the reverse mergers' context, firms may attach earnouts, minimize insider lockups, and allow the private company more freedom to adapt its move to the public market to its requirements, becoming a desirable option for companies with information that cannot be made public or that would have a more challenging time attracting traditional public market investors.[28] The role of these vehicles was indeed to serve those companies[29] for which uncertainty or information symmetry cannot be resolved through a traditional listing process sufficiently for investors and the issuer to arrive at a price each accept.[30]

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[26] *See* Michael D. Klausner, Michael Ohlrogge, *A sober look at SPACs*, 39 SSRN ELECTRONIC JOURNAL 20–48 (2020).

[27] *See* E. Ramey Layne et al., *Alternative routes to going public*, JD SUPRA (2020), https://www.jdsupra.com/post/fileServer.aspx?fName=e97dc3dd-0101-408c-a630-1f790ffd30c9.pdf (last visited Aug 9, 2023).

[28] *See* Alex Gavrilas, *Going Public via SPACs: Structural Characteristics, Implications and Impact on the Space Economy* (2021), https://tesi.luiss.it/33474/1/242001_GAVRILAS_ALEX.pdf (last visited Aug 9, 2023).

[29] These might be companies with an unusual business with few comparable on the public markets, companies that face legal uncertainty or a complicated tax situation, and companies that, for any other reason, require more investigation and analysis by investors than the IPO process allows.

[30] *See* Klausner, *supra* note 26, at 28-29.

Differences concerning the price discovery mechanism between a traditional listing and SPAC listing are bearded in the fact that shell companies' mergers are governed by the same regulations applicable to mergers instead of those which govern public offering. Projections and other forward-looking statements are the primary difference in terms of regulations on the communication of information: statements made in connection with a merger are covered by a safe harbor from liability in private actions under the securities law,[31] meaning that if the statement is false, the issuer is not subject to liability unless the person who made the statement knew that the statement was false when making it. Conferring such legal protection is aimed at encouraging publicly traded companies to disclose information to the market even when there is uncertainty in the information inherent in the forecasts and other forward-looking statements. However, the safe harbor does not apply to statements made in connection with its IPO. Because of this legal treatment and long-standing practice, IPO prospectuses and roadshow presentations rarely include the issuer's financial projections or other forward-looking statements, contrary to a business combination procedure where the disclosure of this material is widely common.[32]

As previously mentioned, private investments in public equity and earnouts for target shareholders that make merger consideration contingent on post-merger performance, represent a further common practice and arguably advantageous to mergers, which is, however, barely used in traditional listing settings.[33] Investors in PIPEs are provided with confidential information with which to make an investment decision, allowing them to do extensive and rigorous due diligence.[34] Some firms that go public through an IPO provide investors the same chance to go "over the wall," access confidential information, and get a specific allocation of shares. However, this is far less typical than it Is among SPACs.[35] For companies with important confidential information that cannot be disclosed to the public or would negatively affect the share price during a traditional listing process, the private placement process may be preferred over an IPO roadshow in price discovery.

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[31] *See* 15 USC § 78u-5 (2018). "This safe harbor does not apply to actions brought by the SEC or the Department of Justice. The judicially created "bespeaks caution" doctrine, which applies to both private actions under the securities laws and actions brought by the SEC or the Department of Justice, provides some protection for projections made in connection with IPOs. Still, there is uncertainty regarding how much protection courts will afford issuers under this judicial doctrine, leading most lawyers and underwriters working on traditional IPOs to avoid using projections." *See Id* at 30.

[32] As recent studies have shown, target companies who decide to go public by combining with shell companies are often "pre-revenue" or low-revenue companies. Therefore, these companies most likely have little other than projection to communicate their value to investors, conferring the freedom to provide and explain projection's significant importance. *See Id* at 31.

[33] *Id.* at 31.

[34] In addition, since a PIPE investor can negotiate the size of a potential investment up front, allowing it to get a precise understanding of how much it can potentially invest enables the investor to dedicate proportional resources to due diligence.

[35] *See* Klausner, *supra* note 33, at 34.

Validation may also occur due to private investment in public equity, as when an investment of this nature is made, it is disclosed to the market. If made at roughly the redemption price, it provides an element of validation for public investors. However, the presence of a PIPE does not entirely provide validation of the value transaction, as it doesn't transmit any information that public investors cannot access and analyze on their own, to the extent that the relevant information is made public.[36] Similarly to private investments in public equity, earnouts for target shareholders[37] can potentially address asymmetric information: the pricing of the merger can potentially be deferred until the post-merger company has performed and the market has had a chance to evaluate it. Analogous earnouts could be engineered in IPOs, for example, by offering warrants to pre-IPO owners.[38]

All these advantages that characterize these operations using shell companies come with potentially high risks for retail and institutional investors. These risks revolve around the potential for dilution, which is a central concern when it comes to evaluating the overall attractiveness of these financial operations. Dilution can manifest in various forms and can significantly impact the value of the newly public target company. One primary source of dilution risk arises from the involvement of sponsors, who often retain a substantial stake in the target company through founders' shares and the conversion of warrants.[39] This sizeable presence of sponsor-held shares can lead to a decrease in the overall value of the newly public target company. Moreover, sponsors and other initial vehicle shareholders may have the option to redeem a significant portion of their shares, potentially resulting in a capital shortfall. If cash availability becomes limited, shell companies may be compelled to seek private investment in public equity (PIPE) financing to bridge the resulting capital deficit.

Dilution in the context of shell vehicle structures can take two distinct forms: shareholding dilution and value dilution. Shareholding dilution involves a reduction in the proportion of shares held by an investor in the combined entity, which can occur when shareholders who possess redemption rights retain their warrants without making an economic contribution to the transaction.

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[36] Typically, an investor in a PIPE requires that the information it receives will be made public in the SPAC's filings when the deal is announced. Unless this is done, the investor cannot trade the company's shares without violating the insider trading prohibition. *See Id* at 34.

[37] "An earnout is intended to align a sponsor's interest with shareholder interests when the sponsor proposes a merger to shareholders. It does so by withholding shares from the sponsor unless a SPAC's post-merger share price reaches specified thresholds. If a SPAC's post-merger share price does not reach a threshold within the term of the earnout—most commonly five or more years—the corresponding shares are canceled. Among SPACs that merged from January through June 2021, 33% adopted earnouts. For these SPACs, earnouts typically covered 30-40% of the promoter's total shares." *See* Michael D. Klausner, Michael Ohlrogge, *Is SPAC sponsor compensation evolving? A sober look at earnouts*, 567 SSRN ELECTRONIC JOURNAL (2022).

[38] *See* Klausner, *supra* note 36, at 35-26.

[39] In addition to ordinary shares, the shell company also issues warrants, which are essentially composed of founder warrants, issued at the SPAC's formation to sponsors as compensation for their services, and public warrants, which are included in the units offered by the vehicle to compensate investors in the SPAC's first public offering for permitting their funds to be utilized to establish the shell company as a public corporation in the first place.

This situation can lead to a further dilution in share ownership for non-redeeming shareholders. Value dilution, on the other hand, relates to a reduction in the net asset value per share.[40] It can arise when warrants are exercised, resulting in the issuance of new shares at a price typically higher than the initial listing price. The extent of value dilution depends on the current trading price of the shares and can have a considerable impact on shareholder value. Additionally, the issuance of shares to the target company's shareholders as compensation for the merger can introduce a further layer of dilution in terms of both participation and value for shareholders of the shell vehicle. PIPE investors may also have the opportunity to acquire new shares at a discount or at the listing price, with or without accompanying warrants. This further issuance can either exacerbate value dilution (in the case of shares issued at a discount or with warrants) or offset dilution stemming from other sources (in instances where shares are issued without any discount).[41]

Another layer of risk in these operations is associated with financial diligence, particularly during the listing process. Notably, SPACs are not subjected to the same rigorous due diligence as seen in conventional listing processes. They are not mandated to appoint an underwriter, which implies reduced external oversight and a potentially less thorough scrutiny of the target company's financials. This lack of stringent oversight can create a heightened risk of restatements or improper valuation of companies, which, in turn, may erode investor confidence and adversely impact the overall perception of these operations within the market. Distrust in the accuracy of regulatory requirements can also ensue, further complicating the investment landscape.[42]

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[40] *See Special Purpose Acquisition Companies* (2023), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD732.pdf (last visited Aug 9, 2023).
[41] *Id.* at 42.
[42] *See* Gavrilas, *supra* note 28, at 19.

III. U.S. SPAC-SPECIFIC REGULATIONS

A. Market Dynamics, Self-Regulation, and Legal Complexities

1. SPAC Evolution: From Self-Regulation to Regulatory Scrutiny and Market Impact

"SPACs operate within market practices and self-regulation, rather than statute."[43] Their origins trace back to the 1980s when these entities were initially introduced in the financial landscape. At that time, SPACs were often derogatorily referred to as "blank check companies." During this era, some SPACs became notorious for engaging in speculative and even illicit activities, notably participating in schemes known as "pump-and-dump" operations.[44] These practices involved manipulating stock prices for personal gain, resulting in investor losses. In response to the questionable activities associated with SPACs, regulatory bodies took action. The Securities and Exchange Commission (SEC) introduced Rule 419,[45] a set of regulations aimed at curbing the activities of these companies. Additionally, the U.S. Congress passed the Securities Enforcement and Penny Stock Reform Act in 1990 to provide further oversight and protection to investors. The regulatory measures introduced through Rule 419 and the Securities Enforcement and Penny Stock Reform Act brought significant changes to the SPAC landscape. These included provisions such as mandating an 18-month acquisition timeline, granting dissenting shareholders a redemption right, and requiring that IPO proceeds be held in trust until the intended acquisition or combination was completed. These measures aimed to safeguard investors and ensure transparency in the operations of SPACs. After a period of relative dormancy, SPACs experienced a resurgence in 2003. However, this time, their emergence occurred on different platforms, primarily unregulated ones like the Over-

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[43] *See* Daniele D'Alvia, *From darkness to light: A comparative study of special purpose acquisition companies in the European Union, the UK, and the US*, 24 CAMBRIDGE YEARBOOK OF EUROPEAN LEGAL STUDIES 201–238 (2023).

[44] "Pump-and-dump is a manipulative scheme that attempts to boost the price of a stock or security through fake recommendations. These recommendations are based on false, misleading, or greatly exaggerated statements. The perpetrators of a pump-and-dump scheme already have an established position in the company's stock and will sell their positions after the hype has led to a higher share price." *See* Rajeev Dhir, *Pump-and-dump: Definition, how the scheme is illegal, and types*, INVESTOPEDIA (2023), https://www.investopedia.com/terms/p/pumpanddump.asp (last visited Aug 9, 2023).

[45] "Rule 419 states that all securities issued in connection with an offering by a blank check company, and the gross proceeds from that offering must be deposited into either an escrow account or a separate bank account established by a broker or dealer registered under the Exchange Act. This essentially places a restriction on blank check companies that wish to offer their securities. Under the Rule, all money raised and the securities being offered must be placed in an escrow account or trust, so no trading occurs prior to completing the acquisition. Additionally, the fair value or net assets of a target business must represent at least 80% of the maximum offering proceeds from the SPAC's IPO." *See* Taylor Kern, *Rule 419 and SPAC Transactions (2021),* https://www.aigbelaw.com/securitiesinvestinglawblog/2021/7/26/rule-419-amp-spac-transactions (last visited Aug 9, 2023).

the-Counter (OTC) market.[46] The new generation of SPACs that emerged voluntarily adhered to various regulatory requirements, a departure from the earlier SPACs of the 1980s. This shift in approach paved the way for SPACs to transition to more regulated exchanges, including the Amex, NYSE, and NASDAQ.[47] These modern SPACs, in contrast to their predecessors, did not issue penny stocks and chose to comply with regulations such as Rule 419, trust account rules, minimum capitalization requirements, and others.

The evolving landscape of SPACs and their compliance with regulatory standards gained momentum just before the global financial crisis. These changes marked a significant shift in the SPAC ecosystem, setting the stage for their eventual prominence in the financial world. Another pivotal development in SPAC market practices was the introduction of tender offers for shares held by specific shareholders before the completion of an acquisition. This innovative approach prompted many SPACs to adopt registration statements that incorporated tender offer structures effectively. In response, major stock exchanges[48] proposed rule changes to their SPAC listing standards. These changes allowed for a cash tender offer following a successful shareholder vote on an acquisition,[49] a move that empowered shareholders who voted against the business combination. These shareholders were given the option to tender their shares in exchange for a pro-rata share in the SPAC's trust fund.

Several other market practices, driven by self-regulation and innovation, contributed to the rapid growth of SPACs during the second decade of the new millennium, culminating in their peak during the global pandemic. One of the most notable practices was the decoupling of the right to vote and the redemption right. Initially, only shareholders who opposed a transaction were granted the right to redeem their public shares for a pro-rata portion of the trust's proceeds. However, over time, this mechanism was extended to all shareholders, allowing them to redeem their shares through a mandatory redemption offer.[50] An essential facet of this development was that redemption rights typically did not apply to warrants. This incentivized investors to vote in favor of or against a transaction while retaining their warrants.[51] Each warrant typically entitled the holder to purchase

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[46] "OTC Markets Group (formerly Pink Sheets) is an American financial market providing price and liquidity information for almost 10,000 over-the-counter (OTC) securities. The group has its headquarters in New York City. OTC-traded securities are organized into three markets to inform investors of opportunities and risks: OTCQX, OTCQB, and Pink." *See OTC Markets Group*, WIKIPEDIA (2023), https://en.wikipedia.org/wiki/OTC_Markets_Group (last visited Aug 9, 2023).

