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Converts & Financing Alternatives for De-SPACed Companies

The SPAC Series

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Speakers

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ICR Team

- Head of ICR Capital's Convertible & Equity Derivatives Advisory team where he focuses on complex capital markets transactions across all industry verticals
- Head of Technology Origination at Matthews South (convert advisory firm)
- 15 years at Barclays where he was a Managing Director leading convertible and equity derivatives efforts
- 17 years of Wall Street experience executing 200+ convertible and derivatives deals totaling $100bn+ of value
- Started banking career at Lehman Brothers
- Graduated from the University of Texas at Austin
- Born and raised in Bangladesh

- Managing Director at ICR Capital's Convertible & Equity Derivatives Advisory team bringing her unique legal and banking experience to assist clients
- Senior Capital Markets Counsel at Wells Fargo covering multiple desks, including the equity derivatives desk
- Director and Counsel at Barclays where she worked together with Raj for 7+ years
- 14+ years of experience advising clients on structuring, documentation, and legal aspects of capital markets and equity derivatives transactions
- Started legal career at Shearman & Sterling
- Graduated from the University of Virginia School of Law and Columbia University
- Born in Ukraine and fluent in Russian

- Managing Director at ICR Capital advising corporate management teams on IPOs, follow-on offerings, block trades, SPACs, convertible offerings and warrants
- Director of Convertible and SPAC Trading Desk at Deutsche Bank
- 12 years of experience structuring and trading SPACs, convertibles and warrants
- Raised +20bn for clients to finance growth, acquisitions and recapitalizations
- +20 years of capital markets experience
- MBA in Finance & Economics from Columbia Business School

Agenda

WHAT IF THE DE-SPAC DID NOT YIELD SUFFICIENT GROWTH CAPITAL? OR RESULT IN A LIQUID STOCK?

- Overview of historical and current redemption rates
- Impact of redemptions on access to capital
- Warrant exchange to streamline shareholding structure
- Equity market alternatives
- Convertible offerings and other alternatives
- Securities law considerations

Overview of Redemptions and Impact on deSPAC Companies

High redemption rates complicate deSPAC cap tables and reduce access to capital

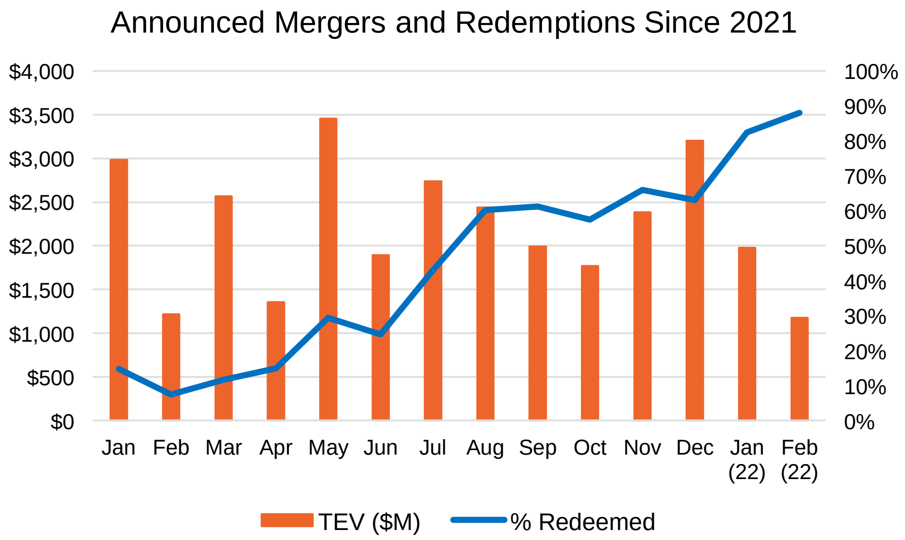
- SPACs that have closed business combinations in 2022 have faced high redemptions
- Negative impact on deSPAC companies' ability to execute on business plan
  - Less cash on balance sheet
  - Reduced access to capital
- deSPAC management teams are still working through these implications

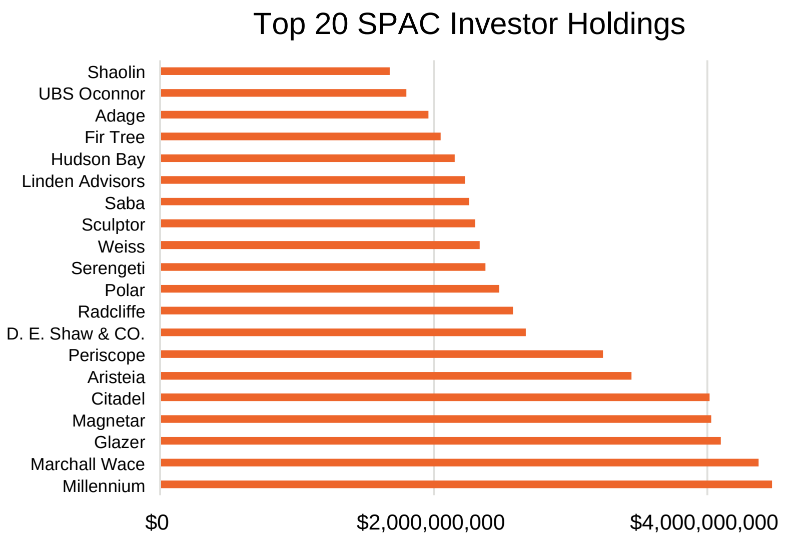
Source: ICR Capital, SEC filings, Bloomberg, FactSet, Dealogic, SPAC Insider, SPAC Research

SPAC Redemption Dynamics

Redemption rates have steadily increased as SPAC equities have come under pressure

- Redemption rates have increased from 11% in 1Q21 to 85% in 1Q22
- SPAC management teams expect this trend to persist in 2022
- Hedge funds *and* fundamental investors are responsible for high redemption rates





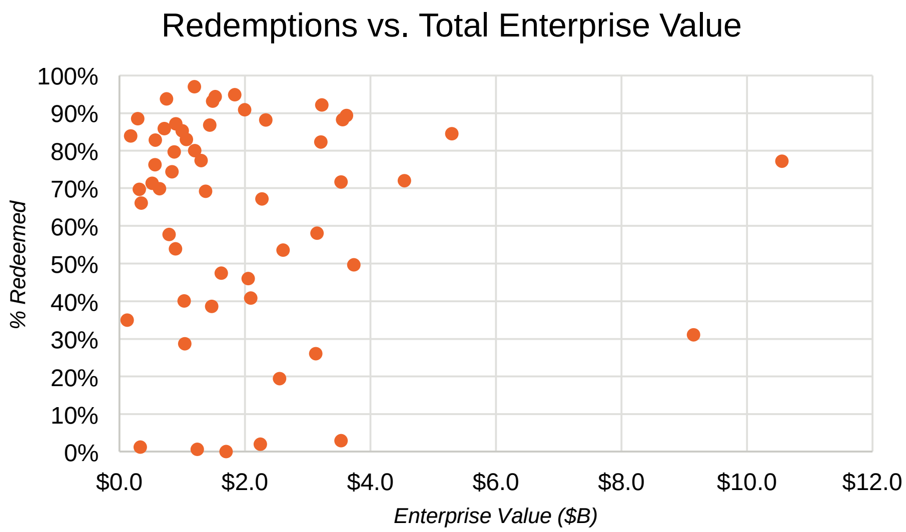
Source: ICR Capital, SEC filings, Bloomberg, FactSet, Dealogic, SPAC Insider, SPAC Research

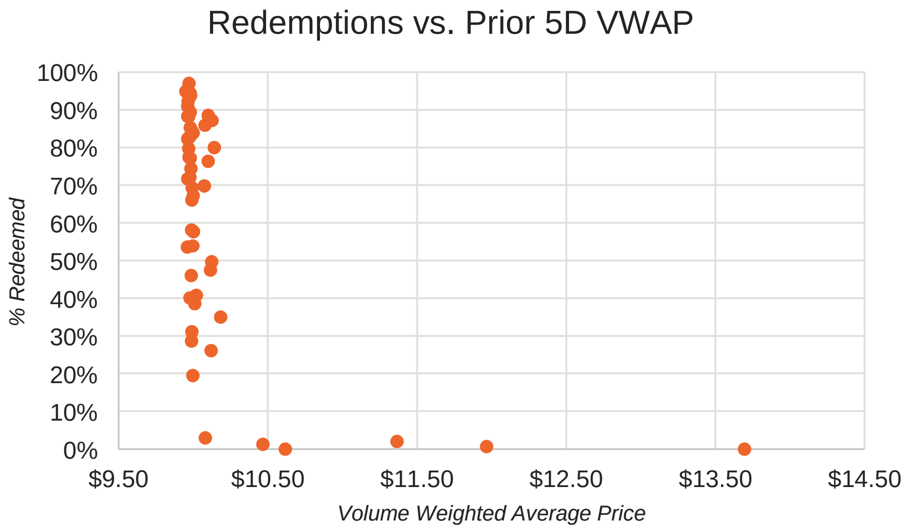
Note:. Top 20 holders account for $56.5 Billion representing 37.1% of the market value, graph above shows data from Jan 2021 – Feb 2022.

