

European SPACs

Guide to Regulatory Obligations

March 2022



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1. European¹ SPACs: Guide To Regulatory Obligations: Introduction

Special purpose acquisition companies (or SPACs) saw a significant increase in popularity in 2020, which has continued into 2021. This trend, which largely started in the United States, has spread to global capital markets hubs, including many in Europe. As a result, European based investors, sponsors, targets and regulators are focused on the SPAC model and ensuring that transactions are structured in compliance with the existing regulatory framework. Certain National Competent Authorities (NCAs) are also taking steps to build a new regulatory framework for SPACs looking to list in their market.

SPACs offer an alternative way of raising funds, through an initial public offering, prior to buying a target operating company. SPAC management teams typically target an industry or sector, but not a particular company, before IPO. Once a SPAC goes public it has a set timeframe — usually 18 to 24 months — to use its funds to acquire a target (the de-SPAC), or else return the funds to its investors.

SPACs offer an efficient route to go public that may be a better fit for certain companies. SPAC IPO pricing is often simpler on the front end because the value of a SPAC's shares is equal to the money in its trust or escrow account. Sponsors are increasingly executing larger SPAC IPOs and de-SPAC transactions, successfully acquiring significant operating businesses in the process. Price discovery takes place between the SPAC and target business during the de-SPAC transaction, providing an insightful pricing process that is attractive to both targets and investors.

This fast-paced market development requires market participants to track and align interpretation of existing and new pan-European (and national) regulatory frameworks. In the months prior to the publication of this paper, we have seen new UK and Italian rules, and draft Spanish rules, in relation to SPAC transactions in those markets. In addition, ESMA published a statement on the prospectus disclosure and investor protection issues raised by SPACs. However, there remains no harmonized regulatory approach to SPAC transactions across the EU or Europe, partly because structures and approach will depend on what is permitted under national law. The purpose of this guide is to assist AFME members in understanding those obligations when participating in SPAC transactions.

We would like to thank, and to acknowledge the invaluable work of, Latham & Watkins in helping to produce this guide, and to also thank AFME members for their input and expertise.

In addition to Latham & Watkins, we would like to thank the following law firms that contributed to the production of this guide: NautaDutilh N.V. (Netherlands, Luxembourg & Belgium); Lenz & Staehlin (Switzerland); Wiersholm (Norway); and A&L Goodbody (Ireland).

“SPACs offer an efficient route to go public that may be a better fit for certain companies”

¹ For the purposes of this guide, the term “European” means the EU, the United Kingdom and, for certain purposes, Switzerland. References to “EU” are to the EU 27 Member States.



2. Overview/Executive summary

General

To meet the objectives of this guide, this document takes a comparative approach to illustrate the jurisdictional regulatory and legal environments in various European jurisdictions in which SPAC IPOs and de-SPAC transactions are conducted. For each jurisdiction, we outline:

- a. features of a listed SPAC;
- b. regulatory requirements/notifications;
- c. disclosure requirements for a SPAC listing prospectus;
- d. the de-SPAC announcement disclosure requirements; and
- e. any ongoing considerations.

This guide also provides timelines of the typical lifecycle of a SPAC IPO and de-SPAC transaction and provides an outline for determining which regulatory regime applies to the SPAC IPO and de-SPAC transaction respectively.

We also seek to clarify the similarities and differences between US and European SPACs.

“This document takes a comparative approach to illustrate the jurisdictional regulatory and legal environments in various European jurisdictions”



Regulatory Implications

In Part 2 of the guide, we analyse SPACs-related issues and implications under the following European regulatory initiatives:

a. Managing AIF recategorization risk under AIFMD

The Alternative Investment Fund Managers Directive (“AIFMD”) regulates all “alternative investment fund managers” (AIFM) (EU or non-EU) managing or marketing “alternative investment funds” (AIFs) (EU or non-EU) within or into the EU. If categorised as an AIF, the SPAC will be subject to AIFMD which has been implemented throughout the EU, as well as its co-existing national Member State legislation and any local regime for funds and / or collective investment vehicles. The guide therefore aids Members by outlining the definition of an AIF and provides additional structuring considerations to mitigate AIF recategorization risk per jurisdiction, and provides further guidance on which jurisdictional regime applies.

b. UK and EU MAR Considerations

The guide provides a checklist for identifying entities with UK and EU MAR in-scope instruments and sets out the primary assumptions in relation to what stage in the transaction considerations related to the price sensitivity of information (and related disclosure obligations) might apply.

c. MiFID II Product Governance

The MiFID II product governance regime requires that a target market is assigned to financial instruments and the guide provides relevant target market analysis and the information which must be given to EEA and UK Distributors. The Guide outlines certain considerations relating related to the target market analysis and other considerations under MiFID’s product governance regime.