[47] *See* D'Alvia, *supra* note 43, at 218.

[48] The first proposed rule was filed by NASDAQ in 2010, followed by NYSE Amex a year later.

[49] *See* D'Alvia, *supra* note 47, at 218-219.

[50] *Id.* at 220.

[51] "It is not by chance that in 2015, 19 SPACs completed IPOs, raising $3.6 billion in a 120% increase over the amount raised in SPAC IPOs in 2014,45, and seven more registered (for example, Double Eagle Acquisition Corp. completed an IPO that raised $480 million, and Pace Holdings Corp. completed an IPO that raised $400 million)." *See Id.* at 221.

one common share, and a unit often comprised one share and a fraction of one warrant. This structure created an additional incentive for investors to accumulate more shares to obtain whole warrants, further stimulating investor participation.[52]

Beyond structural changes, several market-specific factors contributed to the popularity of SPACs. In the latter half of 2019, private companies faced increasing complexity in securing financing. This complexity was partly attributable to the challenges faced by unicorns that had gone public earlier in the year. Many of these unicorns did not perform well in the market, resulting in restructurings at significantly lower valuations.[53] Additionally, the difficulties encountered by *SoftBank*, a major source of venture financing, following the dramatic listing of *WeWork* had a profound impact on venture financing dynamics. These events made the market more price-sensitive and selective, compelling private companies to seek alternative capital sources.[54] Simultaneously, retail investors, seeking speculative and volatile stocks, displayed growing interest in SPACs.[55] The announcement of mergers with early-stage companies by aggressive sponsors further catalyzed the SPAC trend. The combination of these factors created a perfect storm that drove SPACs into the limelight. However, as with any financial trend, the surge in popularity of SPACs attracted regulatory scrutiny. By the end of 2020, significant regulatory changes were underway, particularly under the Biden administration. The SEC issued warnings concerning SPACs, leading to increased regulatory oversight and scrutiny. One notable action by the SEC was the initiation of an inquiry to understand how underwriters managed risks in reverse merger transactions involving shell companies. Additionally, the SEC raised concerns about the accounting and reporting treatment of warrants issued by SPACs. The suggestion was that these warrants should be classified as liabilities rather than equity or assets of the company. While this warning lacked a specific implementation date and legal force, it prompted SPAC sponsors to address and restate the accounting treatment of warrants as liabilities. These intensified regulatory measures, combined with market dynamics influenced largely by rising interest rates aimed at combating inflation, have posed significant challenges to the SPAC

[52] *Id.* at 223.
[53] Unicorn refers to a privately held startup company valued at over $1 billion. Companies that experienced such struggles include *Uber, Lyft, and Slack*. *WeWork*'s case also contributed to creating more scrutiny on companies looking to go public through traditional listing processes after "failing" its IPO. *See* D. Erickson et al., *Why Spacs are booming, and is there the SPAC bubble?*, 9 REVIEW OF BUSINESS AND ECONOMICS STUDIES 38–45 (2021).
[54] *See* D'Alvia, *supra* note 52, at 223-224.
[55] "The Virgin Galactic case serves as an example. After merging with venture capitalist Chamath Palihapitiya's first SAPC, even if already aggressively valued, Virgin Galactic's stock (SPCE) went from $ 11.70 on January 02 to $ 38.79 on February 20 — more than 330% in less than two months. Then, DraftKings started trading in late April, following the completion of its merger with the Diamond Eagle Acquisition SPAC, and five weeks later had traded up more than 250 percent." *See Id.* at 224.

market's sustainability. Since April 2021, SPAC listings have witnessed a decline, largely in response to the SEC's warnings and inquiries.

This evolving regulatory environment, coupled with shifting market conditions, has raised questions about the long-term viability and attractiveness of SPACs as a favored financial vehicle. While SPACs have undoubtedly left a significant mark on the financial landscape, their future trajectory remains uncertain in the face of evolving regulations and market dynamics. The intricate interplay between market practices, self-regulation, and evolving regulatory scrutiny continues to shape the fascinating journey of SPACs in the financial world.[56]

2. Legal Framework and Investor Protection in SPAC Transactions: Regulation, Forward Looking Statements, and Disclosure

Throughout the COVID-19 pandemic, the securities markets in the United States have borne witness to an extraordinary surge in the utilization of special-purpose acquisition vehicles (SPACs). This surge can be attributed to a confluence of factors, with regulatory preferences favoring SPACs over traditional listings and a reduction in disclosure requirements for business combination transactions playing pivotal roles in amplifying their allure.[57]

The ascendancy of SPACs during this period underscores the dynamic nature of financial markets, where adaptive mechanisms and innovative financial instruments often emerge as responses to evolving economic conditions. The regulatory environment has significantly influenced this trend, as SPACs have been granted a certain degree of leniency compared to their traditional counterparts, notably in terms of disclosure requirements. This regulatory preference has acted as a potent catalyst, incentivizing both established players and newcomers to explore SPACs as an avenue for raising capital and pursuing mergers and acquisitions.[58] One of the central reasons behind the burgeoning

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[56] *See* Teddy Kotler, *SPAC to reality: The rise, fall, and possible future of SPACs*, VILLANOVA LAW REVIEW (2022), https://www.villanovalawreview.com/post/1691-spac-to-reality-the-rise-fall-and-possible-future-of-spacs (last visited Aug 9, 2023).

[57] *See* John Coates, *SPACs, IPOs and Liability Risk under the Securities Laws*, SEC.GOV (2021), https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws (last visited Aug 9, 2023).

[58] *See* Beau Duty, *Business Judgment Rule or Due Diligence? How to Reduce Vicarious Liability for SPAC Directors and Officers*, 44 UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW (2021).

appeal of SPACs is the robust safeguards they inherently offer to protect investor capital. This is particularly noteworthy given the potential risks associated with investment vehicles that deviate from the traditional initial public offering (IPO) route. Investors are drawn to SPACs due to their adherence to a set of safeguards reminiscent of those enacted by the Penny Stock Reform Act (PRSA). Although SPACs are not strictly mandated to employ PRSA protections, many have voluntarily embraced these provisions to enhance investor security. The voluntary compliance of SPACs with a substantial portion of the criteria outlined in SEC Rule 419 is a testament to their commitment to safeguarding investor interests. A crucial facet of this commitment lies in the meticulous management of IPO proceeds. These funds are prudently retained within a trust account, distinct from the operational assets of the SPAC, and disbursed judiciously for predefined purposes. Such purposes may include the redemption of outstanding shares or the consummation of the acquisition of the SPAC's target company. This disciplined approach to fund management not only enhances investor confidence but also mitigates the potential for misuse of capital, thereby bolstering the overall integrity of SPACs as investment vehicles.

Regarding predictions and other forward-looking statements, the legal treatment of business combinations and traditional listings differ. Even if such statements are permitted in both transactions, it is widely assumed that the *Private Securities Litigation Reform Act's* (*PSLRA*) safe harbor extends to SPACs but not traditional listings. This is why sponsors, targets, and others involved in a de-SPAC feel comfortable presenting projections and other valuation material that is not commonly found in conventional IPO prospectuses.[59] This difference in treatment is not the result of a deliberate policy decision by any regulatory institution, as the safe harbor provision of the act itself excludes "blank check companies" from its coverage; the SEC, however, had previously defined "blank-check companies" very narrowly to pursue penny stock fraud, and SPACs were designed for the precise purpose of falling out of that definition of blank check companies (the SEC had limited the definition of a blank check corporation, at the time the act was enacted, to a firm that issued "penny stock," which was defined as a company with total net tangible assets of $5 million or less).[60] It is widely accepted that a reverse merger through business combination should be treated, indeed, with the same regulatory scrutiny as an IPO: when a SPAC proposes a merger, the sponsor and the target's management market the deal to potential investors in the same way that an issuer does during

[59] *See* Jay L. Pomerantz et al., *SEC's new guidance on liability risks likens SPACS to ipos Fenwick*; WEST LLP (2021), https://www.fenwick.com/insights/publications/secs-new-guidance-on-liability-risks-likens-spacs-to-ipos (last visited Aug 9, 2023).

[60] According to the House Conference Report on the PSLRA, the safe harbor "does not extend to an issuer who... makes the statement in connection with a 'blank check' securities offering... or issues penny stock." *See* H.R. REP. NO. 104-369, at 46 (1995).

an IPO roadshow.[61] Almost all shareholders who invested in a merger bought their shares after the merger was announced, probably in response to what was published about the target, including its projections.[62] Consequently, evaluating the validity of the safe harbor concerning special purpose acquisition vehicles, or the extension of such protection to traditional listings, is a proper consideration. While for companies that are having issues bridging information gaps with potential shareholders, such as some SPAC candidates, providing predictions and other forward-looking statements may be an effective way of communicating the value,[63] Congress' exclusion of initial public offerings[64] from the safe harbor reflects a concern about the quality of information presented to potential investors when a firm first enters the public markets. A significant issue when similarly regulating these two listing processes is that state law may require projections to be disclosed if SPAC management considered them while deciding to propose a merger. However, projections are not required in the case of an IPO.[65]

A further aspect on which reverse mergers and initial public offerings are differently regulated is the application of Section 11 of the Securities Act, which allows purchasers of security in a public offering to bring a civil action against the issuer, underwriter, or anyone who signed or helped prepare the registration statement for any misrepresentations in the registration statement.[66] While several of these shell companies have been challenged in lawsuits involving the violation of the section mentioned above, when a SPAC enters a business combination with a target company, the liability that can be imposed, according to Section 11, is limited for three reasons.[67] First, in some reverse mergers, the vehicle issues target stockholders' unregistered shares, later registered by the combined business when the merger is completed. Misstatements about the pre-merger SPAC and the merger terms would not be subject to Section 11 claims in those transactions because post-closing registration statements normally do not address those issues. In other mergers, the SPAC offers registered shares

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[61] *See* Layne, *supra* note 19.

[62] "These protections benefit investors far more than those of a standard IPO. In contrast to the ability of SPAC investors to redeem shares before the de-SPAC transaction, typical IPO underwriters or investors who make a firm purchase commitment before the IPO date do not have the opportunity to withdraw from the deal before the IPO. In a de-SPAC, the investor can decide to redeem after observing how the transaction trades on the market and learning how the public perceives the transaction. In contrast, the investor in a traditional IPO will not know how the market views the deal until it is launched." *See* Duty, *supra* note 51, at 37.

[63] This is especially true for "pre-revenue" or "low-revenue" targets.

[64] The exclusion of IPOs from the safe harbor is prefaced by the language "except to the extent otherwise specifically provided by the Commission's rule, regulation, or order. *See* 15 U.S.C. § 78u–5(b) (2018).

[65] An additional inconsistency is represented by the fact that issuers generally do not provide projections in IPOs, underwriters do, and those projects are based on information provided by the issuer.

[66] Section 11 provides that issuers, underwriters, officers and directors of the issuer, and any other expert who helped prepare the registration statement (e.g., accountants, lawyers) are strictly liable for any misrepresentation or omission of material information, i.e., securities fraud, in their registration statement. *See Section 11*, LEGAL INFORMATION INSTITUTE (2022), https://www.law.cornell.edu/wex/section_%20in%20the%20registration%20statement. (last visited Aug 9, 2023).

