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Recent SPAC Developments

The SPAC Series

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John Ablan

Partner, Chicago

+1 312 701 8018

jablan@mayerbrown.com

Eddie Best

Partner, Chicago

+1 312 701 7100

ebest@mayerbrown.com

Esther Chang

Partner, Chicago

+1 312 701 8974

echang@mayerbrown.com

Agenda

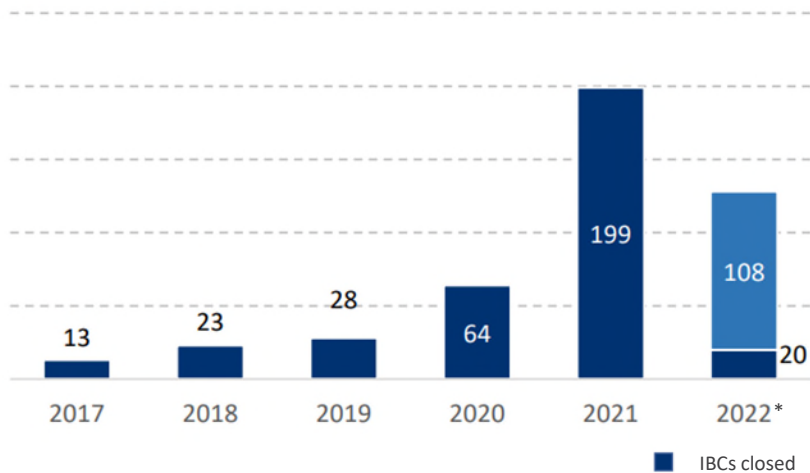
- State of the SPAC Market
- The SPAC PIPE Market
- Proposed SPAC-related Legislation
- Developments affecting China-based SPACs
- Statements from the SEC Relating to SPACs
- The MultiPlan Litigation
- SPAC Accounting Developments
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State of the SPAC Market

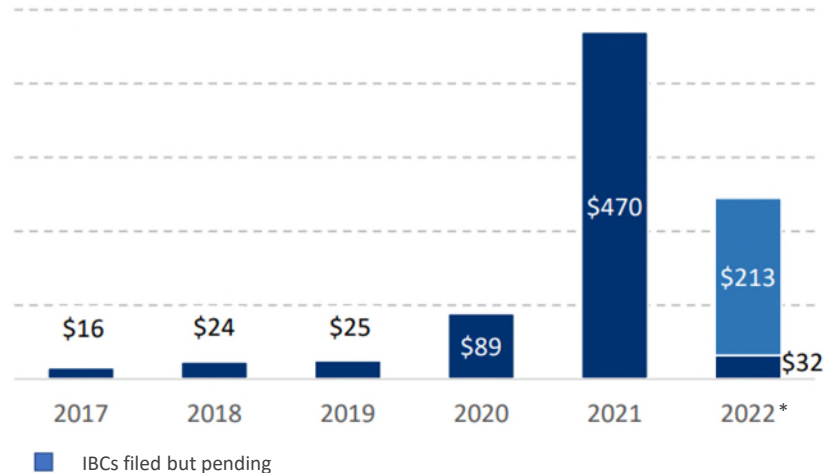
SPAC Market

- In 2022, through February 15, there have been 20 initial business combinations that have been completed with an aggregate value of \$32 billion.