Analysis of Redemption Drivers

SPAC equity price is the main driver of redemptions

- Redemption rates are uncorrelated with size of SPAC merger and with sector
- SPAC equity prices drive redemptions, especially VWAP for the 5 days before the redemption deadline
- Companies must articulate and amplify a compelling investment thesis





Source: ICR Capital, SEC filings, Bloomberg, FactSet, Dealogic, SPAC Insider, SPAC Research
Note: Graphs show SPACs that closed 4Q21.

Minimizing Redemptions

- An area of focus often relates to minimizing (or reversing) redemptions, a process that allows investors to get back their money at the SPAC IPO price.
- The SPAC sponsor may consider offering a portion of their securities to the SPAC's public shareholders in order to obtain a non-redemption commitment.
- The SPAC sponsor might instead (or as an added supplement) consider offering cash consideration to the SPAC shareholders as an inducement in exchange for a non-redemption guarantee.
- If the shareholder has already redeemed, the SPAC sponsor may offer consideration in exchange for an agreement to reverse their redemption decision.

Minimizing Redemptions

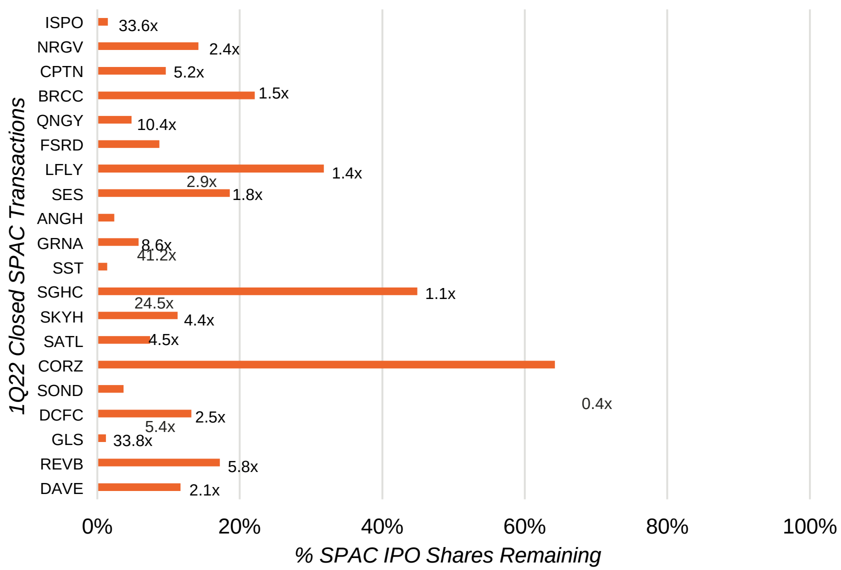
- The SPAC is unable to issue additional securities that would vote on the business combination and the holder of the securities cannot receive a cash payment from the SPAC's trust account.
- Triggering the tender offer rules would also require the SPAC’s offer to remain open for at least 20 business days following the commencement of the offer among other impractical requirements.
- Any cash payment made to the SPAC's shareholders must come directly from the SPAC sponsor or its affiliates.
- Due to high level of redemptions, and smaller size of SPAC PIPEs, certain de-SPAC companies need to reconfirm compliance with applicable exchange requirements.
  - Nasdaq Global/NYSE: at least 400 round lot holders must hold 1.1 million shares.
  - Satisfy minimum market capitalization requirement for the applicable exchange.

Impact of Share Redemption on Post Merger Cap Table

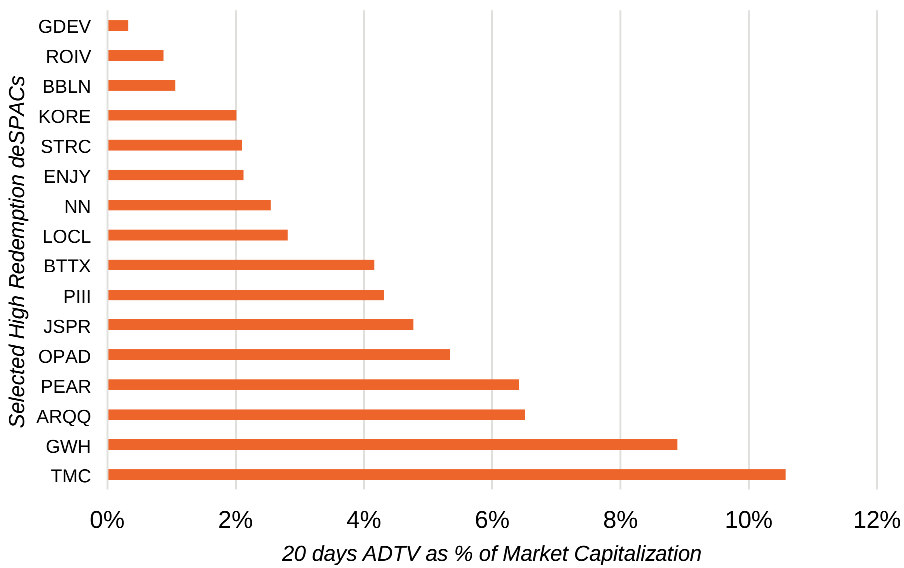
Redemptions increase shareholding complexity and reduce access to capital

- 80% of business combinations in 2022 experienced redemptions of more than 80% of their SPAC IPO shares
- The resulting lower share turnover reduces the amount of capital that can be raised efficiently
- High redemption rates increase the ratio of the SPAC warrants to SPAC shares
  - For deSPACs with +80% redemptions, the average ratio of warrants to common shares is 9.7x

1Q22 Redemptions and Post Merger Warrant Ratio



Illustrative deSPAC Access to Equity Capital

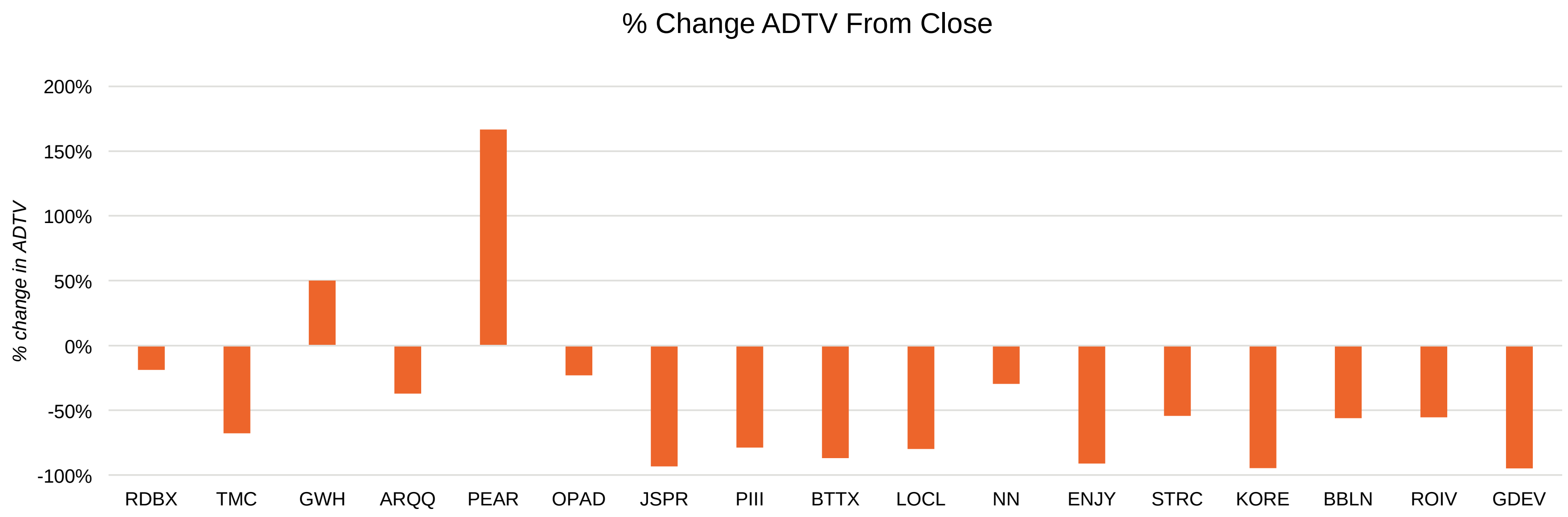


Source: ICR Capital, Company filings, FactSet, SPAC Research
Note: SPACs on graph in chronological order from left to right. deSPAC access to equity capital graph contains US SPACs that closed a merger transaction after August 2021, had an equity PIPE capital, at least 80% redemptions, and closed more than 50 trading days ago.