[67] *See* Layne, *supra* note 61, at 36.

to target shareholders, who may have claims in those transactions, but only if there are misstatements or omissions of which they were unaware. To the extent that the alleged misstatements or omissions are related to the target's business, these claims are likely weak. To the same extent that target shareholders had done due diligence on the shell company, misstatements and omissions would be the same. In other cases, the SPAC is a new corporate entity concurrently with the merger, and the new entity registers shares issued to the SPAC and target shareholders. In those situations, SPAC and target shareholders may have a claim based on the registration statement disclosures about the shell company, the target, and the merger terms. Second, except for transactions involving newly issued shares to SPAC and target shareholders, Section 11's tracing requirement is a hindrance.[68] A plaintiff in a conventional public offering has standing to sue under the abovementioned section only if it purchased shares directly in a registered offering or can trace them back to the registered offering. Tracing shares to an IPO is not a problem when the issuer has no other shares trading in the market. However, even if target shareholders obtain registered shares in a reverse merger, if those shares are sold, they mix with shares that have been trading since the SPAC's public listing. Thus, plaintiffs will have to trace their shares to the registration statement covering shares issued in conjunction with the merger, except target shareholders who still hold registered shares issued by the SPAC in the merger. However, because courts frequently refuse to grant motions to dismiss based on tracing arguments, the tracing requirement does not necessarily prevent an appealing settlement for shareholders. Furthermore, in a recent case involving tracing in a direct listing, the Court determined that the policy underlying Section 11 necessitates that the legislation be read broadly enough to allow a plaintiff to have standing.[69] Third, unlike a traditional listing, which exposes the underwriter to Section 11 litigation risk, there is no underwriting of shares in a reverse merger. As a result, even if shareholders have a solid claim against the SPAC and its management, they cannot sue an underwriter.[70] In addition, before the de-SPAC transaction, the board of directors of a shell company is obligated by corporate fiduciary duties to the shareholders. In contrast, the underwriters and issuers of an IPO are not always obliged by corporate fiduciary duties to the investors who buy shares in a traditional listing. Because investors who acquire an IPO are contracting with the underwriters, if the underwriters or issuers mislead the investors, their only legal recourse after the IPO would most likely be based on the statutory requirements of the Securities Exchange Act. For SPACs, however, investors who own the vehicle's shares on the record date for the de-SPAC vote may sue the directors and

[68] *Id.* at 36-37.
[69] *Id.* at 37
[70] *Id.* at 38.

officers under the Securities Act of 1933 and the Securities Exchange Act of 1934 for breach of corporate fiduciary duty or statutory liability.[71]

Regarding disclosure, it should provide transparency to all investors into the price they are paying to invest in the post-merger company and reveal their interest in the deal. Sponsors benefit from very high post-merger returns, while non-redeeming shareholders suffer negative returns. If the merger fails, the sponsor will lose its whole investment. The same is true for officials and directors, who frequently overlap with the individuals who manage the organization that sponsors the SPAC. As a result, the interests of sponsors and management are not always aligned with those of shareholders. Proxy filings for SPACs frequently contain explicit reports about sponsors and SPAC management having competing interests with shareholders.[72] They differ, however, in terms of specific transparency. Some SPACs are opaque regarding the sponsor's relationship with affiliates that make PIPE investments, ownership interests in the sponsor, and how the sponsor distributes the promotion among various individuals and institutions. SPAC proxy statements should be obliged to explicitly disclose how much the sponsor and the shell company management stand to gain if a merger is completed and how much they stand to lose If the vehicle Is liquidated. Furthermore, sponsors should be forced to publish the post-merger share price required to make the merger more profitable than a liquidation.[73]

B. Directors' Fiduciary Duties and Shareholder Approval in SPAC Transactions: Delaware's Legal Landscape

Delaware imposes the duties of care and loyalty upon the directors and officers of its corporation, which requires directors to avoid gross negligence when making business decisions. A court will only conclude that a director has breached his duty of care based on the substance of his decision if no rational person would make the decision under the circumstances. When a plaintiff concludes that a director has breached his duty of care or duty of loyalty, the Court applies the business judgment standard of review.[74] The duty of loyalty requires a director always to be

[71] *See* Duty, *supra* note 62, at 261.
[72] *See* Layne, *supra* note 70, at 39.
[73] *Id.* at 39.
[74] "The business judgment standard of review is the general assumption that the directors of the corporation have exercised judgment on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company. A plaintiff seeking to rebut the business judgment standard of review by showing a breach of the duty of care is required to show that the directors were grossly negligent by ignoring red flags or failing to use all the information available to them in making a business decision." *See* Duty, *supra* note 71, at 260.

completely loyal to the company. It also imposes the responsibility to avoid possible conflicts of interest, precluding a director from self-dealing or taking advantage of a corporate opportunity for personal gain.[75] When a director has breached his duty of loyalty, the Court applies the entire fairness standard.[76] Suppose directors wish to avoid carrying the burden of proof under the entire fairness standard of review. In that case, they can either have the transaction approved by a majority of the disinterested shareholders or have the transaction approved by a majority of the minority shareholders. If they obtain the successful vote of the shareholders, then the burden will shift to the plaintiff to show that the transaction was unfair.[77] *Corwin*[78] provides that a fully informed stakeholder vote will cleanse an otherwise conflicted transaction. This stockholder vote is distinguished by two qualifiers: "fully informed" and "uncoerced." Coercion is often not an issue in the SPAC environment; nonetheless, whether the vote is "fully informed" is crucial. According to the *Corwin* court, "if troubling facts regarding director behavior that would have been material to a voting stockholder were not disclosed, then the business judgment rule is not invoked.[79] "Furthermore, disclosures made in connection with the de-SPAC are significantly less regulated than those made with an IPO. There is no "Quiet Period."[80] as in a standard IPO, the SPAC is free to make future estimates of the post-merger firm. Financial estimates of performance that may condition the market or persuade investors to purchase shares are examples of forward-looking information. Because they are frequently deceptive and impossible to verify with precision, these projections are practically disallowed in the IPO.[81] Given the variations in transparency standards, shareholder approval will not

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[75] *See* Will Kenton, *Duty of loyalty: What it is, how it works, example*, INVESTOPEDIA (2023), https://www.investopedia.com/terms/d/duty-loyalty.asp (last visited Aug 9, 2023).

[76] "The entire fairness standard of review is a higher level of scrutiny than the business judgment rule and requires the Court to determine whether the transaction was fair and the product of fair dealing.102 While plaintiffs bear the burden of proof under the business judgment rule, directors bear the burden of proof under the entire fairness standard of review." *See* Duty, *supra* note 74, at 261-262.

[77] *Id.* at 262.

[78] The most important development in Delaware law during 2016 was arguably the courts' growing deference to stockholder approval. In 2015, the Delaware Supreme Court held in Corwin v. KKR Financial Holdings that a transaction subject to enhanced scrutiny under Revlon would instead be reviewed under the deferential business judgment rule after it had been approved by a majority of fully informed and uncoerced stockholders. *See* Steven Haas, *The Corwin effect: Stockholder approval of M&A Transactions*, THE HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (2017), https://corpgov.law.harvard.edu/2017/02/21/the-corwin-effect-stockholder-approval-of-ma-transactions/) (last visited Aug 9, 2023).

[79] *See* 25 A.3d at 312. *See also* Francis Pileggi, *Supreme Court Limits Application of Corwin Doctrine Delaware Corporate*, COMMERCIAL LITIGATION BLOG (2018), https://www.delawarelitigation.com/2018/08/articles /supreme-court-limits-application-of-corwin-doctrine/) (last visited Aug 9, 2023).

[80] Before a company's initial public offering (IPO), the quiet period is an embargo on promotional publicity mandated by the U.S. Securities and Exchange Commission (SEC). The quiet period prohibits management teams or their marketing agents from making forecasts or expressing opinions about their company's value. For publicly-traded stocks, the four weeks before the close of a business quarter is also known as a quiet period. *See* Will Kenton, *Quiet period: Definition, purpose, violation examples*, INVESTOPEDIA (2022), https://www.investopedia.com/terms/q/quietperiod.asp (last visited Aug 9, 2023).

[81] *See* Logan A. Krulish, *Defending The De-SPAC Merger: What Standard Of Review Applies?*, 74 BAYLOR LAW REVIEW (2022).

ensure a cleansing vote. When important information is hidden, the vote is not fully informed. "If there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote" or, in the case of a SPAC, in deciding whether to redeem, information is material.[82]

Contrarily to the entire fairness standard, the business judgment rule is particularly generous to director-defendants. The rule indicates that "in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company."[83] When deciding whether the business-judgment requirement was met, "the court merely looks to see whether the business decision made was rational in the sense of being one logical approach to advancing the corporation's objectives." Only "when a decision lacks any rationally conceivable basis" will a court "infer bad faith and breach of duty."[84] *Smith v. Van Gorkom*[85] was a rare case in which this high bar on plaintiffs was met. *Van Gorkom's* directors set the merger price without doing any financial study or getting a proper appraisal. No director reviewed the merger agreement or wrote a description of the contents.[86] The directors relied entirely on the assertions given to them. Even with the assistance of the business judgment rule, the Court concluded that the director defendants had breached their fiduciary duty "by their failure to make true and correct disclosures of all information they had, or should have had, material to the transaction submitted for stockholder approval."[87] So, although the business judgment rule is often seen as a complete bar to a plaintiff's success, there are certain facts that, if shown, can overcome the plaintiff's steep burden. Commentators have been arguing how the business judgment rule applies in blank-check companies' contexts, relating to the fact that, first, the entire fairness necessitates a "disabling conflict." The sponsor's promotion falls short of that threshold, and second that even if there is a conflict, a fully informed stockholder vote would remove any conflicts of interest from the de-SPAC.[88] The first line of defense against the entire fairness standard is to demonstrate that there is no conflict at all. After all, unless there Is a disabling conflict of interest, the business judgment rule applies. "Delaware courts classify conflicted controller transactions involving entire fairness into two

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[82] *See* Zachary A. Paiva, *Quasi-Appraisal: Appraising Breach of Duty of Disclosure Claims Following "Cash-Out" Mergers in Delaware*, 23 FORDHAM JOURNAL OF CORPORATE AND FINANCIAL LAW (2017).
[83] *See* AJ Harris, *SPAC The Deck: Why the Control Exerted by SPAC Sponsors Subjects De-SPAC Transactions to Entire Fairness Review*, 27 FORDHAM JOURNAL OF CORPORATE AND FINANCIAL LAW (2022).
[84] *See* Kevin C. Logue, Kevin P. Broughel, Zachary Melvin, *Delaware Court of Chancery dismisses duty of oversight and care claims against directors,* PAUL HASTINGS LLP (2023), https://www.paulhastings.com/insights/client-alerts/delaware-court-of-chancery-dismisses-duty-of-oversight-and-care-claims (last visited Aug 9, 2023).
[85] *The Smith v. Van Gorkom* decision is significant because it established the "duty of care" standard for corporate directors in Delaware. This standard requires directors to exercise informed business judgment and to conduct a reasonable investigation before making important corporate decisions. If directors fail to meet this standard, they can be held personally liable for breaching their fiduciary duties. *See Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985)
[86] *See* Duty, *supra* note 77, at 262.
[87] *See Smith v. Van Gorkom, supra* note 85.
[88] *See* Duty, *supra* note 86, at 263.

categories: 'where the controller stands on both sides' and 'where the controller competes for consideration with the common stockholders.'"[89] The first category, in which a controller acts on both sides, is less prevalent in the SPAC setting because it would necessitate the fiduciary having some connection to the target. However, the SPAC structure may be entangled in the second category, in which the controller fights for consideration with the common stockholders.[90] Since directors and shareholders are interested in the transaction, which is often aligned as everyone wants to get the most value from their shares, it is not enough for a shareholder to claim that the directors had a conflict of interest. Rather, the shareholder must demonstrate that a majority of the directors were subjected to a debilitating conflict that impairs a director's judgment. In the context of a SPAC, sponsors are allocated "founders' units,"[91] which challenging stockholders may say creates a debilitating conflict.

However, this reasoning overlooks the fact that the conflict must be so serious that the directors' judgment is rendered ineffective in the specific transaction. If any benefit were sufficient to trigger total fairness, practically every transaction would be susceptible. Delaware courts have consistently found that an incidental advantage exclusive to directors does not automatically violate the duty of loyalty. In other words, the plaintiff-shareholder must be prepared to identify specific and material conflicts that potentially cross the line into "disabling conflicts." If, on the other hand, plaintiff- shareholder can demonstrate serious and specific facts indicating a debilitating conflict, defendant-directors are not completely out of luck.[92] A conflict of interest would overcome the presumption of the business judgment rule, but this would not permanently remove the presumption. Even if a crippling conflict of interest exists, an uncoerced and properly informed stockholder vote will "cleanse" the conflict, reinstating the business judgment rule.[93] A reverse merger requires a stockholder vote to be approved. As previously stated, a stockholder can vote against the transaction, redeem their shares, and receive their money back under the SPAC model. As a result, every de-SPAC transaction will be a "unanimous" vote because the only surviving stockholders will be those who choose to leave their money in the fund.[94] This serves as a significant safeguard for SPAC management because they will almost always have a "cleansing vote." While it may appear that *Corwin* will always use the business judgment rule in favor of the defendants, this is an incomplete argument. *Corwin* does not want just any stockholder vote but rather one "fully informed." The SPAC

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[89] *See Smith v. Van Gorkom, supra* note 87.
[90] *Id.*
[91] "Founders stock " refers to the equity given to an organization's early founders. This type of stock differs in a few important ways from common stock sold in the secondary market. Key differences are that founders' stock can only be issued at face value and comes with a vesting schedule." *See Founders stock*, CORPORATE FINANCE INSTITUTE (2022), https://corporatefinanceinstitute.com/resources/equities/founders-stock/) (last visited Aug 9, 2023).
[92] *See* Duty, *supra* note 88, at 263-264.
[93] This is often referred to as a "cleansing vote" or "*Corwin* vote."
[94] *See* Krulish, *supra* note 81, at 510.

must give extensive disclosures to be considered a "fully informed" shareholder vote on the transaction. *Corwin* can safeguard the de-SPAC, but SPAC directors must be prepared to show that proper disclosures to investors were made prior to their approval, including disclosures of their conflicts of interest.[95]

C. In Re MultiPlan Corp. S'holders Litig.

In *Re MultiPlan Corp. Shareholders Litigation*, the Court of Chancery's pivotal decision was to largely deny motions seeking the dismissal of claims challenging a de-SPAC merger.[96] This landmark ruling hinged on two critical determinations that shaped its outcome. Firstly, the court established the application of the entire fairness standard of review to the proceedings. Secondly, it categorically identified the nature of the claims as direct rather than derivative in nature. This decision, noteworthy for its ramifications in the realm of special purpose acquisition companies (SPACs), was predicated upon a meticulous examination of the alleged failure to disclose material information. The court made it explicitly clear that its ruling was limited in scope and did not pass judgment on the hypothetical scenario where adequate disclosure was provided, and the allegations primarily revolved around the potential conflicts of interest inherent in the SPAC structure. It is imperative to underline that the court's conclusion was tethered to the specific context of alleged materially misleading disclosures.[97]

