





Directors and Officers Liability Insurance

The de-SPAC Process



Safeguard
your future.



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- Shell company that raises money through an IPO generally offering units comprised of common stock and warrants. –
- The warrants are intended to be exercisable only if an Initial Business Combination (IBC) is completed.
- Most of the proceeds from the IPO are placed in trust pending an IBC or a liquidation
- Typical lifespan of a SPAC is 18-24 months
- If no IBC is identified, the SPAC liquidates and returns the proceeds to the investors.

**IBC: Initial Business Combination*



What is the de-SPAC process?



1



SPAC manager raises initial small pool of initial capital to get SPAC established

2



SPAC manager publishes prospectus (with business and acquisition plan) to list SPAC on exchange

3



SPAC raises more money from institutional and retail investors and lists on exchange (with shares immediately tradable)

4



SPAC makes investments or acquisitions in companies in a particular industry

5



Combined company begins to trade publicly

6



Share price and market cap increase as value of company increases; investors exit at any time by selling shares

SPAC IPO COUNT



SPAC Stats-At-A-Glance

- ✓ **330 SPAC IPOs completed YTD in 2021 alone**
- ✓ **250+** SPACs currently in the IPO pipeline
- ✓ **400+** SPACs currently seeking business combinations
- ✓ **150+** business combinations currently pending
- ✓ **140** de-SPAC transactions completed since 2017

\$67.3B Filed to IPO **+** **\$133.4B** Searching **+** **\$47.3B** Announced

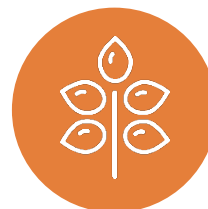
= Total \$248B

What is driving the sudden explosion of SPACs?



Ease of Use:

- Faster time to market
- Definitive Valuation provides deal certainty
- Perceived easier SEC review process & the ability to provide future guidance
- Lower risk to shareholders as they have the redemption option



Diminishing Stigma

As their popularity increases and more brand name companies choose to go this route, SPACs are viewed as a viable alternative to the traditional IPO especially as better known sponsors enter the space.



Ability to raise ever larger funds

Historically SPACs raised significantly less money which limited their deal opportunities. This has drastically changed and we are seeing ever increasing deal size and valuations.

Sponsors

- Successful team with a long track record of value creation.
- Proprietary deal sourcing and access to multiple target candidates.
- Ability to bring value and management expertise post deal.

Targets

- Ready to go public.
- Solid company fundamentals and a path to profitability.
- Seeking faster access to the capital markets and greater valuation certainty.
- Flexible deal structure with the potential for upside through earn outs and/or warrants.

Deal Structure

- Warrants vs No Warrants?
- Quality of Investor Base
- Sponsor Team
- Forward Purchase Agreement or Not?

IPO vs de-SPAC

- Equity analyst coverage
- Attracting Institution Investors
- Fear of the unknown
- Post Market Performance

Sellers' Market

- SPAC- OFFs
- Conflicts of Interest
- Deal Terms
- Indemnification

Heightened Scrutiny

- Regulatory Bodies
- Plaintiffs' Bar
- Short Sellers
- D&O Underwriters

Factors Impacting D&O Terms



Uncertain Litigation Outcomes

While SPACs and the subsequent de-SPAC process are not new, the recent volume of these transactions has sparked the interest of regulators, short sellers, and the plaintiffs' bar. As lawsuits start to roll in against various business combinations, insurers are particularly concerned with how pre- and post- transaction D&O policies will interact with indemnification agreements laid out in the S-4 or proxy filing.



Aggregate Exposure

Due to the huge influx of SPAC IPOs and de-SPAC transactions, insurers have been increasingly cautious of their exposure to these deals and have responded by reducing limits, increasing premiums and retentions, and tightening policy terms.



Hardening D&O Market

Prior to the recent SPAC boom, the public D&O market was already struggling after years of unprofitability, record rates of securities litigation, and event-driven challenges, such as COVID-19, the #MeToo movement, and cybersecurity breaches.

