Brooklyn Journal of Corporate, Financial & Commercial Law

Volume 16 | Issue 2 Article 3

6-2-2022

In Vogue Again: The Re-Rise of SPACS in the IPO Market

Maria Lucia Passador

IN VOGUE AGAIN: THE RE-RISE OF SPACS IN THE IPO MARKET

Maria Lucia Passador[*]

ABSTRACT

If the capital markets described the year 2020 in a few words, it would certainly be Special Purpose Acquisition Company (SPACs), which - although to a different extent - are now gaining momentum on both shores of the pond. While, in the United States, SPACs are really enjoying a new lease on life due to the pandemic, the outlook seems positive in Europe too, although data are not comparable to those registered across the Atlantic.

This article focuses on SPACs in the United States prior to the COVID-19 pandemic (between January 2010 and December 2019), in order to understand their structural changes over the years and the grounds for their recent resurgence. First, the article aims to identify the length and profitability of such an investment phenomenon and also understand the behavior of institutional investors in this context. Second, the article analyzes the possible investment shifts in the sector of SPACs, driven by the 2020 post-COVID bubble, relying on data retrieved from different providers and players, and specifically focusing on three main concerns: the increasing litigation phenomenon, the (resulting) increase in Directors and Officers (D&O) insurance costs, and the engagement of Private Investment in Public Equities (PIPEs) as guarantors of the soundness and of the successful outcome of the transaction.

The results of this analysis may lead to several considerations and wide-ranging policy implications. But most importantly, they reasonably prompt the belief that U.S. SPACs will hold a foreground role in the near future, not plunging back into the shadows (or even worse into the darkness that they had been living in for years), especially if some disclosure tools, like the one suggested here with regard to their sponsors, are implemented. Moreover, SPACs will certainly be able to update and evolve for good, as they have shown themselves capable of doing in the past, thus, overcoming the problems and perplexities they raise.

* John M. Olin Fellow in Empirical Law and Finance at Harvard Law School; Fellow of the Harvard Law School Program on Corporate Governance; Post-doctoral Researcher in Financial Law at the University of Luxembourg and Academic Fellow in Corporate Law at Bocconi Law School.
The author is very grateful to Lucian A. Bebchuk, Alma Cohen, Mihir Desai, Marco Di Maggio, Howell E. Jackson, Holger Spamann, and Robin Morgan for insightful comments and suggestions. The paper has benefited substantially from discussions with the participants at the Harvard Program in Corporate Governance Fellows Spring 2021 Workshop held on February 17, 2021; at the annual Wharton Financial Regulation Conference held on April 16, 2021; and at the National Business Law Conference held on June 17, 2021

"Faced with unforeseen circumstances, a change of mindset is as necessary in this crisis as it would be in times of war. […] The cost of hesitation may be irreversible."

— Mario Draghi, *We face a war against coronavirus and must mobilise accordingly*, FIN. TIMES, Mar. 25, 2020

INTRODUCTION TO THE FOUR-LETTER WOR(L)D

Hope is a risk that we must run, especially in these uncertain times of the global COVID-19 pandemic. While vaccine programs give hope to the world, a four-letter word offers hope to the markets.[1]

Short for "Special Purpose Acquisition Company," a SPAC is a purpose-built vehicle established with the aim to collect financial resources through an initial public offering (IPO) on the stock market in order to identify and then incorporate (through the so-called business combination) an unlisted operating company and lead it to listing. It can indeed be regarded as a borderline product between the capital market and classic private equity since, although it retains the characteristics of an open-ended capital company from the outset – which is reflected in the marketability of its shares – it also carries some typical features of the closed-end private equity fund manager/investor contract.

1. In the latter part of 2020, it was the SPACs […] that raised billions of dollars as a quick and suddenly popular way to get more companies into the public markets' wide-open arms. The banks' fourth-quarter [2020] results provide fresh evidence of the equity-underwriting hot streak, raising hopes that SPACs may continue to boost the banks' results even as the overall economy shows signs of slowing down. David Benoit, *SPACs Rescued Wall Street From the Covid Doldrums*, WALL ST. J., Jan. 22, 2021; *see also* WACHTELL, LIPTON, ROSEN & KATZ, TAKEOVER LAW AND PRACTICE (2020) ("[B]oth the number and the average size of SPAC IPOs have been rising steadily since 2016. This trend has accelerated in 2020 thus far, with more than $30.4 billion raised by SPACs in over 75 IPOs through August 20, 2020. In July 2020, the largest-ever transaction with a SPAC – Churchill Capital Corp. III's proposed $11 billion acquisition of healthcare management services provider MultiPlan – was announced, and the largest-ever SPAC IPO – that of hedge fund manager Bill Ackman's Pershing Square Tontine Holdings, which raised $4 billion – was completed," at 7); Maureen Farrell, *Record IPO Surge Set to Roll on in 2021,* WALL ST. J., Dec. 30, 2020; Andrew R. Brownstein, Andrew J. Nussbaum & Igor Kirman, *The Resurgence of SPACs: Observations and Considerations*, HARV. L. SCH. FORUM ON CORP. GOV. (Aug. 22, 2020), https://corpgov.law.harvard.edu/2020/08/22/the-resurgence-of-spacs-observations-and-considerations [https://perma.cc/4SB8-S77G]); Richard Henderson, *NYSE wins back listing crown from Nasdaq after luring SPACs,* FIN. TIMES, Nov. 1, 2020 (mentioning how relevant it was for the NYSE to land Bill Ackman's deal in the context of the NYSE-Nasdaq competition); Ramey Layne & Brenda Lenahan, *Special Purpose Acquisition Companies: An Introduction*, HARV. L. SCH. FORUM ON CORP. GOV. & FIN. REG. (July 6, 2018), https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction; and the constantly updated data provided by SPAC Research, https://www.spacresearch.com/?gclid=EAIaIQobChMIh6Ktnpyh7AIV1ODICh2CqAgtEAAYAiAAEgKQo_D_BwE [https://perma.cc/YSL9-RRCJ]). In this regard, it is worth emphasizing the UK market seems to still be trying to entice SPACs to the UK, with a 2020 running total for SPACs launches equal to zero (according to the Dealogic data reported by Camilla Hodgson, *London explores hopping on SPACs bandwagon*, FIN. TIMES, Oct. 6, 2020).

In this article, after outlining the life cycle of the SPAC (Section I), I will dwell on SPACs' structure over the pre-COVID scenario in the United States (from January 2010 to December 2019) (Section II), and, specifically, on the length of the investment horizons and on institutional investors' behavior (Section II.B).

Moreover, thanks to data provided by McKinsey & Company, I will describe the SPAC-tacle, namely what happened in the field in 2020, especially focusing on litigation costs, directors and officers (D&O) liability insurance, and the role of Private Investment in Public Equities (PIPEs) (Section III). Finally, I performed a pre- and post-COVID comparison to check the evolution of the most severely affected sectors, as well as of the financial advisors' market in terms of market shares and player concentration (Section IV). Considering the length of the investment, the short-term horizon prevails in 52.85% of the SPAC transactions (against the lower value of 47.19% of the IPO ones), proving a dilution of the investment over time. Furthermore, based on industry average prices, the increase in demand for these instruments is also driven by specific macro sectors that are more profitable than others (all starting from $10), such as consumer staples ($11.70), media and entertainment ($11.09), consumer products and services ($10.54), retail ($10.37), and high technology ($10.27). This increasing interest in SPACs has required new instruments to constantly track their development. Such instruments include the new IPOX SPAC INDEX, which tracks the most liquid SPACs in the market, or the NDXX SPAC & NEXT GEN IPO, which tracks the performance of all the newly listed SPACs. A comprehensive analysis shows that due mainly to the different regulatory amendments, the New York Stock Exchange (NYSE) listing has become highly significant for the use of this instrument, with a +400% increase from 2015 to 2020. In addition, as observed with respect to institutional investors, considering all changes over a ten-year horizon (from 2011 to 2020), they tend to reduce their holdings after the de-SPAC phase, in 45.43% of cases (versus an average of 42.44%), and more often than the other investor clusters.

In conclusion, this article aims to trace the possible evolution of SPACs' overall market in the short-to-medium term. Despite the regulatory (listing requirements) and structural differences (lack of reception of the U.S. SPAC 3.5 model in the European Union), notwithstanding the problems reported in a coeval paper[2] and the uncertainties arising from both Brexit and the sale of Borsa Italiana by the London Stock Exchange[3] (and specifically, the AIM

2. Michael D. Klausner, Michael Ohlrogge & Emily Ruan, *A Sober Look at SPACs* (Oct. 28, 2020); Stanford Law and Economics Olin Working Paper No. 559, NYU Law and Economics Research Paper No. 20-48, 39 YALE J. REG. 228 (2021), https://ssrn.com/abstract=3720919 [https://perma.cc/7DT8-D3NQ].

3. *Inter alia*, Leah Hodgson, *LSE to sell Borsa Italiana to Euronext in €4.3B deal*, PITCHBOOK, Oct. 9, 2020; *see also*, Philip Stafford & Harry Dempsey, *LSE confirms €4.3bn sale of Borsa*

market),[4] it is reasonable to conclude that we have not seen the last of SPACs. In fact, together with direct listing, SPACs have proved their value in the new millennium and under very difficult circumstances. SPACs themselves, being aware of their limits,[5] will adjust and evolve so as to continue to play a role in the market arena, becoming an alternative to traditional IPOs.[6]

I. SPACS' LIFE CYCLE: ANATOMY AND GEOGRAPHICAL TRENDS

A. ANATOMY

SPACs are companies with a pre-determined maturity, set upon listing in the prospectus, within which the company undertakes to finalize the acquisition, thereby resulting in a business combination. If the desired purpose is not achieved or if the business combination is not appreciated by the investors of the vehicle company, the shareholders will be liquidated, as the managers are required to return the funds (plus a given minimum interest rate) to them in accordance with a principle that is proportionate to the share capital held.

It is conceivable that a SPAC's life cycle is highly standardized, thus, it can be divided into three main phases: the listing, the identification of a target company, and the acquisition[7] or liquidation of the company. The money earned from a SPAC's IPO, as well as the profits derived from the initial and

---

Italiana to Euronext, FIN. TIMES, Oct. 9, 2020. That is extremely relevant in connection to the structure of the AIM market, which has undoubtedly facilitated the listing of some companies that, in the absence of this market, would perhaps have been able to take advantage of the SPAC instrument to approach listing, thus potentially impacting the number of SPACs in Italy and in the United Kingdom.

4. The Brexit and COVID combination, as well as the existence of the "softer" AIM market in the European Union are probably the main reasons that we can link to the lack of growth of the SPAC phenomenon in Europe.

5. For an in-depth analysis of all the SPAC-related myths, which need to be fixed in order to moderate deep fraud's market distortions, *see* John C. Coates, *SPAC Law and Myths* (Jan. 31, 2022), available https://ssrn.com/abstract=4022809.

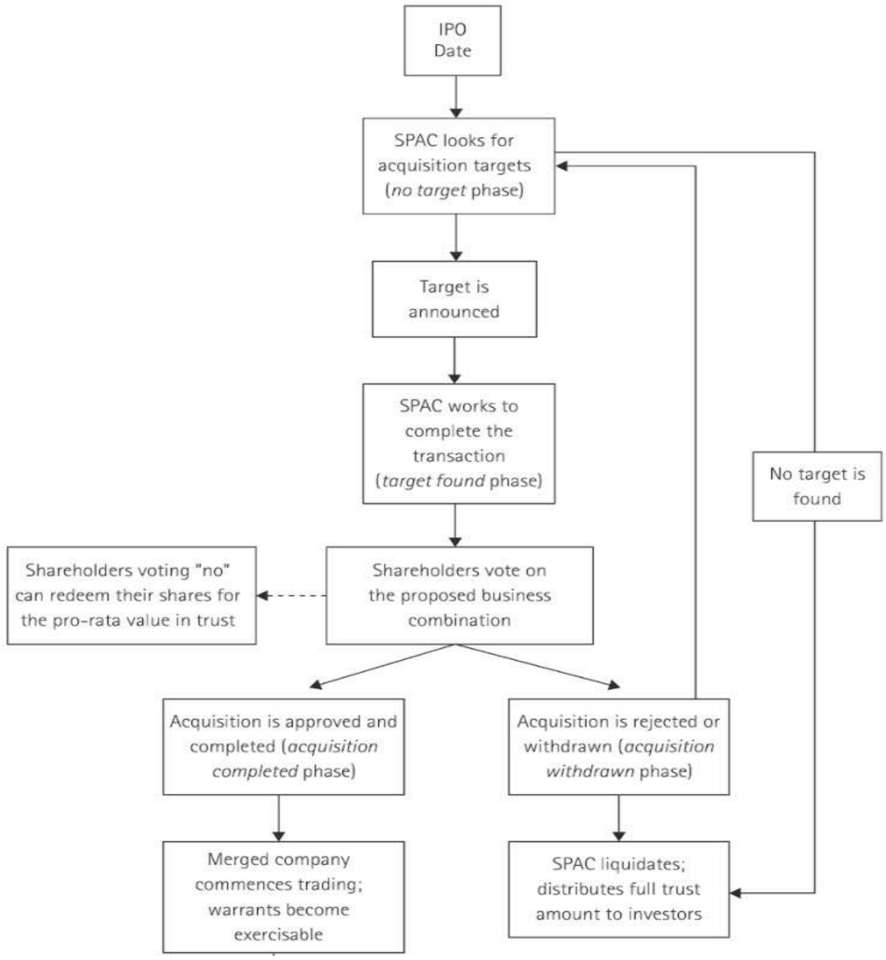
6. In order to fully become an alternative to IPOs, the SEC should close gaps in investors protections that stem form the failure of a regulation to recognize that economic substance, as clarified in Harald Halbhuber, *An Economic Substance Approach to SPAC Regulation* (Jan. 10, 2022). Available at https://ssrn.com/abstract=4005605, especially in its Part III.

7. The acquisition implies also changing the name of the company: "I feel like if you launch a SPAC that intends to invest in the health care space, and then you buy Drug Company A, you will not have a lot of investors who are passionate lifelong fans of Drug Company B, hate Drug Company A, and feel betrayed by your choice. I mean they might not like the valuation or whatever, that's why SPACs have withdrawal rights, but fandom won't enter into it. But if you launch a SPAC called RedBall and people are like 'RedBall? They must be planning to buy Arsenal, or the Red Sox,' and then you go and buy Chelsea, or the Yankees, people are gonna be so disappointed. The point of a SPAC, for investors, is that you are buying a share of a company to be named later. *That's weird enough if you're buying the company to make money; if you're buying it because you love sports it seems very challenging.*" Matt Levine, *You Can Relax Once You're in the Index*, BLOOMBERG, July 28, 2020, https://www.bloomberg.com/opinion/articles/2020-07-28/you-can-relax-once-you-re-in-the-index (emphasis added).

the additional investment of the founders, are segregated by means of different kinds of accounts (trust accounts, escrow accounts, or term deposits). Managers must pay at least 90% of the funds obtained from the listing and not use them, except for the acquisition, but then refund them in case of winding-up. On average, the financial resources obtained through the further investment of the founding members account for 1.5% to 4% of the total time deposits. As a result, investors transfer more than 95% of the resources needed for the acquisition. After being tied up, these funds accrue interest over the lifetime of the vehicle company, either from short-term investment in risk-free assets such as government bonds, or simply from their deposit with a credit institution, often one of the banks in the placement syndicate. The different investments of the funds raised constitutes one of the discrepancies between United States and European Union market practices regarding SPACs, albeit without altering their scope. The funds not deposited in the trust account are instead used to pay the legal and underwriting costs at the time of the listing, as well as the additional expenses for the non-identification of the target company. The interest accrued therefore covers a portion of these expenses and holds a higher percentage of the funds obtained from the listing available for acquisition or liquidation. The impossibility of using most of the funds gathered constitutes the major guarantee for investors: the higher the tied portion of the funds, the lower the relative risk of investing in SPACs.

In addition, a higher percentage enables founding members to offer a larger price when negotiating with the members of the target company, but also holds them responsible for paying any excess or extra cost.[8] Following the listing, the shares and warrants of the target company are traded in line with the supply and demand dynamics. Managers are free to purchase shares with voting rights and a percentage of the trust account on the secondary market in the event of liquidation.

8. The most comprehensive analysis of costs is performed in the coeval article by Klausner, Ohlrogge & Ruan, *supra* note 2.



Very effective illustrations of a SPAC's life cycle, described above, are offered in several articles and reports (together with the benefits accruing to the various stakeholders).[9]

9. Richard Greco & Achille Teofilatto, *SPACs, a no brainer*, LONGITUDE at 67 and 70 (2013), http://filangiericapital.com/wp-content/uploads/2013/07/SPACS.-.-.-A-No-Brainer.pdf [https://perma.cc/4KCP-9DMY]. An overview of the various positions and interests of the major actors of the system is also offered in the above-mentioned chapter Yochanan Shachmurove & Milos Vulanovic, *SPAC IPOs*, *in* OXFORD HANDBOOK OF IPOS at 321–322 (Douglas Cumming & Sofia Johan, eds., 2018), and in Derek K. Heyman, *From Blanck Check to SPAC: the Regulator's Response to the Market, and the Market's Response to the Regulation,* 2 ENTREPREN. BUS. L. J. 531, 546–549 (2007).

B. GEOGRAPHICAL TRENDS

In the United States, during 1993–1994, the investment banker Nussbaum launched thirteen blank-check companies,[10] which we are now

10. "Blank-check companies have been around for decades. They have been called 'clean shell companies,' 'blind pools,' 'public shells' and, since the 1990s, the somewhat classier 'special purpose acquisition companies' — SPACs. The basic model has remained the same: investors advance cash to the sponsors of the blind pool who look for something for the public shell company to acquire." *See* David Golden, *The rise of SPACs*, TECHCRUNCH (Nov. 22, 2017), https://techcrunch.com/2017/11/22/the-rise-of-spacs/?guccounter=1 [https://perma.cc/MK5G-MEAZ]; *see also* Tim Jenkinson & Miguel Sousa, *Why SPAC Investors Should Listen to the Market*, 21 J. APP. FIN. 38, 2 (2009).