To contextualize this legal discourse, it is pertinent to delve into the background of Churchill Capital Corp. III, a Delaware Corporation. Established in October 2019, it assumed the role of a special purpose acquisition company, or SPAC. The SPAC's sponsorship was vested in Churchill Sponsor III, LLC, a corporation under the control of Michael Klein. The sponsor, in exchange for its "founder" shares, infused $25,000 into the SPAC, equating to a 20% ownership stake in the company's existing stock. Additionally, it acquired 23 million warrants at the price of $1 per warrant, which were termed as the "Private Placement Warrants," with an exercise price of $11.50 per warrant.[98] It is noteworthy that Michael Klein played a pivotal role in shaping the SPAC's board of

[95] *Id.* at 510.
[96] *See In re Multiplan Corp.*, C. A. 2021-0300-LWW (Del. Ch. Jan. 3, 2022)
[97] *See* Krulish, *supra* note 95, at 511-512.
[98] A private placement is a sale of stock shares or bonds to pre-selected investors and institutions rather than publicly on the open market. It is an alternative to an initial public offering (IPO) for a company seeking to raise capital for expansion. The U.S. Securities and Exchange Commission regulates private placements under Regulation D. *See* Akhilesh Ganti,

directors during its initial public offering, owing to his ownership of the sponsor. As an incentive, the directors were remunerated with financial stocks in the sponsor.[99] A hallmark feature of SPACs is their inherent structure, where founder shares undergo conversion into Class A common stock on a one-to-one basis during a business merger. The SPAC's post-IPO timeline was constrained to 24 months for the consummation of a business combination. Failure to achieve this within the stipulated "completion window" would render the founder shares and Private Placement Warrants effectively worthless. These distinctive characteristics underscore the typical composition of a special purpose acquisition firm.[100] Prior to the de-SPAC merger, the board of Churchill Capital Corp. III presented *MultiPlan* as their prospective target[101], asserting that they had diligently conducted an extensive due diligence process on the target company. According to the proxy statement, this due diligence initiative furnished Churchill's management with comprehensive insights into *MultiPlan's* business operations, financial health, and historical performance. Churchill further claimed to have engaged in direct interactions with senior leaders of several major *MultiPlan* clients to gain a deeper understanding of the quality and nature of these relationships, as well as the competitive landscape within which *MultiPlan* operated. On the surface, it appeared that Churchill had indeed conducted a thorough and equitable due diligence process concerning *MultiPlan*. However, what would later transpire left stockholders in a state of astonishment. It came to light that MultiPlan was heavily reliant on a single customer, accounting for a substantial 35% of its revenue, and this customer was on the brink of severing ties with *MultiPlan* to explore alternative competitive platforms. This crucial piece of information seemingly contradicted Churchill's claims of having engaged with "several large *MultiPlan* customers" during their due diligence process. The stark contrast between the information disclosed and the subsequent revelation of *MultiPlan's* precarious situation undoubtedly raised concerns and questions among stockholders.

In essence, the Court of Chancery's decision in the *Re MultiPlan Corp. Shareholders Litigation* case marked a significant milestone in the legal landscape surrounding SPACs, particularly in the context of disclosure obligations and potential conflicts of interest. This ruling shed light on the complex intricacies of de-SPAC mergers and underscored the importance of transparent and

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Private placements: Definition, example, pros and cons, INVESTOPEDIA (2023), https://www.investopedia.com/terms/p/privateplacement.asp (last visited Aug 9, 2023).

[99] *See In re Multiplan Corp., supra* note 96.

[100] *See* Krulish, *supra* note 97, at 512-513.

[101] MultiPlan, Inc. provides healthcare cost management solutions. The Company specializes in providing claim cost management solutions for controlling the financial risks associated with medical bills. MultiPlan also offers primary preferred provider organization (PPO) network solutions for accessing hospitals, ancillary care facilities, and healthcare professionals in the United States. *See Multiplan Inc.*, BLOOMBERG LAW, https://www.bloomberg.com/profile/company/295472Z:US?in_source=embedded-checkout-banner (last visited Aug 9, 2023).

accurate disclosure in such transactions. The case exemplifies the evolving legal scrutiny surrounding SPACs and their compliance with fiduciary duties, offering valuable insights into the intricacies of corporate governance in the dynamic world of special purpose acquisition companies.

Nonetheless, Churchill's management failed to recognize that the loss of this customer ultimately ruined MultiPlan's financial condition, causing the SPAC's stock price to fall. Before the de-SPAC merger, MultiPlan's revenue had declined for three years. Churchill, not to be deterred, submitted its financial predictions to support the board's recommendation of the corporate merger. These forecasts showed a sudden increase in revenue in the future.[102] This mysterious growth was followed by Churchill's assurances that the estimates were realistic in light of their "extensive due diligence." An impartial third-party valuation or fairness judgment to objectively confirm these guarantees was conspicuously absent from these disclosures. An independent research firm produced a report 35 days after the purchase was completed identifying MultiPlan as a fast-declining business and pointing out several factors hidden or camouflaged in the proxy. Such information included the name and loss of MultiPlan's largest client, the fact that this client was forming a competitor and that MultiPlan's revenue was declining even with this customer. The stock of the post-de-SPAC firm sank to a low of $6.27 per share the next day, 37.3% below the IPO price of $10 per share. This plummeting stock price meant that investors suffered catastrophic losses while the sponsor stood to profit hundreds of millions of dollars for its initial $25,000 donation. The plaintiffs filed direct claims against certain Churchill directors, offers, and its controlling stockholder for violating fiduciary duty.[103] The defendants requested to dismiss the complaint for failure to allege a claim upon which relief might be granted under Court of Chancery Rule 12(b)(6).[104] It is crucial to note for our purposes that the criteria underlying this motion to dismiss states that "dismissal is inappropriate unless the 'plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.'"[105] All reasonable inferences were drawn in favor of the plaintiffs based on their well-pleaded factual accusations. Thus, the plaintiffs will have to prove these facts to be true at a later stage in the litigation. The Delaware Court of Chancery denied the defendant's motion to dismiss on January 3, 2022, ruling that complete fairness applied under alleged facts. The Court decided that the possible conflict between the defendants and public investors was sufficient to meet Rule 12(b)(6)'s "reasonably conceivable" criterion. Vice Chancellor Will observes that "the plaintiffs' claims are

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[102] *See* Krulish, *supra* note 100, at 513.
[103] *Id.* at 514.
[104] The Court of Chancery Rule 12(b)(6) allows a defendant to request the dismissal of a case if the plaintiff's complaint, even when taken as true, doesn't establish a valid legal claim. This rule aims to quickly eliminate cases with no legal basis, saving time and resources. If successful, the case is dismissed without proceeding to further legal steps. *See* Rule 12 Defenses and Objections When and How Presented by Pleading or Motion for Judgment on Pleadings.
[105] *See In re Multiplan Corp., supra* note 99.

viable not simply because of the nature of the transaction,"[106] but also because "the Complaint alleged that the director defendants failed, disloyally, to disclose information necessary for the plaintiffs to exercise their redemption rights knowledgeably." For the defendants' request to dismiss, the claims "sufficiently gave rise to an overall lack of fairness."[107]

Although the Court's decision is just a denial of a motion to dismiss and not a definitive decision on the merits, it is a crucial step forward for blank-check companies and their sponsors. *MultiPlan* states, "If public stockholders, in possession of all material information about the target, choose to invest rather than redeem," a stockholder's redemption rights will be severely harmed. Without explicitly doing so, the Court inferred that full disclosures would purify an otherwise conflicted transaction,[108] similar to a *Corwin* vote in the typical merger scenario. Regarding the definition of material information,[109] a key passage in the matter, "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote,"[110] or, in the case of a SPAC, in deciding whether to redeem, information is material.[111] A thorough disclosure will ensure that public shareholders are "fully informed," and their vote will be sufficient to achieve a clean result. It's difficult to conceive a scenario where defendants may point to a thorough proxy statement and a shareholder's claim survives. *Multiplan's* blunder demonstrates that thorough due diligence is essential to full disclosures. Any uncovered passage in the preparation of the proxy statement will certainly be discovered. Plaintiffs' claims hinge solely on the premise that fiduciaries were interested, leaving the claim insufficient to invoke entire fairness after turning over every stone, recording such discoveries, and providing comprehensive disclosures. As a result, the business judgment rule will be applied to any de-SPAC merger that "was rational in the sense of being one logical approach to advancing the corporation's objectives."[112] Indeed, "only when a decision lacks any rationally conceivable basis will a court infer bad faith and a breach of duty."[113]

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[106] *See* Krulish, *supra* note 103, at 514-515.
[107] *Id.* at 515.
[108] In Delaware law, a "conflicted transaction" occurs when a business deal involves individuals with personal interests or loyalties that might compromise impartial decision-making. These conflicts can lead to decisions prioritizing personal gain over the company's best interests.
[109] In Delaware's legal context, "material information" refers to important facts that could influence an investor's decision about buying or selling a company's securities. It's information that, if disclosed, could impact the securities' market price. Accurate material information is a legal obligation to ensure transparency and fairness in the financial markets. Directors and officers must fulfill their duty to provide such information to shareholders and investors. *See* Richard A. Booth, *The Two Faces of Materiality*, VILLANOVA LAW/PUBLIC POLICY RESEARCH PAPER NO. 2013-3048 (2013).
[110] *See* Sean J. Griffith, The Honorable Andre G. Bouchard, *22 The Sixteenth Annual Albert A. DeStefano Lecture on Corporate, Securities, Financial Law*, FORDHAM CORPORATE LAW CENTER (2017).
[111] *See* Krulish, *supra* note 107, at 516.
[112] *Id.* at 516.
[113] *See* Logue, *supra* note 84.

The disclosures in *MultiPlan* were compared to those in the context of a tender offer and described as "unilateral and not counterbalanced by opposing points of view." The proxy for MultiPlan "was not accompanied by an independent third-party valuation or fairness opinion." The SPAC's management prepared the financial analysis included in the proxy with the assistance of The Klein Group, a wholly-owned subsidiary of the controlling stockholder. Certainly, SPAC directors may participate in information preparation without raising suspicion. However, when it comes time for directors to demonstrate their objectivity, support from an impartial and unbiased authority will carry some weight.[114] As evidence of good faith diligence, the Delaware Supreme Court almost always demands a fairness opinion.[115] In other words, while Delaware law does not need a fairness opinion, the absence of such a requirement will create "no defense" for directors if the board does not get it right. In the case of *MultiPlan*, not only was there "no defense" for the directors, but the apparent financial advisor was identified as a defendant in the litigation for aiding and abetting breaches of fiduciary duty. As a result, at the pleading stage, the controlling stockholder's knowledge was attributed to the financial advisor. Retaining The Klein Group as a financial advisor was not only unproductive, but it contributed to the judgment that the de-SPAC merger was a conflicted transaction.[116] Because there were no claims that The Klein Group intentionally withheld information or promoted any failure to report, the *MultiPlan* defendants maintained that knowing participation in any breach could not be shown. As a result, the move to dismiss the aiding and abetting claim was refused. Independent third-party fairness evaluations are not required under Delaware law. Nevertheless, it will always provide a helping hand when the chips are down.