Number of SPAC IBCs



Value of SPAC IBCs, \$billion

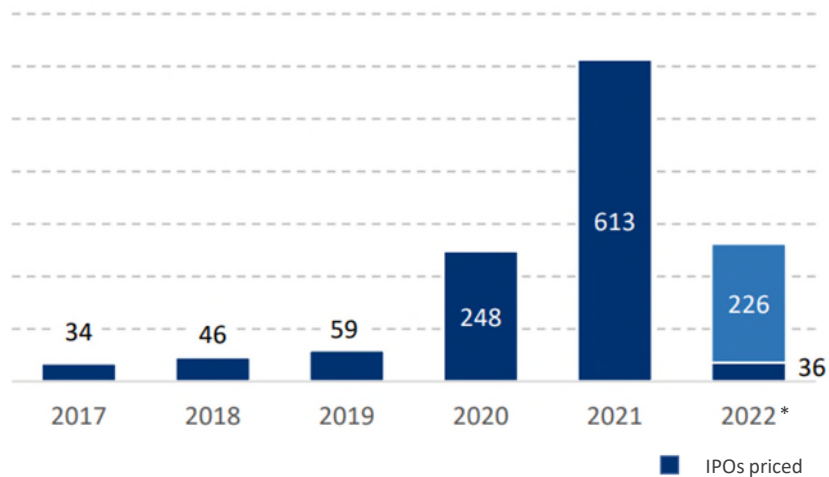


Sources: Refinitiv, SPACalpha.com
*Data as of February 15, 2022

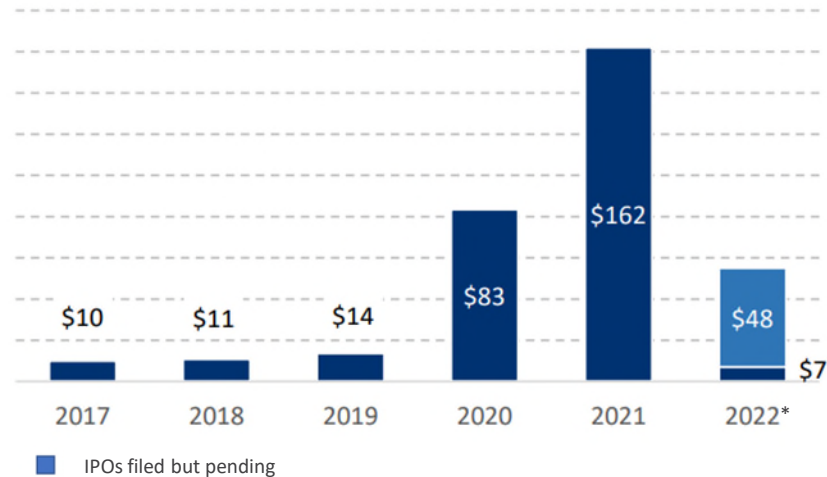
US-listed SPAC IPO Activity

- In 2022, 36 SPAC IPOs have priced and 226 are filed but pending.

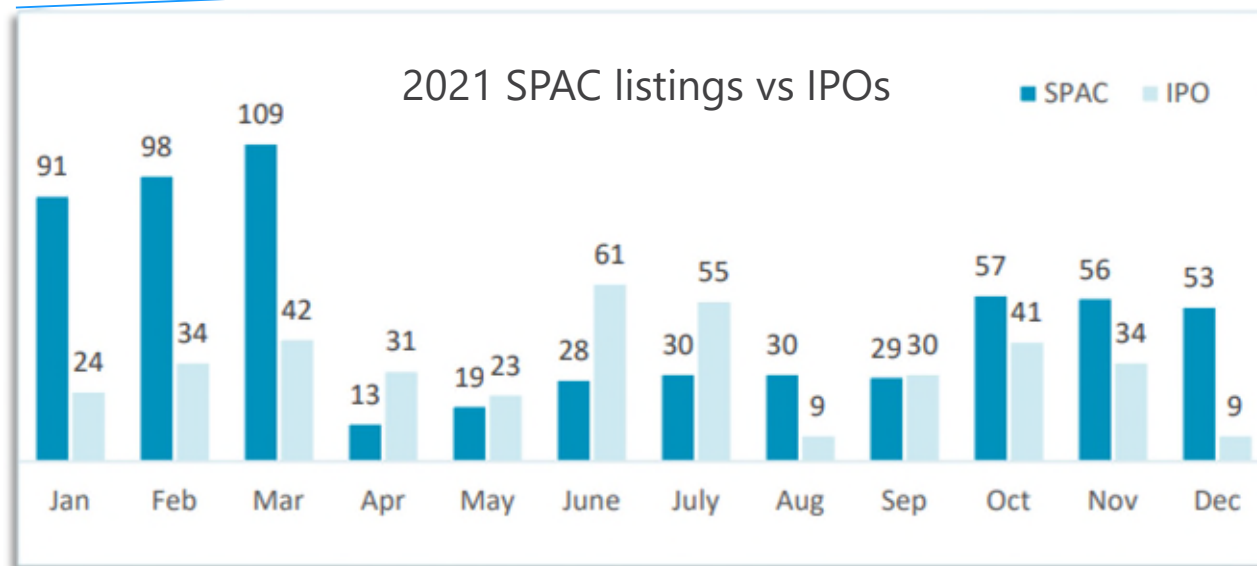
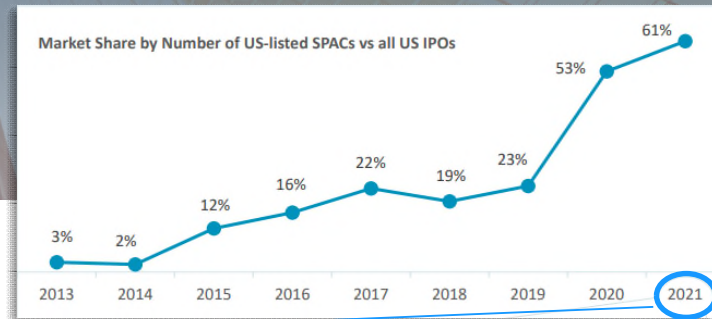
Number of SPAC IPOs