deSPAC Share Liquidity Analysis

Redemptions increase shareholding complexity and reduce access to capital

- Low share turnover limits the ability of current investors to sell down their positions
  - Creates an extended period of selling pressure on the common stock price
  - Complicates investor targeting and access to capital



Source: ICR Capital, Company filings, FactSet, SPAC Research
Note: We analyzed US SPACs that closed a merger transaction after August 2021, had an equity PIPE capital, at least 80% redemptions, and closed more than 50 trading days ago. The 17 SPACs are LOCL, NN, BTTX, RDBX, BBLN, ENJY, GWH, ROIV, KORE, OPAD, JSPR, TMC, ARQQ, GDEV, PEAR, PIII, and STRC. We then calculated the volume in the 2 weeks preceding the merger combination and compared to the volume until February 2022

deSPAC Liquidity Limitations

Research and Road Shows

- Consider if a relationship with a reputable investment bank has been established that will provide equity research coverage to the deSPAC company.
- As an ineligible issuer, the following safe harbors are unavailable for deSPAC companies:
  - Research report safe harbors (Rules 137, 138 and 139)
  - Communications more than 30 days before registration statement is on file (Rule 163A)
  - Restrictions expire three years after the initial business combination is completed and the Super 8-K is filed

deSPAC Liquidity Limitations

Lock-up Restrictions

- The ability of the SPAC and target company's insider to sell their shares after the business combination is a key point of negotiation in any deSPAC transaction.
  - Common for insiders and key shareholders to agree not to transfer their shares for a certain period following the closing, typically 6 or 12 months, subject to certain customary exceptions.

Overview of Capital Raising Alternatives

Underwritten Offering	Private Placement	Direct Lending
✓ Simple ✓ Potentially increases float ✗ Requires Company to build robust institutional book of demand ✗ Requires more mature stock trading dynamics, e.g., ADTV, stock borrow ✗ Public nature of offering ✗ Greater deal risk ✗ Stock price impact	✓ Simple ✓ Potentially increases float over time ✓ Potentially exempt from registration requirements ✓ Discreet ✗ Requires Company to build a book of demand ✗ More flexible than underwritten offering, but sizing and pricing still based on stock trading dynamics ✗ Higher headline pricing but could be partially offset by lower stock price impact	✓ Potentially exempt from Registration requirements ✓ Potential to raise capital without negative stock price impact ✓ Flexibility in pricing and structure ✗ Incremental complexity ✗ Balance sheet leverage and repayment risk ✗ Does not increase float ✗ Requires cash flow or assets

Overview of Capital Raising Alternatives (continued)

At-the-Market Offering	Sovereign Strategic Private Equity	Legacy Shareholders
✓ Simple ✓ Increases float, slowly ✓ Does not require institutional book of demand ✓ Modest stock price impact ✘ Limited available proceeds ✘ Weaker signal than bookbuild offering	✓ Strong signal to market ✓ Potentially exempt from registration requirements ✓ Potential benefits to engineering, sourcing and distribution ✘ Limited availability of capital ✘ Pricing and sizing often related to current opportunity set	✓ Strong signal to market ✓ Potentially exempt from registration requirements ✘ Existing shareholders likely interested in liquidating investments ✘ Further concentrates shareholding structure ✘ Potentially limited increase on float and share turnover

Legal and Regulatory Considerations

Public Offering Alternatives

- Most deSPAC companies will be unable to do a confidential follow-on offering as the 12-month period following the SPAC's IPO will have already expired.
- Additionally, any deSPAC follow-on offering within the 12-month period following the deSPAC transaction must be registered on Form S-1.
  - SEC will need to review and declare Form S-1 effective.
  - Establishing an "at-the-market" (ATM) offering will be impractical until the deSPAC company becomes S-3 eligible and is able to rely on Regulation M's ADTV exemption.

Legal and Regulatory Considerations

Private Placement Alternatives

- Any private placement of deSPAC securities must take into consideration the exchange's shareholder approval rules.
  - Each exchange has specific requirements applicable to listed companies to receive shareholder approval before they can issue 20% or more of their outstanding common stock or voting power in a "private offering."
  - The exchanges also require shareholder approval in connection with certain other transactions.
  - These issues may arise as well with a convert.

Offering Alternatives

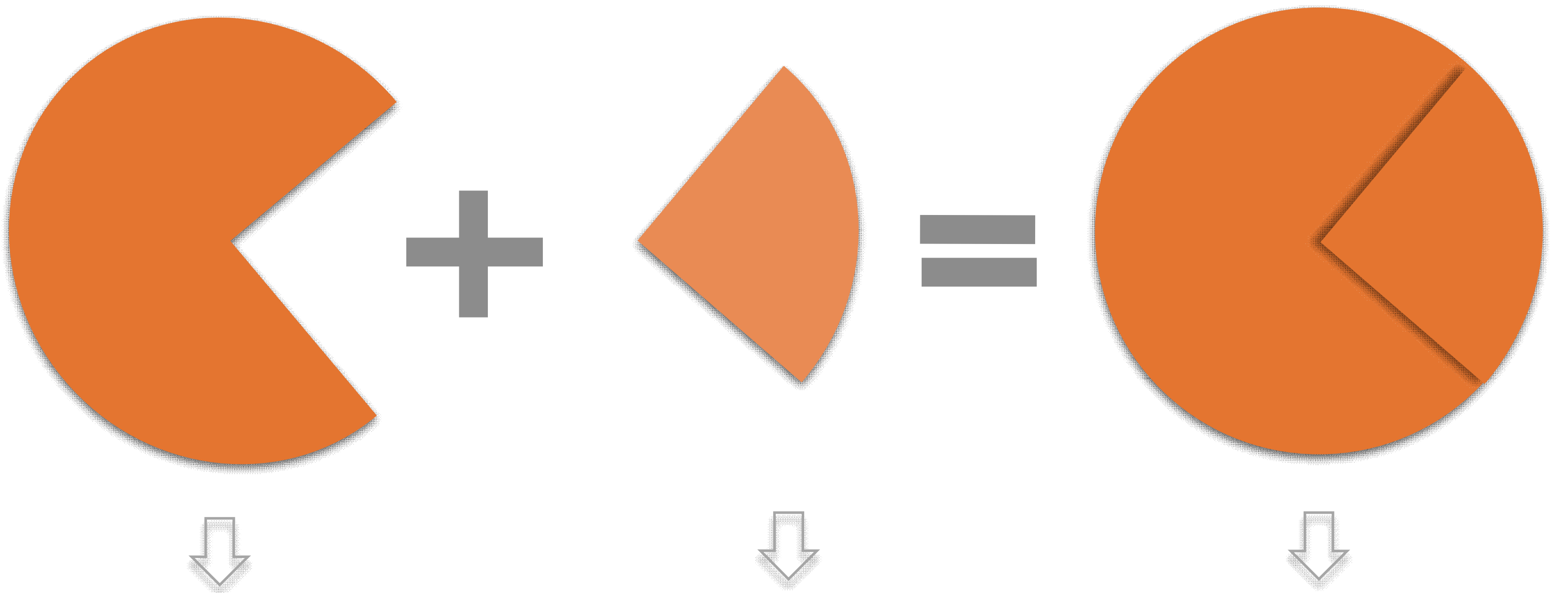
What is a Convertible Bond?