These companies have been subject to a wide-ranging reform, called the 1990 Penny Stock Reform Act, by which the SEC identified restrictive measures for blank-check companies, implemented by Rule 419 since 1992 (*cf.* GIMEDE GIGANTE & ANDREA CONSO, LE SPAC IN ITALIA. STATO DI UN FENOMENO IN EVOLUZIONE (2020); Filippo Garramone, *Una panoramica in tema di Special Purpose Acquisition Companies (SPAC),* BANCA IMPRESA SOCIETÀ 131 (2020); Daniele D'Alvia, *The international financial regulation of SPACs between legal standardized regulation and standardization of market practices,* 21 J. BANK REG. 107 (2020) (where reference also to the United Kingdom, Malaysian, Canadian and Korean systems); Ramey Layne & Brenda Lenahan, *Special Purpose Acquisition Companies: An Introduction*, HARV. L. SCH. FORUM ON CORP. GOV. & FIN. REG. (July 6, 2018), https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction; Pierluigi De Biasi, *La SPAC, uno speciale veicolo di investimento e quotazione*, RIV. SOCIETÀ 713, 719-722 (2018); Gul Okutan Nilsson, *Incentive Structure of Special Purpose Acquisition Companies*, 19 EUR. BUS. ORG. L. REV. 253 (2018) (focusing on management's compensation structure and value dilution problems affecting investors); Marco M. Fumagalli, *Brevi considerazioni sugli statuti delle SPAC e sui regolamenti dei* warrants *(di Space S.p.A: e di Capital for Progress 1 S.p.A. in particolare)*, RIV. SOCIETÀ 743 (2018); Daniele D'Alvia, *SPACs: limiti e prospettive tra* hard law *e* soft law*,* RIV. DIR. SOCIETARIO 1167 (2017) (offering a comparative perspective, including the Korean and Malaysian legal systems, and emphasizing the differences with respect to the location of the SPAC regulation in each national framework); James S. Murray, *Innovation, Imitation and Regulation in Finance: The Evolution of Special Purpose Acquisition Corporations*, 6 REV. INTEGRATIVE BUS. & ECON. RESEARCH 1 (2017), https://ssrn.com/abstract=2952119; AXEL MOELLER, ALTERNATIVE INITIAL PUBLIC OFFERING MODELS THE LAW AND ECONOMICS PERTAINING OF SHELL COMPANY LISTINGS ON GERMAN CAPITAL MARKETS at 4–9 (2016); Johannes Kolb & Tereza Tykovova, *Going Public via Special Purpose Acquisition Companies: Frogs do not Turn into,* 40 J. CORP. FIN. 80, 82 (2016) (analysing SPACs over the "second generation" period, *i.e.* between 2003 and 2015, when they represented 10.1% of the entire IPO activity, observing that they were affected by a remarkable long-run underperformance and were mostly adopted by small, low-growth, levered firms in volatile markets); Usha Rodrigues & Michael A. Stegemoller, *Exit, Choice, and Reputation: The Evolution of SPACs,* 37 DEL. J. CORP. L. 849, 870-879 (2013) (stating that even if SPACs are a new form, also called "one-shot deals," "their contract design borrows heavily from private equity's playbook"); Tim Castelli, *Not Guilty by Association: Why the Taint of their Blanck Check Predecessors Should Not Stunt the Growth of Modern Special Purpose Acquisition Companies*, 60 B.C. L. REV. 237, 237–253 (2009); Steven M. Davidoff, *Black Market Capital,* 2008 COLUM. BUS. L. REV. 172, 224–228 (2008); William K. Jr. Sjostrom, *The Truth about Reverse Mergers*, 2 ENTREPR. BUS. L.J. 743, 756–759 (2008); Daniel S. Riemer, *Special Purpose Acquisition Companies: SPAC and Span, or Blank Check Redux,* 85 WASH. U. L. REV. 931, at 931–934, 953–954, & 967 at n. 226 (2007) (a thorough investigation of the history of SPACs, of their beneficial qualities - despite the unsuccessful fraudulent blank-checks offerings of the 1980s - concluding that SPACs are a unorthodox investment . . . for and sophisticated investors . . . [whose] structure yields a high degree of control and safety (quoting *Robinson v. Glynn*, 349 F.3d 166, 170 (4th Cir. 2003) (citing SEC v. W.J. Howey Co., 328 U.S. 293, 299 (1946)) which fills a void in the current IPO market, "where private equity financing is in short supply and can also offer private equity firms an alternative and

going to call SPACs.[11] Even earlier than 1993–1994, there was scattered evidence that the blank-check companies appeared in England, when they were addressed as "blind pools" with regard to the South Sea Bubble,[12] in the form of "investment trusts." However, if we investigate it thoroughly, we will find that as early as 1955, a similarly structured transaction had been set up by a truck business, McLean Industries, which bought out Pan-Atlantic Steamship Company. To avoid the regulation that required approval for the merger of a truck and shipping business, Malcom Purcell McLean ("the father of container idea" or "the savior of the shipping industry") founded an ad-hoc publicly traded company named McLean Trucking Company with his two siblings. Today, we might call this a vehicle. Once McLean put control of the truck company in a trust to their benefit and allowed the trustees to sell all stocks except for the $5 million held by the family, he stepped down from the roles held in the truck company and started taking them on in the newco.[13] Finally, after being "dismissed as a shady Wall Street relic"[14] and thanks to the investment bank Early Bird Capital, linked to the same Nussbaum, in 2003 the first operational SPAC (Millstream Acquisition Corp., also known

unexploited avenue of capital" (at 966)); Heyman, *supra* note 9, at 531–543; *see also* Bruce Rader & Shane de Búrca, *SPACs: A Sound Investment or Blind Leap of Faith?* 6 J. TAX'N OF FIN. PRODUCTS 17, 18 (2006) and Cristina Chiomenti & Leonardo Graffi, *La "Special Purpose Acquisition Company",* GIUR. COMM. 445 (2010, I). This rule stipulates that promoters have to transfer the income of the IPO after deducting the expenses incurred for it into a restricted account until the approval of the business combination, to draft the financial statements relating to the target, to develop a way out of the investment and the calculation of the consideration, to identify and acquire the target, and to punish the full return of the capital to the investors. MARCO M. FUMAGALLI, LO SVILUPPO DELLE SPAC IN ITALIA, UN NUOVO MODO DI FARE PRIVATE EQUITY E DI QUOTARE LE IMPRESE IN BORSA, 32 (2014). The Nussbaum model is consistent with the new regulations, but at the same time, since it only applies to companies that joined an IPO with net tangible assets of less than $5 million, many (large) companies are exempt. Nussbaum and Early Bird Capital have set up hybrid Blank-check companies to protect investors, especially in the fields of technology, health, commerce, and telecommunications.

11. In order to clarify the terminology with regard to the word SPAC, *see* Riemer, *supra* note 10, fn. 5, where the Author also refers to Sarah Hewitt, *Specified Purpose Acquisition Companies*, 1 BLOOMBERG CORP. L.J. 97 (2006), http://www.thelen.com/resources/documents/06_BCLJ.pdf.

12. About the historical background of the case, *see* Shachmurove & Vulanovic, *supra* note 9, at 313; Moeller, *supra* note 10, at 4; A. GARY SHILLING, THE AGE OF DELEVERAGING: INVESTMENT STRATEGIES FOR A DECADE OF SLOW GROWTH AND DEFLATION, at 20 (2010); Richard W. Painter, *Ethics and Corruption in Business and Government: Lessons from the South Sea Bubble and the Bank of the United States*, L. SCH. UNIV. CHI. (2006), https://www.law.uchicago.edu/files/file/fulton-painter2006.pdf [https://perma.cc/89T7-DT7D]; MALCOLM BALEN, THE SECRET HISTORY OF THE SOUTH SEA BUBBLE: THE WORLD'S FIRST GREAT FINANCIAL SCANDAL (2004).

13. PRIVATE EQUITY, HISTORY AND FURTHER DEVELOPMENT (Dec. 27, 2008), http://blogs.harvard.edu/nhonma/2008/12/27/private-equity-history-and-further-development [https://perma.cc/ZEX8-5459]. For the sake of storytelling, not just about corporate profiles; *see also* Marc Levinson, *Container Shipping and the Decline of New York, 1955-1975*, 80 BUS. HISTORY REV. 49 (2006).

14. Michael J. de la Merced, *The Year in Deals Can be Summed Up in 4 Letters*, N.Y. TIMES DEALBOOK, Dec. 19, 2020.

as "the first SPAC of new generation"[15]) was admitted to listing on the over-the-counter bulletin board (OTCBB), giving rise to a steadily growing trend, with the sole exception of the decline recorded in the period of the boom of high-tech IPOs[16] and the 2007–2008 financial crisis.[17]

The first European SPACs were launched in July 2007, with the listing of the Pan-European Hotel Acquisition Company N.V. on the NYSE Euronext Amsterdam.[18] The following year, two other SPACs were listed on the same market, right before the two-year turndown due to the global financial crisis, with investors fleeing into safer and less volatile investments, such as gold and real estate. However, with the listing of Helikos SE in 2010, SPACs also entered into German capital markets.[19] It is undeniable that this information leads to some disappointment: it would have been obvious to expect London to be the designated venue, where such an event would have taken place. However, the British market provided for rules that did not allow SPACs to circulate, given that, as soon as SPACs announce a proposed acquisition, their shares are suspended. After all, the literature has highlighted rules that would benefit from revision in order to embrace this new opportunity, namely having "a tradable instrument from day one."[20] Afterwards, SPACs were welcomed by the British AIM market, where regulation is much more versatile.[21] Currently, SPACs can be listed on the London Stock Exchange's AIM market, or on the standard Main Market thanks to Chapter 14 of the Listing Rules, which "both benefit from lighter regulation than a premium listing on the Main Market."[22]

A study of SPACs in Europe from 2005 to 2013 (only 19 firms) shows that, despite their listing on the European stock exchange, most SPACs do not have a Europe-wide focus, either in terms of investors or in their choice of target companies. They are also very heterogeneous, particularly in the

15. Milan Lakićević & Miloš Vulanović, *Determinants of mergers: a case of specified purpose acquisition companies (SPACs)*, INVESTMENT MGMT. AND FIN INNOVATIONS. 114 (2011).

16. It had also been registered in the mid-nineties (Guidalberto Gagliardi, *Pledge fund, search fund e SPAC: novità nel private equity*, 31 AMMINISTRAZIONE & FINANZA 65 (2011)).

17. However, as early as 2009 there was a turnaround, with the transactions reported by Steven Davidoff Solomon, *Behind the Re-emergence of SPACs*, N.Y. TIMES DEALBOOK, Oct. 21, 2009, and Peter Lattman, *Yes, Risk Is Back Now, With SPACs*, WALL ST. J., Sept. 29, 2009.

18. Moeller, *supra* note 10, at 3, fn 4; 10, fn. 33–34.

19. *Id.* at 10, and fn 35.

20. Andrew Dell, Ruari Ewing, Marco Nikolic & Bruce Duncan, *Speaking out on the Big Issues*, 27 INT'L FIN. L. REV. 20, 23 (2008).

21. Heyman, *supra* note 9, at 551.

22. For further details, *see* James Inness & Anna Ngo, *The Recent Resurgence of Special Purpose Acquisition Companies*, LATHAM & WATKINS, LLP (Feb. 1, 2018), https://www.latham.london/2018/02/the-recent-resurgence-of-special-purpose-acquisition-companies [https://perma.cc/FLW9-Y2N9]. The regulation is changing rapidly, as illustrated by Paul Davies, *UK Listing Review*, OXFORD BUS. L. BLOG (Mar. 16, 2021), https://www.law.ox.ac.uk/business-law-blog/blog/2021/03/uk-listing-review-march-3-2021 [https://perma.cc/CV6M-BF63].

selection of target companies.[23] Generally, SPACs are active in several non-U.S. markets (Australia, Austria, Brazil, Canada, Germany,[24] Italy,[25] Malaysia, Mexico,[26] Netherlands, New Zealand, South Africa, South Korea,[27] Sweden, and the United Kingdom[28]). Recently, however, during the COVID pandemic period, SPACs have not been as successful in these countries as they have been in the United States.[29]

---

23. Elena Ignatyeva, Christian Rauch & Mark Wahrenburg, *Analyzing European SPACs*, 17 J. PRIV. EQUITY 64, 69 (2013). On the role of the targets and on the perils of eliminating "meaningful shareholder voice on the acquisition of a private target, using instead a species of 'empty voting,'" *see* Usha Rodrigues & Michael A. Stegemoller, *SPACs: Insider IPOs* (2021), available at https://ssrn.com/abstract=3906196.

24. Moeller, *supra* note 10, at 33–43.

25. In Italy, the first SPAC came in 2011, with Italy 1 Investment, a company incorporated under the laws of Luxembourg and listed on the MIV (Mercato Investment Vehicles), followed by Made in Italy, the first SPAC incorporated under the laws of Italy to be listed on the AIM Italia market. After a half-hearted start, also thanks to Law no. 232 of December 11, 2016, the market for SPACs expanded considerably until reaching a notable result in Italy, which is one of the few scenarios (although remotely) comparable to that of the United States. *See* ORGANIZATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT [OECD], CAPITAL MARKET REVIEW OF ITALY 2020: CREATING GROWTH OPPORTUNITIES FOR ITALIAN COMPANIES AND SAVERS, OECD CAPITAL MARKET SERIES, at 10, 86, 88 (2020), https://www.oecd.org/corporate/ca/OECD-Capital-Market-Review-Italy.pdf [https://perma.cc/8WT8-QUK3].

26. *See* Amelie Labbe, *Deal: First Latin American SPAC IPO,* INT'L FIN L. REV. (Aug. 30, 2017) (mentioning the Vista Oil & Gas case, whose main characteristics are detailed in the following webpage: Tom Zanki, *Latham Steers Mexican Energy SPAC's Landmark $650M IPO*, LAW360 (Aug. 16, 2017), https://www.lw.com/mediaCoverage/latham-steers-mexican-energy-spac-landmark-ipo [https://perma.cc/YEE3-PAG3]).

27. The landing in Korea has been surprisingly successful since 2009, but there is some skepticism about using them extensively, due to the conflicts of interest by the investment services providers, concerns about disclosure, sponsor remuneration and management issues, as well as tax matters. Soonghee Lee, *Special Purpose Acquisition Company*, INT'L FIN. L. REV. (Mar. 1, 2010).

28. Shachmurove & Vulanovic, *supra* note 9, at 325, fn 1.

29. In Europe, only four business combinations were concluded in 2020. PITCHBOOK, EUROPEAN PE BREAKDOWN. 2020 ANNUAL 9 (2020), (detailed data can be retrieved from the 2020 annual PitchBook, that also warns about the risk of over-supply of U.S. SPACs, which may enjoy interesting opportunities in Europe), available at https://files.pitchbook.com/website/files/pdf/PitchBook_2020_Annual_European_PE_Breakdown.pdf [https://perma.cc/DY6Z-FFZM]. *See also* Laurent Grillet-Aubert, *SPACs: Opportunities and Risks of a New Way of Going Public*, AUTORITÉ DES MARCHÉS FINANCIERS [AMF] [FINANCIAL MARKETS REGULATOR] (July 2021), available at https://www.amf-france.org/sites/default/files/private/2021-07/spacs_opportunities-and-risks-of-a-new-way-of-going-public.pdf. The increasing EU attraction for SPACs is evident looking at a recent event. *See* Stephen Morris, *Arnault and Mustier join the $100 bn Spac boom*, FIN. TIMES, (Feb. 15, 2021). As proof of their success, we can recall that: "[a]t least 41 SPACs have gone public so far [from January to June 2020], according to SPACInsider.com, compared with 59 for all of 2019. The hedge fund magnate Bill Ackman added $1 billion to his target for his forthcoming SPAC, Pershing Square Tontine, for a total of $4 billion. That would make it the biggest blank-check fund to date. Fisker, an upstart electric-car maker, plans to go public by merging with the blank-check fund Spartan Energy, which is backed by Apollo Global Management, in a $2.9 billion deal. Nikola went public last month through another such deal (with VectoIQ, backed by Fidelity and ValueAct). The health services company MultiPlan agreed on Sunday to merge with Churchill Capital Corp III, a SPAC created by the high-profile banker Michael Klein, in a deal valued at $11 billion, the biggest blank-check merger to date". *Big Blank Checks*, N.Y. TIMES DEALBOOK, (July 14, 2020), https://www.nytimes.com/2020/07/14/business/dealbook/spac-blank-check.html. *See also*, Preston Brewer, *Analysis: De-SPACing Successes Refuel Hot SPAC IPO*

II. PRE-COVID SPACS' HIGHLIGHTS IN THE UNITED STATES

A. SHORT OR LONG-TERM INVESTMENTS?

In light of the framework above, and in order to complement the literature that already compared IPO and SPAC firms,[30] the first objective of this study is to try to understand (and empirically show in the period considered) whether, after the business combination, such investments have a short- or long- term perspective, and whether shares were profitable at the time they were sold. To capture such a phenomenon, the analysis of price fluctuations and the number of available shares has been used as a proxy.

$$\frac{Q}{P} ratio_{year\ n} = \frac{Quantity\ of\ shares_{year\ n}}{Price\ of\ a\ share\ (annual\ median)_{year\ n}}$$

$$\Delta = \frac{Q}{P} ratio_{year\ n} - \frac{Q}{P} ratio_{year\ n-1}$$

In fact, given the Q/P ratio (where Q represents the number of available shares and P stands for the annual share price), we notice that either an increase in Q or a decrease in P will increase our proxy ratio. Once I calculated the ratios for all the available SPAC observations, in order to understand if there has been an actual dilution or concentration, I analyzed the year *n* to year *n-1* ratio Delta. By means of this analysis, we easily get three possible scenarios: if Delta > 0, then there has been either a dilution in terms of shares, or a lower value in terms of price; if Delta < 0, then there has been either a concentration in terms of shares, or a higher value in terms of price; if Delta = 0, (in the vast majority of cases there has been no variation or, in a few isolated cases) then the two effects have balanced each other, resulting in an overall neutral result.

Changes that affected SPAC indices, as a proxy for short-term investment horizon, and those of IPOs, are examined to investigate initial outcomes. Then the two trends are compared, thus providing potential reasons for any differences or similarities.

Market, BLOOMBERG LAW, July 23, 2020, https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-de-spacing-successes-refuel-hot-spac-ipo-market [https://perma.cc/UDX4-P9RJ]; Matt Levine, *Affirmation*, BLOOMBERG, (Jan. 14, 2021), https://www.bloomberg.com/opinion/articles/2021-01-14/ipos-keep-going-up.

30. Jessica Bai, Angela Ma & Miles Zheng, *Segmented Going-Public Markets and the Demand for SPACs* (Sept. 2021), available at https://ssrn.com/abstract=3746490 [https://perma.cc/SCR4-BL8Z].

	2011	2012	2013	2014	2015
Increase	19	35	35	37	48
Decrease	23	10	23	23	24
Unchanged	1	2	9	6	6

	2016	2017	2018	2019	2020
Increase	51	46	55	66	51
Decrease	22	40	46	48	51
Unchanged	11	14	15	21	36

Figure 1: Overall prospect in absolute terms of the possible changes of the ratio Q/P from 2011 to 2020 for SPACs.

	2011	2012	2013	2014	2015
Total Operations	43	47	67	66	78
Delta Previous Y		4	20	-1	12

	2016	2017	2018	2019
Total Operations	84	100	116	135
Delta Previous Y	6	16	16	19

Figure 2: Total number of SPAC transactions considered for this analysis from 2011 to 2019 and relative changes year by year.

	2011	2012	2013	2014	2015
Dilution %	44.19%	74.47%	52.24%	56.06%	61.54%
Concentration %	53.49%	21.28%	34.33%	34.85%	30.77%
Unchanged %	2.33%	4.26%	13.43%	9.09%	7.69%

	2016	2017	2018	2019	2020
Dilution %	60.71%	46.00%	47.41%	48.89%	36.96%
Concentration %	26.19%	40.00%	39.66%	35.56%	36.96%
Unchanged %	13.10%	14.00%	12.93%	15.56%	26.09%

Figure 3: Overall prospect in relative terms of the possible changes of the ratio Q/P from 2011 to 2020 for SPACs.