Value of SPAC IPOs, \$billion

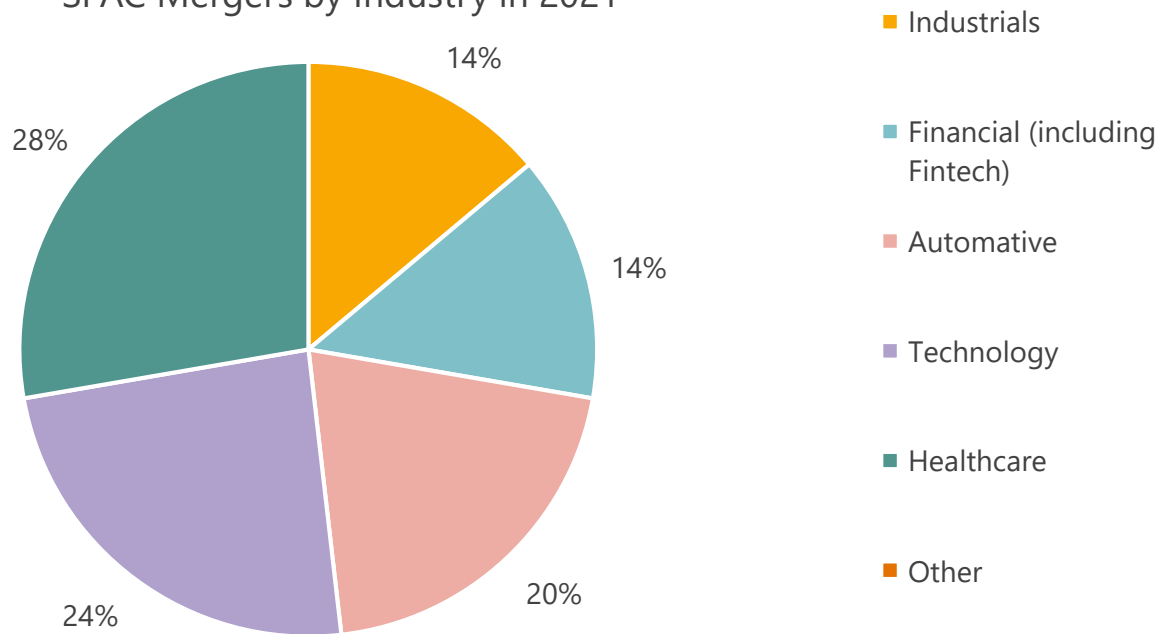


US-listed SPAC IPO Activity



SPAC Market

SPAC Mergers by Industry in 2021



State of the SPAC PIPE Market

SPAC PIPEs

- Nearly every SPAC merger in 2021 included a PIPE transaction
- SPAC PIPEs raised in average \$316 million in proceeds
- The environment for de-SPAC transactions has changed dramatically from just a year ago.
- Redemptions by SPAC shareholders have risen substantially, SPAC PIPE investors have been less willing to hold illiquid securities and regulatory impediments have complicated transaction execution.



Proposed Legislation Relating to SPACs

Pending Legislation

- Two pieces of legislation aimed at imposing additional regulations on special purpose acquisition companies (“SPACs”) were introduced on November 9, 2021 in the US House of Representatives and referred to the House Committee on Financial Services:
 - H.R. 5910, the “Holding SPACs Accountable Act of 2021,” sponsored by Rep. Michael San Nicolas (D-GU), and
 - H.R. 5913, the “Protecting Investors from Excessive SPACs Fees Act of 2021,” sponsored by Rep. Brad Sherman (D-CA).
- On November 16, after a full committee markup, H.R. 5910 and H.R. 5913 passed the House Committee on Financial Services and were ordered reported by a vote of 27-23 and 29-23, respectively.

Pending Legislation

- [H.R. 5910](#) proposes to amend the securities laws to exclude all SPACs from the safe harbor for forward-looking statements (the “Safe Harbor”). Currently, only forward-looking statements made in connection with the offering of securities by a blank check company are excluded from the Safe Harbor.
 - The Securities Act of 1933 (the “Securities Act”) defines a blank check company as “a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person” that issues “penny stock.”
 - The House bill would amend Section 27A of the Securities Act and Section 21E of the Exchange Act to replace the term “blank check company” with “a development stage company that has no specific business plan or purpose or has indicated that its business plan is to acquire or merge with an unidentified company, entity, or person.”
 - Without reference to issuing penny stocks, H.R. 5910 would exclude all SPACs from the Safe Harbor, not just SPACs issuing penny stock.