A convertible bond is a combination of a discounted bond and equity options

Bond (~70-80% Value)

Option (~20-30% Value)

Convertible Bond (Sold at 100%)



- Often senior unsecured
- “Bond Value” = Present value of convertible cashflows discounted at straight debt rate

- Option value compensates investors for low coupon
- If option is in-the-money, share delivery can defease convertible liability

- Coupon < Straight Debt Rate
- Claim in bankruptcy is par and based on seniority of the debt component

What is a Convertible Bond? *(cont'd)*

While technically a convertible is a "discounted bond" plus "equity options," a better way to understand convertibles is to look at the various cash and share flows at various stages of the security

- ***Initial Assumptions / Calculations***
  - To simplify the calculations, we have assumed that a company wants to raise $100, stock price is $8.00, and convertible terms are "1% up 25%" – that is, coupon (interest rate) is 1% and conversion premium is 25%
  - Given $8.00 stock price at issue and a 25% conversion premium, conversion price is $8.00 x (1 + 25%) = $10.00
  - A $100 convertible bond, therefore, has $100 / $10 = 10 conversion shares
  - The convertible bond entitles the investor to receive (i) 10 shares or (ii) $100 back at maturity
- ***At Inception***
  - The issuer receives $100 from the investor and delivers a convertible bond to the investor
- ***Interim Period***
  - The issuer pays 1% x $100 = $1.00 of annual interest to the investor in two semi-annual payments of $0.50 each
  - Even if stock performs well, investors are unlikely to convert their securities early as they can retain the option value and continue to receive coupons
- ***At Maturity***
  - Depending on the stock price, the investor chooses to receive $100 back ("redemption") or ask for 10 shares ("conversion")
  - While the choice of "redemption" vs. "conversion" resides with the investor, the issuer can settle the conversion in cash, shares, or combination at its option as long as it delivers an equal amount of value to the investor (1)

Stock at Maturity	Conversion Value	Redemption Value	Investor Chooses to	Value to be Received by Investor	Issuer Chooses to Deliver Cash / Share / Combination (1)
$9.99	$99.90	$100.00	Receive $100 in cash ("Redemption")	$100.00	Can deliver $100 only in cash
$15.00	$150.00	$100.00	Receive 10 shares ("Conversion")	$150.00	Can deliver $150 / 10 shares / any combination of cash and shares
$30.00	$300.00	$100.00	Receive 10 shares ("Conversion")	$300.00	Can deliver $300 / 10 shares / any combination of cash and shares

(1) *Assumes a convertible with flexible settlement.*

Why Consider a Convertible Bond?

Convertible securities can offer a number of unique benefits and negatives vs. other financing alternatives

Benefits and Negatives for Issuers		Benefits and Negatives for Investors
Compared to Equity	**Compared to Debt**	
✓ Sold under Rule 144A – exempt from registration requirements ✓ Sell stock up 100% or more through call spread vs. today's price ✓ Reduce dilution further by settling principal amount in cash at maturity × Leverage and need for repayment	✓ No restrictive covenants and no need for ratings ✓ Materially lower interest expense ✓ Quicker process ✓ Underwriters can pick up coverage × Equity dilution × Potential stock price impact on the day of the deal	✓ Higher risk-adjusted returns given downside protection and upside participation ✓ Ability to employ volatility monetization trading strategy ✓ Capture a modest yield vs. equity × Potentially lower absolute returns when equity markets outperform × Less liquidity vs. the equity markets

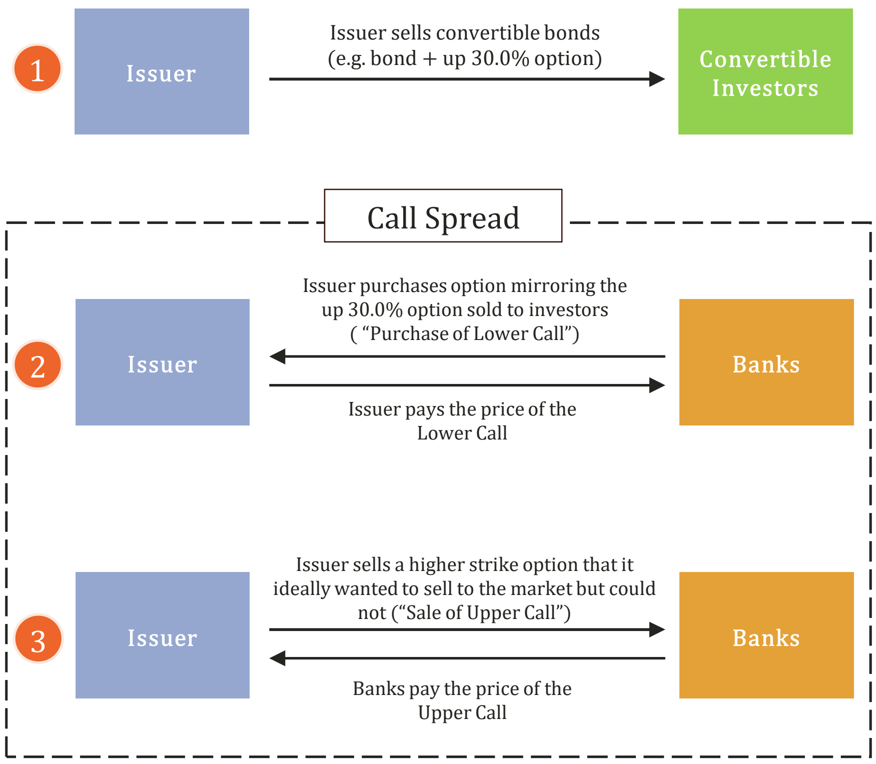
Many Issuers also Purchase a Call Spread alongside a Convertible Issuance

A call spread allows an issuer to issue a market standard security to the market and purchase a separate "insurance policy" from the banks to increase the effective conversion premium

Overview

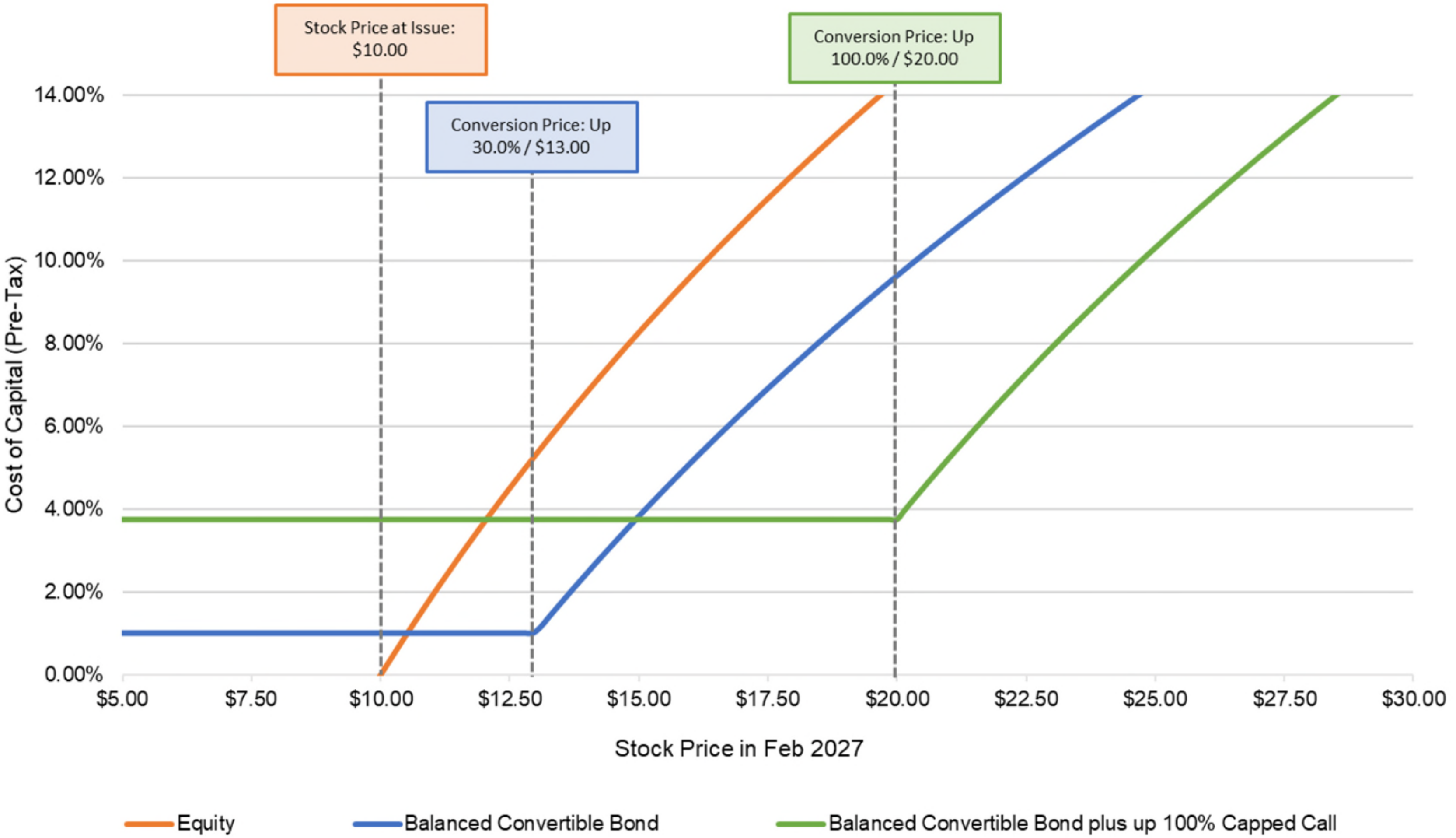
- Convertible investors want "equity upside" and prefer a 30 – 50% conversion premium instead of a higher coupon / higher premium security
- However, many issuers want and are often willing to pay for a materially higher conversion premium (e.g., 100%+)
- Banks can bridge the gap between "what issuers want" and "what investors want" by selling a call spread to an issuer
  - Issuer sells a market standard security
  - Issuer then buys a call spread from the banks by making an upfront cash payment
  - The banks agree to compensate the issuer for any future dilution above the conversion price until the new effective conversion price
- Call spreads can be structured based on a company's need for flexibility in the future and tax status
  - Bond Hedge plus Warrants (structure where the call spread is bifurcated into the purchase of a lower strike call and the sale of an upper strike call)
  - Capped Call (single instrument call option with a capped upside)

