Transatlantic SPACs:

Navigating the Waters in the U.S. and the U.K.

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Introduction

- Is 2021 the Year of the SPAC?
- Flood of new U.S. SPAC listings which overtake 2020's total. Widespread celebrity endorsements from the likes of Colin Kaepernick and Shaquille O'Neal in the U.S. to David Beckham in the U.K.
- U.K. is catching up with SPAC listings but still lags behind with the bigger ticket SPACs seen in the U.S. Opportunities for smaller scale SPAC listings in U.K.
- Are SPACs all they are cracked up to be for the combining company? Or is it better to IPO?

What is a SPAC?

- SPAC stands for Special Purpose Acquisition Company.
- A SPAC is also known as a “blank check” company or “cash shell.” It is essentially a company with no existing commercial operations and it is incorporated for the sole purpose of making one or more acquisitions or investments in future, usually with certain industry sectors or geographic regions identified.
- Usually the SPAC raises funds contemporaneously with a flotation on a public stock exchange. The funds it raises are used to identify and acquire/invest in a business or businesses which would result usually result in the combined entity becoming publicly listed through a reverse takeover.

Key features of U.K. SPACs

- Founders incorporate the company and invest a nominal amount of capital to cover initial start-up costs in exchange for founder shares and founder warrants.
- On IPO, investors will usually receive shares and sometimes warrants in the SPAC.
- Founders will generally sit on the boards of the listed companies and perform investment management services to the SPAC to identify and execute the acquisition.
- In the U.K., the markets can cater for smaller IPOs and corresponding costs can be much lower.
- U.K.-listed issuers can apply to the OTC markets to access North American investors without Sarbanes-Oxley or SEC reporting requirements in connection with the cross-trading on the OTC markets by relying on the announcements and disclosures it makes on their home London market.

Choice of Market in the U.K.

- **In the U.K., SPACs/cash shells are not eligible for listing on the premium segment of the Main market of the LSE. Therefore the markets available for a listing of a SPAC in the U.K. are:**
  - Standard segment of the Main Market of the LSE
  - AIM
  - Access market of the Aquis Growth Market
- **Some of the key SPAC requirements for Standard, AIM and Aquis listings are summarised in the following slide. The administrative and cost burden involved in producing a prospectus (and having it approved by the UKLA), and the requirement for 25% of it shares to be held in public hands, a listing of the Access market on the Aquis Growth Market is becoming a favoured listing venue for U.K. SPACs.**

U.K. Markets

Requirement	Standard Listing	AIM	AQUIS Growth Market
Listing Document	Prospectus	AIM Admission Document	AQSE Admission Document
Shareholder approval on acquisition	No	Yes	Yes
Minimum raise on IPO	£700K[1]	£6m	£700K[1]
Investment window to implement acquisition	No formal requirement (2 years is normal)	18 months	No formal requirement (2 years is normal)
Adviser	No formal requirement	Nomad	AQSE Corporate Adviser
Shares in public hands	25%	No formal requirement (15% is normal expectation)	10%

[1] *Typically the minimum is £1 million.*

Key features of U.S. SPACs

- In the U.S., a SPAC is usually created by institutional investors of one sort or another—typically professionals with a background in private equity or hedge funds—although that is changing as the popularity of SPACs grow.
- The only significant asset of a SPAC is the capital raised from its IPO, for which investors will usually receive shares and warrants in the SPAC.
- A U.S. SPAC typically IPOs for $10 a share, and raises between $300 to $400 million.
- That money is held in trust in an interest-bearing account while the Founders or management team find a private company with which to combine.
- The post-IPO SPAC usually has two years to find a suitable company. Otherwise the money must be returned to the shareholders and the SPAC is liquidated.
- A U.S. SPAC is typically listed on a major exchange such as NYSE or NASDAQ.

Key Differences Between U.S. and U.K. SPACs

- **Shareholder Rights**
  - In the U.S., shareholder approval is usually required to approve the initial acquisition whereas currently no shareholder approval is required in the case of a SPAC listed on the Standard List in the U.K. However, a SPAC listed on AIM or the Access market of the AQSE Growth Market requires shareholder approval for an RTO.
  - In the U.S., shareholders of SPACs are usually granted redemption rights allowing them to redeem their shares for a pro rata portion of the trust account at the time of the closing of the acquisition or extension of the life of the SPAC. Typically in the U.K., shareholders hold one class of shares although in recent traditional IPOs, the founder has been allowed to keep a golden share for a limited period.
  - In the U.S., both the NYSE and NASDAQ rules require 90% of the gross proceeds raised during the IPO to be immediately deposited and held in a trust account and are subject to strict investment criteria. No such requirement in the U.K. – the directors of a U.K. SPAC have more autonomy and flexibility when identifying acquisition/investment targets as well as use of the SPAC's funds subject to fiduciary duties to use the funds in the best interest of the company and shareholders (as a whole) and as described in the IPO prospectus/admission document.