Average	Change
52.85%	Dilution Average
35.31%	Concentration Average
11.85%	Unchanged Average

Figure 4: Provides the average change of the ratio Q/P from 2011 to 2020 for SPACs.

As far as SPACs are concerned, both in absolute and relative terms, the change and volatility in this market led to meaningful changes, as it increased from 2.2% of unchanged cases in 2011 to 22.09% in 2020. Furthermore, whereas dilution has characterized the years from 2012 to 2019, a concentration (driven by the massive use of this tool) occurred again in 2020, thus making it possible to register a general increase in prices and a resulting reduction in the availability of shares associated with the analyzed transactions.

Overall, the average market variation over the last ten years shows a general (prevailing, with 52.61% of cases) dilution trend and the presence of a short-term investment. This trend is even strong enough to reverse the opposite effect that occurred during 2011 and 2020.

	2011	2012	2013	2014	2015
Increase	19	137	203	303	591
Decrease	28	59	190	327	330
Unchanged	37	42	56	76	103

	2016	2017	2018	2019	2020
Increase	873	695	746	1106	743
Decrease	343	652	662	399	871
Unchanged	143	212	301	395	496

Figure 5: Overall prospect in absolute terms of the possible changes of the ratio Q/P from 2011 to 2020 for IPOs.

	2011	2012	2013	2014	2015
Total Operations	84	238	449	706	1024
Delta Previous Y		154	211	257	318

	2016	2017	2018	2019
Total Operations	1359	1559	1709	1900
Delta Previous Y	335	200	150	191

Figure 6: Total number of IPO transactions considered for this analysis from 2011 to 2019, and relative changes year by year.

	2011	2012	2013	2014	2015
Dilution %	22.62%	57.56%	45.21%	42.92%	57.71%
Concentration %	33.33%	24.79%	42.32%	46.32%	32.23%
Unchanged %	44.05%	17.65%	12.47%	10.76%	10.06%

Figure 7A: Overall prospect in relative terms of the possible changes of the ratio Q/P from 2011 to 2015 for IPOs.

	2016	2017	2018	2019	2020
Dilution %	64.24%	44.58%	43.65%	58.21%	35.21%
Concentration %	25.24%	41.82%	38.74%	21.00%	41.28%
Unchanged %	10.52%	13.60%	17.61%	20.79%	23.51%

Figure 7B: Overall prospect in relative terms of the possible changes of the ratio Q/P from 2016 to 2020 for IPOs.

Average	Change
47.19%	Dilution Average
34.71%	Concentration Average
18.10%	Unchanged Average

Figure 8: Average change of the ratio Q/P from 2011 to 2020 for IPOs.

As far as IPOs are concerned, their trend declined substantially and, also due to the increased SPAC uptake, IPOs experienced a sharp reduction in growth in the following years. Their overall trend was also characterized by a dilution of the Q/P ratio from 2012 to 2013 and from 2015 to 2019. Again, the high volatility in the market led to significant variations for 2020: even in this case, a concentration condition occurred for IPOs, most likely driven by the reduced use of new IPO issuances, making fewer (but more profitable) options available (*i.e.*, allowing for a general increase in prices and leading

to a corresponding reduction in the availability of shares associated with the analyzed transactions). On a general note, commenting on the average variation in the market over the past ten years, we can observe how the general trend of dilution, which demonstrates the presence of a short-term position, is less prevalent (47.10% of cases) than in the case of SPACs, thus reinforcing the idea that while the phenomenon of a short-term investment may seem similar with respect to both instruments, it is less evident in traditional IPOs.

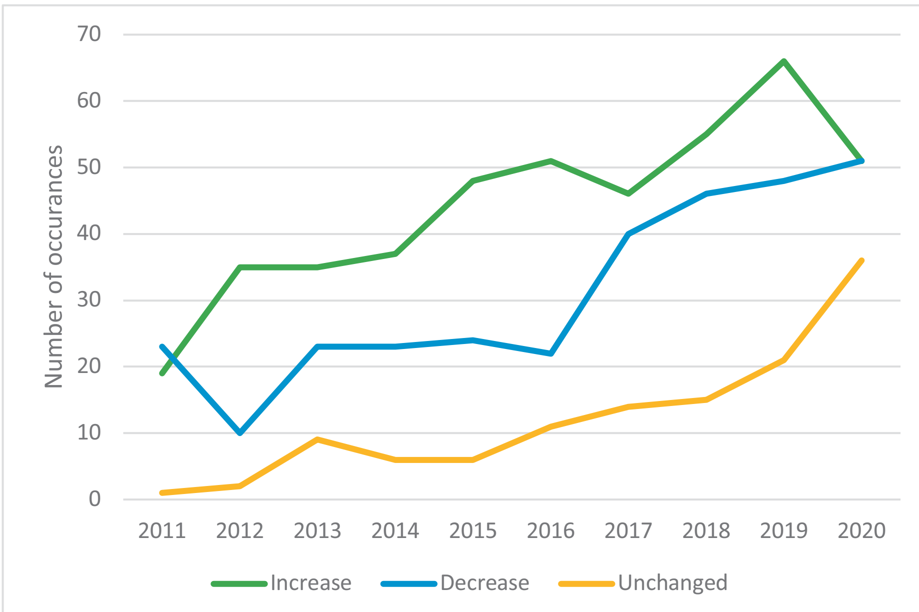


Figure 9: Overall prospect of the possible changes of the Q/P ratio for SPACs.

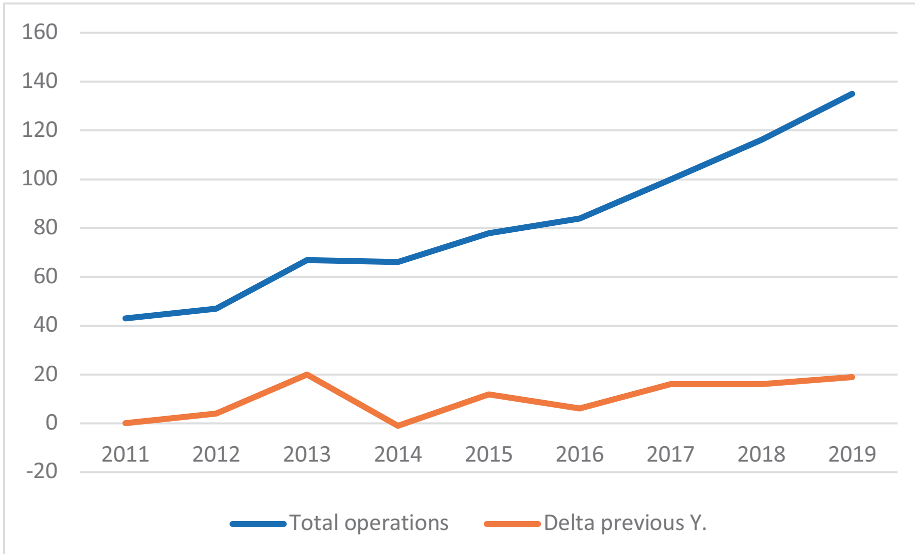


Figure 10: Total number of SPAC transactions and relative change by year.

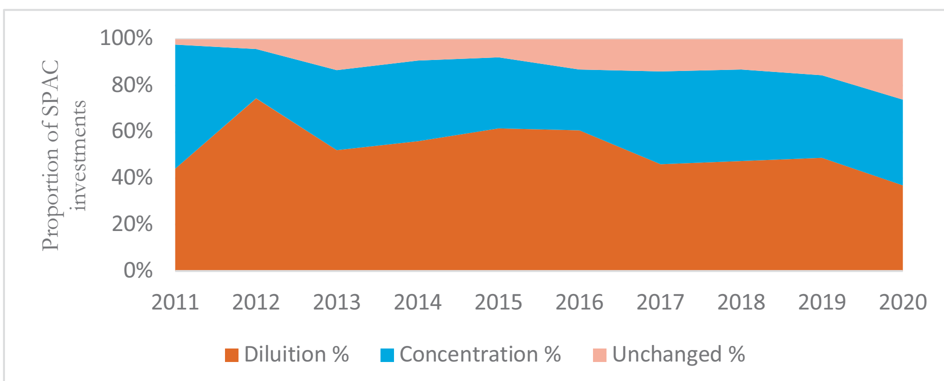


Figure 11: Overall prospect in relative terms of the possible changes in the Q/P ratio.

B. INSTITUTIONAL INVESTORS

The second objective of this analysis is to determine how many institutional versus retail investors are involved, as well as to assess for how long they stay engaged (*i.e.*, when they sell their shares, and whether they sell them when they are profitable or because the investment was unsuccessful).[31]

31. On a different note, suggesting a modified version of the SPAC model, "designed to allow the public to participate in the world of corporate activism," Sharon Hannes, Adi Libson, and

In order to perform this analysis, I considered 216 companies undertaking a merger using SPACs from January 2010 to December 2019 (out of 281 companies, as all the necessary data were not available for some companies). I found that these SPACs have on average 18.33 investors. In fact, overall, there were 3,960 different shareholders for this cluster. In absolute terms, I identified sixteen different types of investors,[32] whose classification and relative percentage participation in SPAC investment are specified below (Figure 12).

SPACs investors	Absolute n°	Relative %
Financial company	899	22.70%
Corporate	809	20.43%
Mutual and pension fund, nominee, trust, trustee	643	16.24%
Bank	614	15.51%
One or more named individuals or families	441	11.14%
Private equity firm	199	5.03%
Insurance company	151	3.81%
Public authority, state, government	73	1.84%
Venture capital	52	1.31%
Hedge fund	51	1.29%
Public	15	0.38%
Other unnamed shareholders, aggregated	4	0.10%

Gideon Parchomovsky, SPACtivism 1-43, 1 (Dec. 26, 2021), Hebrew University of Jerusalem Legal Research Paper No. 22-4, available at https://ssrn.com/abstract=3993847.

32. The classification into clusters deserves some further clarification with respect to the following concepts:

- Operating companies: including all non-banking, financial or insurance companies, which can be involved in manufacturing activities but also in trading (*e.g.,* wholesalers, retailers, brokers, etc.), or in B2B or B2C non-financial services.
- Public authorities, States, Governments: including States, governmental agencies, governmental departments, or local authorities.
- One or more known individuals or families: including single private individuals or families, as well as shareholders designated by more than one named individual or families, *i.e.,* a group of players who would be likely to jointly cast their votes.
- Employees/Managers/Directors: This category could be considered as unable to exercise its power jointly (like the "public" in the case of publicly traded companies). It could also be considered as being unionized and exercising its voting power collectively.
- Unnamed private shareholders, aggregated: including private shareholders; private citizens; private persons; private investors with less than 2%, collectively designated.
- Other unnamed shareholders, aggregated: including more than one unnamed shareholder, either companies (unnamed) or a mixture of companies and private owners.

Employees, managers, directors	3	0.08%
Self-ownership	3	0.08%
Foundation, Research Institute	2	0.05%
Unnamed private shareholders, aggregated	1	0.03%
Total	**3960**	**100.00%**

Figure 12: Overview of the ownership framework for the 216 sampled SPACs. Source: Datastream.

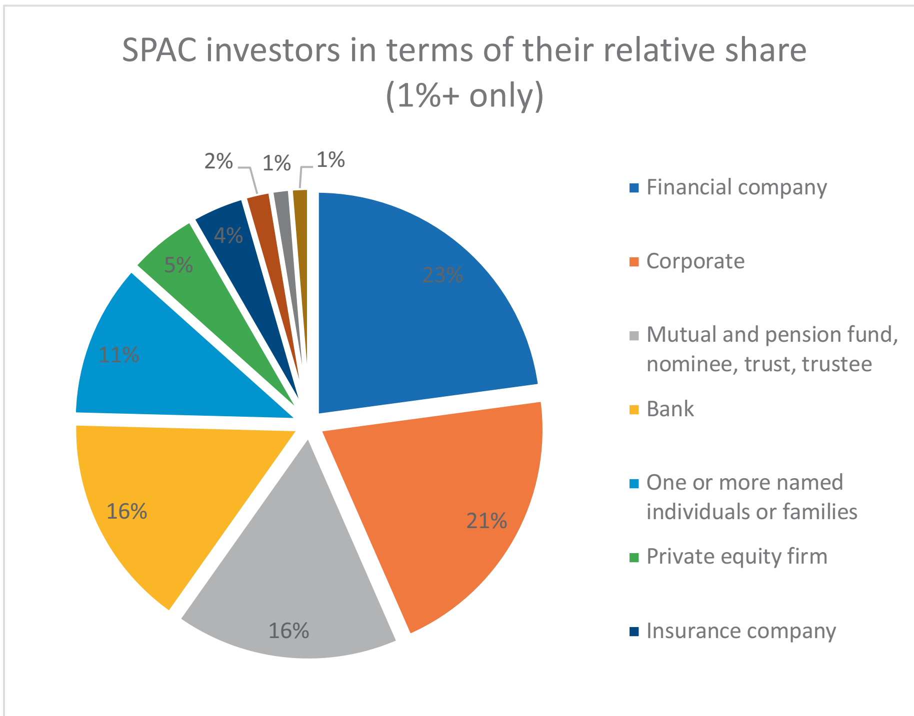


Figure 13: SPAC investors in terms of relative share (> 1% only).

The relative importance of institutional investors (in this case: financial companies; mutual and pension funds, nominees, trusts, trustees; banks; insurance companies; hedge funds) is immediately clear, as they account for 59.55% of total shareholders.

In order to examine investor behavior post de-SPAC, I considered the shares held by each of the 3,960 different investors over the years as a proxy. In addition, in order to track changes from 2011 to 2020, I built a matrix for each investor. After retrieving the relevant changes, I was able to understand how each investor acted over time: if Delta > 0, then the shareholder increased her participation (probably following a long-term strategy); if Delta

< 0, then she decreased her weight in the company (with a shorter speculative strategy); and if Delta = 0, then nothing changed.

	2011	2012	2013	2014	2015
Increased	60	62	84	70	122
Decreased	83	80	117	110	178
Unchanged	27	12	39	67	122
Total	170	154	240	247	422

	2016	2017	2018	2019	2020
Increased	194	270	243	249	189
Decreased	220	279	264	293	270
Unchanged	142	188	209	247	276
Total	556	737	716	789	735

Figure 14: Absolute headcount of all stock changes from 2011 to 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	2011	2012	2013	2014	2015
Increased	35.29%	40.26%	35.00%	28.34%	28.91%
Decreased	48.82%	51.95%	48.75%	44.53%	42.18%
Unchanged	15.88%	7.79%	16.25%	27.13%	28.91%

	2016	2017	2018	2019	2020
Increased	34.89%	36.64%	33.94%	31.56%	25.71%
Decreased	39.57%	37.86%	36.87%	37.14%	36.73%
Unchanged	25.54%	25.51%	29.19%	31.31%	37.55%

Figure 15: Relative headcount of all shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

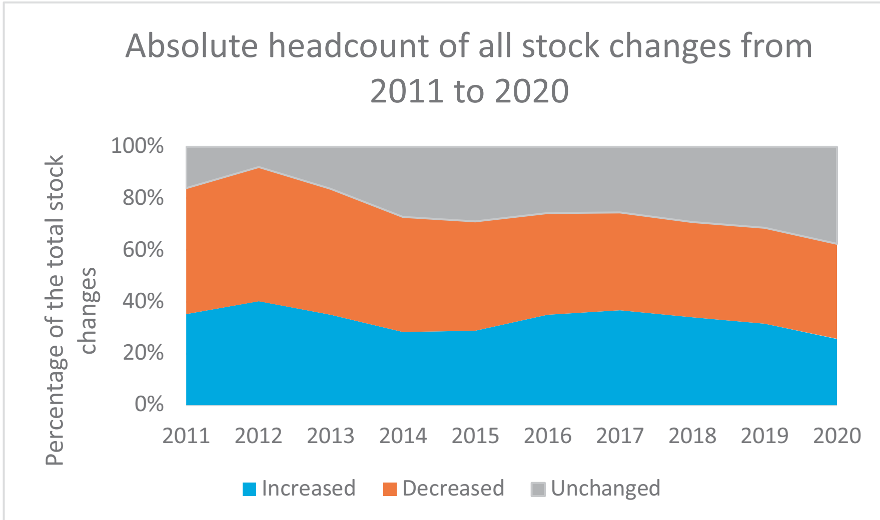


Figure 16: Absolute headcount of all shares' changes from 2011 until 2020.

	Average
Increased	33.05%
Decreased	42.44%
Unchanged	24.51%
Total	100.00%

Figure 17: Average of all shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

Comparing absolute and relative numbers, on average, the strategy tends to be overall decreasing, but both this trend and the growing one showed a strong downturn in the most recent years against the more stable "unchanged" position. The situation does not change when aggregate values are considered, with an average of 42.44% of changes resulting in a reduction, as opposed to an average of 33.05% of cases sticking to a holding position.

Then, the sample was split into two sub-clusters to understand the behavior of institutional investors specifically (the institutional investors, as defined above, and the remaining investors, *see* Figure 9). The same analysis was performed again to determine if the strategy outlined by focusing on general data is primarily driven by one of these two groups of investors.

	2011	2012	2013	2014	2015
Increased	47	49	67	49	92
Decreased	56	56	84	68	99
Unchanged	22	9	17	17	49
Total	125	114	168	134	240

	2016	2017	2018	2019	2020
Increased	126	186	181	181	139
Decreased	137	194	181	207	181
Unchanged	49	71	82	72	76
Total	312	451	444	460	396

Figure 18: Absolute headcount of Institutional investors' stock changes from 2011 to 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	2011	2012	2013	2014	2015
Increased	37.60%	42.98%	39.88%	36.57%	38,33%
Decreased	44.80%	49.12%	50.00%	50.75%	41.25%
Unchanged	17.60%	7.89%	10.12%	12.69%	20.42%

	2016	2017	2018	2019	2020
Increased	40.38%	41.24%	40.77%	39.35%	35.10%
Decreased	43.91%	43.02%	40.77%	45.00%	45.71%
Unchanged	15.71%	15.74%	18.47%	15.65%	19.19%

Figure 19: Relative headcount of Institutional investors shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	Average
Increased	39.22%
Decreased	45.43%
Unchanged	15.35%
Total	100.00%

Figure 20: Average of Institutional investors shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	2011	2012	2013	2014	2015
Increased	13	13	17	21	30
Decreased	27	24	33	42	79
Unchanged	5	3	22	50	72
Total	45	40	72	113	181

	2016	2017	2018	2019	2020
Increased	68	84	62	68	50
Decreased	83	85	83	86	89
Unchanged	93	117	127	175	200
Total	244	286	272	329	339

Figure 21: Absolute headcount of Institutional investors' stock changes from 2011 to 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	2011	2012	2013	2014	2015
Increased	28.89%	32.50%	23.61%	18.58%	16.57%
Decreased	60.00%	60.00%	45.83%	37.17%	43.65%
Unchanged	11.11%	7.50%	30.56%	44.25%	39.78%

	2016	2017	2018	2019	2020
Increased	27.87%	29.37%	22.79%	20.67%	14.75%
Decreased	34.02%	29.72%	30.51%	26.14%	26.25%
Unchanged	38.11%	40.91%	46.69%	53.19%	59.00%

Figure 22: Relative headcount of Other investors shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	Average
Increased	23.56%
Decreased	39.33%
Unchanged	37.11%
Total	100.00%

Figure 23: Average Other investors shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

The results can be summarized as follows: on the one hand, there is a different strategy according to the kind of investors, as the "decreasing strategy" is present in 45.43% of the cases regarding institutional investors, and in only 39.33% of the cases related to other investors. On the other hand, several changes occurred during the years under consideration: despite some functional variability, institutional investors reported a consistent approach to their investment strategy, while retail investors – who, according to other authors,[33] are the big losers in the SPAC's game because they do not exercise their redemption rights upon the de-SPAC merger and thus suffer the post-merger negative returns – shifted from a strongly decreasing to a moderately stable strategy (60% and 59% of the total cases, respectively).