Mechanics



Pre-tax Cost of Capital Analysis

- We have shown a sample cost of capital model to compare (i) equity with (ii) a balanced convertible, and (iii) balanced convertible with an up 100% capped call



Note: Assumes a 1.00% coupon, a 30.0% conversion premium, a 12.5% net premium for an up 100% capped call, and a $10.00 stock price at issue.

BeautyHealth's $750mm Convertible Offering plus Capped Call

BEAUTYHEALTH™

Issuer	The Beauty Health Company
Offering Type	144A
Size at Launch	$400mm
Size at Pricing	$650mm
Overallotment Option	$100mm (exercised)
Marketing Method	1-day Bookbuild
Maturity	5 Years
Structure	Provisionally Callable in 3 Years
Coupon Range	1.50 – 2.00%
Final Coupon	1.25%
Conversion Premium Range	27.5 – 32.5%
Final Conversion Premium	32.5%
Capped Call Strike (Up %)	100.0%
Stock Price Impact	(12.8%) (1)
Advisor	ICR Capital
Active Bookrunners	JPM, Cowen

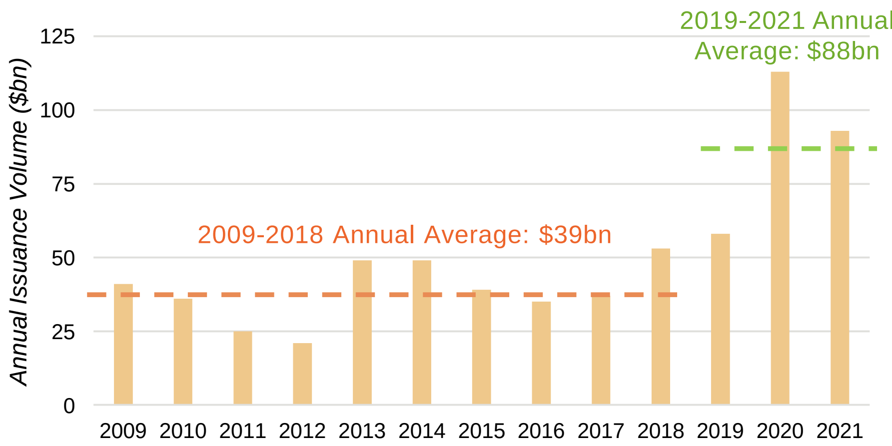
The Beauty Health Company ("BeautyHealth" / NASDAQ: SKIN) is a category-creating company with an innovative, patented system ("HydraFacial") to cleanse, extract, and hydrate the skin. BeautyHealth went public via a merger with Vesper Health, a SPAC founded by Brent Saunders, the former CEO of Allergan and Bausch + Lomb.

- **ICR Capital provided strategic advice to management and board** on key topics, including financing alternatives, structuring, pricing, allocation strategy, and the overall execution process
  - Reviewed and updated documentation to ensure issuer-friendly provisions
  - Helped fast-track the "go to market" process ahead of a busy market window
- **Guided management** through the **selection of underwriting teams and negotiation of bank economics** based on relationships and knowledge of banks
- **Ran a competitive capped call auction process** which saved 100bps+ in value despite 62.5% upsizing in deal size
  - The capped call will protect BeautyHealth from dilution until stock price is 2x today's level
- **Ensured efficient convertible pricing** by analyzing credit spread and volatility, crafting a marketing strategy, and monitoring the order book on deal day
  - Final pricing of 1.25% up 32.5% was better than the best end of the price talk range
  - The $100mm overallotment option was exercised on the first day of trading
- ICR will continue to partner with the Company post-deal through our Investor Relations and Public Relations teams

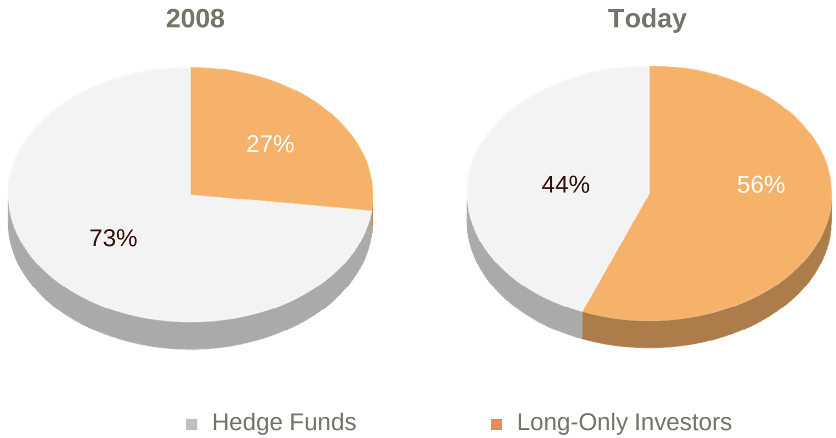
Source: ICR Capital, SEC filings, Bloomberg.
(1) The Company's stock was up 49% in the prior one month.

2021 was a Pivotal Year for the Convertible Market

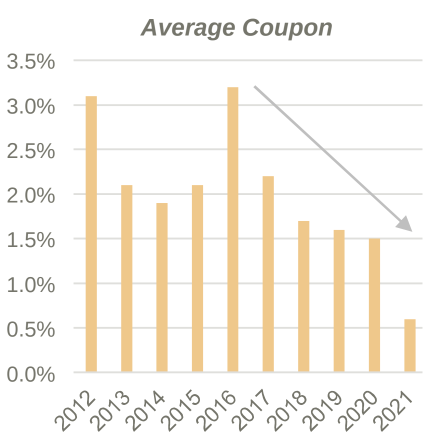
2021 saw the 2nd highest convertible volume since the Credit Crisis

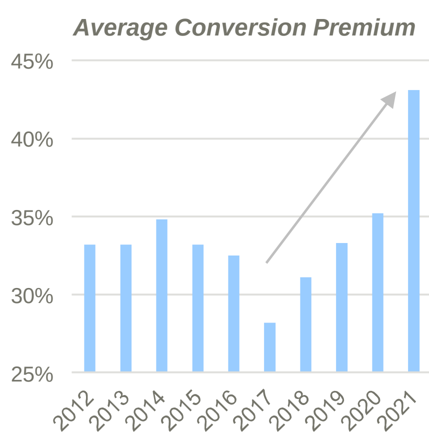


Crossover investors, particularly credit funds, entered the market increasing long-only participation to above 50%



Terms were the best in history driven by a combination of high volatility, tight credit, and strong market conditions





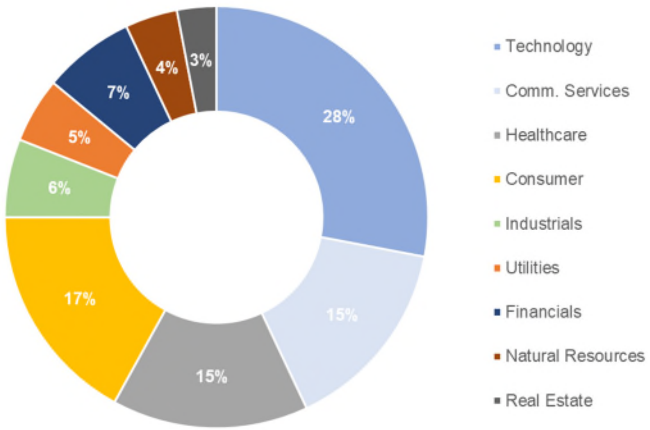
More issuers used call spreads than before – on average, advisors saved issuers 1.6% of deal size on call spread price

% of Deals with Call Spreads	58%
Average Upper Strike	95%
Capped Call vs. Bond Hedge plus Warrants	84% / 16%
Average Call Spread Savings per Deal with an Experienced and Independent Advisor	1.58% of Deal Size

Source: ICR Capital, Bloomberg.