Furthermore, if the SPAC seeks a third-party fairness opinion, the third party should be independent of the SPAC directors. Otherwise, a conflicted advisor may become a party to the action, bolstering the accusations against directors. An impartial third-party fairness evaluation serves as an objective source of good faith and fair dealing for directors.[117] Similarly, Delaware law does not require that these SPAC directors provide competing views on the target company to stockholders. However, like fairness opinions, competing ideas will balance a proxy statement otherwise riddled with optimistic performance expectations. Indeed, disclosures that are "unilateral and not counterbalanced by opposing points of view" will impose "an even more exacting duty to disclose

[114] *See* Krulish, *supra* note 112, at 516-517.
[115] A "fairness opinion" in Delaware law is an evaluation provided by financial experts to determine if the terms of a transaction, like a merger, are financially reasonable. It helps ensure fairness, especially in situations involving potential conflicts of interest. While not legally binding, it assists boards in fulfilling their duty to act in shareholders' best interests. It considers financial data and market conditions to assess the transaction's fairness objectively. *See* Blake Rohrbacher, John Mark Zeberkiewicz, *Fair Summary: Delaware's Framework for Disclosing Fairness Opinions*, 63 THE BUSINESS LAWYER (2008).
[116] *See* Krulish, *supra* note 114, at 518.
[117] *Id.* at 518-519.

upon fiduciaries in possession of the information."[118] In *MultiPlan*, for example, the proxy omitted to disclose that the target's major client was working on a competitive alternative to the target's company that would eliminate the target's need. This made the target less appealing. When it came time to accept the merger and, more significantly, determine whether to redeem their shares, many public stockholders might hold that fact against the de-SPAC. Nonetheless, SPAC directors should risk redemption by disclosing this adverse information than for a research firm to air the target's dirty laundry in a published study within weeks of the merger.[119]

The approval of a special independent committee,[120] similar to the *Corwin* cleansing vote, can purify an otherwise conflicted transaction. To approve the transaction, a SPAC may designate one or more directors who do not own any founder shares and are otherwise unaffiliated with the sponsor to serve as a special independent committee. If an informed stockholder vote fails, this process could serve as a safety net.[121] In *MultiPlan*, the plaintiffs claimed that five of the SPAC's directors were tied to the controlling stockholder "because he had appointed them to serve as directors of other... SPACs, providing them founders shares with the potential for more multi-million-dollar paydays.'" One of those directors was also the controlling shareholder's brother. It was in the best interests of these directors to keep the controlling investor content. Although these directors did not claim to be an "independent committee," these are the same facts that would be utilized to decide whether or not a committee was actually independent. As a result, an independent committee is preferably composed of disinterested directors who are unaffiliated with any other entity associated with the interested directors.[122]

One reason the business judgment rule was rebutted in *MultiPlan* was that the "complaint 'alleged facts supporting a reasonable inference that there were not enough sufficiently informed, disinterested individuals who acted in good faith when taking the challenged actions to comprise a board majority."[123] SPAC directors should ensure an unaffiliated, disinterested board composition, similar to the above debate about an independent committee. "A director who is subject to the

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[118] *See In re Multiplan Corp, supra* note 105.
[119] *See* Krulish, *supra* note 117, at 519.
[120] "Special committees often play a critical role in conflict transactions, such as transactions involving controlling stockholders, corporate insiders or affiliated entities, including "going private" transactions, or purchases or sales of assets or securities from or to a related party. Such "conflict transactions" raise complicated legal issues and, in today's environment, a high likelihood of litigation. A well-functioning and well-advised committee can offer important protections to directors and managers in after-the-fact litigation." *See* Andrew Brownstein et al., *Use of special committees in Conflict Transactions*, THE HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (2019), https://corpgov.law.harvard.edu/2019/09/23/use-of-special-committees-in-conflict-transactions/ (last visited Aug 10, 2023).
[121] *See* Krulish, *supra* note 119, at 521.
[122] *Id.* at 521-522.
[123] *See In re Multiplan Corp, supra* note 118.

interested parties dominion or is beholden to that interested party' lacks independence."[124] A sensible board will diversify its membership to avoid an entire fairness review. The controlling shareholders of *MultiPlan* appointed each of the directors to the board and have the unilateral authority to remove them. As previously stated, five of these directors were also appointed to serve on the boards of other SPACs, one of whom was the controlling stockholder's brother. The Court of Chancery determined in *Beam v. Stewart*[125] that a director has a "material interest in her own continued employment" and that the controller's capacity to influence that employment can cast doubt on an appointed director's independence.[126] While it is less than ideal for SPAC directors, it is probably in their best interests to avoid nominating friends, relatives, and connections to the board of directors. This does not imply that every board must consist entirely of strangers. However, when a director is "subject to the interested parties dominion or beholden to that interested party," they lack independence.[127]

Protective clauses,[128] which are common in most financing agreements, may be incorporated as an incentive for performance and to stabilize the stock price. In the context of a SPAC, funds may include a "lock-up" provision or specify that some sponsor shares will invest and then revest subject to specified conditions. These rules will impose restrictions on directors, discouraging them from completing a value-decreasing de-SPAC merger and immediately dumping their shares. Furthermore, by subjecting a fraction of shares to vesting restrictions, directors are incentivized to improve company performance post-merger.[129] A lock-up provision prevents shareholders from selling their shares for a set period of time, typically six to thirty-six months. With this restriction, stockholders are saddled with "bad shares" whose value is falling. This is especially important in the SPAC setting because the sponsor is now incentivized to choose a long-term rather than a short-term target. This limitation, however, may be illusory. Because the shares were obtained for pennies on the dollar in the first place, waiting to liquidate at a lower price may still result in big gains. Another way to boost performance is through vesting conditions.[130] These provisions will place limitations on corporate performance, also called "milestones," before the shares "vest," which means they will not be held until the condition is met. In most cases, the milestone is some gauge of financial performance.

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[124] *Id.*
[125] Holding that directors' sales of stock in the company did not "place them in a position inimical to their duties to the Company," and remarking that "[w]ere [the court] to decide otherwise, directors of every Delaware corporation would be faced with the ever-present specter of suit for breach of their duty of loyalty if they sold stock in the company on whose Board they sit." *See Beam v. Stewart*, 845 A.2d 1040 (Del. 2004).
[126] *See* Krulish, *supra* note 122, at 522.
[127] *Id.* at 523.
[128] "Protective clauses" in Delaware law are contractual provisions that safeguard specific interests or outline conditions in various business agreements. They can cover shareholder rights, loan conditions, merger terms, partnership rules, or convertible security terms. These clauses aim to ensure fairness, security, and compliance in different business scenarios.
[129] *See* Krulish, *supra* note 127, at 522.
[130] *Id.* at 521.

Because the sponsor frequently has a substantial investment in the public firm, they are more motivated to improve value and meet these standards. The *MultiPlan* SPAC included a lock-up provision as well as vesting conditions. An eighteen-month lock-up period applied to the sponsor's converted shares in the post-merger entity. Furthermore, approximately 45% of the sponsor's share would invest and revest after the merger if the public company's stock price exceeded $12.50 for any forty trading days in a sixty-day period.[131] According to *MultiPlan*, protective clauses such as a lock-up or vesting conditions are insufficient to save the day on their own; yet they are significant enough to demand debate. Prudent directors will continue to include these safeguards to demonstrate "good-faith decision-making" and performance prioritizing. With more skin in the game, defendant directors can use these clauses to demonstrate that their interests coincide with those of other public shareholders.[132]

D. Looming SEC Regulations

However, much had changed from a regulatory standpoint in the U.S. under the Biden administration by the end of 2020, and since April 2021, business combinations have fallen following the regulator's warnings. In March 2021, the SEC issued a particular warning about celebrities involved in SPACs and launched an investigation into how underwriters manage risks in such transactions. Following that, it raised accounting and reporting concerns about warrants issued by shell companies, advising that they be treated as liabilities rather than equity or assets of the company. Although the later warning was issued without an implementation date or legal force, it implicitly required SPAC sponsors to restate and resolve the accounting characterization of warrants as liabilities.[133] The SEC's new approach was reinforced in September 2021 by what may be described as "regulation by enforcement."[134] Prof. Gary Gensler's statement as the new SEC Chair under the Biden administration is the most visible example of this new approach.[135] When he spoke of the need

[131] *Id.* at 523-524.
[132] *Id.* at 526.
[133] *See* D'Alvia, *supra* note 55, at 227.
[134] "Regulation by enforcement in the context of the SEC and SPACs means using enforcement actions and legal cases to define and clarify rules and standards. It involves taking legal actions against violators to establish regulatory expectations and set precedents in areas where formal rules might not yet exist. This approach helps provide guidance and transparency in rapidly evolving industries like SPACs." *See* Chris Brummer, Yesha Yadav, David T. Zaring, *Regulation by Enforcement, Forthcoming*, SOUTHERN CALIFORNIA LAW REVIEW (2023).
[135] *See* Gary Gensler, *Statement on Proposal on Special Purpose Acquisition Companies (SPACs), Shell Companies, and Projections,* SEC.GOV (2022), https://www.sec.gov/news/statement/gensler-spac-20220330 (last visited Aug 10, 2023).

for stronger investor protection, he equated SPACs with Bitcoin and set an agenda to implement more enforcement measures. High-profile enforcement actions support this approach launched that same year against companies such as Momentus Inc.[136] and Nikola Corporation.[137] As a result, SPACs have already begun to cancel their planned IPOs for the beginning of January 2022.[138] Shareholder lawsuits are also rising, particularly when SPAC sponsors fail to fulfill their pledges and breach their fiduciary duties. This element is addressed, for example, by the new SEC SPAC reform, which was launched in March 2022 and offers specialized disclosure and financial statement requirements for sponsors to disclose any potential conflicts of interest and dilution in connection with the company's public listing and transaction. Furthermore, when a shell company files a registration statement for a de-SPAC transaction, the SEC wants to make the target firm a co-registrant. This is also done to improve the target company's disclosures to investors.[139] Regarding forward-looking statements and the overvaluation of target companies, the SEC proposes to amend the Private Securities Litigation Reform Act of 1995 ('PSLRA'). Indeed, the option to include forward-looking financial projections in a proxy or registration statement rather than historical financial results distinguishes a business combination from a regular IPO. Financial estimates regarding a de-SPAC now fall within the PSLRA's definition of forward-looking statements. The proposed rule would make safe harbor liability in disclosure papers filed by special purpose vehicles inaccessible.[140] In other words, the SEC would want to assert that the business combination transaction is the vehicle's target IPO, and one of the proposed rules would classify the transaction as a securities offering to existing SPAC investors. This indicates that the business combination should be recognized as a securities sale, necessitating filing a registration statement under the Securities Act of 1933, as amended. This is a positive move if allowed, but it is also potentially deceptive and false because SPACs are the inverse of the

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[136] "On July 13, 2021, the Commission instituted and simultaneously settled cease-and-desist proceedings against Momentus, Inc., Stable Road Acquisition Corp., SRC-NI Holdings, LLC, and Brian Kabot. In the Order, the Commission found that Momentus, a privately held space company that aspires to provide space infrastructure services, and its former Chief Executive Officer Mikhail Kokorich, made materially false statements, omitted to state material facts, and engaged in other deceptive conduct as Momentus sought to go public through a business combination with Stable Road Acquisition Corp., a publicly traded special-purpose acquisition company. Specifically, the Commission found that Momentus' business plans and multi-billion dollar revenue projections, as provided to investors and described in SRAC's Form S-4 registration statement/proxy statement filed in connection with the anticipated merger, were materially false and misleading." *See In the Matter of Momentus, Inc., et al. Admin*. Proc. File No. 3-20393, SEC.GOV (2023), https://www.sec.gov/enforcement/information-for-harmed-investors/momentus (last visited Aug 10, 2023).

[137] "On December 21, 2021, the Commission instituted and simultaneously settled cease-and-desist proceedings against Nikola Corporation. In the Order, the Commission found that from at least March 2020 through September 2020, Nikola, a publicly traded zero-emissions transportation system provider, misrepresented material to investors about key aspects of its business. According to the Order, through misrepresentations made by its CEO and later Executive Chairman, Trevor R. Milton, Nikola misled investors about, among other things, its technical advancements, in-house production capabilities, reservation book, and financial outlook, all aimed at inflating and maintaining Nikola's stock price." *See In the Matter of Nikola Corporation Admin.* Proc. File No. 3-20687, SEC.GOV (2023), https://www.sec.gov/enforcement/information-for-harmed-investors/nikola (last visited Aug 10, 2023).

[138] *See* D'Alvia, *supra* note 133, at 228.

[139] *Id.* at 229.

[140] *Id.* at 229-230.

traditional IPO approach. Investment wants a functioning firm rather than an operating company seeking investment.[141] As a result, because it serves a different objective, a shell company cannot be viewed as a competitor or alternative to a standard public listing. A SPAC, in particular, is an alternative acquisition model that is not necessarily focused on reverse takeovers or mergers and can be qualified under the broader multi-level' SPAC definition, which can include acquisition of individual assets, cash-out deals, distressed M&A, financing, and so on.[142] Finally, regulators wish to broaden the meaning of statutory 'underwriter' and liability in a business combination transaction. It is recommended that the underwriter qualification under Section 2(a)(11) of the Securities Act[143] should be granted to anybody who assists a listing through a special purpose vehicle, facilitates any linked financing transaction, or otherwise engages in the de-SPAC transaction.