Key Differences Between U.S. and U.K. SPACs (continued)

- **Commissions/Fees and Ongoing Listing Requirements**
  - Typically higher in the U.S. with a deferred element paid at the closing of the initial acquisition whereas in the U.K., the commissions/fees are typically structured in the same manner as an IPO, payable on closing of the IPO.
  - Ongoing listing requirements and annual/periodic filing requirements are generally considered more burdensome in the U.S. for public companies than for Standard/AIM/AQSE Growth listed companies.

Roadmap of SPACs – Acquisition Process

- In the U.K., typically the initial acquisition will constitute a reverse takeover for the SPAC. This means that, on completion, an application needs to be made for the enlarged group to be admitted to trading on the relevant market. Therefore, as well as the usual M&A process, the listed issuer will need to publish a prospectus or admission document (as applicable) for the enlarged group to be re-admitted to trading.
- Following IPO, on the announcement of an acquisition, but before publication of a prospectus/admission document and completion, it is usual for the relevant exchange to suspend listing of the SPAC's shares to ensure orderly market or otherwise to protect shareholders.
- In the U.K., it is possible for a SPAC listed as an investment company with an investment strategy to make investments in a number of undetermined companies in certain sectors to not trigger a reverse takeover by making an acquisition of shares in target subject to certain parameters such as minority and non-controlling interest.

Reverse into a SPAC or Go It Alone and IPO

- **Certainty of cash**
  - SPAC will have visible cash in the bank even if the RTO will involve additional fundraising.
- **Shareholder base**
  - SPAC will provide existing shareholders for free float requirements. Conversely with an IPO, a company will be free of any legacy shareholders from a SPAC and have more control initially over its shareholder base.
- **SPAC life cycle**
  - Target should assess where the SPAC is in its life cycle to determine bargaining leverage. A SPAC in its early stages may not be as motivated an acquirer as a SPAC near the end of its life cycle.
- **Valuation**
  - Target is able to privately negotiate a fixed valuation with the acquirer by setting a purchase price that a trade sale may not be able to offer.
  - Target could potentially avoid the potential impact of uncertain market conditions to the valuation as the executed acquisition agreement locks in the price.

Reverse into a SPAC or Go It Alone and IPO (continued)

- **Costs**
  - Usually similar to IPO with the addition of costs of acquisition.
  - If transaction completes, the SPAC bears most of the costs. If the transaction does not complete, target sellers usually bear only the sell side costs.
- **Execution risk**
  - All cash subject to IPO fundraising.
  - All costs borne by company regardless of successful IPO or not.
- **Selection of advisers**
  - SPAC will have existing financial advisers, lawyers and brokers. Conversely, with a traditional IPO route, target selects its own advisers.
- **Documentation**
  - SPAC acquisition will involve definitive acquisition agreement and related transactional documents together with the IPO documents.
- **Board Composition**

SPACs – Regulatory Issues from a U.S. Perspective

- **Given the sudden rise in SPAC popularity, the U.S Securities and Exchange Commission (SEC) and other regulators have expressed concern about the risks that SPACs pose for investors.**
- **The SEC's recent pronouncement that some SPACs may have improperly accounted for warrants sold or given to investors is one example of this. Typically, warrants are classified as equities, but under certain circumstances may be liabilities according to the SEC. This may cause some SPACs to have to restate previously issued financial statements, if deemed material.**
- **Gary Gensler, the incoming Chairman of the SEC, has also expressed concerns about the recent SPAC frenzy.**
- **The SEC Division of Corporate Finance has also issued guidance on issues specific to SPACs such as potential conflicts of interest between a SPAC's sponsors and its shareholders—particularly as the two-year window begins to close. More transparency as to the impact of additional financing has also been highlighted by CorpFin.**
- **The SEC's Division of Enforcement also appears to be actively investigating a number of SPACs.**
- **Taken all together, one might conclude that there is a coordinated effort by the SEC and other regulators to "chill" the hot U.S. SPAC market. If so, it appears to be working.**

Future of U.K. SPACs

- **Lord Hill published recommendations from his U.K. Listing Review in March 2021. Amongst his recommendations, he included the following in relation to SPACs:**
  - Removal of current FCA rule to suspend trading when an intended acquisition is announced. This is seen as a key deterrent for potential investors as they are “locked into” their investment and unable to sell their shares for an uncertain period of time pending completion of the SPAC merger.
  - Introduce appropriate rules and guidance including investor rights to:
    - vote on acquisitions by a SPAC prior to their completion; and
    - redeem their initial investment prior to completion of the merger.
  - Dual class share structures.
- **FCA aims to launch a consultation paper by the summer, and make the relevant rule changes by late 2021.**

Key Takeaways

- There are opportunities in the U.K. for smaller SPAC IPOs as well as opportunities for U.S. companies to reverse into U.K. SPACs.
- Not all SPACs are the same. Some structures are more transparent and less expensive. Do your due diligence.
- Private companies considering an exit should consider SPACs together with the traditional routes of trade sale, IPO or private equity. Given the number of listed SPACs available, private companies could achieve a better valuation with a SPAC merger. However, consider risks – is the purchase price all cash or a mix between cash and paper?
- Consider the securities laws and exchange regulations as there may be change in the near future.

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