Volume of SPAC-related transactions



Hungry Plaintiffs' Bar



Attention from Regulators



CHALLENGING D&O MARKET

Typical claims include alleged violations of:
The Securities Act of 1933, Sections 11, 12 & 15 and
The Securities Exchange Act of 1934, Sections 10b, 14a & 20a
Breach of Fiduciary Duties

These suits can be brought as:

Typical merger objection suits	The disclosure in the proxy/S-4 omits critical information, not fairly representing the target company, or overpaying for the target company. Recent trend towards bringing these claims as state court fiduciary duty claims. The defendant makes suggested changes to the proxy/S-4 and renders the allegations “moot”. Plaintiffs are paid a fee for their efforts.			
Misleading Financial Information	The disclosure in the S-4 contains misleading financial information, for example: <ul style="list-style-type: none"> ▪ Inaccurate subscriber numbers ▪ Omitted disclosures about related party transactions ▪ Missing details about the immediate need for additional cash to satisfy debt obligations ▪ Misrepresentations of the length of the company’s path to profitability ▪ Provide false information about the commercial readiness of a product ▪ Failure to disclose material litigation and/or investigations 			
Due Diligence Process	Allegations about the lack of an extensive due diligence process and/or unfair deal terms where one party was motivated to consummate the transaction due to a misalignment of their compensation and the return to be had by the shareholders.			
Current litigation examples available for review	<ul style="list-style-type: none"> ▪ Multiplan ▪ Akazoo ▪ Lucid Motors 	<ul style="list-style-type: none"> ▪ Waitr ▪ Nikola ▪ Virgin Galactic 	<ul style="list-style-type: none"> ▪ Triterras ▪ Clover Health 	<ul style="list-style-type: none"> ▪ Ability Computer & Software ▪ QuantumScape

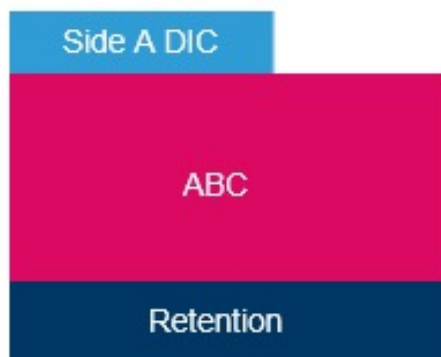
MOST COMMON

LEAST COMMON

Traditional Approach



- ABC insurance to fund defense and settlement costs, with a share of Side A DIC insurance in the event ABC limits are exhausted or unavailable.
- Coinsurance (i.e. insurers and company share of loss excess of the retention) can be incorporated to control costs.
- **Pros:** Greatest level of balance sheet protection for the company, with some dedicated personal asset protection to individuals.
- **Cons:** Highest cost.



Personal Assets Protection Approach



- Program comprised exclusively of Side A insurance, which responds only to non-indemnifiable loss against Ds and Os (e.g. derivative claims, claims when company is bankrupt).
- **Pros:** Provides Ds and Os with strong personal asset protection; lower cost than traditional approach.
- **Cons:** Provides no balance sheet protection to company, with company self-insuring the defense and settlement of most securities class action lawsuits; potentially limited cost “savings” (versus ABC coverage), despite materially narrower coverage provided.



Captive Insurance



- Mirrors the traditional approach in most respects, but the insurance company is owned and controlled by its insureds
- Company creates an on-balance sheet asset designed to manage the risk
- Significant upfront time and cost
- Purchase of a Side A DIC policy required

Indemnification Trust



- Company self-insures the D&O exposure to the size of the trust
- Typically requires significant capital and cash reserves to establish a pool of funds for D&O liability
- Significant upfront time and legal cost
- Company can purchase D&O insurance excess of the indemnification trust

1

What level of insurance does the SPAC purchase? Is it full ABC coverage or A side only?

2

Does the SPAC insurance purchase change during the Run-off Period?

3

What level of indemnification is being requested by the SPAC? What has been agreed to?