“This guide provides a checklist for identifying entities with UK and EU MAR in-scope instruments”



d. PRIIPs

Where a SPAC may offer a warrant, these will often track the value of the vehicle's shares and may therefore trigger the definition of a PRIIP (packaged retail and insurance-based investment product). If the warrant issued by the SPAC satisfies the definition of a PRIIP, the distributor must produce and publish on their website a key information document (KID) for retail investors. The Guide provides an overview of our analysis of PRIIPs-related SPACs considerations.

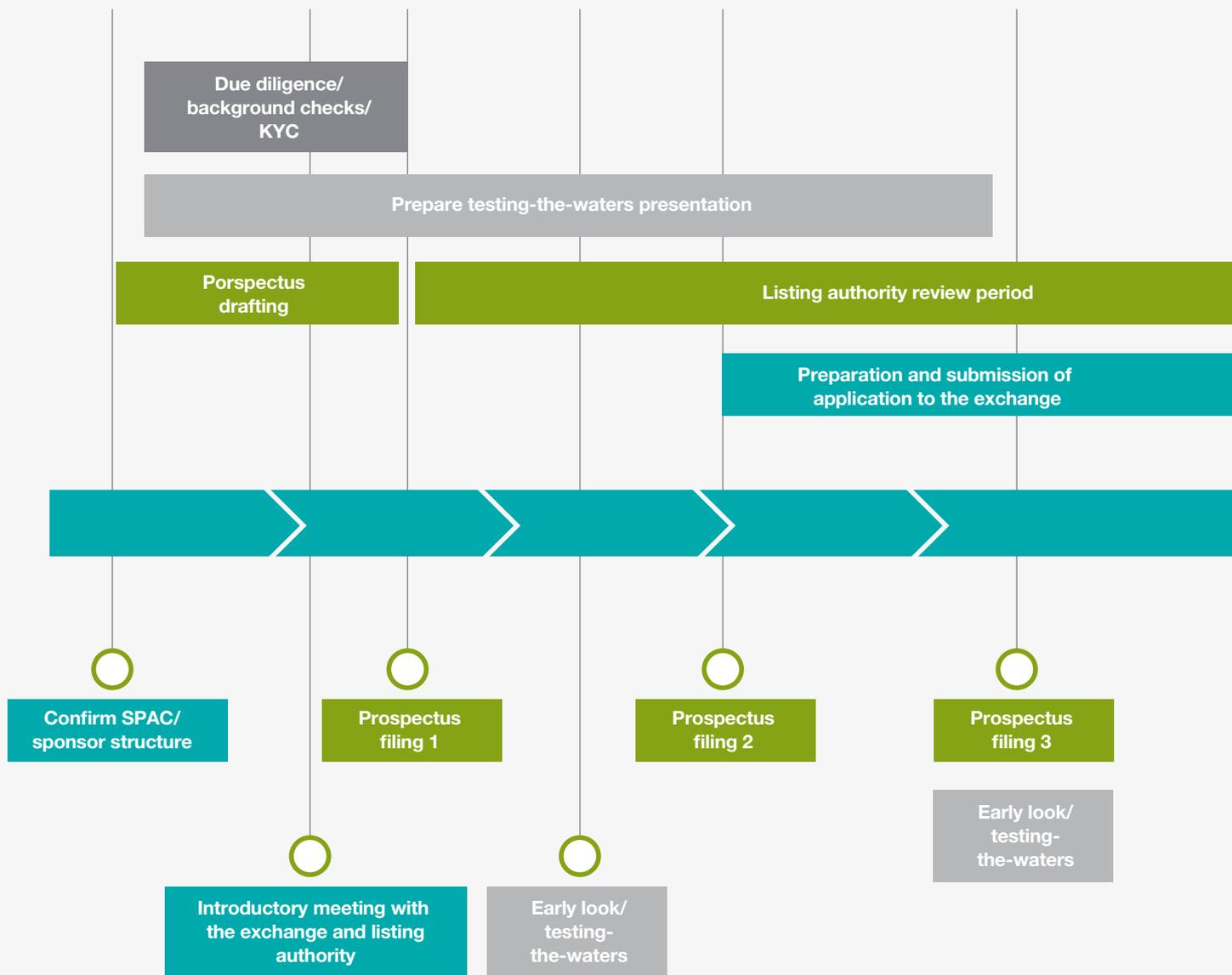
The core European regulatory frameworks that should be considered in the context of a SPAC transaction are listed below. This guide provides practical considerations for market participants when considering SPAC structures, listing venues and marketing plans in relation to both the SPAC listing and the de-SPAC process.