Pending Legislation

- [H.R. 5913](#) proposes to amend the Investment Advisers Act of 1940 (the “’40 Act”) and the Exchange Act, to prevent investment advisers, as defined by the ’40 Act, and brokers and registered representatives of brokers, as defined by Exchange Act, from recommending SPAC securities to a non-accredited investor unless the SPAC’s promote or other economic compensation is less than 5% or the SPAC makes certain disclosures mandated by the Securities and Exchange Commission (the “Commission”).
 - The legislation would compel the Commission to promulgate a rule requiring the disclosure by SPACs of compensation arrangements, such as a promote, granted to the sponsor of the SPAC when the arrangement would lead to dilutive effects affecting investors in the SPAC. The dilutive effects of the awards of promotes have been widely criticized.

The SPAC Act

- On April 29, 2021, Sen. John Kennedy (R) introduced the [Sponsor Promote and Compensation \(SPAC\) Act](#) (the “bill”), which would require the SEC to issue rules requiring enhanced disclosures for blank check companies, including SPACs, during the IPO and pre-merger stages.
- Specifically, the SPAC Act calls for rules requiring the disclosure of:
 - the amount of cash per share expected to be held by the blank check company immediately prior to the merger under various redemption scenarios;
 - any side payments or agreements to pay sponsors, blank check company investors, or private investors in public equity for their participation in the merger, including any rights or warrants to be issued post-merger and the dilutive impact of those rights or warrants; and
 - any fees or other payments to the sponsor, underwriter, and any other party, including the dilutive impact of any warrant that remains outstanding after blank check company investors redeem shares pre-merger.



Developments Affecting China-based SPACs

Increased Disclosure Requirements

- In December 2021, the SEC Staff issued a sample comment letter to issuers based, or have the majority of their operations, in China. The SEC called upon China-based companies to provide (among other things) the following specific disclosures:
 - the corporate structure of the China-based company and the relationship between the entity conducting the offering and the entities conducting the operating activities (including VIE structures);
 - potential impact if VIE contracts were unenforceable;
 - the potential impact of the Holding Foreign Companies Accountable Act;
 - approval required to be obtained from Chinese authorities to operate its business or offer securities outside of China; and
 - how cash is transferred within the organization

Increased Disclosure Requirements

- For SPACs, the Staff's sample comment letter required additional disclosure for SPACs (i) with sponsors based in China; (ii) having executive offices in China; or (iii) having a majority of its executive officers and/or directors located in or having significant ties to China; or (iv) contemplating merging with a company incorporated in China. Specifically, the letter required disclosure of:
 - risks associated with the SPAC's operations, and the challenges in enforcing rights under the SPAC's controlling agreements;
 - any impact Chinese law may have on the SPAC's ability to complete a merger transaction Chinese company; and
 - the risks related to an investment in a China-based company after any subsequent business combination with an operating company, including any Chinese regulation of that entity's business and what challenges in enforcing rights under the SPAC's controlling agreements with a VIE

Holding Foreign Companies Accountable Act

- HFCAA directs the SEC to identify reporting companies that use an audit firm that:
 - is located in a foreign jurisdiction; and
 - the PCAOB is unable to investigate or inspect completely because of a position taken by an authority in such foreign jurisdiction
- Each such Commission-Identified Issuer (“CII”) must submit documentation establishing it is not owned or controlled by a governmental entity in its foreign jurisdiction
- Any foreign CII must disclose: (i) the name of its auditing firm; (ii) the amount of equity owned by governmental entities in the foreign jurisdiction and whether it is “controlling”; and (iii) the name of each official of the Chinese Communist Party (“CCP”) who is a director of the issuer or its operating entities; and if its charter contains any charter of the CCP, including the text of any such charter

Holding Foreign Companies Accountable Act

- Failure to allow PCAOB inspection for three consecutive years requires the SEC to prohibit a CII's securities from trading on a national securities exchange or through any other method regulated by the SEC, including over-the-counter trading.
- Trading prohibition can be removed:
 - If issuer certifies it has retained a registered public accounting firm that the PCAOB has inspected to the satisfaction of the SEC
- Failure to comply again results in a trading suspension for a minimum of 5 years
- On December 16, 2021, the PCAOB released a report pursuant to the HFCAA identifying over 60 auditor firms located in mainland China and Hong Kong that it was unable to investigate or inspect. The SEC is now identifying public companies that use these firms.