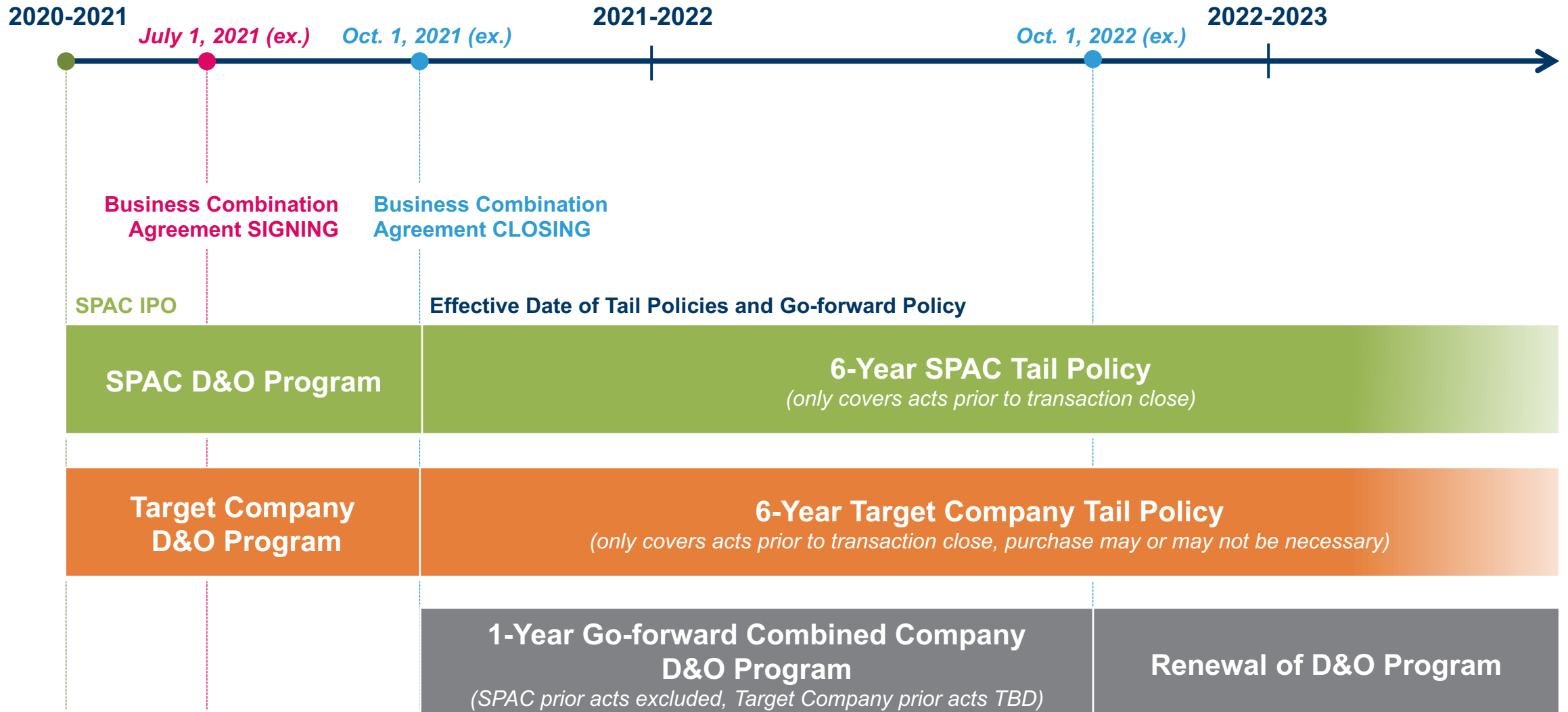
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Are you aware of how Insurance and Indemnification will work and not work together in the de-SPAC transaction?