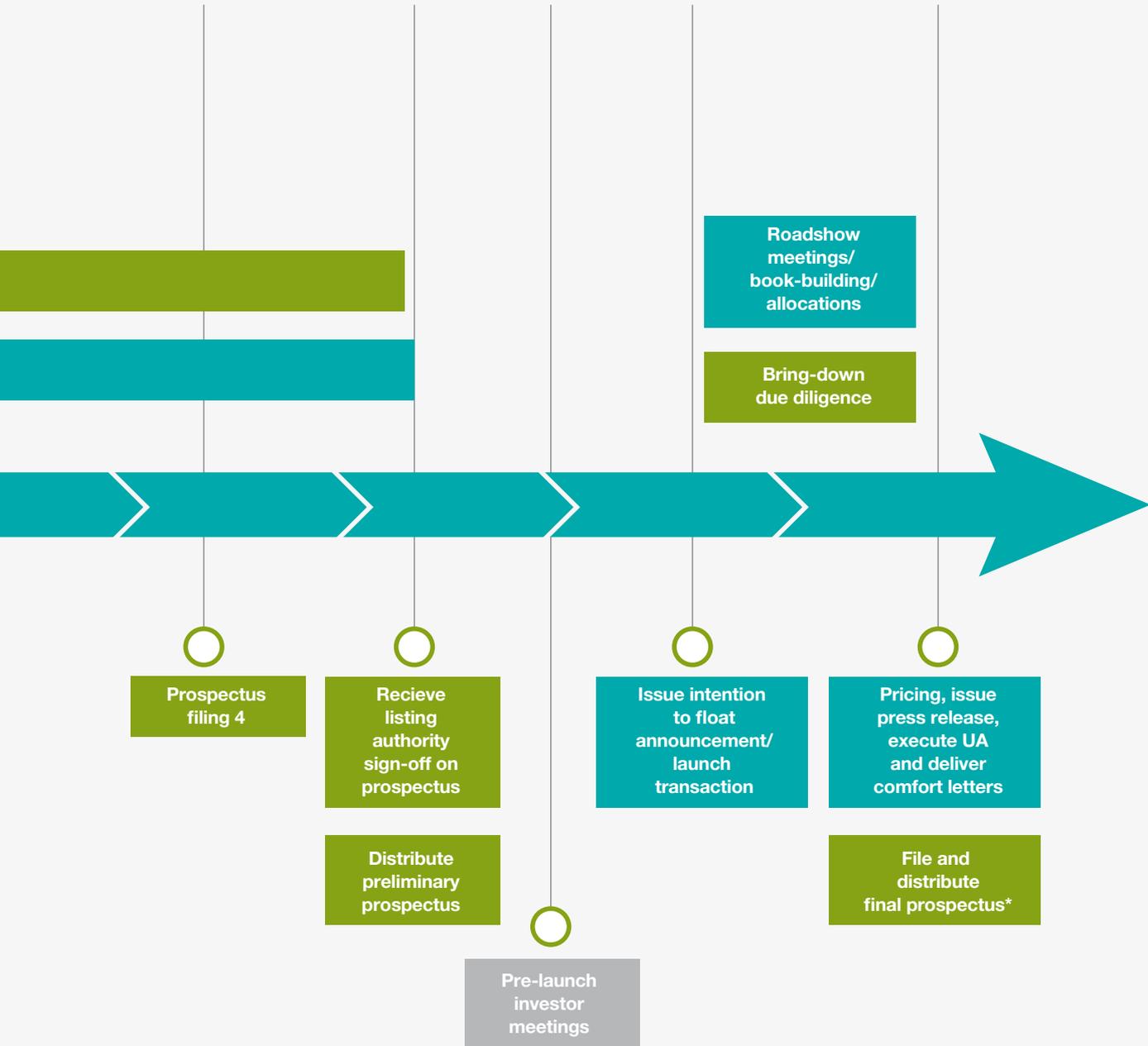
The timelines below sets out the typical lifecycle of a SPAC IPO and a de-SPAC transaction and highlights when the regulatory considerations become relevant.