Statements from the SEC Relating to SPACs

Proceed with caution...

THE WALL STREET JOURNAL. APRIL 7 2021

SEC Official Warns on Growth of Blank-Check Firms

Special-purpose acquisition companies have significant, undiscovered issues, says the acting director of the SEC's Corporation Finance division



U.S. SEC official warns Wall Street of risks associated with blank-check companies MARCH 31 2021

FINANCIAL TIMES

Spac boom under threat as deal funding dries up

Hundreds of blank-cheque companies face uncertainty after investors balk at high valuations

APRIL 9 2021

MarketWatch

APRIL 12 2021

SPAC investors worry about a 'stigma' after SEC warnings, surge in lawsuits



SEC is scrutinizing SPAC projections, seeks clearer disclosures



TheStreet MARCH 31 2021

Are We in a SPAC Investment Bubble Now?

Is the SPAC market dangerously overheated now, or does it still have room to grow? We looked at the evidence and talked to some experts.

SEC Statements

- Over the past twelve months, SEC commissioners and the Staff have given several written and oral public statements regarding SPACs
 - April 2021 – Statement from Acting Director, Division of Corporation Finance - SPACs, IPOs and Liability Risk under the Securities Laws
 - Limits of the safe harbor provided by the Private Securities Litigation Reform Act
 - December 2021 – Statement from SEC Chairman Gary Gensler – Healthy Markets Association Conference
 - Priming the market – deSPACs are announced with slide deck, press release and sometimes celebrity endorsements, well before a full proxy statement and/or prospectus is available
 - Gatekeepers & Conflicts of Interest – “The law takes a broader view of who constitutes an underwriter.”

The MultiPlan Litigation

Factual Background

- Churchill III was a Delaware SPAC that completed an \$1.1 billion IPO in February 2020.
- In July 2020, Churchill signed a business combination agreement with MultiPlan, a provider of data analytics technology for the US healthcare industry.
- In October of 2020, the business combination was consummated with 93% of shares voted voting in favor and less than 10% opting to redeem.
- In November 2020, a research firm published a report stating that Multiplan's largest customer – representing 35% of 2019 revenues – was developing a platform called Naviguard which would soon negate the need for MultiPlan.
- Plaintiffs brought suit in the Delaware Court of Chancery for breaches of fiduciary duty in connection with the proxy statement's failure to disclose Naviguard to investors.

Litigation

- Court applied “entire fairness standard” because: (i) the business combination was a “conflicted transaction” and (ii) a majority of the directors was conflicted.
- Court Stated:
 - [The plaintiffs’ claims] are reasonably conceivable because the Complaint alleges that the director defendants failed, disloyally, to disclose information necessary for the plaintiffs to knowledgeably exercise their redemption rights. **This conclusion does not address the validity of a hypothetical claim where the disclosure is adequate and the allegations rest solely on the premise that fiduciaries were necessarily interested given the SPAC’s structure.** The core, direct harm presented in this case concerns the impairment of stockholder redemption rights. **If public stockholders, in possession of all material information about the target, had chosen to invest rather than redeem, one can imagine a different outcome.**

SPAC Accounting Developments

Accounting Treatment of Common Stock

- Generally, SPACs have a provision in their charter restricting the number of shares of Class A common stock that can be redeemed to the extent such redemption would result in the SPAC having less than \$5,000,001 in net tangible assets
- Done to avoid the SPAC's stock being deemed a "penny stock" under Rule 3a51-1 of the Exchange Act; which, in turn, prevents a SPAC from being a "blank check company" under Rule 419 of the Securities Act
- Previously this \$5,000,001 worth of stock was accounted for as "permanent equity"
- Following comment letters received from the SEC late in 2021, many SPACs and their auditors now account for all Class A common stock as "temporary equity." Several SPACs concluded that their historical financial statements should be restated to reflect the new accounting treatment

What to Expect

IPOs

- First part of 2022 likely to be quiet as some sponsors wait on the sidelines
- Sponsors likely to be higher quality/repeat sponsors
- More international activity (e.g., Hong Kong and Europe)
- “Investor friendly” terms will continue
 - Shorter duration
 - Over-funding
 - Higher warrant coverage
- Offshore incorporations becomes more popular

De-SPACing Transactions

- Expect higher volume as many SPACs approach expiration
- Expect to start seeing more liquidations
- Redemptions will remain high
- Sponsors will have to give up more equity
- More alternatives to common equity PIPEs
- MORE REGULATION
- MORE LITIGATION

Supplemental Materials and Additional Resources

Read more:

- [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 more:

- [MB Microtalk: An Overview of SPACs](#)



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