Scenarios to consider:

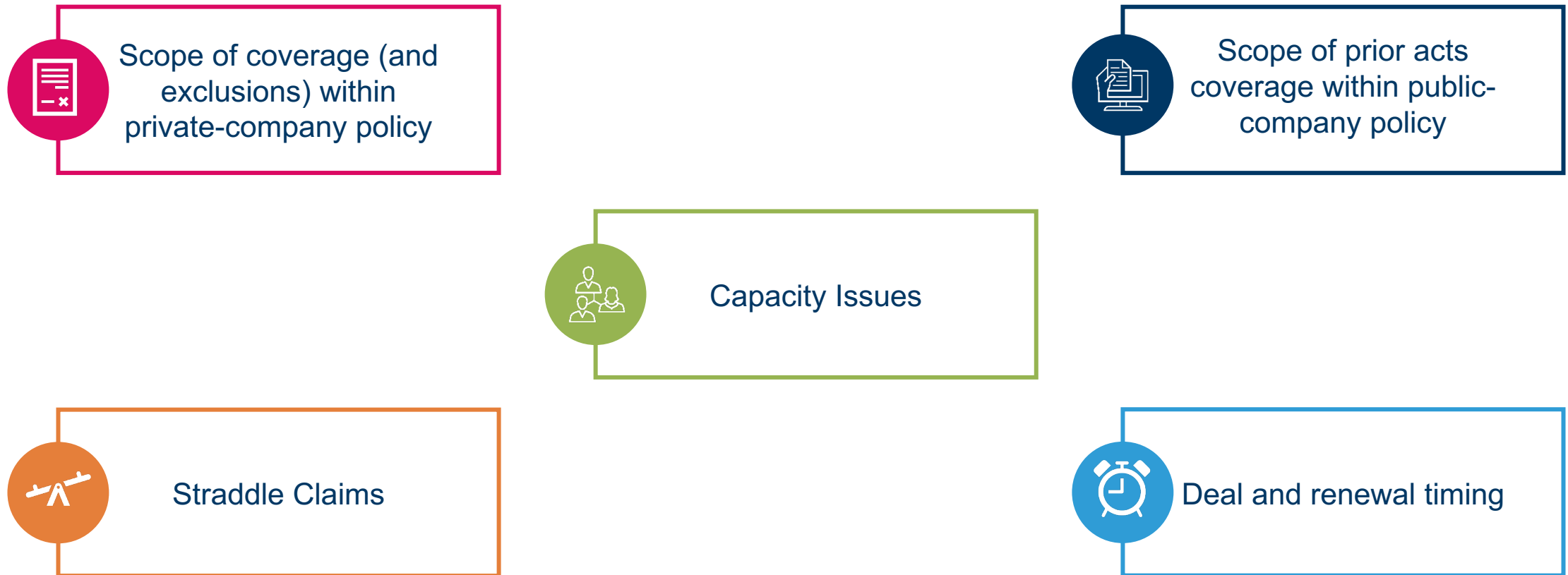
- Does the SPAC purchase insurance that will respond to a post close lawsuit?
- Who will pay the SPAC's SIR?
- Who will pay the SPAC's uninsured defense costs and settlements?
- Have the above considerations been factored into your insurance purchasing decision?