The SEC's activism has Influenced Investor sentiment, as the volume of redemptions has skyrocketed since the beginning of 2022. SPAC sponsors have taken note of this trend: just 17 special purpose vehicles listed in the U.S. raised $2.2 billion in the second quarter of 2022, and no new SPAC raised money in the U.S. in July 2022 for the first time in five years. Important transactions, such as Forbes, were abandoned, and well-known investment banks resisted financing new SPAC offerings and acting as consultants in these transactions, owing primarily to the potential expansion of liability and its retroactive effect.[144] This is causing an enormous disturbance in the market, particularly in the completion of de-SPAC transactions. This is further supported by the SEC's plan to avoid defining SPACs as investment corporations under the Investment Act 1940 (U.S.).[145] This confirms that these companies are primarily designed as 'backdoor' offerings, or at the very least as alternatives to typical IPOs, rather than alternative acquisition models. According to the SEC, the SPAC's main special purpose must be limited to the de-SPAC transaction, which is the target public listing. The typical business model of SPACs, according to the U.S. financial authority, is this function. This indicates that if a SPAC's' special purpose' differs from the standard business model as specified by the

[141] *Id.* at 230-231.
[142] *Id.* at 232.
[143] "Section 2(a)(11)of the Securities Act defines an underwriter as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking." *See* Securities Act, Section 2(a)(11)(1933).
[144] *See* D'Alvia, *supra* note 142, at 233.
[145] Section 3(a)(1) of the 1940 Act defines the term investment company to mean "any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Section 3(a)(1)(C) of the 1940 Act defines "investment company" to mean any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. *See* Elizabeth G. Miller, *Holding Companies and the Application of Rule 3a-2 under the Investment Company Act*, SEC.GOV (2017), https://www.sec.gov/investment/im-guidance-2017-03.pdf (last visited Aug 10, 2023).

regulators, it may be regulated differently this time around by permitting a precise definition of shell companies as investment companies.[146]

IV. EUROPEAN SPAC LANDSCAPE

A. Regulatory Dynamics, Investor Safeguards, and Market Dynamics

The emergence of SPACs represents a relatively recent and evolving phenomenon within the European financial landscape. When juxtaposed with the United States, it becomes apparent that Europe has witnessed a considerably lower number of SPAC listings and IPO revenues. This divergence in SPAC activity underscores the distinct dynamics at play within the European financial ecosystem and calls for an in-depth examination of the factors contributing to this variance. In the year 2021, the European SPAC landscape saw the listing of 38 SPACs, collectively mobilizing approximately €7 billion in capital. Notably, the Netherlands emerged as a significant contributor to this European SPAC surge, spearheading the way with 16 SPAC offerings in the same year, amassing a substantial €3.7 billion in capital. The ascendancy of the Netherlands in this regard is noteworthy and underscores its pivotal role as a hub for SPAC activity in Europe. According to the Netherlands Authority for the Financial Markets (AFM), this impressive feat implies that by the year 2021, more than 40% of all SPACs registered on European stock markets found their listing on Euronext Amsterdam,[147] solidifying the city's position as a prominent player in the European SPAC landscape. While it is evident that Europe has lagged behind the United States in terms of the volume of public listings and capital raised through business combination operations, it is essential to recognize the dynamic shifts that have transpired in recent times. Since the onset of the COVID-19 pandemic, Europe has witnessed a remarkable transformation in its SPAC landscape. The number of SPAC deals within Europe has tripled, illustrating a notable surge in entrepreneurial and investor interest in this financial instrument. Additionally, the listing volume generated through SPACs in Europe has escalated eightfold, signifying a substantial increase in the capital mobilized through these vehicles.[148]

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[146] *See* D'Alvia, *supra* note 144, at 233-234.

[147] "Euronext is the largest stock exchange group in Europe, and one of the largest in the world. It was originally created via the mergers of the Amsterdam, Paris, and Brussels stock exchanges in 2000. Over the years, it has since merged with several other exchanges, most notably the New York Stock Exchange (NYSE), before itself being acquired by the Intercontinental Exchange (ICE). In 2014, Euronext was spun off to become an independent entity once again." *See* Gordon Scott, *Euronext: What it is, timeline, regulations,* INVESTOPEDIA (2023), https://www.investopedia.com/terms/e/euronext.asp (last visited Aug 10, 2023).

[148] *See* D'Alvia, *supra* note 146, at 234.

However, there isn't yet an harmonized secondary legislative system for shell companies in Europe, such as a regulation or a directive that sets a certain legal discipline. The European Securities and Markets Authority ('ESMA') once issued recommendations on the Alternative Investment Fund Managers Directive ('AIFMD')[149] without mentioning special purpose acquisition vehicles or clarifying whether the AIFMD can be applied to them. It is reasonable to believe that a SPAC may fall within the scope of the definition and qualify as an alternative investment fund if the purpose is to invest the gross proceeds of its issuance in other (short-term) financial instruments.[150] According to the authorities' guidelines, a UCITS[151] does not have a general commercial or industrial purpose, pools together capital raised from its investors for investment to generate a pooled return for those investors, and its unit holders, as a collective group, have no day-to-day discretion or control. According to this definition, SPACs can be considered as collective investments in transferable securities because they are cash-shell companies that do not pursue industrial goals but instead seek to raise funds through an IPO process, and they are directed by managers rather than unit holders, who do not have direct control or discretion over the firm. However, this is one conceivable interpretation under the European Union's current financial law framework, which has yet to be implemented. This interpretation similarly compares SPACs to private equity funds, at least in terms of structure, but they differ in some ways, such as their dependence on equity rather than debt.[152] However, the prudent European interpretations of SPACs ended in July 2021, when the ESMA issued its first public remark on these shell companies, providing grounds to put Europe under what is called a regulation by objectives.[153] Indeed, the public statement aims to encourage consistent prospectus disclosure and to protect SPAC investors, with a particular emphasis on retail investors. It further promotes regulatory consistency among national regulators in Europe.[154]

The majority of the authorities' comments are based on existing prospectus disclosure rules. Regarding disclosure requirements, the prospectus law provides a unified legal framework across the

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[149] "The Alternative Investment Fund Managers Directive (AIFMD) is a European Union (E.U.) regulation that applies to alternative investments, many of which were left largely unchecked prior to the 2008-09 global financial crisis. The directive sets standards for marketing around raising private capital, remuneration policies, risk monitoring, reporting, and overall accountability." *See* Adam Hayes, *Alternative investment fund managers directive (AIFMD)*, INVESTOPEDIA (2021), https://www.investopedia.com/terms/a/alternative-investment-fund-managers-directive-aifmd.asp (last visited Aug 10, 2023).

[150] *See* D'Alvia *supra* note 148, at 234-235.

[151] "The Undertakings for the Collective Investment in Transferable Securities (UCITS) is the European Commission's regulatory framework for managing and selling mutual funds. UCITS funds can be registered and sold in any country in the European Union using unified regulatory and investor protection requirements." *See* James Chen, *Undertakings for collective investment in transferable securities*, INVESTOPEDIA (2023), https://www.investopedia.com/terms/u/ucits.asp (last visited Aug 10, 2023).

[152] *See* D'Alvia, *supra* note 150, at 235.

[153] "Regulation by objective" in European law means focusing on achieving specific goals or outcomes rather than rigid rules. It offers flexibility for entities to choose their methods while ensuring desired regulatory results. This approach adapts well to changing environments and reduces unnecessary bureaucracy.

[154] *See* D'Alvia, *supra* note 152, at 236.

European Union, and precisely concerning special purpose vehicles, at least four sections will be relevant to regulators. First, the risk factor section will include that the SPAC has no operating experience and no precise aims have yet to be set; second, in the business description, the issuer will specify the elements that the SPAC will evaluate while looking for a business combination in the business description; third, the offering section will describe the capital structure of the SPAC; and lastly, the management description will include a full explanation of the sponsor, founders, promoters, and so on, because the investment experience of the SPAC's governing bodies is an essential driver of valuation.[155] Given that the SPAC would not yet have any company activity or financial history, the prospectus's financial parts may be quite restricted. As a result, the financial portions will be written and reviewed in less time than a traditional IPO. In addition to those portions of the prospectus, the ESMA would like the sponsors to provide investors with information about potential scenarios that may occur during the transaction period.[156] Authorities expect the SPAC prospectus to include at least the following information: future remuneration of the sponsors and their role after the vehicle has acquired the target; information about possible changes to the company's governance after it has acquired a target; information about the future shareholdings of the sponsors and other related parties; and details of possible scenarios that might arise if the sponsor fails to find a suitable target, such as SPAC de-listing and winding up.[157] The ESMA public statement issued on July 15, 2021, confirms the implementation of the just-mentioned regulation by objective.[158] The European exchanges have adopted these recommendations, and several have enacted or implemented SPAC regulatory reforms (see Italy, Belgium, and Spain). In Europe, where the exchanges have not published a particular discipline (for example, the Netherlands and Germany), the national company law framework applies to business combinations, in addition to common exchange disclosure and registration obligations.[159]

Diversified corporate law frameworks can thus result in a discrepancy between, say, a SPAC formed under Italian corporation law and one formed under the more permissive and flexible Dutch corporate law regime, and so forth. However, it can also foster regulatory competition, with governments that see the importance of these vehicles attempting to create a more SPAC-friendly environment. SPACs in Europe are primarily characterized by competition-based regulation. Different redemption rights treatments have given rise to innovations, such as the listing of a SPAC

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[155] *Id.* at 237.
[156] *Id.* at 237-238.
[157] *See* Ferdinand Mason et al., *ESMA guidance on EU SPAC Prospectuses White*, CASE LLP (2021), https://www.whitecase.com/insight-alert/esma-guidance-eu-spac-prospectuses?s=spacs (last visited Aug 10, 2023).
[158] *See* Dan Nacu-Manole, *ESMA publishes disclosure and investor protection guidance on SPACs* (2021), https://www.esma.europa.eu/press-news/esma-news/esma-publishes-disclosure-and-investor-protection-guidance-spacs (last visited Aug 10, 2023).
[159] *See* D'Alvia, *supra* note 156, at 238.

in the form of SE[160] or incorporating a SPAC in a different Member State than where the investment vehicle is listed. For example, German or Italian special-purpose vehicles established in Luxembourg can fully mirror US-style corporate law features. Indeed, European corporate frameworks are generally more conservative than those of the United States, except for Dutch and Luxembourg law,[161] which are more flexible than U.S. company law. The importance of the country's legislation is related not only to SPAC formation and incorporation but also to the de-SPAC phase when an American shell company seeks to acquire a European firm. Each European jurisdiction has its own business combination rules as well as its taxation regime. As a result, the transaction structure for each proposed de-SPAC transaction must be examined. A U.S. SPAC looking for a European target, for example, might engage in a transaction putting a newly formed parent company above both the SPAC and the target, with the SPAC and the target being acquired or reverse-merged into subsidiaries of the new parent company, which is usually incorporated under Dutch or Luxembourg law.[162] Furthermore, one of the primary characteristics that European markets share is a general skepticism about the excessive dilution of public investors during the de-SPAC phase (see, for example, Belgium and Spain).[163] Indeed, markets and regulatory institutions, in particular, have long been focused on developing safeguards for financial sector consumers and investors, and retail public investors are at the heart of the Markets in Financial Instruments Directive II (MiFID II).[164] ESMA expects businesses subject to MiFID II's product governance rules to carefully consider whether retail clients should be excluded from the target market for the vehicle's shares and warrants or even included in the negative target market. On this point, it will be claimed that unlike in the United States, retail investors are not the primary investors in SPACs in Europe and that, until now, business combinations, in general, have been mostly reserve' for institutional investors. Indeed, if protecting retail investors is critical, it is also true that they are a continuous minority compared to the universe of institutional investors that gravitate toward SPACs. Early investors in SPACs, often hedge funds, acquire warrants that allow

[160] A *Societas Europaea* is a public company registered under the corporate law of the European Union (E.U.), introduced in 2004 with the Council Regulation on the Statute for a European Company. Such a company may more easily transfer to or merge with companies in other member states. *See Societas Europaea*, WIKIPEDIA (2023), https://en.wikipedia.org/wiki/Societas_Europaea (last visited Aug 10, 2023).

[161] Dutch and Luxembourg regulation is flexible for SPACs due to adaptable corporate structures, clear purposes, diverse share classes, transparent disclosures, and tax efficiency. Luxembourg's regulatory environment, tax benefits, listing options, central location, and experienced professionals contribute to its appeal. Both jurisdictions offer a conducive legal framework while providing flexibility and investor safeguards for SPAC operations.

[162] *See* Lorenzo Corte et al., *SPACs: Reshaping M&A and IPOs for European companies*, Insights, SKADDEN FROM LLP (2021), https://www.skadden.com/insights/publications/2021/02/spacs-reshaping-ma-and-ipos (last visited Aug 10, 2023).

[163] *See* D'Alvia, *supra* note 159, at 238.

[164] "The Markets in Financial Instruments Directive (MiFID) is a European regulation that increases the transparency across the European Union's financial markets and standardizes the regulatory disclosures required for firms operating in the European Union. The stated aim of MiFID is for all E.U. members to share a common, robust regulatory framework that protects investors." *See* Will Kenton, *Markets in financial instruments directive (MiFID) definition*, INVESTOPEDIA (2023), https://www.investopedia.com/terms/m/mifid.asp (last visited Aug 9, 2023).

them to purchase additional shares at a predetermined price in the future. They also frequently sell their SPAC shares before completing transactions to reduce their risk. As a result, hedge funds are typically the early investors in SPACs in both Europe and the United States. Even if SPAC shares fall in value, early investors are protected by the ability to withdraw. Throughout the process, they can sell or keep the warrants. Warrants become more valuable when SPAC shares rise in value. Small investors, on the other hand, acquire at market price and tend to maintain shares after the merger, exposing themselves to the risk of a bad deal.[165] Markets change, and investors can assess their risk tolerance for assets and price them accordingly, or they can choose not to invest at all. A retail investor, for example, who does not redeem shares when trading below their net asset value is clearly careless and should avoid investing. Contrarily, European sponsors want to acquire stock rather than warrants, as founder shares are issued as preference shares, which have a better tax treatment and can be changed into common equity after a corporate combination. Sponsors fund the SPAC's operating costs during its life; therefore, as in the U.S., only those shell companies headed by highly recognized management can afford an unnecessary structure, namely a SPAC that sells solely common shares to its public investors.[166]

V. THE SPACE HOLDING CASE STUDY

A. SPACs in Italy

Compared to the US experience, SPACs have entered the Italian market very late. SPACs were initially eligible to be listed in Italy solely on the multilateral trading system AIM (Alternative Investment Market), and trading on the MIV (Market for Investment Vehicles) market began in 2010. The CONSOB[167] accepted the modifications to the Market Regulations presented by Borsa Italiana in April 2010, which consist of creating new admission conditions and disclosure responsibilities in the MIV market.[168] The new regulation creates a new professional segment not accessible to retail investors in the MIV market, aimed at investment vehicles with a lack of diversity.[169] As a result, SPACs were able to enter the market as Special Investment Vehicles (SIV).