The trends outlined above have two possible (and simultaneously valid) reasons for the different strategies embraced by institutional and retail investors. First, the divergence concerning the decreasing strategy among different investors may have emerged because institutional investors have their core business in making profits from closing deals without being directly tied to specific firms. Hence, they may prefer shorter-term investments to employ the capital they retrieve from deal closing and, instead, employ it in new investments with higher expected returns. Another plausible explanation for this trend may be due to the novelty of SPACs as a widespread tool for taking companies public. The rise in SPAC popularity must have been noticed by sophisticated institutional investors who possess the tools to predict market trends and set more long-term-oriented investment strategies. Consequently, they adopt a more consistent approach compared to retail investors. Additionally, a potential explanation may allude to the time frame of the investments, where SPACs are typically a medium-term investment opportunity. By having access to institutional funding and a more consistent strategy, defined *ex-ante*, institutional investors are less likely to decrease their stock holdings in the events of market swings, whereas retail investors are more likely to follow immediate or short-term market moves, leading them to decrease investments in SPACs if they underperform and perhaps, even invest in new SPACs, which are known to be more profitable in the short to medium term. Thus, the strategy adopted essentially works as

33. Klausner, Ohlrogge & Ruan, *supra* note 2.

a transfer of wealth from retail investors to institutional investors.

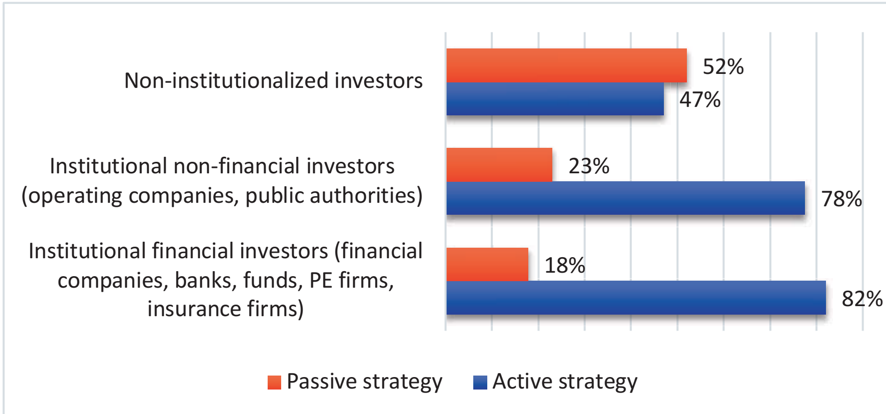


Figure 24: Type of SPAC investors and their preferred investment strategies – high-level picture. Investment strategy for each cluster of investors (generalized).

Once this initial distinction has been made, it is crucial to examine various categories of investors that contribute to differences in terms of general investment strategies in SPACs. Reiterating the stock variation analysis while considering the most relevant clusters (namely, financial companies; operating companies; mutual and pension funds, nominees, trusts, trustees; banks; one or more named individuals or families; private equity firms; insurance companies; and public authorities, states, governments), I considered that investors exceeding the 42.44% threshold actively contribute to the decreasing condition, while those exceeding the 33.05% threshold actively contribute to the increasing one.

	Financial Companies (Avg.)	Operating Companies (Avg.)	Mutual & Pension Funds, etc. (Avg.)	Banks (Avg.)
Increased	37%	25%	29%	48%
Decreased	45%	41%	45%	44%
Unchanged	17%	34%	26%	8%
Total	100%	100%	100%	100%

	One or More Named Individuals / Families (Avg.)	Private Equity Firms (Avg.)	Insurance Companies (Avg.)	Public Authorities, States, Government (Avg.)
Increased	12%	33%	34%	44%
Decreased	35%	47%	48%	45%
Unchanged	52%	20%	18%	12%
Total	100%	100%	100%	100%

Figure 25: Most relevant average investors shares' changes from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

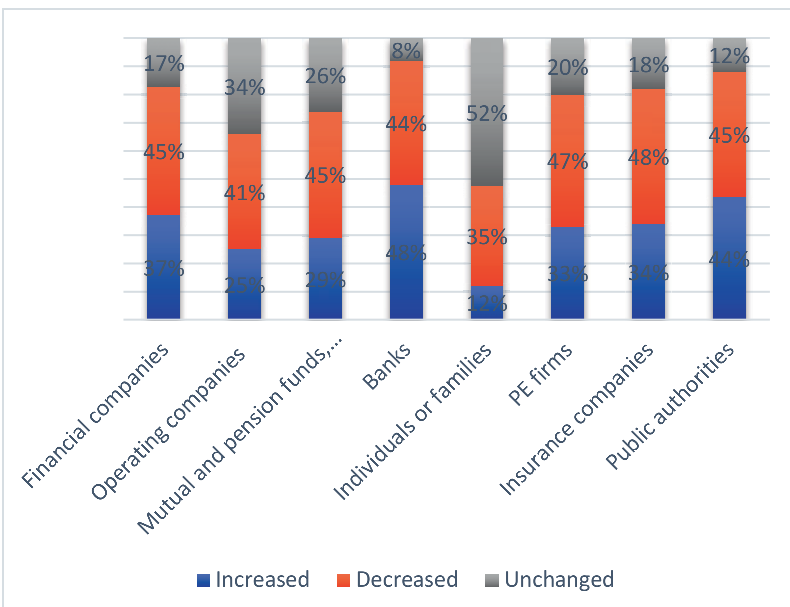
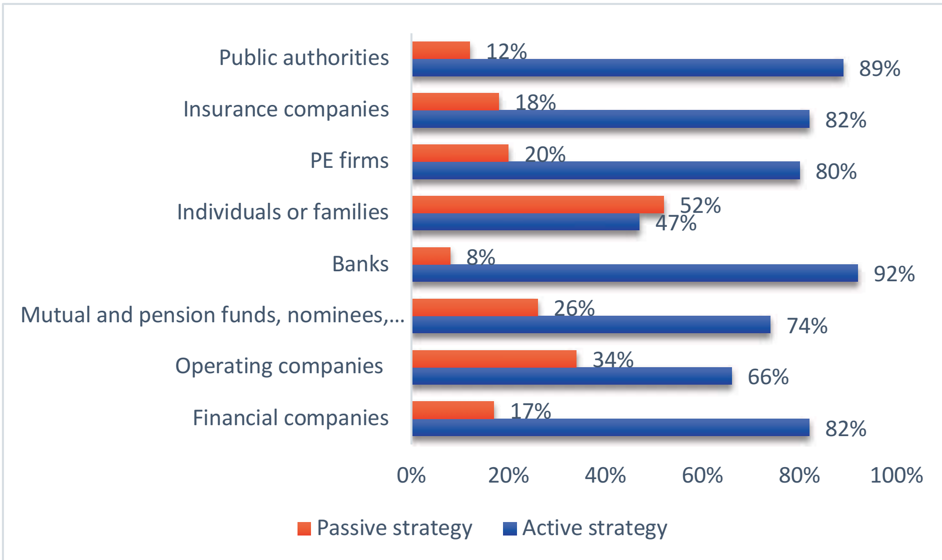


Figure 26: Average participation by type of investor from 2011 until 2020.



Strategy	Cluster of investors
Active	Financial companies; Operating companies; Mutual and pension funds, nominees, trusts, trustees; Banks; Insurance companies; PE firms; Public authorities
Passive	Individuals or families

Figure 27: Investment strategy for each cluster of investors.

As to the decreasing trend, the strategy of limiting investor participation in SPACs is most prevalent among insurance companies (48%). This is consistent with their business model that – taking into account unforeseen shocks to their cost structure (*e.g.*, with unforeseen compensations paid to insurees in times of natural disasters or epidemics) – seeks stable returns due to a long-term nature of building a pool of insurees and pricing risk over longer periods of time. This business model of insurance funds dictates their

investment strategy, which SPACs may not align with due to their short-to-medium term nature.

As to the upward trend, it is noteworthy that banks have both the lowest level of "unchanged" cases (8%) and a relatively high level of "increased" cases (48%). This is consistent with the nature of the banks' business model, especially in investment banking, where revenues are generated by high-frequency transactions, mixing stock shorting and longing strategies, and financial speculation in general. Conversely, the "unchanged" strategy is favored by individuals/families (52% of overall cases) for two reasons. First, individuals tend to hold their investments over the long term to build personal wealth and preserve private capital. Second, they do not engage in high-frequency trading of stocks (*e.g.*, shares in SPACs), so their consistent, unchanged investment strategy is a matter of low engagement with financial markets and reluctance to engage in financial trading (day-trading and financial speculation on stock prices). Therefore, all increasing, decreasing, or stable strategies related to SPAC stocks show that specific investment strategies do not depend on performance of SPAC stocks, but rather on *ex-ante* goals that each specific investor has. Regarding the possible impact that the change in price may have had for institutional investors in relation to their undertaking, we can see that the average trend is a decrease in 55.58% of cases, thus supporting the idea that over time, institutional investors tend to prefer more profitable alternatives.

	2011	2012	2013	2014	2015
Increased	72.73%	55.56%	40.00%	27.27%	30.77%
Decreased	18.18%	44.44%	60.00%	72.73%	69.23%
Unchanged	9.09%	0.00%	0.00%	0.00%	0.00%
Total	100%	100%	100%	100%	100%

	2016	2017	2018	2019	2020
Increased	50.00%	44.44%	25.00%	33.33%	45.45%
Decreased	44.44%	55.56%	70.00%	66.67%	54.55%
Unchanged	5.56%	0.00%	5.00%	0.00%	0.00%
Total	100%	100%	100%	100%	100%

Figure 28: Percentage change in price from 2011 until 2020, grouped by trend (increased; decreased; unchanged). Source: Datastream.

	Average
Increased	42.46%
Decreased	55.58%
Unchanged	1.96%
Total	100%

Figure 29: Average percentage change, grouped by trend (increased; decreased; unchanged). Source: Datastream.

C. ADDITIONAL ASPECTS OF THE U.S. MARKET

Looking at the overall volume of IPOs and the number of U.S. listed companies in the pandemic-unrelated timeframe[34] from January 2010 to December 2019, a period that comprises 281 SPACs and 2444 IPOs, both values grew significantly from 2003 to 2007, reaching the first peak in that year, when the total volume of SPACs' IPOs represented about a quarter of the whole amount of traditional IPOs.[35] After the slowdown due to the 2008 financial crisis, the SPAC market regained momentum. In 2017, the market reached a total volume of transactions substantially equal to that prior to the economic downturn.

Summary of SPACs

	#	Proceeds $M
SPACs seeking acquisition	420	135,552
SPAC announced acquisition	112	36,379
SPACs completed acquisition	289	56,729
SPACs liquidated	90	12,451
Total	911	241,112
IPO pipeline	195	52,480

Figure 30: Overview of the current SPAC market condition, delving into the distinct possible phases: SPACs seeking, announced, completed acquisition, liquidated or PIPE investment. Source: SPACs Analytics.

34. The research aims to look at the roots of the phenomenon, thus complementing what was examined in Klausner, Ohlrogge & Ruan, *supra* note 2, which instead focuses on the timeframe from January 2019 to June 2020.

35. The information is retrieved from the Bloomberg database and the Dealogic ECM software. The number of SPACs is constantly increasing, given that the number of IPOs involving SPACs on December 14, 2018 was 329, according to SPAC Analytics.

SPAC and US IPO Activity

Year	SPAC IPOs	Total IPOs	%	SPAC Proceeds $M	Total US IPO Proceeds $M	%
2020	248	450	55%	83,341	179,344	46%
2019	59	213	28%	13,600	72,200	19%
2018	46	225	20%	10,750	63,890	17%
2017	34	189	18%	10,048	50,268	20%
2016	13	111	12%	3,499	25,779	14%
2015	20	173	12%	3,902	39,232	10%
2014	12	258	5%	1,750	93,040	2%
2013	10	220	5%	1,447	70,777	2%
2012	9	147	6%	490	50,131	1%
2011	16	144	11%	1,110	43,240	3%
2010	7	166	4%	503	50,583	1%

Figure 31: Overview of U.S. SPACs compared to IPOs market for the time period 2010 until 2020. Source: SPACs Analytics.

As for the sector distribution, I repeat once again the analysis that other authors have already undertaken in the literature,[36] but this applies the most recent data obtained from the sample described above.

Finally, I compared the post-acquisition investment profitability to the specific industry. In each case, the benchmark value was calculated as the arithmetic mean of the prices for the following operating years for each SPAC.

36. *Inter alia*, Layne & Lenahan, *supra* note 1.

Macro sector	Average price $
Consumer Staples	11.7
Media and Entertainment	11.09
Consumer Products and Services	10.54
Retail	10.37
High Technology	10.27
Industrials	9.9
Energy and Power	9.58
Financials	9.24
Healthcare	8.86
Real Estate	8.46
Materials	7.39

Figure 32: Average price of the listed SPACs from January 2010 until December 2019. Source: Datastream.

1. Liquidation

Liquidation has taken a central role in the recent development of SPACs, and over time we have seen a strong downward trend in the number of deals that do not actually end in a SPAC, but rather in a repayment of invested capital to shareholders. The payout rate dropped dramatically from nearly 60% in 2010 to nearly 20% in 2015, until it reached an average of less than 5% in 2018/2019. This dropping trend is totally in contrast to the vast growth in both the average size of SPACs and total SPAC transactions. Of course, in both 2019 and 2020, the vast majority of SPACs were still looking for a deal, but provisional data regarding those years – according to a report that considers this aspect,[37] the vast majority of transactions are placed within 18–24 months – confirm the strong presence of a downward liquidation trend. So overall, this tendency seems to be evident from 2018 on and this is due, as per McKinsey experts,[38] to the increasing presence of well-known participants in the market. SPACs gained more attention and trust from the market by increasing the number of high-profile investors and by recruiting executives from high-profile companies. The liquidation rate remained at extremely low levels in the recent years, as only four SPACs were liquidated per year in 2018 and 2019. Finally, in terms of the most recent liquidation

37. CREDIT SUISSE, MAKING WAVES: THE EVOLUTION OF SPACS (2020), https://www.credit-suisse.com/media/assets/investment-banking/docs/corporate-insights/csci-2020-q4-making-waves-spacs.pdf [https://perma.cc/BX7D-EBE4].

38. Kurt Chauviere et al., *Earning the premium: A recipe for long-term SPAC success*, MCKINSEY (2020), available at https://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/earning-the-premium-a-recipe-for-long-term-spac-success [https://perma.cc/6YG2-MNKW]. *See*, in particular, *Exhibit 1*, that is also reproduced here.

that occurred during this time frame, we can see that 75% of the liquidations that occurred in 2019 belonged to the energy sector.

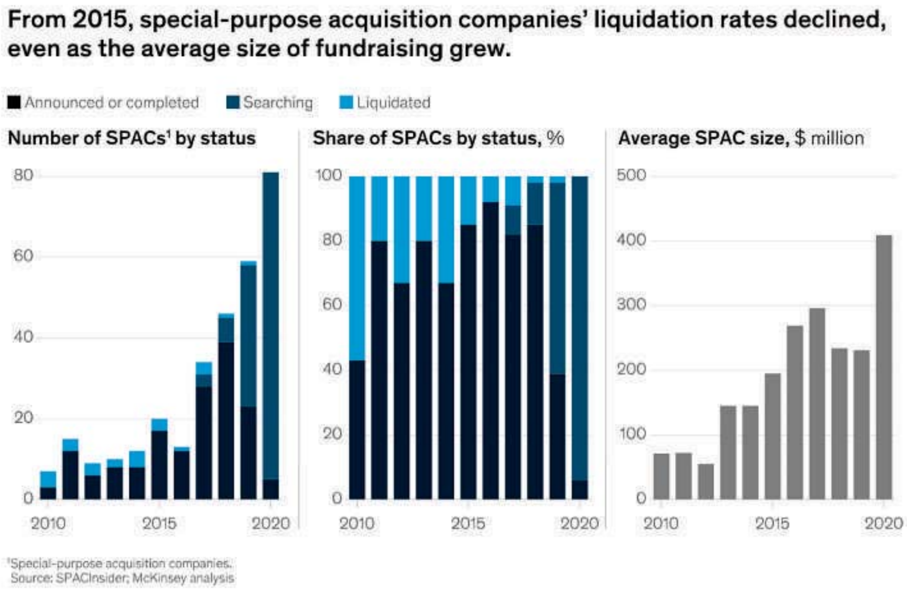


Figure 33: Overview of announced or completed / searching / liquidated SPACs by status from 2010 until 2020. Source McKinsey.

SPAC	Size ($mm)	Sector	At Risk Capital
Sentinel Energy	345	Energy	8.9
Regalwood Energy	300	Energy	8
Vantage Energy	552	Energy	13.04
Saban Capital	250	Media/ Entertainment	7
Total	1447		36.94

Figure 34: Overview of the SPACs liquidations occurred over time and, specifically, in 2019.[39]

39. Rajeev Das, *Bulldog SPAC Update,* BULLDOG INVESTORS (Jan. 14, 2020), https://bulldoginvestors.com/wp-content/uploads/sites/20/2020/01/bulldog-spac-updates-1-14-20-min.pdf [https://perma.cc/66RP-NNMW].

Hence, the intention to understand the rationale for those cases registered up to 2018 led to examination of every case in which, in the United States, SPACs were liquidated (more specifically, as of June 15, 2018). I found it relevant to review each case, and our study revealed that the reasons can be ascribed to six clusters of motivations: (i) the maximum time limits for the completion of a business combination were not met (twenty-six cases); (ii) target-related problems were detected (nineteen cases); (iii) no target was found (eighteen cases); (iv) a mutually accepted termination of the agreement was reached (six cases); (v) a change in the corporate form or macroeconomic conditions was achieved (three cases for both circumstances); and (vi) non-fulfilment of contractual conditions or non-completion of the IPO was detected (one case for both events). Further, the general shareholders meetings did not approve nineteen material transactions[40] for explanations pertaining to four distinct categories: (i) negative Net Equity as registered in the previous year (nince cases); (ii) NFP/EBITDA index above 4 (nine cases); (iii) NFP/EBITDA index above two (eight cases); and (iv) negative EBITDA (five cases).