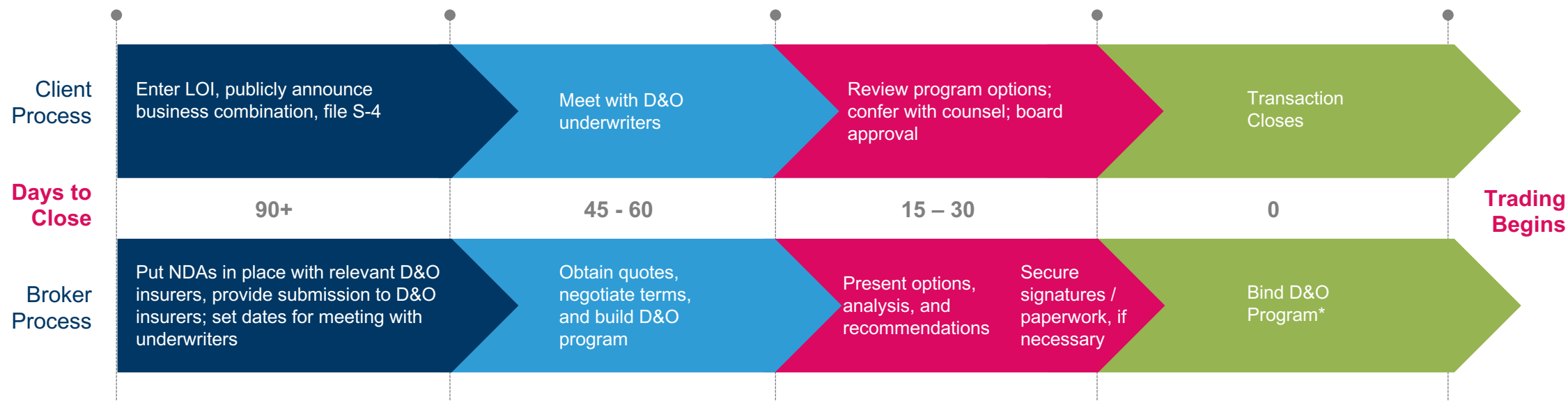
Timeline



de-SPAC transactions are ripe with **traps for the unwary**

Common Issues Include:





de-SPAC Notes:

- The D&O policy for the go-forward public company is bound effective the date the de-SPAC transaction closes and is subject to trading the following business day.
- The target candidate typically has a broad entity policy. Depending on the terms of the merger agreement, this policy may be converted to tail coverage which affords the target company the opportunity to notice claims for wrongful acts that took place prior to transaction close.

Underwriting Concern	Details
Business Operations	<ul style="list-style-type: none"> ■ Please discuss the competitive landscape, threats and the company's ability to defend and expand it? ■ What are the key risks to execution and detail steps management is taking to mitigate those risks? ■ Is the company fully funded or will the company need to raise additional capital? ■ What is the timeline to breakeven? Is Breakeven achieved through revenue growth? Expense alignment? Or both? ■ What is the total cost of implementing the company's plan? Is additional capital required? Please quantify. ■ What are the terms of any agreements in place? ■ Are any of the company's customers/ partners/ contracts at risk? ■ Is there any litigation?, investigations?, or inquires from any regulatory body?
Financials	<ul style="list-style-type: none"> ■ How complex are the company's accounting and revenue recognition policies? and the risk for restatement? ■ What metrics does the company intend to provide to the investment community and how predictable and sustainable are those metrics? ■ Highlight key controls, systems and/or initiatives that have or are being implemented and their risk of disruption? ■ Detailed discussion of financial projections provided through de-SPAC process and included in S-4.
Experience of Management Team & Board of Directors	<ul style="list-style-type: none"> ■ What is the experience level and track record of senior management and the board with public companies? ■ Particular focus is on CEO and CFO's experience with the street and their approach to issues like guidance, ability to successfully forecast, M&A integration, and their ability to scale and implement.
Corporate Governance Practices	<ul style="list-style-type: none"> ■ Discuss the company's SOX, FCPA and related policies and controls (or implementation timeline). ■ Has the company received any calls from whistle blowers or demand letters from former employees ?
Insider Trading Activity	<ul style="list-style-type: none"> ■ Will all senior executives use 10b-5(1) trading plans? ■ Will trading outside of plans be prohibited? ■ Will 60+ day waiting periods be required for new plans or plan changes? ■ Is there a process in place where Section 16 officers and/or others will need approval prior to trading?
Transaction Parameters	<ul style="list-style-type: none"> ■ Please discuss the process for the company's decision to go the de-SPAC route vs. an IPO or a direct listing? ■ How was the valuation determined? Did the company and /or the SPAC engage a financial advisor who provided an evaluation? Does the company anticipate a secondary or follow-on offering? ■ Please provide the Post Close company ownership? ■ What is the company's estimated post-transaction market cap range?

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Thank You!



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