2022 will be a Market of Windows

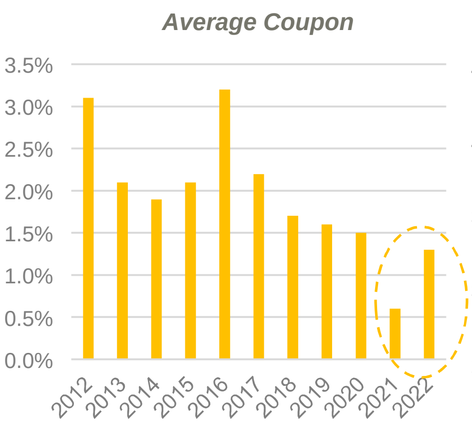
High growth stocks represent a sizable portion of the convertible market

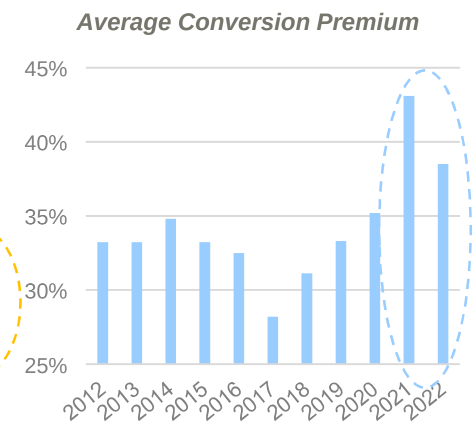


As valuations are impacted due to fears around rising rates, convertible market takes pain

Index	2022 YTD Return (%)
Bloomberg US Convert Composite	(7.1)
Convert Market Weighted Equity Basket	(10.9)
S&P 500	(7.5)
Russell 2000	(9.9)
Bloomberg US High Yield	(4.5)
Bloomberg US Investment Grade	(5.6)
5-7 Year Treasury	(3.3)

But the market is open as investors are using this opportunity to build positions at an attractive entry-point





We believe 2022 will be a different market than 2021

- In 2021, equity draw downs were limited and terms were the best in convertible history
- In 2022, we are likely to see shorter windows – after choppy markets, there will be periods of stability when issuers rush to the market causing deal oversupply and weakness
- Best-in-class companies will still achieve very attractive terms, but on average, terms are likely to be 0.5-1.0% worse than last year
- Terms will be significantly worse for companies with challenging stock technicals
- We recommend clients to be proactive and prepare ahead of time so that they can move quickly and capture market windows

SPAC Convertible Market Update

While convertibles have long been a financing tool for high growth companies, SPACs recently started to access this attractive market; since 2021, 18 issuers have raised ~$12bn in the public convertible market

- A number of issuers accessed the market as little as 4-5 months after the de-SPAC close
- 72% of the issuers redeemed their warrants before executing the convertible transaction
- 67% of the issuers used a capped call to increase the effective conversion price

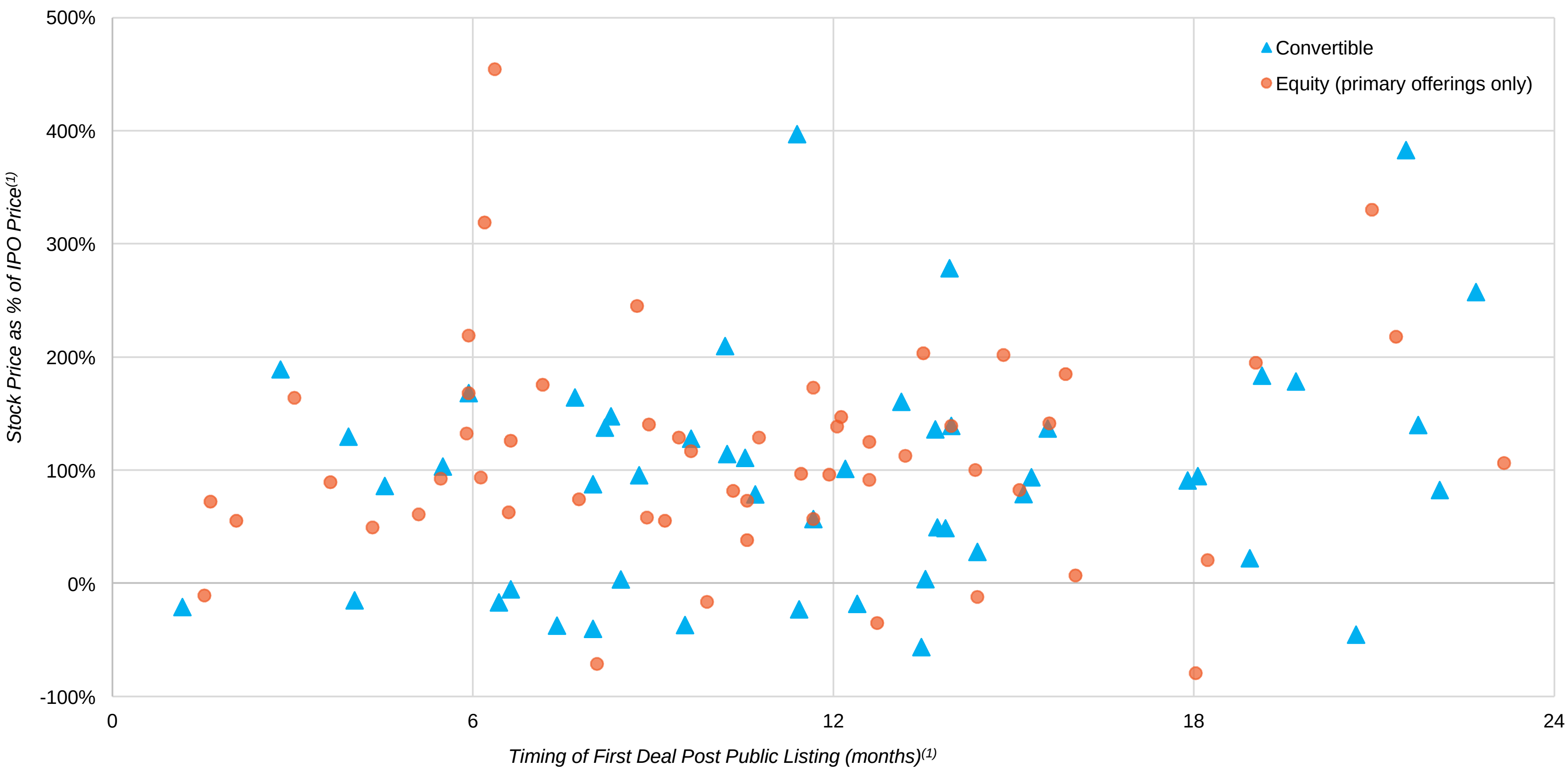
Pricing Date	Name	Months after de-SPAC	Warranted Redeemed Before	Type	Maturity (Yrs)	Final Size ($mm)	Coupon (%)	Conversion Premium (%)	Capped Call	Capped Call Strike (Up %)
1/14/2022	Virgin Galactic Holdings, Inc.	26.7	✓	Bond	5	$425.0	2.50%	27.50%	✓	100%
12/17/2021	Danimer Scientific Inc.	11.5	✓	Bond	5	$240.0	3.25%	27.50%	✓	100%
12/14/2021	Luminar Technologies, Inc.	12.4	✓	Bond	5	$550.0	1.25%	32.50%		
12/9/2021	Lucid Group, Inc.	4.5	✓	Bond	5	$1,750.0	1.25%	50.00%		
11/18/2021	Arrival	7.8	✓	Bond	5	$275.0	3.50%	25.00%		
11/17/2021	Stem Inc.	6.6	✓	Bond	7	$460.0	0.50%	32.50%	✓	125%
9/30/2021	SoFi Technologies Inc.	4.0		Bond	5	$1,200.0	0.00%	40.00%	✓	100%
9/13/2021	Porch Group Inc.	8.8	✓	Bond	5	$425.0	0.75%	32.50%	✓	100%
9/10/2021	The Beauty Health Company	4.2		Bond	5	$750.0	1.25%	32.50%	✓	100%
9/9/2021	Radius Global Infrastructure, Inc.	11.3		Bond	5	$264.5	2.50%	30.00%	✓	100%
8/18/2021	Opendoor Technologies Inc.	8.0	✓	Bond	5	$977.5	0.25%	30.00%	✓	100%
8/13/2021	Fisker Inc.	9.4	✓	Bond	5	$667.5	2.50%	30.00%	✓	115%
6/10/2021	Clarivate PLC	25.3	✓	Mandatory	3	$1,437.5	5.25%	20.00%		
5/25/2021	Shift Technologies, Inc.	7.4	✓	Bond	5	$150.0	4.75%	27.50%	✓	125%
3/24/2021	MP Materials Corp.	4.2		Bond	5	$690.0	0.25%	26.50%		
3/16/2021	Centennial Resource Development, Inc.	53.2		Bond	7	$170.0	3.25%	30.00%	✓	75%
3/16/2021	Draftkings Inc.	8.4	✓	Bond	7	$1,265.0	0.00%	40.00%	✓	100%
1/14/2021	Repay Holdings Corp.	18.4	✓	Bond	5	$440.0	0.00%	40.00%		
Mean[1]		**12.0**			**5**	**$629.0**	**1.63%**	**32.6%**		**103%**
Median[1]		**8.4**			**5**	**$460.0**	**1.25%**	**30.0%**		**100%**