2. OTCBB or AMEX/NYSE, or NASDAQ?

Initially, SPACs were listed on the Over-The-Counter Bulletin Board (OTCBB), an electronic system for trading securities that were not allowed on domestic regulated markets. Then, in 2005, they were regulated by the AMEX market (later NYSE), which set the minimum capital of the constituent companies, attributed guidelines for corporate governance, fixed the minimum price of shares, and ensured compliance with the Sarbanes-Oxley Act.[41] Afterwards, in 2008, given the excellent results achieved,[42] the

40. The cases involve the following SPACs: Atlas Acquisition Holdings Corp., Cambridge Capital Acquisition Corp., Coastal Bankshares, Inc., Cold Spring Capital Inc., Energy Infrastructure Acquisition Corp., Garnero Group Acquisition Corp., GSC Acquisition Company, Hicks Acquisition Company II, JK Acquisition Corp., KBL Healthcare Acquisition Corp. III, MBF Healthcare Acquisition, Millstream II Acquisition, North Shore Acquisition Corp., Origo Acquisition Corp., Overture Acquisition Co., TAC Acquisition, Tailwind Financial Inc., United Refining Energy, and Victory.

41. Moeller, *supra* note 10, at 9. For an overview of the regulatory evolution, *see* D'Alvia, *The international financial regulation of SPACs between legal standardized regulation and standardization of market practices*, *supra* note 10, at 111–15.

42. The rampant predictions of a 2008 decline in mergers and acquisitions are missing one coming takeover boom: acquisitions by special purpose acquisition companies or SPACs. . . . According to SPAC Analytics, in 2007 SPACs raised approximately $12 billion in proceeds in sixty six initial public offerings. . . . Even in today's troubled climates these companies should sustain a steady flow of private M&A activity in the next year. It won't quite match the private equity boom but a nice chunk of business in troubled times. SPACs are the untold capital markets story of 2007. In 2007, approximately 23 percent of the total number of U.S. initial public offerings and 18 percent of the money raised were SPAC related. If the current figures hold 2008 will be even better. . . . SPACs have a distasteful reputation due to a number of scandals associated with them in the 1980s. But like Frankenstein arisen from the dead, they are back. Stephen M. Davidoff, *The Unseen Merger Boom: SPACs*, N.Y. TIMES DEALBOOK (Jan. 6, 2008, 11:39 AM),

NYSE and NASDAQ admitted SPACs to listing, while imposing even more stringent requirements and officially confirming the transition to the SPAC 2.0 model. As for the NYSE first of all, it required a market value of $250 million and a free float market value of at least $200 million, whereas for the NASDAQ, which is divided into two segments (Global Market and Capital Market), further specifications are identified – respectively, a minimum capitalization value of $75 million and $50 million and a minimum free float value of $20 million and $15 million.

In October 2010, NASDAQ called for a further amendment to the SEC regulations to allow a SPAC to make a tender offer at a price corresponding to the pro-rata of the trust's liquidity as an alternative to calling a shareholder meeting to approve the business combination, if this is not already explicitly required by the law of the country in which the company is incorporated. This amendment was approved shortly after and promptly extended to the NYSE.

If, up to 2008, 59% of the IPOs took place on the OTC-BB market, whereas 40% took place on the NYSE and only 1% took place on the NASDAQ, then, over the following six years, the trend reversed.[43]

Considering the total number of listings, the number of transactions in 2010–2018 (128 transactions) is almost the same as in 2019–2020 (116 transactions). NASDAQ remained the most relevant market in United States from 2015 to 2019. In fact, another difference that stands out when considering the 2020 data is the stronger presence of SPACs listed via NYSE (+400% since 2015), accounting for 87% of the transactions listed via NASDAQ by means of forty transactions.

Beginning in 2010, regulatory developments led to a further step (*i.e.*, to SPAC 3.0), namely, the split between the voting right and the right to redeem shares, which was originally limited solely to those who voted against the proposed business combination.[44]

https://dealbook.nytimes.com/2008/01/06/the-unseen-mergers-boom-spacs/. During that time, the study of the SPAC governance elements at the basis of its successful development was conducted by Anh L. Tran, who reached the conclusion that the role of specialization, ownership structure, and independent long-term institutional blockholders' monitoring were decisive. *See* Anh L. Tran, *Blank Check Acquisitions* (Nov. 16, 2010), available at https://ssrn.com/abstract=2070274 [https://perma.cc/HK4Y-LBVP]).

43. In 2018 – but as early as 2017, it was clear that this would have been the trend. *See What's Next for IPOs? More Nasdaq SPAC Listings,* PROSPECTUS.COM (Sept. 5, 2017), https://www.prospectus.com/2017/09/nasdaq-blank-check-companies-ipo-spac [https://perma.cc/R3WT-YMM2]. The Nasdaq's performance is truly excellent. *See Nasdaq continues momentum with 100th spac listing,* NASDAQ (Feb. 9, 2018), https://business.nasdaq.com/marketinsite/2018/CCG/Nasdaq-Continues-Momentum-with-100th-SPAC-Listing.html [https://perma.cc/6T3N-QH9Z].

44. Minmo Gahng, Jay R. Ritter & Donghang Zhang, *Investor Returns on the Life Cycle of SPACs* (Jan. 29, 2021), available at https://ssrn.com/abstract=3775847 [https://perma.cc/9QM7-6B4E]). The fact that investors in the SPAC's first public capital raise often redeem or sell their shares around the time of the business combination is one of the more interesting and challenging aspects of recent SPAC transactions. *See* John C. Coates, *Statement by Acting Director Coates on SPACs, IPOs and Liability Risk under the Securities Laws*, HARV. L. SCH. F. ON CORP. GOV. (Apr.

More recently, between 2019 and 2020, a new praxis has been established (the fractional warrant practice, which characterizes the so-called SPAC 3.5), according to which each whole warrant entitles the holder to purchase one common share and each unit is composed of one share and a function of one warrant, thereby incentivizing shareholders to buy more shares to get a full warrant and decreasing the risks of dilution at the de-SPAC phase. Such a stage also leads to a reduction of the "strike price of warrants to stimulate a consolidation of the share capital at the back-end through a facilitated form of investment participation in the future proceeds of the post-business combination entity as directly resulted from direct mergers, reverse mergers, or acquisition of a portfolio of related target companies."[45] This is a series of measures which, if properly applied elsewhere, would make the model at stake decidedly attractive.

Year	OTC	Nasdaq	New York Stock Exchange	NYSE Amex	NYSE MKT	Pink Sheet	Sm Cap Mkt	NEX Board	Total YEAR
2010	1	2	1	0	0	2	0	0	**6**
2011	10	0	0	0	0	2	0	0	**12**
2012	13	6	0	0	0	1	0	0	**20**
2013	11	3	0	1	0	0	0	0	**15**
2014	2	8	0	0	0	0	0	0	**10**
2015	3	5	1	0	0	0	0	0	**9**
2016	1	10	0	0	0	0	0	0	**11**
2017	1	20	1	0	0	0	0	0	**22**
2018	0	20	2	0	1	0	0	0	**23**
2019	2	16	8	0	0	0	0	0	**26**
2020	1	46	40	0	0	0	1	2	**90**
Total MARKET	**45**	**136**	**53**	**1**	**1**	**5**	**1**	**2**	

Figure 35: Listing operations per single year, for each market.

9, 2021), https://corpgov.law.harvard.edu/2021/04/09/statement-by-acting-director-coates-on-spacs-ipos-and-liability-risk-under-the-securities-laws/ [https://perma.cc/W9C5-MWDN].

45. Daniele D'Alvia, *SPACs: An art or a science?*, FIN. MIRROR (Sept. 19, 2020), https://www.financialmirror.com/2020/09/19/spacs-an-art-or-a-science/. *See also* Gahng, Ritter & Zhang, *supra* note 44 at 49–50.

3. Benchmark indexes

The first example of a benchmark index for SPACs is the Morgan Joseph Acquisition Company Index, established by the homonymous U.S. merchant bank. The indicator covers all SPACs listed on the U.S. market (January 1, 2005, base of 100) according to the IPO price but excludes them from the date of the business combination or liquidation.[46] This is a market capitalization value-weighted index (excluding promote shares and over-allotments), in which the "weights" are the market capitalizations of the companies, linearly balanced upon the exclusion or introduction of a new SPAC. Over and above the fact that the index only includes SPACs prior to the business combination phase, its latest update dates back to March 31, 2014.[47]

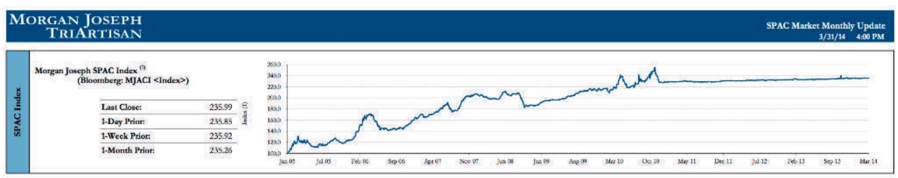


Figure 36: Morgan Joseph SPAC Index results from July 30, 2005, on. Source: Bloomberg.

Other indexes have been built by scholars too: for example, some authors have built an original SPAC Shipping Index and compared its performance with benchmark indices.[48] Due to the 2020 consistent increase of SPAC usage, several instruments were adopted to trace performances: from July 30, 2020, the IPOX SPAC INDEX, that tracks the thirty to fifty most liquid SPACs based on daily equity turnover, and, from April 30, 2020, the NDXX SPAC & NEXT GEN IPO, a passive rules-based index that tracks the performance of the newly listed SPACs.[49]

46. FUMAGALLI, LO SVILUPPO DELLE SPAC IN ITALIA, *supra* note 10, at 24.
47. The monthly update for March 2014 is available at http://mjta.com/i/SPAC_Monthly.pdf.
48. Shachmurove & Vulanovic, *supra* note 9.
49. *INDXX SPAC & NEXTGEN IPO INDEX,* INDXX, https://www.indxx.com/indices/thematic/indxx-spac—nextgen-ipo-index-tr.

Figure 37: IPOX SPAC INDEX results from 30 July 2020 on. Source: Refinitiv.

Figure 38: NDXX SPAC & NEXT GEN IPO results from 30 April 2020 on. Source: Refinitiv.

III. THE 2020 SPAC-TACLE

The following data (Section III.A) clearly shows SPACs' boom in 2020, but it should be accompanied by several legal remarks. Indeed, a series of developments have recently occurred: retail investors approaching not only

the equity markets but SPACs too,[50] long-only institutional investors increasing attention, diversifying sponsors (including large private equity firms, high-profile individuals, and public companies), the innovation of SPAC structures (due to warrants, sponsor economics, and de-SPAC design, leading to an increased proactive preparation of private companies for a possible de-SPAC, that can both serve as a liquidity-exit event and a financing), and SEC requiring enhanced disclosures on compensation and other interests affecting insiders (SPAC sponsors, directors, officers, and other affiliates) to alert public investors of their financial incentives and potential conflicts.[51] At the same time, we are currently experiencing the following phenomena: (i) the increase in litigation cases; (ii) the rise in D&O insurance; and (iii) consequently, the steadily expanding use of PIPEs. The following pages will be more specifically devoted to the last three key elements (Sections III.B–C–D).

A. DESCRIPTIVE ANALYSIS

Starting from an in-depth analysis of the current scenario in the United States, I will now try to investigate the possible determinants under the meaningful 2020 upturn.

Over time, the IPO landscape has radically changed. Indeed, SPACs have gained relative weight at a general level: in 2010, SPACs were only 4% of the total transactions; from 2010 to 2018, they represented 12.1% of all transactions on average; and, since 2019, the total number has risen well above 28%. This trend has maintained a robust 52% uptick in the early months of our analysis – considering January and February 2020 data only, to avoid COVID-2019 influence – while absolute terms show how SPACs' volume increased more than fourfold since September 2020. Interestingly, such high percentage levels were only occurring in the 2008 (uncertain) environment due to the global financial crisis.[52]

The different forces and trends that drove this change are heterogeneous: from investors' point of view, uncertainty is reduced, as the available redemption has made it possible to end those investments quickly and

50. *The Economist explains - What is a SPAC, Grab's path to a $40bn listing?*, THE ECONOMIST, Apr. 13, 2021. https://www.economist.com/the-economist-explains/2021/04/12/what-is-a-spac

51. SEC DIV. OF CORP. FIN., CF DISCLOSURE GUIDANCE: TOPIC NO. 11 – SPECIAL PURPOSE ACQUISITION COMPANIES (DEC. 22, 2020), https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies [https://perma.cc/ST2U-96DU]. Some concerns about the incentive structures have been recently raised by the CEO of Golman Sachs. *See Spacs/incentives: skewed dudes*, FIN. TIMES, (Jan. 22, 2021), https://www.ft.com/content/42b8e8ff-1314-4774-998e-64d89d3150ec.

52. *See* CREDIT SUISSE, *supra* note 37, at 19 (reporting a 36% value).

cheaply; from the perspective of the market, it provides a quick and certain tool to access the public market, even in terms of possible valuation.[53]

All the above elements, together with a more consistent presence of high-quality diversified sponsors that indeed consistently reduced the liquidation outcome,[54] and along with the implementation of protection tools (*e.g.*, warrants and PIPEs' investments), are a valid response to the extra uncertainties characterizing the current economic environment.

Considering the absolute volume of transactions and the relative monetary values associated with those transactions, 2020 stands out as a remarkable and unusual year. In fact, whereas seven SPACs were issued in 2010, representing a total value of $1 billion, in 2020, the same value soared to 177 transactions representing a total monetary value of $65 billion. This similarity may be seen as a structural incentive for private firms not only to go public, given the higher evaluations, but to do it specifically with a SPAC, as the valuation has risen from the 8.9x in 2010 to the 14.1x in 2019.[55]

Considering sectorial differences among various merger events, we can clearly notice that during 2020, two major clusters overcome the traditional financial cluster: the first (and largest) one is related to information technology, with 40% of the overall transactions; the second one is related to the health care industry, with a relative 9% of the total funds raised. An interesting insight regards the level of constant innovation, dynamism and capital required by those sectors. There is a positive correlation among them, as more traditional sectors (like real estate, utilities, communication services and energy) amount to 6% of the total funds raised, if jointly considered, and a negative correlation among the capital intensiveness of the sectors using SPACs.[56]

The post-SPAC performance (considered one, three, or six month(s) after the business combination) has an important role in determining the reasons behind the employment of this instrument. In 2020, under the S&P 500, median returns were -13, -6, and -27 percentage points respectively.[57] Thus, the consistent use of SPACs, despite poor post-merger results in terms of performance on average, showed once again how the application of this tool is influenced by other elements: *e.g.*, higher pre-merger value or lower risks and greater certainty in terms of equity evaluation.

Focusing on the five most important 2020 deals, as per the monetary unit return of shares, we can mention the following companies that conducted deals: DraftKings (with an actual stock price of $70.65, and a unit return of

53. GOLDMAN SACHS, TOP OF MIND. THE IPO SPAC-TACLE 3–4, 11, 13 (Feb. 2, 2021), https://www.goldmansachs.com/insights/pages/top-of-mind/the-ipo-spac-tacle/report.pdf [https://perma.cc/Q5GY-L85H].
54. *Id.* at 14.
55. CREDIT SUISSE, *supra* note 37, at 13.
56. GOLDMAN SACHS, *supra* note 54, at 17.
57. *Id.* at 13.

804%); Quantumscape Corp (that realized a stock price of $59.80, and a unit return of 741%); Betterware (with a stock price of $37.81, and a unit return of 541%); and Danimer Scientific and MP Materials (with a stock price of $46.45 and $44.09, and a unit profit 539% and 450%, respectively).[58]

Finally, to properly assess the U.S. situation and to fully understand its magnitude, I must briefly compare it to the market situation globally, as the United States accounted for 25% (only) of the total IPO proceedings handled in 2019, and during 2020, SPACs registered a significant and unprecedented increase, reaching 50% of the overall listing transactions.

B. Increasing Litigation

Several lawsuits were filed in 2019, highlighting SPACs' liabilities connected to the representation made within S-1s, quarterly and annual filings, as well as to due diligence and business combination proxy filings, and post-combination entities' activities. In 2020, 44% of IPO proceeds raised were SPAC-related.[59]

More specifically, the Stanford Law School Securities Class Action Clearinghouse mentions the following twenty-two SPAC-related shareholder lawsuits as the ones filed in the period between January 30, 2019 (first one) and April 9, 2021 (last one).[60]

Filing Name	Filing Date	District Court	Exchange	Ticker	Sector
MultiPlan Corporation	02/24/2021	S.D.N.Y.	New York SE	MPLN	Financial
Immunovant, Inc.	02/19/2021	E.D.N.Y.	NASDAQ	IMVT	Healthcare
GigCapital3, Inc.	02/08/2021	N.D. Cal.	New York SE	GIK	Financial
Clover Health Investments, Corp.	02/05/2021	M.D. Tenn.	NASDAQ	CLOV	Financial
QuantumScape Corporation	01/05/2021	N.D. Cal.	New York SE	QS	Consumer Cyclical
Triterras, Inc.	12/21/2020	S.D.N.Y.	NASDAQ	TRIT	Technology
Nikola Corporation	09/15/2020	D. Ariz.	NASDAQ	NKLA	Consumer Cyclical
Churchill Capital Corp III	08/11/2020	S.D.N.Y.	New York SE	CCXX	Financial

58. SPACs Analytics, https://www.spacanalytics.com.

59. Priya Cherian Huskins, *Why More SPACs Could Lead to More Litigation (and How to Prepare)*, American Bar Association (June 25, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/07/spacs-litigation/ [https://perma.cc/V2JU-RTFW].

60. Data available at *SPACs*, Stanford L. Sch.: Securities Class Action Clearinghouse, http://securities.stanford.edu/current-topics.html# [https://perma.cc/2G46-VEVK] (last visited Apr. 25, 2022).

Akazoo S.A.	04/24/2020	E.D.N.Y.	NASDAQ	SONG	Services
Boxwood Merger Corp.	11/22/2019	D. Del.	NASDAQ	BWM CU	Financial
Waitr Holdings Inc	09/26/2019	W.D. La.	NASDAQ	WTRH	Services
Chardan Healthcare Acquisition Corp.	09/25/2019	D. Del.	New York SE	CHAC	Conglomerates
Greenland Acquisition Corporation	09/19/2019	D. Del.	NASDAQ	GLAC U	Conglomerates
Black Ridge Acquisition Corp.	06/17/2019	D. Del.	NASDAQ	BRAC U	Conglomerates
Alta Mesa Resources, Inc.	01/30/2019	S.D. Tex.	NASDAQ	AMR	Conglomerates

Figure 39: Litigation cases before February 28, 2021.

Shareholders increasingly tried to hold blank-check company leaders accountable.

