

8 Things You Should Know About SPACs

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No. 1: Put a Tight Leash on Your Client

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- To facilitate a smoother SEC review process, you should advise your client:
 - To avoid taking any steps to search for or locate a target business before and during the IPO
 - To avoid any contacts, preliminary or otherwise, with potential target businesses before and during IPO
- Otherwise, be prepared to add a lot of additional disclosure to Form S-1

No. 2: Complete Promoters' Investment Commitment Prior to Filing Form S-1

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- To avoid “embarrassing” risk factor disclosure regarding possible rescission rights for Section 5 violations:
 - Promoters should enter into binding agreements to make investment in SPAC prior to filing Form S-1 with the SEC
- Former Corp. Fin. Director John Huber’s position that the filing of a registration statement constitutes a general solicitation
- Binding agreements permit SPAC to rely on Rule 152 in connection with the Section 4(2) private offering to promoters
- Possible to rely on SEC’s new interpretative in Reg. D rule proposals

No. 3: Spend Time Understanding Trust Account and Funds Needed Prior to Business Combination

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- To avoid issues subsequent to IPO regarding adequacy of funds prior to business combination
 - Understand general operating expenses
 - D&O insurance premiums
 - Income taxes relating to interest earned on trust proceeds
 - Legal and accounting expenses relating to Forms 10-K and 10-Q
 - Public company reporting requirements and obligations
 - Ensure necessary cash retained outside trust account or can be withdrawn therefrom
 - Portion of interest earned on escrowed funds available to SPAC
- Extremely important given trend toward 100% of IPO proceeds escrowed in trust account

No. 4: Promoters May Still Need Registration Rights

- Notwithstanding new Rule 144, promoters may still need registration rights
- Prior to Rule 144 revisions, the Worm/Wulff letters prohibited the use of Rule 144 by SPAC promoters indefinitely
- New Rule 144(i)
 - Applies to companies and to shell companies
 - Prohibits use of Rule 144 until one year after filing of “Form 10 information” with SEC reflecting non-shell company status
- In light of typical SPAC lock-ups, new Rule 144(i) appears to permit promoters to use Rule 144 but unclear whether it supersedes Worm/Wulff letters
- Dribble-out provisions of Rule 144 still applies to affiliates

No. 5: File Form 8-K Containing Audited Financial Statements Reflecting Receipt of IPO Proceeds

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- To avoid falling within Rule 419, remember to file Form 8-K containing audited financial statements reflecting receipt of IPO proceeds
 - All offering proceeds must be placed in escrow until after business combination
 - No trading of “blank check” company’s securities until after business combination
- Pursuant to SEC staff interpretive guidance, Rule 419 avoided if SPAC files Form 8-K promptly upon IPO indicating net assets in excess of \$5 million
 - Form 8-K must include audit financial statements reflecting receipt of IPO proceeds

No. 6: Beware of Investment Company Status

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- To avoid investment company status under the 1940 Act, trust account proceeds must only be invested in:
 - Government securities
 - One or more money market funds which invest principally in either short-term securities issued or guaranteed by the United States
- 1940 Act defines an investment company as an entity which owns investment securities having a value exceeding 40% of the value of the entity's total assets
 - Government securities excluded from the definition of "investment securities"

No. 7: Ensure Effective Registration Statement in Place for Shares Underlying Warrants

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- SPAC must ensure an effective registration statement in place covering shares issuable upon exercise of warrants
- Typically, warrants become exercisable one year from date of IPO or consummation of business combination

No. 8: Benefits of a Covered Security Status

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- In the early days, neither NYSE, Nasdaq nor AMEX would list SPACs because of stigma attached to blank check companies
 - As a result, SPACs traded on OTC-BB and required to qualify for offer and/or sale in particular states, some of which prohibit the offer and/or sale of securities issued by SPACs
- In 2005, AMEX began to permit SPACs to list and all SPACs thereafter have listed on AMEX
 - Benefit of AMEX listing is SPAC's securities are cover securities and exempt from state securities regulation
- Recently, NASDAQ issued proposed rules to allow SPAC listing and NYSE rumored to be seeking to do the same