[1] Based on convertible bonds only, ignores the mandatory convertible deal issued by Clarivate.

We Believe Convertible Issuances by Former SPACs will Increase Further

- To ascertain what might lie ahead, we analyzed the first primary capital raises of the ~250 technology companies that publicly listed since 2016
  - 40%+ of them accessed the market in the first 2 years to raise primary capital
  - The split between equity vs. convertible was roughly 50% / 50%

% Stock Price Change vs. Timing of First Capital Markets Offering Post- Public Listing



Source: Dealogic, Factset, ICR Capital, SEC filings, Bloomberg.
Note: Analysis as of December 31, 2021.
(1) For Coinbase, Spotify, and Slack, price change is from initial Reference Price. Ignores 3 deals where stock price performances were 500%+.

Thinking through Convertible Sizing

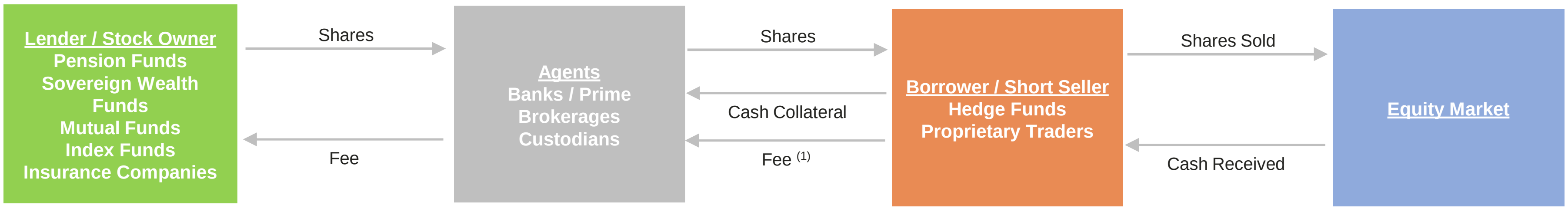
- Convertible deal sizing depends on (1) issuer need, (2) market dynamics, and (3) stock technicals
- In terms of market dynamics, there are a number of size-based execution considerations
  - Deals below $100mm are likely to be sold to a handful of investors in a “club deal”
  - Deals below $150-200mm may struggle to receive attention from blue chip long-only investors
  - “Index eligible” sizable deals may receive incremental investor focus and slightly better execution
- Deals often have a 15% over-allotment option, although an issuer can choose a smaller over-allotment option if desired
- We have highlighted the stock technicals-related “rules of thumb” below:

Deal Metrics	“Rule of Thumb”	Commentary
% of Market Capitalization	Up to ~20%	• If a deal is too large a percentage of market cap, investors might start to focus on optics of higher dilution and higher leverage • However, this factor can be mitigated by the right use of proceeds
Multiple of Stock Trading Liquidity	Up to 20-25x	• If a deal is a large multiple of daily stock trading volume, hedge fund shorting would put pressure on the stock price during the day of the deal
Multiple of “Stock Borrow”	Up to 2x	• “Borrow” is the availability of shares that can be loaned *by* institutional investors and loaned *to* hedge funds • Hedge funds can borrow these shares and set up a short position to hedge equity exposure and monetize volatility • Rule of thumb is that for every $1 of available borrow, a company can issue a $2 deal • Ideally, borrow cost should be standard rate of ~25bps ("General Collateral" or "GC")

Overview of Stock Borrow

Given naked shorting is not allowed in many jurisdictions, a short seller must first "borrow" shares from a lender (i.e., current owner of shares) before those shares can be sold to effectuate a short position; "Stock Borrow" is stock that can be borrowed from an equity holder by a short seller

Illustration of Borrow and Stock Shorting



- Many equity holders ("lenders") put their shares in a "borrow pool" managed by agents (such as banks, custodians, etc.) so that their shares can be loaned out in exchange for a fee
  - Borrow providers are often passive investors who can use the borrow fee to increase their annual returns
- Potential short sellers can borrow these shares so they can sell them and create a short position
  - Given naked shorting is not allowed, borrowing shares is a must before they can be sold short
  - Short sellers pay the agent / lender (i.e., stock owner) a fee for being able to borrow these shares [1]
- Total "stock borrow availability" and the fee to borrow these shares ("borrow cost") are two metrics a company should keep an eye on

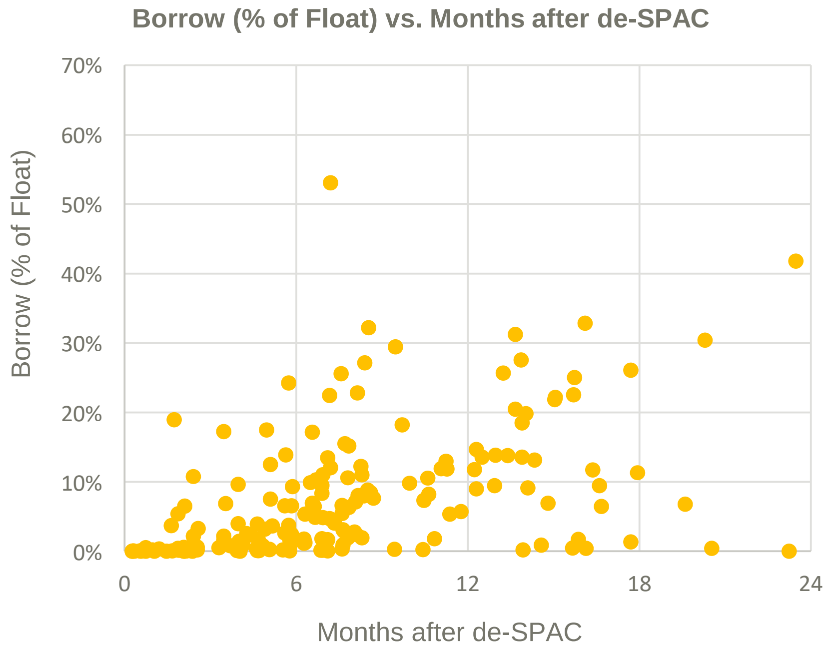
[1] In reality, the agent reinvests the cash collateral and receives a reinvestment return; the borrow fee takes into account this reinvestment return. That is, if reinvestment return is higher vs. the borrow fee, the agent may actually pay a rebate to the borrower.