One high-profile lawsuit related to a SPAC is the action filed against *Nikola Corporation*, which went public through a reverse merger with the SPAC VectoIQ Acquisition Corp. Plaintiffs allege that VectoIQ did not engage in proper due diligence regarding the merger, and two former VectoIQ officers are named as defendants in the lawsuit.[61]

Other famous lawsuits include:

- *Alta Mesa Resources Inc*., where shareholders allege that they were misled in approving the merger by inflated appraisals of the target businesses;
- *Akazoo SA*, where Quintessential Capital Management claimed that Akazoo had overstated revenue, profits, subscribers and services, thus claiming that Akazoo's former management defrauded the company, ultimately leading to its delisting;
- *Clover Health Investments*, where shortseller Hindenburg Research claimed the company failed to disclose a Justice Department investigation,[62] although Clover denied the wrongdoing;[63]

61. Kristen Savelle & Leo Cho, *SCAC Now Tracking Cases Involving SPACs*, STANFORD L. SCH. (Nov. 30, 2020), http://securities.stanford.edu/news-reports/20201130-SCAC-Now-Tracking-Cases-Involving-SPACs.pdf [https://perma.cc/S7TF-5EDT].

62. *Clover Health: How the "King of SPACs" Lured Retail Investors Into a Broken Business Facing an Active, Undisclosed DOJ Investigation,* HIDENBURG RESEARCH (Feb. 4, 2021), https://hindenburgresearch.com/clover [https://perma.cc/V8L6-8S38].

63. Edvard Pettersson & Crystal Tse, *SPAC Flop Is Test Case for Disgruntled Investor Lawsuits*, BLOOMBERG (Feb. 16, 2021). For an in-depth case analysis, *cf.* STANFORD L. SCH. SECURITIES CLASS ACTION CLEARINGHOUSE, *Case Summary. Alta Mesa Resources, Inc. Securities Litigation*, http://securities.stanford.edu/filings-case.html?id=106903 [https://perma.cc/4VYY-JTAL]; STAN. L. SCH. SECURITIES CLASS ACTION CLEARINGHOUSE, *Case Summary. Akazoo S.A. Securities Litigation*, http://securities.stanford.edu/filings-case.html?id=107409 [https://perma.cc/5BHR-E27

- *Triterras*, a Fintech corp organized under the laws of Cayman Islands, that merged with Netfin Acquisition Corp., and whose CEO is also the controlling shareholder of a commodity trading business headquartered (as Triterras) in Singapore;[64] and
- *Waitr Inc.,* one of Grubhub and UberEats rivals, and the blank-check firm it decided to merge with in November 2018, Landcadia Holdings, where the federal judge was asked to weigh to what extent sponsors can be held liable for failing to deliver, as the company's shares lost about 96% of their market value (almost $1 billion) in 2019.[65]

The effect of these rulings will potentially be more than just disruptive, and SPAC litigation in general is expected to further grow in 2021.

One of the SPACs' benefits is the safe harbor provisions of the Private Securities Litigation Reform Act[66] for forward-looking statements, excluding IPOs, but a prospectus issued in connection with a de-SPAC transaction is covered if the statements are identified as forward-looking and if suitable "meaningful cautionary statements" accompany the information.[67] Plaintiffs can still allege a moral hazard of the management and consider that the prospectus "lacked the disclaimers" and "meaningful cautionary statements" required to fall within the safe harbor provision or that the allegedly false statements involved then-existing facts.[68] In this regard, a relevant recent case is the one of Nikola Motor Company. Listed in June 2020 under a SPAC, it has received considerable public attention, regarding the liability of its directors, after the investment fund Hindenburg Research accused Trevor Milton, the founder and executive chairman of Nikola, of making false assertions about his company's technology, and leading to his resignation.

Also, disgruntled shareholders can bring state-law breach of duty claims against SPACs' directors. However, the case of *Bogart v. Israel Aerospace Indus. Ltd.*[69] shows that the degree to which breach of duty claims can be brought against SPACs is limited, which reflects their complicated nature not only in financial matters but in the law as well. The reasoning is the following: "SPAC's sponsor did not have standing to bring a claim for breach

T]; STANFORD L. SCH. SECURITIES CLASS ACTION CLEARINGHOUSE, *Case Summary. Clover Health Investments, Corp. Securities Litigation*, [https://perma.cc/5DJK-FNKC].

64. Kevin LaCroix, *SPAC-Acquired Company Hit with Post-Acquisition Securities Suit*, THE D&O DIARY (Dec. 22, 2020), https://www.dandodiary.com/2020/12/articles/securities-litigation/spac-acquired-company-hit-with-post-acquisition-securities-suit [https://perma.cc/9KPJ-TDJL].

65. Pettersson & Tse, *supra* note 64.

66. 15 U.S.C. § 78u-5.

67. MCGUIRE WOODS, SPAC LITIGATION LIKELY TO SURGE IN 2021 (Feb. 1, 2021), https://www.mcguirewoods.com/client-resources/Alerts/2021/2/spac-litigation-likely-to-surge-in-2021 [https://perma.cc/Y7E8-U68L].

68. *Id.*

69. Bogart v. Israel Aerospace Indus. Ltd., 2010 WL 517582 (S.D.N.Y. Feb. 5, 2010).

of the duty to negotiate in good faith because it could not establish an independent duty running from the target company to the sponsor."[70]

More specifically, actions can be brought under a number of different statutes:

- Section 10(b) of the Exchange Act and Rule 10b-5,[71] prohibiting false or misleading statements or fraudulent schemes "in connection with the purchase or sale of a security." In the SPAC world, the adverb "scienter" can be translated as "near the end of the liquidation window."
- Section 14(a) of the Exchange Act and Rule 14a-9, prohibiting false or misleading statements or fraudulent schemes "in connection with proxy solicitations" and not requiring plaintiffs to prove scienter.[72] In the SPAC world, the "foreign private issuers" exemption requirement can hardly be met, as it requires more than half of the outstanding votes to be held by non-U.S. residents.
- Section 11 of the Exchange Act, in case the SPAC needs to raise additional capital to complete the business combination.
- State laws, in case of breach of the duty of care and loyalty to the shareholders.[73] In the past, courts held that a claim for failure to conduct diligence cannot be protected by the business judgment rule,[74] and we expect that courts will consider directors in breach of their duty of loyalty to the SPAC when trying to conclude the de-SPAC deal, without even considering the best interests of the shareholders.[75]

---

70. *Litigation Risk in the SPAC World,* QUINN EMANUEL URQUHART & SULLIVAN, LLP (Sept. 30, 2020), https://www.quinnemanuel.com/the-firm/publications/litigation-risk-in-the-spac-world [https://perma.cc/KPX4-HPDB].

71. In relation to the *Nikola* case, *cf.* Malo v. Nikola, et al., C.A. No. 5:20-cv-02168 (C.D. Cal. Oct. 16, 2020); In re Nikola Corp. Deriv. Litig., C.A. No. 1:20-cv-1277 (D. Del. Sept. 23, 2020); Borteanu v. Nikola et al., C.A. No. 2:20-cv-01797-PHX-JZB (D. Ariz. Sept. 21, 2020); Wojichowski v. Nikola, et al., No. 2:20-cv-01819-DLR (D. Ariz. Sept. 17, 2020); Salem v. Nikola, et al., No. 2:20-cv-04354 (E.D.N.Y. Sept. 16, 2020).

72. Initially, plaintiffs were couching pre-closing disclosure-based claims under Section 14(a) of the Exchange Act (Wheby v. Greenland Acquisition Corp., C.A. No. 1:19-cv-01758 (D. Del. Sept. 19, 2019)), whereas now this is more often deemed as part of the breach of fiduciary duty claims.

73. Orman v. Cullman, 794 A.2d 5, 19-20 (Del. Ch. 2002). *See also* Caroline H. Bullerjahn & Morgan Mordecai, *Limiting SPAC-Related Litigation Risk: Disclosure and Process Considerations*, GOODWIN at n. 12 (Feb. 23, 2021), https://www.goodwinlaw.com/publications/2021/02/02_23-limiting-spac-related-litigation-risk#ft12 [https://perma.cc/HL86-KERP]): "[a]lthough some SPACs have been domiciled in Delaware, they are more typically incorporated in the Cayman Islands ('Cayman') such that Cayman law would apply to breach of fiduciary duty claims brought by SPAC stockholders. Under Cayman law, a director is a fiduciary with respect to the corporation and owes the corporation a duty to act in its best interests and refrain from self-dealing, abuse of power, and conflicts of interest. *See* 9 Fletcher Corp. Forms § 35:163 (5th ed.)."

74. *See* Parsifal Partners B_LP v. Zugel, 2018 N.Y. Misc. LEXIS 2748, at 23 (N.Y. Sup. Ct. July 2, 2018); AP Servs., LLP v. Lobell, 2015 N.Y. Misc. LEXIS 2314, at 24-33 (N.Y. Sup. Ct. June 19, 2015).

75. AP Servs., LLP v. Lobell, 2015 N.Y. Misc. LEXIS 2314, at 17–24 (N.Y. Sup. Ct. June 19, 2015).

C. D&O INSURANCE

The SPAC craze was totally unexpected—the D&O market capacity was not ready to account for this significant increase in demand, and the D&O financial model was not suitable for "18-month life spans" of policies, as a D&O policy is normally profitable three years after it has been placed. Moreover, after the 2018 Supreme Court decision in *Cyan v. Beaver County Employees Retirement Fund*,[76] – which held that State courts have jurisdiction over class actions alleging violations of only the Securities Act of 1933, and defendants are not permitted to move such actions from State court to federal court – plaintiffs began to bring lawsuits in multiple jurisdictions, including federal and State courts, thus increasing D&O costs.

In the first phase (the SPAC IPO), the D&O coverage is rather limited, given that the SPAC is not an operating company, and that the only problematic option would involve alleging material misstatements and omissions in the IPO registration statement.[77] More precisely, coverage includes any prospectus liability under Sections 11, 12, and 15 of the 1933 Act, as well as under Sections 10(b) and 20 of the 1934 Act for said misstatements or omissions regarding Forms 10-Qs, 10-Ks, and 8-Ks.

In the second phase (the business combination), the M&A representations and warranties insurance plays a key role (at a moderate cost), and D&O insurance can only turn out to be essential when reps and warranties (applicable to the SPAC or to the target company) happen to be flawed in relation to the documentation (Form 8-Ks or Regulation FD communications).

In the third phase, the D&O insurance needs to be put in place for the new combined entity. D&O insurance covers directors and officers for claims not indemnified by the company (such as large derivative settlements, that are non-indemnifiable as a matter of law, and bankruptcy), as well as the company's obligation to indemnify directors and officers for claims, *e.g.*, in a securities class action or breach of fiduciary duty claim. At the same time, D&O insurance protects the financial statements as to the latter (the company's indemnification obligation), and as to claims not otherwise excluded (securities class action or business tort) if the company is private, and as to securities claims if the company is public. Hence, it is essential to find out the right amount of such insurance to get the best premium, pre-negotiate a six-year tail period and avoid prior acts exclusion, carefully thinking about retention and key exclusions, when considering the terms offered by each underwriter.

76. *Beaver County Employees Retirement Fund*, 583 U.S. _ (2018), commented on Michael S. Flynn, Paul S. Mishkin & Edmund Polubinski III, *The Supreme Court's Cyan Decision and What Happens Next*, HARV. L. SCH. FORUM ON CORP. GOV. (May 3, 2018), https://corpgov.law.harvard.edu/2018/05/03/the-supreme-courts-cyan-decision-and-what-happens-next [https://perma.cc/A7TH-CPKJ].

77. Welch v. Meaux et al., No. 2:19-CV-1260 (W.D. La.).

Premium for SPACs has recently increased steeply, probably due to the limited market capacity – in other words: only a minor number of underwriters issue such policies in the field – and due to the aforementioned increase in litigation cases.

The rise in the adoption of D&O insurance practices was unavoidable[78] and led to the enrichment of the offerings by companies to SPACs, especially in five areas: (1) in relation to transaction risks, pre-acquisition insurance, risk management due diligence, exit solutions addressing legacy liabilities in strategic sales, bankruptcies and IPOs are strengthened; (2) in the context of portfolio-level risks, cost optimization, loss reduction strategies and industry knowledge are strengthened; (3) in the area of cost-saving strategies, health and benefits options are incentivized; (4) in the field of liquidity strategies, trade credits are used to provide balance sheet protection and potential growth levers; and (5) in the sphere of value enhancement, enterprise-level risk optimization systems are employed.[79] At a quantitative level, the following data on costs are available:

> Leading into October, a typical, mid-size SPAC would opt for between $10 million and $20 million of D&O coverage to be placed at the time of its IPO and most SPAC teams were generally comfortable with that level of coverage. The numbers have changed dramatically over the last four weeks. [] This demand has driven SPAC D&O pricing to quadruple over just the last few weeks. As a result, the cost of a $20 million D&O policy has jumped from roughly $400,000 in August, $550,00 in September, to roughly $1.5 million in October. Not surprisingly, SPAC sponsor teams, who have a limited amount of funds to spend on SPAC operations, are balking at these numbers and are forced to settle in some cases for $5 million in coverage with $5 million in retention (aka deductible) as opposed to $20 million in coverage with $1.5 million in retention they were expecting to obtain.[80]

78. Lyle Adriano, *Where D&O cover has soared by five times*, INS. BUS. (Feb. 16, 2021), https://www.insurancebusinessmag.com/us/news/professional-liability/where-dando-cover-has-soared-by-five-times-246540.aspx [https://perma.cc/34BC-P6M3].

79. *SPAC Risk Specialists: Protecting Your Assets Before and After IPO*, MARSH & MCLENNAN, https://www.marsh.com/content/dam/marsh/Documents/PDF/US-en/marsh-spac-overview.pdf [https://perma.cc/RY68-Y6Z3].

80. Yelena Dunaevsky, *How SPAC Exubernace Led to a Perfect Storm in D&O Insurance*, BLOOMBERG (Nov. 9, 2020), https://news.bloomberglaw.com/banking-law/how-spac-exuberance-led-to-a-perfect-storm-in-d-o-insurance [https://perma.cc/2TLY-9MGB] (which is also the source of the following figure).

Indicative Ranges of SPAC D&O Premiums

	August	September	October
$20M Limit in D&O Coverage	$400K–$500K	$550K–$1M	$900K–$1.5M

Source: Woodruff Sawyer — Bloomberg Law

Figure 40: Provides the indicative ranges of SPAC D&O Premiums for the period that goes from August 2020 until October 2020.

Finally, the variables considered in determining the price of a SPAC IPO policy include:

> (i) whether the SPAC sponsor team has experienced SPACers or first-time SPACers; (ii) whether the SPAC team has deep experience in the industry of the target company it plans to acquire; (iii) the jurisdiction of the SPAC entity and the potential target; and (iv) the size of the IPO.[81]

D. PIPEs

The combination of an investment banking firm and the existing relationships of the SPAC sponsor enabled the SPAC and the target to raise additional capital through a PIPE, which is "marketed and signed (subject only to funding at closing) concurrently with the negotiation and execution of the merger agreement [thereby] significantly reduc[ing] financing risk and enhanc[ing] the probability of completion of the de-SPAC transaction."[82] In other words, PIPEs are accredited institutional or accredited investors[83] buying shares directly from a public company at a discount to the SPAC's current market trading price.[84] PIPEs are involved in the transaction through a private arrangement.[85] The role of the PIPEs should be clarified in engagement letters, which should also clarify the fees to be paid in connection with the PIPE transaction and include a broad securities indemnification provision. Aimed to raise additional capital to conclude the merger with the

81. *Id.*

82. Sean Donahue, Jeffrey Letalien & Brian Soares, *Going Public through a SPAC: Legal Considerations for SPAC Sponsors and Private Companies*, 34 INSIGHTS 28 (Nov. 2020), also adding that "[i]n less common examples, the PIPE was conducted after the signing of the merger agreement and the execution risk has been much greater because of the lack of certainty that new cash from PIPE investors will cover the loss of cash used to satisfy redemptions".

83. As defined in Rule 501, promulgated under Regulation D of the Securities Act, updated following the passage of the Dodd-Frank Act.

84. *Family Offices and SPACs Part I: SPAC Overview and the Current Market,* KIRKLAND & ELLIS (Feb. 1, 2021), https://www.kirkland.com/publications/private-investment-and-family-office-insights/2021/01/spac-overview-and-the-current-market [https://perma.cc/438C-NE55].

85. For an overview of this tool, including both pros and cons, *see* David M. Calhoun, *Non-Traditional offerings Structures: PIPEs, Equity Lines and SPACs*, MORRIS, MANNING & MARTIN, LLP https://www.mmmlaw.com/files/documents/publications/article_352.pdf [https://perma.cc/6WDT-BBW4].

target, PIPEs are needed when the cost of acquiring a target company exceeds the funds that the SPAC has accrued in its trust account. They are especially valuable as they raise funds quickly, thanks to the less stringent regulatory requirements and lower transactional costs. According to Morgan Stanley data, reported by CNBC, PIPEs generated $12.4 billion in supplemental capital to help fund forty-six SPAC mergers.[86] In case the SPAC fails, or investors decide to withdraw their money from the project, the presence of PIPE arrangements turns out to be essential to conclude the transaction and address this risk. The commitment from the PIPE is irrevocable but conditioned upon the conclusion of the business combination by a certain date, which is normally three months after the announcement of the business combination itself.

Ex ante, their presence is extremely relevant as they validate the valuation, proving that there is investor demand for the company at a certain price. Of course, managers of the funds participating in the PIPE are required to sign a non-disclosure agreement, as they are receiving material non-public information about the potential business combination and will have access to a separate data room to review the characteristics of the transaction.

Ex post, it turns out that those SPACs including a PIPE in the whole transaction have a median performance of 46% one month after the deal is concluded, and according to the Morgan Stanley date, those without PIPEs only gain 21% over the same time period.[87]

IV. COVID IMPACT ON MACRO- AND MID- INDUSTRIES

Lastly, it is relevant to understand how the recent rising appetite for SPACs – that some critics have already considered to be a ready-to-explode bubble – has had an active influence on determining the industries in which SPACs are being implemented. Furthermore, it will be crucial to understand industry changes at the Macro level and Mid-level. The two levels represent two different clusters of industries, and the latter provides specific examples of different areas of development for each Macro area. Hence, the 322 transactions described above reported from the Refinitiv-Datastream database can be divided as follows: the first cluster includes 210 transactions, handled between January 2010 and March 2020, whereas the second one comprises 112 transactions, taking place from April 2020 to December 2020. This distinction pictures changes in terms of Target Mid and Macro Industry. To avoid the possible distortion related to the completely different time periods of the two sets, I will focus on the relative changes that the pandemic may have generated.

86. Leslide Picker & Ritika Shah, *How financing SPAC takeovers became Wall Street's new favorite trade*, CNBC, (Jan 25, 2021), https://www.cnbc.com/2021/01/25/how-financing-spac-takeovers-became-wall-streets-new-favorite-trade.html [https://perma.cc/G5D4-ELYZ].