[165] *See* D'Alvia, *supra* note 163, at 240.
[166] *Id.* at 240-241.
[167] CONSOB stands for "*Commissione Nazionale per le società e la Borsa".*
[168] Resolution No. 17302 dated 04/05/2010.
[169] *See* Patrizia Riva, Roberta Provasi, *Evidence of the Italian special purpose acquisition company*, 16 CORPORATE OWNERSHIP AND CONTROL 66–76 (2019).

A SIV is defined in Article 1.3 of the rule as "a company whose investment policy does not provide for a sufficient level of diversification and whose sole corporate purpose is to invest in a company or activity as well as the related instrumental activities." It also identifies corporations whose investment policies are distinguished by their complexity. Access to the SIV segment is subject to restrictions that the SPACs must likewise meet. The main ones are the company's duration with provisions not exceeding 36 months; compliance with specific disclosure requirements regarding the investment policy, which must be clear and detailed and regularly disclosed and updated; the establishment of a restricted fund in which to deposit the capital raised during the IPO and on subsequent capital increases; and the adoption, application, and maintenance of every reasonable measure to identify potential conflicts of interest.[170]

Italy 1 Investment SA was the first SPAC under Luxembourg law, listing in 2011 on the MIV sector of *Piazza Affari*. In contrast, MadeInItaly 1, with a capital of € 50 million, was the first Italian SPAC, which merged SeSa S.p.A in 2013. According to the data, Italian SPACs gathered over € 3.7 billion, realized € 980 million in investments in currently listed firms, and have approximately € 2.7 billion to invest, of which more than € 300 million is earmarked for the recently announced business combination.[171] Italy 1, in particular, was formed under Luxembourg law in August 2010 and listed on the MIV in 2011 after raising €150 million in IPO proceeds. Note that, under Luxemburg corporate law, when the target is selected, the public limited company (*société anonyme*) can merge with a target company governed by the laws of another EU Member State and subsequently become a European company governed by the laws of any EU Member State (either by Luxembourg law or by the law of the target company). Furthermore, Article 2437 ICC says that public corporations listed on the MTA can only give redemption rights in the conditions specified by law, namely when the SPAC is about to combine or when the certificate of incorporation is changing.[172] That explains why, although the liquidity attained on the Euronext Growth market in Italy is lower than on the MIV market, Luxemburg is chosen due to its flexibility in modeling the redemption right on a US-style right.

Even though the Investment Vehicles market provides new prospects for SPAC listing, the unregulated market AIM Italia remains preferred. Reasons related to the regulatory flexibility for SMEs, which guarantees a simplified listing process (admission to the market in 10 days, with shorter times compared to other markets), to the importance of the Nomad,[173] to a simplified access

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[170] *Id.* at 67.
[171] *Id.* at 68.
[172] *See* D'Alvia, *supra* note 166, at 241.
[173] A NOMAD (Nominated Adviser) is a key player in the public listing process on the Alternative Investment Market (AIM) in the UK. The NOMAD assists companies in meeting AIM's requirements for listing, conducts due diligence,

requirements which doesn't provide for a minimum or maximum capitalization or specified economic-financial indicators, and, lastly, to reduced costs. Plus, the presentation of an Admission Document is not required, nor is the presentation of an Information Prospectus, as in regulated markets, nor is due diligence required by Borsa Italiana or CONSOB.[174] Because SPAC is the preferred choice for smaller companies with limited resources, one might conclude that the presence on the market of companies not deserving to be listed as "low-skilled" B-series enterprises will be favored.

This result appears reasonable and appropriate in the US economy, where giant corporations are far more prevalent than in Italy. The Italian landscape is, by definition, a system of micro-enterprises, and assigning them a negative rating solely based on their turnover appears unfair.[175] The major advantages that businesses gain from listing through the SPAC are cost reduction. Admission to the market implies lesser costs because the vehicle already carried these before the agreement, with the cash provided by the promoters used for listing expenditures.[176] Furthermore, the Ministerial Decree of 23 April 2018, which specifies the application requirements for the facilitation of the listing of SMEs created by the Budget Law 2018, provides a starting point for thought, at least in relation to the Italian legal system. The law provides for a tax credit to be utilized as compensation, valid up to 50% of the consultancy costs expended for listing, up to a maximum of € 500 thousand, and applicable to SMEs that support the abovementioned costs to acquire market listing admission by 2020.[177]

Euronext acquired Borsa Italiana S.p.A. in April 2021 and became a member of the Euronext Group, the first leading pan-European market infrastructure. Between 2017 and 2018,[178] there was a surge of SPACs in Italy, with over 30 listings on the AIM and MIV segments. However, since the 'SPAC boom' in the United States in 2020, Italy has only had one significant example of a SPAC listing: Revo S.p.A. on the AIM in May 2021 for more than €200 million.

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advises on documents for potential investors, ensures ongoing compliance, acts as a link between the company and AIM, and helps with investor relations. The role of a NOMAD is crucial for maintaining the integrity and credibility of companies listed on AIM.

[174] *See* Riva, *supra* note 170, at 68-69.

[175] Italy's prevalence of micro-enterprises is influenced by a historical tradition of craftsmanship, a cultural emphasis on family and community ties, a diverse economy with niche sectors, regulatory challenges for larger businesses, limited access to traditional financing, and market opportunities for unique products. These factors have contributed to the growth of small-scale enterprises that align with Italy's strengths and cultural values.

[176] *See* Riva, *supra* note 174, at 69.

[177] *Id.* at 69.

[178] The MIV and AIM (renamed Euronext Growth market as of October 2021) are market sectors under the Mercato Telematico Azionario ('MTA') market. *See* Giuseppe Cavallaro, SPACs in the Italian legal-economic landscape: The right of withdrawal in the Italian model (2023).

Because of its liberal regulation and the absence of controls by CONSOB, as previously mentioned, the AIM market in Italy has been the favored market for SPACs to list. However, the Italian stock exchange issued a specific communication in 2017 for AIM market modifications, providing that "the issuer for the purpose of admission, must raise a minimum of €10 million in cash through a placement that ends on the date of admission or close to the admission itself" and, on the other hand, introducing certain criteria that the promoters of a SPAC are required to meet for admission to trading of the shares on AIM. On the latter point, the AIM Regulations now state that "promoters must be persons (natural or legal) with proven experience and/or having held senior positions in primary capital market transactions, private equity transactions, management of medium-sized companies, and/or investment banking."[179] These are currently the only listing requirements in Italy for SPACs, and they only apply to the old AIM market (now Euronext Growth). The applicability of Italian company law to SPACs is complex, particularly concerning the MIV. In fact, according to Article 2437, paragraph 4 of the Italian Civil Code ('ICC), public businesses listed on the MTA, and thus on the MIV market, are not permitted to provide investors with a full redemption right. Unless the SPAC is listed on the AIM, this provision may prohibit SPAC investors from receiving their initial investment in full. Companies are not subject to abovementioned article because the AIM is a multilateral trading facility.[180] Finally, regarding the SPAC's capital structure, public investors can purchase units of common shares and warrants in the proportion of one warrant per share, indicating that the fractional warrant structure, or the US counterpart of SPAC 3.5, is not typical in Italy. The sponsor does not own founder warrants but preference shares converted into ordinary shares at par value following a successful business merger.[181]

These certainties do not compensate for the lack of historical aspects and data on which investors might base their selections. They cannot yet justify their decision to subscribe to stocks based on their understanding of the sector in which the SPAC will operate, the target to be identified, its geographical region of activity, the economic data that characterizes it, and a variety of other critical information.[182]

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[179] *Id.* at 11.
[180] *Id.* at 11-12.
[181] *See* D'Alvia, *supra* note 172, at 243.
[182] *See* Riva, *supra* note 177, at 70.

B. Example of a Successful SPAC: Space Holding

Space Holding, founded in 2013, emerged as a pivotal player in the Italian financial landscape, driven by a vision to empower and facilitate the growth of Italian private firms with substantial potential, guiding them towards a strategic transition into publicly traded entities in the short to medium term. The company was founded by a group of seasoned partners with extensive experience in investment banking and private equity.[183] Its core mission centered on identifying and nurturing Italian companies that held leadership positions in their respective industries on a global scale. The company sought to orchestrate strategic business combinations with these firms, single business units, or spin-offs operating within Italy. Its investment approach was flexible, encompassing both majority and minority holdings, particularly focusing on family-owned businesses, private equity funds, or multinational enterprises.[184] The strategic vision of Space Holding extended to key Italian sectors renowned globally for their expertise. These sectors included luxury, fashion, furniture, design, food, biomedical, and sophisticated mechanics. This targeted approach ensured that the SPAC would be at the forefront of industries where Italian excellence was highly regarded. Conversely, the company consciously excluded sectors such as real estate, banking, commodities, and weapon manufacturing from its investment scope. This strategic clarity allowed Space Holding to channel its resources effectively and drive growth in areas where it could make a significant impact.

Space Holding made its grand entrance onto the Italian financial stage through an Initial Public Offering (IPO) on December 18, 2013. In this milestone offering, the company issued 15,000,000 shares at an offering price of €10.00 per share, a package that also included two warrants for every three market shares. This strategic approach culminated in a remarkable achievement, with the total proceeds raised through the IPO reaching an impressive €150,000,000.[185] This substantial capital infusion provided Space Holding with the financial muscle required to embark on its mission of facilitating business combinations and fostering growth among Italian companies. Over the years, the vehicle demonstrated its strategic prowess by promoting and successfully listing four Special Purpose Acquisition Companies (SPACs) under Italian law on the MIV list of Borsa Italiana. These SPACs, named Space, Space2, Space3, and Space4, attracted investments from prominent Italian business families, either directly or through family offices, as well as high-profile Italian and foreign

[183] The special purpose acquisition company Space was founded by Gianni Mion, Sergio Erede, Roberto Italia, Carlo Pagliani, Edoardo Subert, Alfredo Ambrosio, and Elisabetta De Bernardi.
[184] *See* Nicola Michielotto, *Special purpose acquisition companies (SPAC) in Italy: An empirical analysis* (2023), https://hdl.handle.net/20.500.12608/25444 (last visited Aug 11, 2023).
[185] *Id.* at 88.

institutional investors. The total funds committed to these SPACs exceeded approximately 1 billion euros over the last five years, underscoring the high degree of confidence that investors had in Space Holding's ability to drive value creation and growth. Its track record included four triumphant business combinations, each contributing significantly to Italy's corporate landscape. The inaugural business combination featured Space, the first SPAC under Italian legislation to be listed on the MIV, and FILA S.p.A., a distinguished global player in manufacturing and selling coloring, drawing, modeling, writing, and painting products. This combination, concluded in June 2015, marked the beginning of a series of strategic successes.

In April 2017, Space2 achieved a significant milestone by successfully concluding its business combination with Avio S.p.A. Avio was a prominent company in the field of space propulsion, with applications in launch systems, missiles, and satellites.[186] The combination expanded Avio's horizons and solidified its position in the aerospace industry. In December 2017, Space3 executed its business combination with Aquafil S.p.A., a global leader in the production and commercialization of synthetic fibers. Aquafil was also at the forefront of the "circular economy" movement, thanks to its innovative ECONYL nylon regeneration process. This combination reinforced Aquafil's global presence and sustainability initiatives. Notably, in August 2018, Space4 concluded its business combination with Guala Closures S.p.A., a world leader in the production of closures for spirits and wine. This strategic move further entrenched Guala Closures' prominence in the industry. The four companies that emerged from these successful business combinations are currently listed in the prestigious STAR category of the Italian Stock Exchange,[187] commanding a combined market valuation of approximately 2 billion euros. This remarkable achievement underscores Space Holding's commitment to driving value creation and fostering growth within the Italian business landscape.

Space Holding's commitment to innovation and diversification is exemplified by its investments in private-sector ventures. Among these ventures, RedSeed Ventures, a venture capital firm, holds a prominent place.[188] Additionally, Test Industry, a company specializing in the design and manufacture of industrial test equipment, further demonstrates Space Holding's strategic foresight and its role in shaping the future of Italian entrepreneurship and innovation.[189] Its journey represents not just a narrative of financial transactions but a significant chapter in Italy's business landscape. Through its

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[186] *Id.* at 89.

[187] The STAR segment of the Italian Stock Exchange is dedicated to companies that meet high standards of corporate governance, transparency, and financial reporting. These companies adhere to stringent requirements like governance practices, financial reporting, market capitalization, and trading volume. The segment aims to attract investors by highlighting companies prioritizing transparency and investor protection.

[188] RedSeed Ventures operates as a venture capital firm. The company provides equity capital for companies at the seed and start-up phases in the technology sector. RedSeed Ventures invests in companies based in Italy.

[189] *See* Michielotto, *supra* note 186, at 89-90

successful SPACs and strategic business combinations, Space Holding not only facilitated growth but also showcased the capabilities of Italian businesses on a global stage. Its commitment to fostering innovation and value creation underscores its pivotal role in driving Italy's economic vitality and innovation ecosystem.