Borrow Availability Trends for Former SPACs

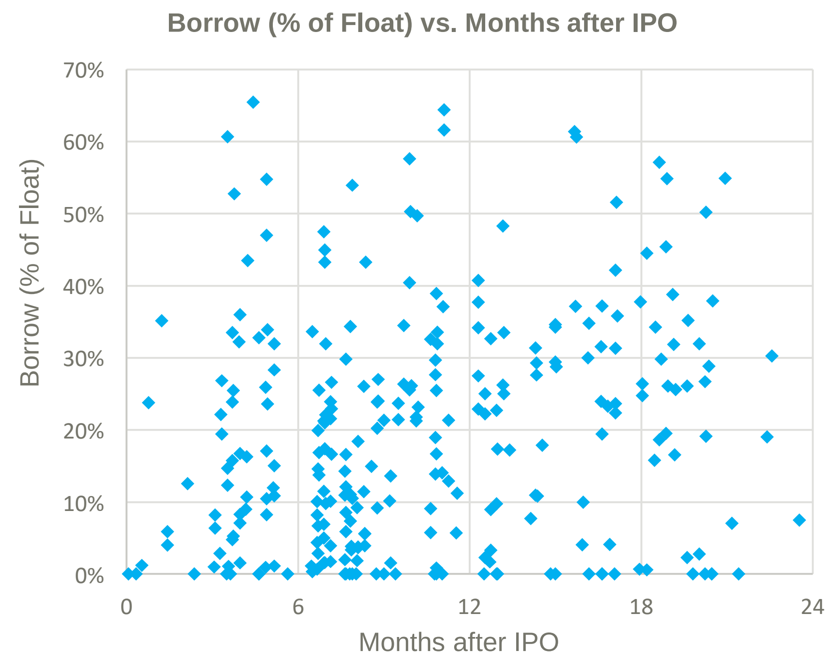
Former SPACs tend to have lower borrow availability compared to companies that go public via an IPO

- We analyzed borrow availability as a % of float for SPACs and IPOs in 2020-2022YTD with current market cap of $500mm-$10bn
  - We found that IPOs tend to have more than 2x borrow vs. de-SPACs 12 months after public listing
  - Also, for companies that have been public for at least 6 months, mean and median de-SPAC borrow costs are 218bps and 48bps higher vs. borrow costs for companies that went public via an IPO
- The lower borrow availability and higher borrow cost impact convertible market access, sizing, and pricing
- SPAC issuers can improve borrow by cleaning up their warrants, bringing more long-term shareholders to the company, and continuing to execute well

Borrow Availability for Former SPACs



Borrow Availability for IPOs



ICR CAPITAL LLC MEMBER FINRA / SIPC

Note: Data based on all 2020-2022YTD SPACs and IPOs with current market cap of $500mm to $10bn.

Addressing Limited Borrow in the Context of a Convertible Offering

If borrow is limited and / or sub-optimal, an issuer can use a number of strategies to alleviate investor concerns around borrow and improve convertible execution

Share Repurchase via a Prepaid Forward Contract

- The issuer repurchases shares concurrently with the convertible offering through a prepaid forward contract
- The structure effectively allows hedge fund investors to synthetically short shares to the company via the lead bank

PLUG POWER

Concurrent Equity Offering

- Executing a common equity offering concurrently with a convertible offering can alleviate borrow concerns
- A portion of the newly issued shares should enter the "borrow market" over time, which provides comfort to convertible investors

MP MATERIALS

ARRIVAL

Capped Call with Longer Total Return Swaps

- When an issuer executes a capped call, the banks must purchase shares as a hedge against the capped call
- Banks can purchase these shares from hedge funds via a synthetic contract (without any involvement from the issuer) and alleviate borrow concerns

FISKER

Private Convertible

- A number of companies, both SPACs and non-SPACs, have recently issued private convertibles
  - Can be a "club deal" or sold to a strategic investor, private equity funds, or other large funds

oscar

世纪互联 VNET

kaleyra

Li-Cycle

CAZOO

Convertible Execution Timeline

A convertible offering can be executed in 2-3 weeks; however, we recommend clients to think through structuring, key considerations, and process items ahead of time

Weeks to months	~2 weeks	~1 day		~2 days	1-2 weeks
Advisor / Banks Discuss Structure with Issuer	Conduct Due Diligence and Prepare Transaction Documents	Launch Transaction and Market Transaction	Price Transaction	Finalize Closing Documents and Close/Fund	Complete Post-Closing Items

- For the most efficient, streamlined process, we recommend issuers to understand key considerations and process items ahead of documentation
  - Allows counsel to prepare documents without any last minute changes
- We put these considerations in 3 buckets:
  - Key gating items on convertible doability (i.e., "Can you issue a convertible?")
    - Authorized shares, debt covenants, borrow availability, Reg S-X considerations, etc.
  - Understanding the potential negatives of a convertible (i.e., "Should you issue a convertible?")
    - Potential dilution, stock price impact, leverage on balance sheet, complexity, change of control method, etc.
  - Thinking through key structuring and process items (i.e., "How should you structure a convertible?")
    - Call structure / redemption method, settlement method / desired accounting, call spread vs. share repurchase, 144A vs. Registered, overnight vs. marketed, selection of lead bank and counsel, etc.

Securities Law Considerations Applicable to deSPAC Companies

Ineligible Issuer Status

- deSPAC companies are deemed "ineligible issuers" for a period of three years from the completion of the deSPAC transaction
  - An "ineligible issuer" may not use free writing prospectuses.
    - Important to consider for the deSPAC company in connection with any follow-on offering.
  - Holders of deSPAC securities may not rely on Rule 144 for resales until one year after the business combination closes and the Super 8-K is filed.
  - A deSPAC company cannot become a well-known seasoned issuer until three years have passed since its business combination.

Availability of Rule 144

- Rule 144 requires that the deSPAC company: (**1**) has ceased to be a shell company; (**2**) is an SEC-reporting company, (**3**) has filed all reports required to be filed with the SEC for the preceding 12 months, **and** (**4**) has filed current Form 10 information with the SEC, reflecting that the company is no longer a shell company and that at least one year has elapsed from the filing of the Form 10 information.
- Counsel may not want to remove the restricted legend for securities of a former SPAC regardless of the holding period making it impossible to hold in a brokerage account.

Emerging Growth Company Status

- A deSPAC company generally will be an emerging growth company ("EGC"), as defined in Section 2(a)(19); it will remain an EGC until the earlier of:
  - The last day of the fiscal year
    - Following the fifth anniversary of the SPAC's IPO completion,
    - In which the deSPAC company has total annual gross revenue of at least $1.07 billion, or
    - In which the market value of common equity held by non-affiliates of the deSPAC company exceeds $700 million as of the prior June 30th (or second fiscal quarter-end if not a December 31 fiscal year-end company).
  - Date on which the deSPAC company has issued more than $1 billion in non-convertible debt securities during the prior three-year period

Roadshows

- Under Rule 433, any roadshow that is a "written communication" is a free writing prospectus ("FWP").
- SPACs and deSPAC companies are not able to use free writing prospectuses so long as they remain ineligible issuers
- Therefore, it is important that deSPAC company roadshow presentations are conducted to avoid being a written communication.
  - Under Rule 455, a "communication that, at the time of the communication, originates live, in real-time to a live audience and does not originate in recorded form or otherwise as a graphic communication, although it is transmitted through graphic means," does not constitute a written communication.

Form S-3 Eligibility

SEC Staff Guidance in the form of Compliance & Disclosure Interpretations

- **Question 115.18:** Following the merger of a private operating company or companies with or into a reporting shell company (for example, a special purpose acquisition company), may the resulting combined entity rely on the reporting shell company's pre-combination reporting history to satisfy the eligibility requirements of Form S-3 during the 12 calendar months following the business combination?
- **Answer:** If the registrant is a new entity following the business combination transaction with a shell company, the registrant would need 12 calendar months of Exchange Act reporting history following the business combination transaction in order to satisfy General Instruction I.A.3 before Form S-3 would become available. If the registrant is a "successor registrant," General Instruction I.A.6(a) would not be available because the succession was not primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company. General Instruction I.A.6(b) also would not be available because the private operating company or companies would not have met the registrant requirements to use Form S-3 prior to the succession. Where the registrant is not a new entity or a "successor registrant," the combined entity would have less than 12 calendar months of post-combination Exchange Act reporting history. Form S-3 is premised on the widespread dissemination to the marketplace of an issuer's Exchange Act reports over at least a 12-month period. Accordingly, in situations where the combined entity lacks a 12-month history of Exchange Act reporting, the staff is unlikely to be able to accelerate effectiveness under Section 8(a) of the Securities Act, which requires the staff, among other things, to give "due regard to the adequacy of the information respecting the issuer theretofore available to the public,...and to the public interest and the protection of investors." [September 21, 2020]

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in our three-part SPAC series:

Litigation and Enforcement Developments

Friday, March 4, 2022
12:00pm – 1:00pm EST

Featuring:
Stanford Law Professor Michael Klausner
and Mayer Brown Partners,
Brian Massengill and Anna Pinedo

Scan to register!

Supplemental Materials and Additional Resources

Read:

- Delaware Court of Chancery Allows deSPAC Litigation to Proceed Applying "Entire Fairness" Standard
- The SEC Pursues Action Against SPAC and Insiders for Misleading Investors
- Staying Nimble in the SPAC PIPE Market
- SPAC PIPE transactions: the market matures

Watch:

- MB Microtalk: An Overview of SPACs

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