87. *Id.*

The table below provides a summary of pre- verses post- COVID-19 changes in the sectorial distribution of SPAC engagement:

Target Mid Industry	**Period 04/2020 - 12/2020**		**Period 01/2010 - 03/2020**	
	Absolute frequency	Relative frequency	Absolute frequency	Relative frequency
Advertising & Marketing	7	3.3%	2	2%
Aerospace & Defense	1	0.5%	5	4%
Agriculture & Livestock	2	1.0%	1	1%
Alternative Energy Sources	1	0.5%	3	3%
Alternative Financial Investments	10	4.8%	2	2%
Asset Management	2	1.0%	8	7%
Automobiles & Components	5	2.4%	1	1%
Biotechnology	6	2.9%	3	3%
Broadcasting	4	1.9%		
Brokerage	1	0.5%	1	1%
Building/Construction & Engineering	11	5.2%	3	3%
Cable	2	1.0%	1	1%
Casinos & Gaming	1	0.5%	1	1%
Chemicals	1	0.5%	2	2%
Computers & Peripherals	4	1.9%		
Containers & Packaging	2	1.0%		
Credit Institutions	1	0.5%	1	1%
Diversified Financials			1	1%
E-commerce / B2B	3	1.4%	2	2%
Educational Services	1	0.5%	1	1%
Electronics	1	0.5%		
Food & Beverage Retailing	5	2.4%	2	2%
Food and Beverage	5	2.4%	2	2%
Healthcare Equipment & Supplies	5	2.4%	3	3%
Healthcare Providers & Services (HMOs)			6	5%
Home Furnishings	1	0.5%	1	1%
Hospitals			2	2%
Hotels and Lodging	1	0.5%		

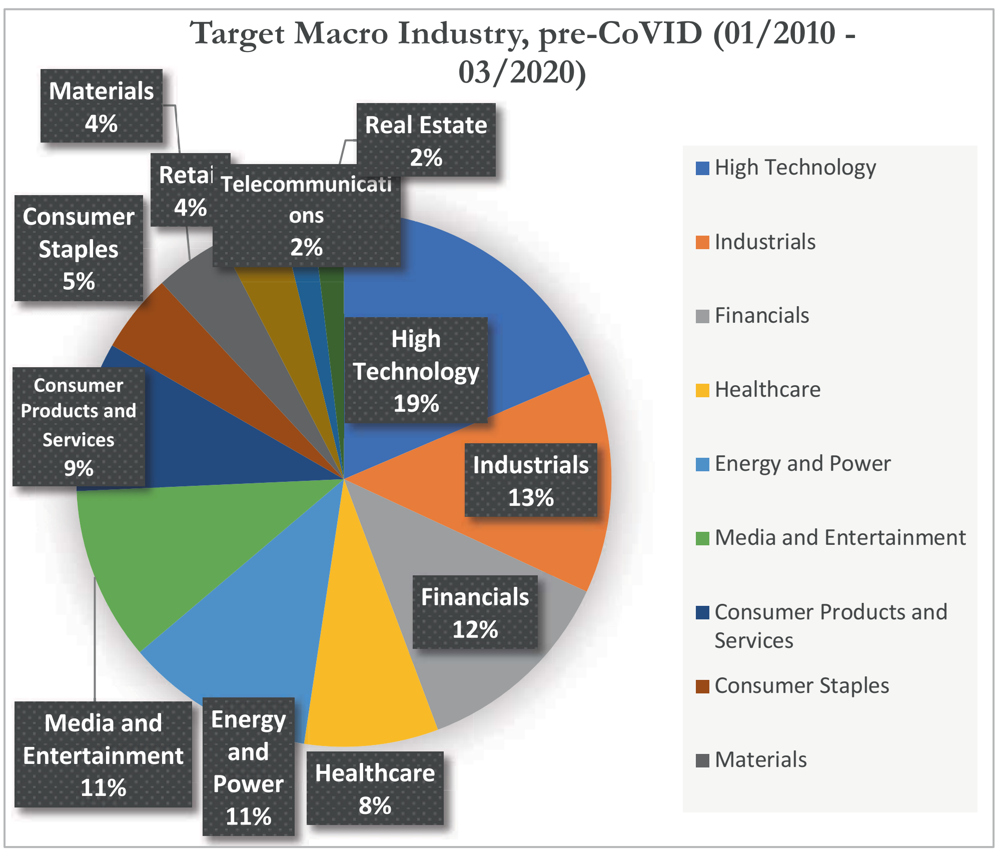
Household & Personal Products	2	1.0%		
Insurance	2	1.0%	1	1%
Internet Software & Services	5	2.4%		
IT Consulting & Services	8	3.8%	4	4%
Machinery	2	1.0%	4	4%
Metals & Mining	4	1.9%	2	2%
Motion Pictures / Audio Visual	5	2.4%		
Oil & Gas	18	8.6%	1	1%
Other Energy & Power			5	4%
Other Consumer Products	5	2.4%		
Other Financials	10	4.8%	6	5%
Other Industrials	2	1.0%		
Other Materials	1	0.5%		
Other Real Estate	2	1.0%		
Other Retailing	3	1.4%	1	1%
Paper & Forest Products	1	0.5%	1	1%
Pharmaceuticals	6	2.9%	4	4%
Power	1	0.5%	1	1%
Professional Services	11	5.2%	4	4%
Publishing	1	0.5%	2	2%
Recreation & Leisure	1	0.5%	1	1%
Residential			1	1%
REITs	2	1.0%		
Semiconductors			3	3%
Software	18	8.6%	14	13%
Space and Satellites	1	0.5%	1	1%
Telecommunications Equipment	1	0.5%		
Telecommunications Services	2	1.0%		
Textiles & Apparel	1	0.5%		
Transportation & Infrastructure	7	3.3%		
Travel Services	1	0.5%	1	1%
Water and Waste Management	4	1.9%	1	1%
Total	**210**	**100%**	**112**	**100%**

Figure 41: Sectorial distribution in SPAC engagement.

There are twelve main industry-clusters in the Macro Industry from April 2020 to December 2020: high technology, industrials, financials, healthcare,

energy and power, media and entertainment, consumer, products and services, consumer staples, materials, retail, telecommunications, and real estate. The most relevant industries in the last ten years, before the pandemic rise, were high technology, industrials, financials and healthcare, which represent more than 50% of the total transactions. On the one hand, highly concentrated industries (like telecommunications) require significant investments. On the other hand, more conservative industries (*e.g.*, real estate) account for 4% of the total transactions, with only eight completed deals over the last ten years.

It is worth pointing out that since the pandemic, there has been a considerable decrease in the relative share of the previously top-performing fields: high technology, industrials, financials, and healthcare were already the top performers before the pandemic, but their position has now become even stronger, as they account for 68% of the entire number of transactions, with a positive Delta of +24%. Because of the overall strengthening of these industries, it is important to stress how healthcare improved dramatically in terms of relative frequency, with a positive Delta of +8%. Additionally, it is striking to look at how these changes did not affect industries that already had a low number of transactions, such as telecommunications and real estate.



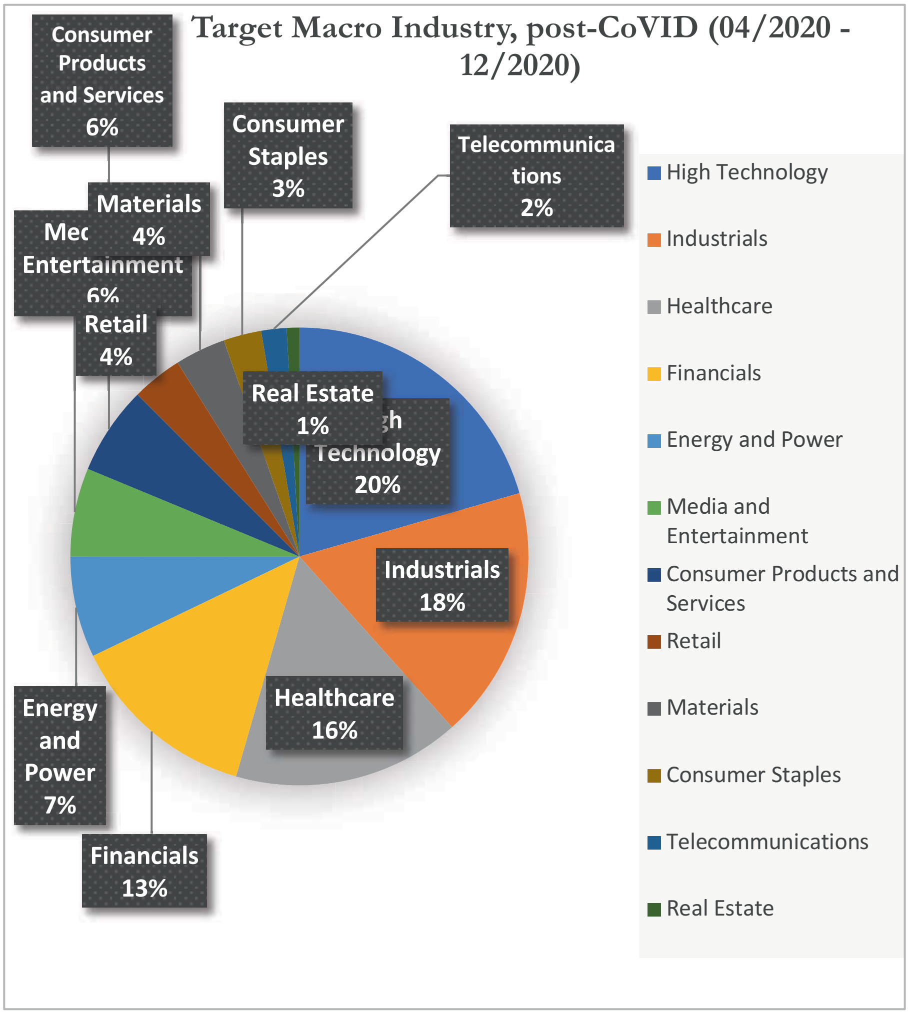


Figure 42: Target Macro Industry relative share on a pie chart, for each single industry; comparing the two timeframes considered.

Target Macro Industy	DELTA %	Relative Change
High Technology	2%	=
Industrials	5%	=
Healthcare	8%	+1
Financials	1%	-1
Energy and Power	-4%	=
Media and Entertainment	-4%	=
Consumer Products and Services	-3%	=
Retail	0%	+2
Materials	-1%	=
Consumer Staples	-2%	-2
Telecommunications	0%	=
Real Estate	-1%	=

Figure 43: Overview of how each single industry has changed its relative share, among the total transactions. Delta trends and relative position changes.

According to the data analyzed, there is a general tendency at a Macro level: industries that were already performing rather positively by resorting to SPACs before COVID-19, experienced a further growth in their role following the pandemic, climbing from 44% to 68% per relative share, if compared to those industries that, even before the pandemic, were employing SPACs only as a marginal tool. In addition, using the 210 operations handled between January 2010 and March 2020 and the 112 operations handled from April 2020 to December 2020 as basic clusters once again, I can point out how industry data at Mid-level were influenced by the latest events. Several changes (if compared to the pre-pandemic condition) may also justify the rising interest in SPACs. With the only exception being the software industry (that is the most relevant Mid Industry with a positive Delta in relative frequency of + 4.56% in the last set), the top ten Mid-Industries experience relevant changes: oil & gas and building/construction and engineering companies (that, in the first period, ranked respectively second and third and cumulatively amounted to 13.81%) experienced a tremendous decrease in the second period, finally reaching a 3.45% of market share. This substantial relative decrease of the traditional fields was also justified by the rising appetite for other sectors, namely healthcare providers and services (positive Delta of + 5.36%), aerospace & defense services (positive Delta of + 3.98%),

and pharmaceuticals services (positive Delta of + 0.71%). One of the most relevant values of SPACs' "indirect" listing is its different way of evaluating future prospects. Compared to a traditional IPO, that mainly accounts for past performance and near future performance (although requiring some solid past results), SPACs will evaluate the target considering their potential future growth. This is precisely the case for healthcare providers and services, aerospace and defense services, and pharmaceuticals services. Other Mid Industries seemed not to be particularly affected by such changes: other financials, professional services, and alternative financial investments had a relative (not a dramatic) decline in market share, from 14.76% to 11.61%.

Target Mid Industry 01/2010 - 03/2020	Absolute frequency	Relative frequency
Software	18	8.57%
Oil & Gas	18	8.57%
Building /Construction & Engineering	11	5.24%
Professional Services	11	5.24%
Alternative Financial Investments	10	4.76%
Other Financials	10	4.76%
IT Consulting & Services	8	3.81%
Advertising & Marketing	7	3.33%
Transportation & Infrastructure	7	3.33%
Pharmaceuticals	6	2.86%
Biotechnology	6	2.86%
Other Consumer Products	5	2.38%
Healthcare Equipment & Supplies	5	2.38%
Automobiles & Components	5	2.38%
Food and Beverage	5	2.38%
Food & Beverage Retailing	5	2.38%
Motion Pictures / Audio Visual	5	2.38%
Internet Software & Services	5	2.38%
Water and Waste Management	4	1.90%
Metals & Mining	4	1.90%
Computers & Peripherals	4	1.90%
Broadcasting	4	1.90%
E-commerce / B2B	3	1.43%
Other Retailing	3	1.43%
Other Industrials	2	0.95%
Agriculture & Livestock	2	0.95%
Other Real Estate	2	0.95%
Cable	2	0.95%
Containers & Packaging	2	0.95%
Machinery	2	0.95%
Household & Personal Products	2	0.95%
Asset Management	2	0.95%
Insurance	2	0.95%
Telecommunications Services	2	0.95%
REITs	2	0.95%
Alternative Energy Sources	1	0.48%
Other Materials	1	0.48%
Textiles & Apparel	1	0.48%
Paper & Forest Products	1	0.48%
Space and Satellites	1	0.48%
Recreation & Leisure	1	0.48%
Travel Services	1	0.48%
Publishing	1	0.48%
Chemicals	1	0.48%
Brokerage	1	0.48%
Hotels and Lodging	1	0.48%
Educational Services	1	0.48%
Credit Institutions	1	0.48%
Home Furnishings	1	0.48%
Electronics	1	0.48%
Power	1	0.48%
Telecommunications Equipment	1	0.48%
Aerospace & Defense	1	0.48%
Casinos & Gaming	1	0.48%
Total	**210**	**54**

Target Mid Industry 04/2020 - 12/2020	Absolute frequency	Relative frequency
Software	14	12.50%
Automobiles & Components	8	7.14%
Other Financials	6	5.36%
Healthcare Providers & Services (HMOs)	6	5.36%
Other Energy & Power	5	4.46%
Aerospace & Defense	5	4.46%
Professional Services	4	3.57%
Pharmaceuticals	4	3.57%
IT Consulting & Services	4	3.57%
Machinery	4	3.57%
Alternative Financial Investments	3	2.68%
Biotechnology	3	2.68%
Healthcare Equipment & Supplies	3	2.68%
Semiconductors	3	2.68%
Building/Construction & Engineering	3	2.68%
Food and Beverage	2	1.79%
Asset Management	2	1.79%
Hospitals	2	1.79%
E-commerce/ B2B	2	1.79%
Metals & Mining	2	1.79%
Chemicals	2	1.79%
Advertising & Marketing	2	1.79%
Publishing	2	1.79%
Food & Beverage Retailing	2	1.79%
Travel Services	1	0.89%
Educational Services	1	0.89%
Home Furnishings	1	0.89%
Agriculture & Livestock	1	0.89%
Water and Waste Management	1	0.89%
Oil & Gas	1	0.89%
Power	1	0.89%
Brokerage	1	0.89%
Credit Institutions	1	0.89%
Insurance	1	0.89%
Diversified Financials	1	0.89%
Recreation & Leisure	1	0.89%
Casinos & Gaming	1	0.89%
Cable	1	0.89%
Residential	1	0.89%
Automotive Retailing	1	0.89%
Other Retailing	1	0.89%
Other Telecom	1	0.89%
Telecommunications Equipment	1	0.89%
Total	**112**	**100.00%**

Figure 44: Relative market share for Mid Industry for the two-time clusters.

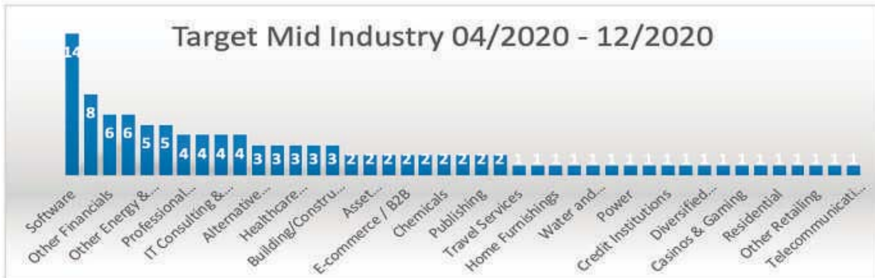
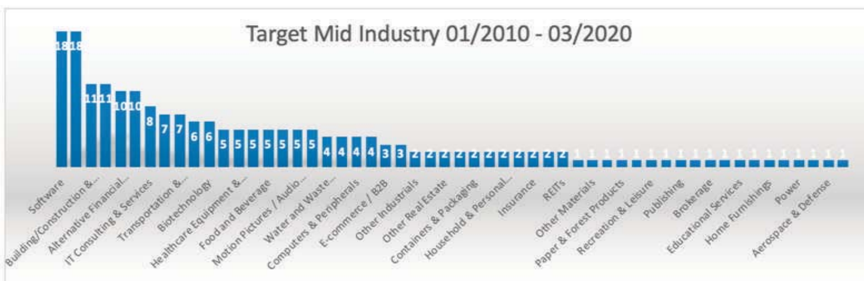


Figure 45: Graphical representation of the Target Mid Industries relative shares from January 2010 to March 2020 and from April 2020 to December 2020.



Finally, I aimed to understand whether, thanks to this significant increase in SPACs, the financial advisors of the acquirors were more capable of adapting to those renewed needs, therefore managing to improve their relative market share position. According to Refinitiv-Datastream, data is available with respect to 115 and eighty-two acquiror's financial advisors respectively for the first (January 2010 to March 2020) and the second cluster (April 2020 to December 2020). Buyer financial advisors, after the COVID-19 pandemic, undertook a volume of business in one single year that can easily be compared to the level of business experienced in the previous ten years: as a matter of fact, in 2020 there were 158 recorded transactions, compared to 213 ones in the previous decade.[88]

88. The value of "Operations per advisor" is higher than "Operations Datastream," as multiple advisors were involved in many of the given transactions.

Period	01/2010 - 03/2020	04/2020 - 12/2020
Operations Datastream	115	82
Operations per Advisor	213	158
Advisors per operation Average	1,8684	1,9268
Total Advisors	64	41

Figure 46: Overview, for both time series, of the total transactions, mean and total number of advisors involved in each transaction and total players competing in this market.

Looking at the evolution of the SPACs advisory market over the past year, we observe a greater level of concentration, with fewer advisors per transaction on average (negative variation of –3.031%) and a sharp reduction in the number of players involved (negative variation of –35.94%).

Whereas in the period from January 2010 to March 2020, the top ten performing institutions accounted for 52.58% of the market. From April 2020 onwards, the new top ten performers account for 58.23% of the market, confirming our previous statement about greater market concentration after COVID-19.