1. Strategic Business Combination and Performance Dynamics:

A Case Study of FILA's Growth Journey

On January 15, 2015, approximately a year after successfully completing its Initial Public Offering (IPO), Space, the first of four Special Purpose Acquisition Companies (SPACs) promoted by Space Holding, made a historic announcement. It unveiled its inaugural business combination with 'Fabbrica Italiana Lapis ed Affini S.p.A. (FILA), an esteemed Italian multinational specializing in art materials and related products with a global presence spanning five continents. FILA's illustrious history had been punctuated by significant acquisitions in the preceding two decades, which firmly established it as a key player in the art materials industry. These strategic acquisitions included Adica Pongo (1994), Dixon Ticonderoga (2005), LYRA (2008), Lapiceria Mexicana (2010), Lycin (2012), and Maimeri (2014).[190] The merger with Space marked a pivotal moment in FILA's journey, propelling it to new heights in the global marketplace. The business combination with Space brought substantial financial advantages to FILA, generating approximately seventy million euros in net cash flow. To further fuel its ambitious expansion plans, FILA leveraged additional sources of financing, including bank loans. Notably, in 2015, FILA successfully acquired Writefine Products Private Limited, an Indian company, followed by the strategic acquisition of the Daler-Rowney Lukas Group, St. Cuthberts, and Canson Group in 2016. These three entities were renowned for their manufacturing and distribution of arts and crafts materials and accessories, including high-quality artist's papers, all under internationally recognized brands.[191] These strategic moves underscored FILA's unwavering commitment to global growth and market leadership, solidifying its position as a powerhouse in the art materials industry. However, the period leading up to the business combination with Space had presented challenges for FILA. Revenue growth had been relatively sluggish, and net income had remained nearly stagnant. Moreover, key financial metrics, such as EBITDA and Return on Invested Capital (ROIC), excluding goodwill, had experienced a decline. Unfavorable market conditions,

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[190] *See* Federico del Maestro, The Shortest Path to Go Public, 2021.
[191] *See* Michielotto, *supra* note 189, at 90.

coupled with the less-than-promising financial performance, prompted FILA to opt for an accelerated business combination strategy. This strategic decision ensured an enterprise value approximately seven times its EBITDA, a testament to FILA's determination to unlock its growth potential and create value for its stakeholders. The transformative merger with Space brought about significant changes for FILA. Stocks of the company were introduced to the MTA's STAR section on November 12, 2015, leading to a surge in trading activity. Importantly, the Group consistently outperformed the FTSE Italia Small Cap index,[192] signaling investor confidence in FILA's prospects and strategic direction. However, it was not without its initial financial challenges.

In the year of its merger with Space (2015), FILA encountered headwinds that impacted its financial performance. This was primarily attributable to non-recurring operating costs of approximately €5 million, incurred for legal and merger assistance, and significant financial expenses amounting to €46 million related to the fair value measurement of Space's shares. These challenges were part of the complex financial landscape associated with mergers and acquisitions. FILA's profitability continued to face challenges in 2016, the year following its public listing. Key profitability measures, including ROIC and Return on Assets (ROA), excluding goodwill and other similar intangibles, experienced notable declines of 6.90% and 3.27%, respectively.[193] Such decreases in profitability are often observed in cases involving accelerated business combinations. Companies with strong growth potential frequently require a substantial portion of fixed operational capital and net working capital to effectively exploit their growth prospects. Consequently, while invested capital may increase in the year of investment, the rewards are typically realized in subsequent years.[194]

The FILA case aligns closely with existing literature on business combinations, where target companies often utilize the capital raised from the merger to fuel growth, make new investments, and expand their operations, rather than immediately enhancing profitability.[195] This strategic approach reflects a long-term vision and a commitment to unlocking the full potential of the merged entity. Despite the initial financial challenges and the complexities associated with business combinations, FILA's share price exhibited remarkable resilience and growth since its listing on the stock exchange. Notably, there was an impressive 16.3% increase in the stock price between the announcement of the

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[192] It is an index that combines all companies excluded from Ftse Italia Mid Cap and Ftse Mib. It is the basket of small-cap companies (not to be confused with SMEs, for which the AIM market is reserved). The components of this index are revised every three months.

[193] *See* Michielotto, *supra* note 191, at 91-92.

[194] *See* del Maestro, *supra* note 190.

[195] *See* Marco Fumagalli, Matteo Carlotti, *Le SPAC nell'esperienza italiana, in Lo Sviluppo della Spac (Special Purpose Acquisition Company) in Italia: Un Nuovo Modo di fare private equity e di Quotare Le Imprese in Borsa*, 43–109 (2014).

target and the shareholders' meeting, signifying strong investor confidence in the success of the business combination.

In conclusion, FILA's journey following its merger with Space exemplifies the intricate dynamics, strategic decision-making, and financial transformations that often accompany accelerated business combinations. The company's ability to navigate these challenges, utilize the merger capital for expansion, and create substantial shareholder value underscores its resilience and strategic prowess.[196] As evidenced by the nearly doubling of FILA's share price in just two years since the merger with Space, the company stands as a testament to the potential for value creation within the context of SPACs and business combinations.

2. Avio's Business Combination and Market Debut: Transformation, Expansion, and Shareholder Landscape

On April 10, 2017, a momentous event in the aerospace industry occurred as Avio S.p.A. finalized its merger with Space2 S.p.A.[197] This strategic merger marked a turning point in the company's history, symbolized not only by a name change but also by a significant expansion of Avio's horizons. The outcome of this transformative merger was the adoption of the name Avio S.p.A., signifying its evolution into a dynamic global player in the aerospace sector. Subsequently, Avio S.p.A. Iy had Its post-merger shares admitted for trading on the MTA, STAR Segment, of the Milan Stock Exchange, underlining its promising future and bolstering investor confidence in the company.[198]

The Avio Group, with Its Impressive legacy spanning over half a century, had solidified Its status as a global aerospace industry leader. This position was no accident but the result of extensive experience and expertise amassed during its five decades in business. With a dedicated and highly qualified workforce, comprising 768 professionals in Italy and an equal number internationally (excluding the joint venture Europropulsion), Avio S.p.A. was exceptionally well-equipped to tackle the aerospace industry's most intricate challenges. In Italy, the core of Avio's operations centered around its headquarters in Colleferro, in proximity to Rome. The company also maintained additional

[196] *See* Tim Jenkinson, Miguel Sousa, *Why SPAC Investors Should Listen to the Market* (2009).
[197] Space2 S.p.A. is the second SPAC promoted by Space Holding after its success with Space and its business combination with FILA S.p.A.
[198] *See Relazione Finanziaria semestrale 2017*, TELEBORSA (2017), https://avio-data.teleborsa.it/2017%2fRelazione-Finanziaria-Semestrale-2017_20170927_110248.pdf (last visited Aug 11, 2023).

facilities in Campania and Piemonte, further enhancing its presence in the country. Beyond Italy's borders, Avio strategically positioned operational sites in France and Guyana, illustrating its unwavering commitment to global excellence and innovation. Avio's expertise spanned a vast array of aerospace disciplines, with a primary emphasis on Launch Systems and Space Propulsion. The company excelled across the entire spectrum of this field, from the development and design phases to the precise manufacturing and seamless integration of space transport systems. Among its notable achievements, Avio was celebrated for its "Lanciatore Vega" and its derivatives,[199] which had earned worldwide acclaim. The company was also a leading force in solid and liquid propellant systems, catering to the needs of spacecraft, satellites, tactical missiles, and pioneering low-impact environmental propellant systems. In addition to its primary focus on aerospace, Avio S.p.A. had embarked on a journey into land infrastructure, a critical component necessary for the success of "ground" operations in the realm of space missions. This diversification underscored the company's forward-thinking approach and its commitment to addressing the holistic requirements of the aerospace industry.[200]

Turning to financial performance, Avio's impressive growth trajectory was on full display. In the fiscal year, the company achieved a remarkable 292 million euros in revenue, marking a substantial 13.4 percent increase compared to the prior year. This remarkable growth was primarily attributed to heightened sales of launchers, cementing Avio's status as a dominant force in the industry. Furthermore, the company's adjusted EBITDA and adjusted EBIT figures stood at 36.5 million and 26.9 million euros, respectively, benefiting in part from the amortization of specific research and development costs. These figures not only reflected the positive financial impact of the merger and subsequent IPO but also signaled the company's strengthened financial position.[201]

The strategic journey leading to Avio's IPO commenced in October 2016 when Leonardo-Finmeccanica,[202] an Avio shareholder since 2003, increased its stake from 14 percent to 28 percent. Simultaneously, the company's management joined forces with Space2 and Leonardo in this transformative journey, while Cinven Limited exited its investment in Avio. This strategic move utilized approximately €154 million of Space2's capital, representing roughly half of its capital endowment. The remaining assets were transferred to the newly formed Space3 S.p.A. ("Space3")

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[199] The Vega rocket, also known as "Lanciatore Vega," is a small-to-medium-sized launch vehicle developed by the European Space Agency (ESA) and Avio. It's designed to carry small and medium payloads into various orbits, using a modular design with solid rocket stages for cost-effective and reliable launches.
[200] *See* Relazione Finanziaria, *supra* note 198.
[201] *See* Luca Scalera, *L'IPO di Avio Starting Finance* (2017), https://startingfinance.com/approfondimenti/lipo-di-avio/ (last visited Aug 11, 2023).
[202] Leonardo is a global high-tech player in the aerospace, defense, and security industries, with a direct presence in five domestic markets (Italy, the United Kingdom, the United States, Poland, and Israel) and a worldwide commercial network.

due to Space2's partial proportional demerger, a strategic move approved by their respective boards of directors on October 19, 2016.[203] The historic debut of Avio on the STAR segment of the Milan Stock Exchange on April 10, 2017, was met with significant market interest. Trading volumes were substantial, underscoring investor enthusiasm for the company's promising future. Equita SIM promptly provided a "buy" rating for Avio stock, accompanied by a target price of 15 euros. This favorable assessment was grounded in several key factors: Avio's pivotal role in the European space industry, characterized by high barriers to entry; the stellar reputation for reliability of the launchers produced; a growing target market; substantial net liquidity enabling strategic agility; and numerous development projects funded by the European Space Agency (ESA), which added further visibility and growth potential to the company's trajectory.[204]

Furthermore, this transformative transaction resulted in a substantial reshaping of the shareholding structure. Cinven's exit was complemented by the entry of new shareholders from Space2, while Leonardo maintained a representative interest of 28.15 percent in the share capital. Company managers held a representative interest of 3.85 percent, Space Holding S.r.l. (the promoter of Space2) held 3.81 percent, and the current shareholders of Space2 collectively held a substantial representative interest of 64.19 percent.[205] The capital infusion of approximately €70 million, contributed to Avio through the Business Combination, was strategically allocated to support Avio's ambitious business development plans. These plans encompassed expanding the capacity of its VEGA system launch, consolidating the supply chain, and diversifying its portfolio with innovative launch solutions and technologies. This significant injection of capital laid the foundation for Avio's continued growth and prominence in the aerospace industry, solidifying its position as a key player in the global space technology landscape.[206]

VI. CONCLUSION

The rise of SPACs within the complex environment of financial markets has been a phenomenon that has been both shaped by and shaped by recent exceptional circumstances. Their popularity has grown significantly in recent years, owing to a shifting market climate marked by

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[203] *See Space2 Porta Avio in Borsa insieme a Leonardo Finmeccanica* (2017), https://www.galaw.it/wp-content/uploads/2016/11/Space2-Comunicato-Ita.pdf (last visited Aug 11, 2023).
[204] *See* Scalera *supra* note 201.
[205] *See* Space 2, *supra* note 203.
[206] *Id.*

renewed hope and considerable market liquidity following the pandemic-induced depression. The volatility in equity markets in 2020, fueled by the uncertainty surrounding the worldwide pandemic, demonstrated the endurance of financial ecosystems and permitted the resurrection of an equity vehicle that had previously operated in the background. SPACs, as a comprehensive financial innovation, bridge the gap between private and public capital markets. However, SPACs' remarkable development has not been without its hurdles. The growing occurrence of pre-closing strike cases and post-closing litigation highlights the legal complexity inherent in the SPAC ecosystem. In the context of SPAC directors and officers, the blurring line between corporate fiduciary regulations and securities laws has created a problem that the legal community is wrestling with, as shown by the In Re MultiPlan Corp. Shareholders Litigation.

It Is safe to conclude that while they provide a tempting path for firms looking to go public and investors looking for growth prospects, they also carry inherent dangers. The spotlight on SPACs grew brighter as examples of unfulfilled purchases highlighted possible flaws. This, combined with regulatory scrutiny from organizations such as the Securities and Exchange Commission, caused a rethinking of SPAC plans and practices. Indeed, as they continue to evolve and adapt to shifting market conditions, it is clear that their impact on the financial landscape will be scrutinized and explored indefinitely. The intricate interplay between sponsors, target companies, and investors highlights the importance of openness, due diligence, and good communication in ensuring successful transactions and value creation for all parties. The SPAC ecosystem is at a crossroads due to a developing financial landscape and the aforementioned regulatory measures. While attempting to maintain its innovative edge, the industry must contend with the possible ramifications of increased regulatory oversight.

SPACs can thus teach us what we already know: the process of financial innovation is more intriguing than the substance. As the SPAC bubble matures and the cycle of boom, bust, and regulation resurfaces, SPACs are called upon to undergo structural reshaping to fit the new regulatory frameworks, ensuring investor protection while consolidating their place in today's dynamic investment environment.

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