As to the relative market share of each player, Cantor Fitzgerald & Co. moved from the eleventh position to the first position (from a relative market share of 2.35% in the first cluster to a relative market share of 8.86% after April 2020). The other financial advisors (Goldman Sachs, Citi, Credit Suisse, and Deutsche Bank) were already among the top ten best performing firms in terms of contribution undertaken to single deals, being able to consolidate their market position during this recent growth cycle that SPACs are experiencing. The improvement undertaken by Nomura Securities is also remarkable, as it jumped from almost 0.5% of market share to a solid 4.43%, with a x9.4 growth, reaching the seventh place in terms of market share.

Acquiror Financial Advisors 01/2010 - 03/2020	Absolute frequency	Relative frequency
Citi	24	11.27%
Deutsche Bank	22	10.33%
Credit Suisse	11	5.16%
Earlybirdcapital Inc	11	5.16%
Goldman Sachs & Co	11	5.16%
Bank of America Merrill	8	3.76%
Cowen	7	3.29%
Lazard	6	2.82%
Moelis & Co	6	2.82%
Needham & Co LLC	6	2.82%
Stifel Nicolaus & Co Inc	6	2.82%
Cantor Fitzgerald & Co	5	2.35%
Chardan Capital Market	4	1.88%
Jefferies LLC	4	1.88%
Morgan Stanley	4	1.88%
XMS Capital Partners LL	4	1.88%
BMO Capital Markets	3	1.41%
Cantor Fitzgerald Inc	3	1.41%
Cassel Salpeter & Co LLC	3	1.41%
Evercore Partners	3	1.41%
JP Morgan	3	1.41%
Maxim Group LLC	3	1.41%
Tudor Pickering & Co LL	3	1.41%
UBS Investment Bank	3	1.41%
BTIG LLC	2	0.94%
Duff & Phelps	2	0.94%
Ladenburg Thalmann &	2	0.94%
Macquarie Capital Grou	2	0.94%
Macquarie Capital Partr	2	0.94%
Northland Securities Inc	2	0.94%
Piper Jaffray Cos	2	0,94%
Raymond James & Assoc	2	0.94%
Rothschild & Co	2	0.94%
William Blair & Co	2	0.94%
Atlantic-Pacific Capital,	1	0.47%
B Riley & Company	1	0.47%
B Riley FBR	1	0.47%
Berkshire Capital Securi	1	0.47%
BofA Securities Inc	1	0.47%
Craig-Hallum, Inc.	1	0.47%
DA Davidson & Co Inc	1	0.47%
Deal Creation	1	0.47%
Financial Technology Pa	1	0.47%
GP Bullhound Ltd	1	0.47%
Greenhill & Co, LLC	1	0.47%
Headwall Partners LLC	1	0.47%
Houlihan Lokey	1	0.47%
I-Bankers Securities Inc	1	0.47%
JMP Securities LLC	1	0.47%
Leerink Partners LLC	1	0.47%
Lepe Partners LLP	1	0.47%
M Klein & Co LLC	1	0.47%
Nomura Secs Intl	1	0.47%
Oppenheimer & Co Inc	1	0.47%
PJTPartnersInc	1	0.47%
PricewaterhouseCooper	1	0.47%
Primary Capital LLC	1	0.47%
RBC Capital Markets	1	0.47%
Robert W Baird & Co Inc	1	0.47%
Royal Bank of Canada	1	0.47%
Sandler O'Neill Partners	1	0.47%
SC&H Capital	1	0.47%
Stifel/KBW	1	0.47%
Wells Fargo Securities LI	1	0.47%
Total	**213**	**100%**

Acquiror Financial Advisors 04/2020 - 12/2020	Absolute frequency	Relative frequency
Cantor Fitzgerald & Co	14	8.86%
Goldman Sachs & Co	13	8.23%
Citi	10	6.33%
Credit Suisse	10	6.33%
Deutsche Bank	10	6.33%
Morgan Stanley	10	6.33%
Nomura Securities	7	4.43%
Jefferies LLC	6	3.80%
JP Morgan	6	3.80%
Stifel Nicolaus & Co Inc	6	3.80%
UBS Investment Bank	6	3.80%
Barclays	5	3.16%
Earlybirdcapital Inc	5	3.16%
Cowen	4	2.53%
BofA Securities Inc	3	1.90%
BTIG LLC	3	1.90%
Moelis & Co	3	1.90%
Raymond James & Assoc	3	1.90%
RBC Capital Markets	3	1.90%
B Riley & Company	2	1.27%
Canaccord Genuity Corp	2	1.27%
Chardan Capital Market	2	1.27%
Keefe Bruyette & Wood:	2	1.27%
M Klein & Co LLC	2	1.27%
Northland Capital Mark	2	1.27%
Oppenheimer & Co Inc	2	1.27%
Tyton Partners Consulti	2	1.27%
Wells Fargo Securities LI	2	1.27%
Bank of America Corp	1	0.63%
BMO Capital Markets	1	0.63%
Centerview Partners LLC	1	0.63%
Connaught St Michaels I	1	0.63%
Financial Technology Pa	1	0.63%
Houlihan Lokey	1	0.63%
Maxim Group LLC	1	0.63%
MTS Health Partners LP	1	0.63%
Piper Sandler & Co	1	0.63%
PJT Partners Inc	1	0.63%
Robert W Baird & Co Inc	1	0.63%
Vantage Point Capital A	1	0.63%
William Blair & Co	1	0.63%
Total	**158**	**100%**

Figure 47: Relative market share for each financial institution for the

two-time clusters.

CONCLUSION

The study which initially outlined the characteristics of the SPACs' life cycle is probably one of the most fascinating stories of "legal innovations" (although taken from the past) in recent decades.[89] Although SPACs do not represent a traditional type of listing on the market, once the appropriate safeguards ("responsible diligence, disclosures and forecasting"[90]) are in place, they nevertheless may be extremely valuable for achieving the very same legal status as listing, cutting total transaction costs and collecting an amount of money that is less uncertain than that traditionally obtainable through an IPO. In addition, they allow investors to participate in one or more transactions with characteristics similar to those of private equity – usually accessible to qualified investors only – thereby reducing investment costs and increasing liquidity and transparency.

In order to avoid the potentially skewing COVID-19 effect, this article performs a detailed study of U.S. SPACs as of December 31, 2019, and focuses on a few major aspects.

First, with respect to the length of the investments, it is noticeable that shareholders in both IPOs and SPACs tend to maintain their holdings in the company for a short period of time: in fact, the Q/P ratio is decreasing, and dilution can be expected either in terms of shares available on the market (to a lesser extent) or in terms of prices per share. However, this tendency towards dilution is more evident in the case of SPACs (52.85% of the total changes verses 47.19%, in the case of IPOs).

The development of this instrument and its intensive application is closely linked to regulatory development. In fact, SPACs had momentum when they were regulated by the AMEX market in 2005. Then, in 2008, they were regulated by the NYSE and NASDAQ, under a new model of SPAC 2.0, with even stricter requirements aimed at protecting investors from possible fraud and sponsor misconduct. After several amendments were introduced by NASDAQ and latterly by the NYSE, such as making a tender offer at a price corresponding to the pro-rata of the trust's liquidity as an alternative to calling a shareholders' general meeting to approve the business combination, the listing trend constantly shifted toward these two exchanges. Finally, SPAC 3.0 allowed for a split between the right to vote and the right to redeem shares, originally limited to those shareholders who objected to the proposed business combination, encouraging shareholders to buy more

89. The expression lexically recalls the phase used by Rodrigues & Stegemoller, *supra* note 10, at 927.

90. *See* the conclusion of the post by Bruce A. Ericson, Ari M. Berman & Stephen B. Amdur, *The SPAC Explosion: Beware the Litigation and Enforcement Risk*, HARV. L. SCH. FORUM ON CORP. GOV. (Jan. 14, 2021), https://corpgov.law.harvard.edu/2021/01/14/the-spac-explosion-beware-the-litigation-and-enforcement-risk [https://perma.cc/7Q96-TFRR].

shares to secure more redeem shares, which are sold on a fractional basis. The swift knock-on effect of this legal innovation is the significantly rapid growth of SPACs listed on the NYSE since its introduction: even just considering the number of transactions passing through that market since 2015, the value has grown by +400%, reaching almost the same level of NASDAQ listed transactions in 2020.

The massive increase in the listing of these vehicles has revived not only the hands-on need to understand what determinants made a SPAC profitable, but also the concrete necessity to constantly monitor its performance. For this reason, several tools have been adopted to track their performance: the IPOX SPAC INDEX, which tracks the thirty to fifty most liquid SPACs based on daily share turnover, was introduced in July 2020, and the NDXX SPAC & NEXT GEN IPO, a passive rules-based index that tracks the performance of newly listed SPACs, has also been used since April 2020. . Delving deeper into the performance of SPACs, I found that consumer goods registered the highest average price ($11.70), followed by media and entertainment ($11.09), consumer products and services ($10.54), retail ($10.37), and high tech ($10.27).

In this dynamic environment, liquidation decreased over time, despite the moral hazards that a few liquidation cases can bring. In fact, while several cases were registered before 2018, then, in 2018 and 2019, only eight SPACs were liquidated, and the vast majority (75%) of the deals that failed in 2019 were related to the energy sector.

Institutional investors tend to disinvest after the de-SPAC occurred (45.43%, verses an average disinvestment rate of other investors of 42.44%), and tend to do this more often than other specific investors (one or more named individuals/families, in 35% of cases; operating companies, in 41% of cases).

While we know that 2020 in a word (or a few words) would be SPAC,[91] it is hard to say – especially in the light of the empirical study cited above[92] – whether the same will happen again in 2021.[93]

91. Brooke Masters, *Year in a word: SPAC*, FIN. TIMES (Dec. 31, 2020), https://www.ft.com/content/80458983-1693-4022-ba23-113925d24d70.

92. Klausner, Ohlrogge & Ruan, *supra* note 2.

93. Their decline is certainly not expected to be sudden and unforeseen – after all, notwithstanding the Klausner, Ohlrogge & Ruan warning, the trend shows no sign of slowing down [and] [a]nother 74 SPACs are waiting in the wings, as highlighted by Masters, *supra* note 92. On the contrary, the situation will certainly not change in the upcoming months, but it is difficult to understand how much SPACs will matter in terms of percentage in a relatively short period of time. *See* Michael Klausner & Emily Ruan, *The SPAC Bubble May Burst – and Not a Day Too Soon*, WALL ST. J. (Jan 6, 2021), https://www.wsj.com/articles/the-spac-bubble-may-burstand-not-a-day-too-soon-11609975529. This opinion seems to be in line with that of practitioners who "expect the product is here to stay". Derek Dostal, Davis Polk & Wardell corporate partner, *in* KIRKLAND & ELLIS, SURGE IN 'BLACK CHECK' COMPANIES KEEPS SPAC SPECIALISTS BUSY (Aug. 27, 2020), https://www.kirkland.com/news/in-the-news/2020/08/surge-blank-check-companies-spac-special ists [https://perma.cc/G6NG-RUFR]. According to SPAC Research data, this turns out to be a

Undoubtedly, SPACs are going to hold a key position in the U.S. global corporate and financial arena,[94] especially as long as we can guarantee the careful supervision of investors, the promptness of payment, and the expertise provided by sponsors. This would be even more relevant in the current (and, more generally, post-pandemic) economic scenario,[95] that finds SPACs ready not only in terms of financial structure, but also in their ability to cover sustainable issues. In late December 2020, a private equity fund and a large UK impact investment manager launched a sustainable SPAC seeking to raise $400 million, seeking companies aligned with the Sustainable Development Goals set by the United Nations. The former CEO of NRG Energy premiered a $200 million SPAC to tackle climate change. and a private equity firm debuted a $350 million SPAC targeting companies with Environmental, Social, and Governance (ESG) qualities.[96]

---

benefit mostly for certain firms: among underwriters (looking at 2020 data, though data accessed on February 4, 2021 confirm the leading position of these three firms, with a reversal between the two top ranks), especially to the advantage of Credit Suisse (19,24% of shares, with a bookrunner volume of $10,3mm), Citigroup (14,19% of shares, with a bookrunner volume of $7,6mm) and Goldman Sachs (11,62% of shares, with a bookrunner volume of $6,2mm); among law firms (looking at 2020 data), primarily to the benefit of Skadden, Arps, Slate, Meagher & Flom (12.44% of shares, with a volume of $20,622mm; but the firm is only fourth in the 2021 ranking as of February 4, 2021), Kirkland & Ellis (12,36% of shares, with a volume of $ 20,501mm; whereas it dominates the 2021 ranking as of February 4, 2021 and the 2020 DeSPAC legal advisors' ranking in 2020 with 14 deals and $27,5mm in deal volume) and Ropes & Gray (11,79% of shares, with a volume of $19,555mm). According to Refinitiv, "2021 has seen 70 SPAC mergers valued at $144 billion total – six times as many as that time last year. Davis Polk is noted as taking the lead, having handled deals worth a combined $40.4 billion through February 2021". *See Davis Polk noted in Reuters as leading law firm for SPAC mergers,* DAVIS POLK WARDELL LLP (Mar. 1, 2021), https://www.davispolk.com/news/davis-polk-noted-reuters-leading-law-firm-spac-merger-deal-values [https://perma.cc/2AFB-VNLG]).

94. According to Goldman Sachs, SPACs will drive $300 billion in M&A activity over the next two years, and so far in 2021, almost sixty new SPACs have together raised about $17 billion, or more than $1 billion for each day the market was open. Market participants say SPAC IPOs tend to be several times oversubscribed, and no wonder: SPACs have usually "popped" in the first days of trading. *See* Chris Bryant, *Goldman Sachs Is Right to Warn About SPACs*, BLOOMBERG (Jan. 20, 2021) https://www.bloomberg.com/opinion/articles/2021-01-20/why-goldman-sachs-boss-is-right-about-spac-mania; *see also* GOLDMAN SACHS, *supra* note 54. *See also* Shalini Nagarajan, *SPACs will drive $300 billion in M&A activity over the next 2 years after a monstrous 2020, Goldman Says,* BUSINESS INSIDER (Dec. 14, 2020), https://markets.businessinsider.com/news/stocks/spacs-could-drive-300-billion-mergers-acquisitions-boom-goldman-sachs-2020-12-1029890265.

95. Arguably, this would have been the conclusion even without accounting for the impact of the pandemic, as shown by Mahon and Klein. Based on risk vs. return evaluation in the near term, they propose three expected outcomes in the market: 1) "strong sponsor groups and aggressive structuring will likely still provide a path forward for a smaller number of new SPAC launches"; 2) increasing demand for PIPE investors from the SPAC space; and 3) "private equity sponsors [becoming] larger players in the SPAC business combination space" (due to large amount of SPAC capital raised recently, and the private equity participants' increasing comfort levels with respect to SPACs). John J. Mahon & Eleazer Klein, *IPOs Surge While Market Tightens, But Opportunities Remain,* HARV. L. SCH. FORUM ON CORP. GOV. (Nov. 29, 2020), https://corpgov.law.harvard.edu/2020/11/29/ipos-surge-while-market-tightens-but-opportunities-remain [https://perma.cc/5A4Q-83M7]).

96. Patrick Temple-West, *Green SPACs burst on to the market*, FIN. TIMES, (Sept. 16, 2020) https://www.ft.com/content/f596b6fa-f02b-48c8-9eab-e57444fda892.

Although it would seem that America is still attracting dreamers – as the U.K.-based electric vehicle upstart business confirms[97] – the Italian SPACs market also has a lot to say in the future, when it will probably experience a growing level of specialization, diversifying promoters' contributions (not only financial but also industrial ones), aligning promoters' and investors' interests (increasing the capital paid by promoters *ex ante* and linking their remuneration to the soundness of the investment), and turning to a 2.0 version with the implementation of SPAC-in-cloud[98] (announced in September 2017 and adopted for the first time, in November 2018, by Digital Value).[99]

In conclusion, the current market condition of SPACs reflects their power and importance in the U.S. financial market. They have proven to be a robust financial tool for taking companies public, and hence their strength has remained in place, despite a number of changes to the overall market circumstances: evolution in regulatory standards (listing requirements), in structure (lack of reception in the most recent model of SPAC usage in the U.S. financial market), and in the global economy (due to Brexit and the COVID-19 pandemic). Despite the problems reported in a coeval paper[100] and the post-Brexit uncertainties[101] (which, however, seems to be slowly clearing up),[102] it is reasonable to expect not only that we will not get rid of SPACs anytime soon, but that all key players in the SPAC model will adjust and evolve to the ongoing market situation, so as to continue playing a leading role in the market for taking companies public.[103] For example, investors could benefit from the existence of a database of SPAC sponsors, who ultimately are perceived as investment advisors coming along. Like financial advisors, in fact, investors (especially retail ones) rely on SPAC sponsors to propose a business combination that is meant to affect their choices.[104] Avoiding the reiteration of unsuccessful past experiences by

97. *Arrival/SPACs: coming to America*, FIN. TIMES, (Nov. 18, 2020) https://www.ft.com/content/7cda701a-a615-4889-8649-5a7a05e5c98c.

98. De Biasi, *supra* note 10, at 718.

99. *SPAC in Cloud*, *Cf.* ELITE, https://www.elite-network.com/it/spac-in-cloud [https://perma.cc/3PF5-UCNN]; *cf.* Christian Martino, *Elite Tocca Quota Mille. Ecco la Formula 1 delle PMI*, IL SOLE 24 ORE, (Nov. 8, 2018) https://www.ilsole24ore.com/art/elite-tocca-quota-mille-ecco-formula-1-pmi-AEwZMocG?refresh_ce=1.

100. Klausner, Ohlrogge & Ruan, *supra* note 2.

101. *Why London should resist the Spac craze*, FIN. TIMES (Feb. 24, 2021) https://www.ft.com/content/838a00a0-f55f-40b8-b0b5-2deb0f3ddb08.

102. Davies, *supra* note 22. *See also* the 2021 eagerly anticipated UK final rules (Financial Conduct Authority, Investor protection measures for special purpose acquisition companies: Changes to the Listing Rules, Policy Statement [PS21/10], July 2021).

103. Georges Ugeux, *Regulating SPACs – Before It's Too Late*, COLUM. L. SCH. BLUE SKY BLOG (Mar. 31, 2021), https://clsbluesky.law.columbia.edu/2021/03/31/regulating-spacs-before-its-too-late/ [https://perma.cc/7WXG-L6FR].

104. This idea mirrors the empirical work carried out in a very recent paper with respect to financial advisors, where the authors recommend mapping the history of misconducts throughout States in order to prevent their misconduct from being repeated across borders, taking advantage of differences in jurisdiction. Colleen Honigsberg, Edwin Hu & Robert J. Jackson Jr., *Wandering*

providing information to investors would, once again, be as beneficial as in the case of financial advisors, preventing sponsors from "wandering" in search of unexplored lands (*rectius*: markets) in which to replicate potential failures.

Since this conclusion was drawn from data concerning the U.S. market, the SPAC model will need to be adapted to the peculiarities of each country following the spread of this investment method. However, the trial ground provided overseas makes it reasonable to expect that SPACs will be increasingly used elsewhere and embraced across the Atlantic (and the Channel) as well.

Financial Advisors (Jan. 20, 2021), https://ssrn.com/abstract=3769653 [https://perma.cc/KS7L-AFYG].