“This guide provides practical considerations for market participants when considering SPAC structures, listing venues and marketing plans”



SPAC IPO timetable

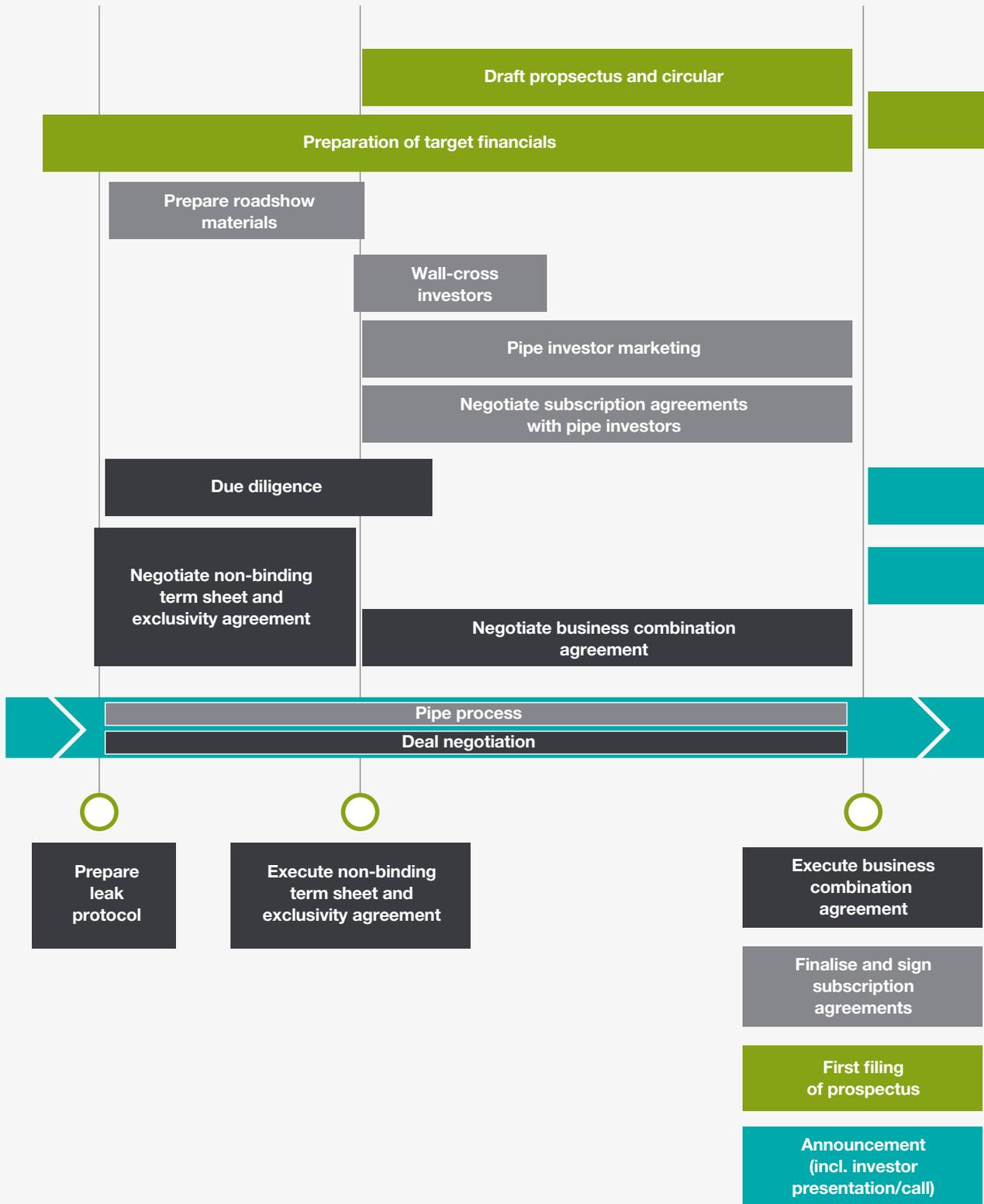


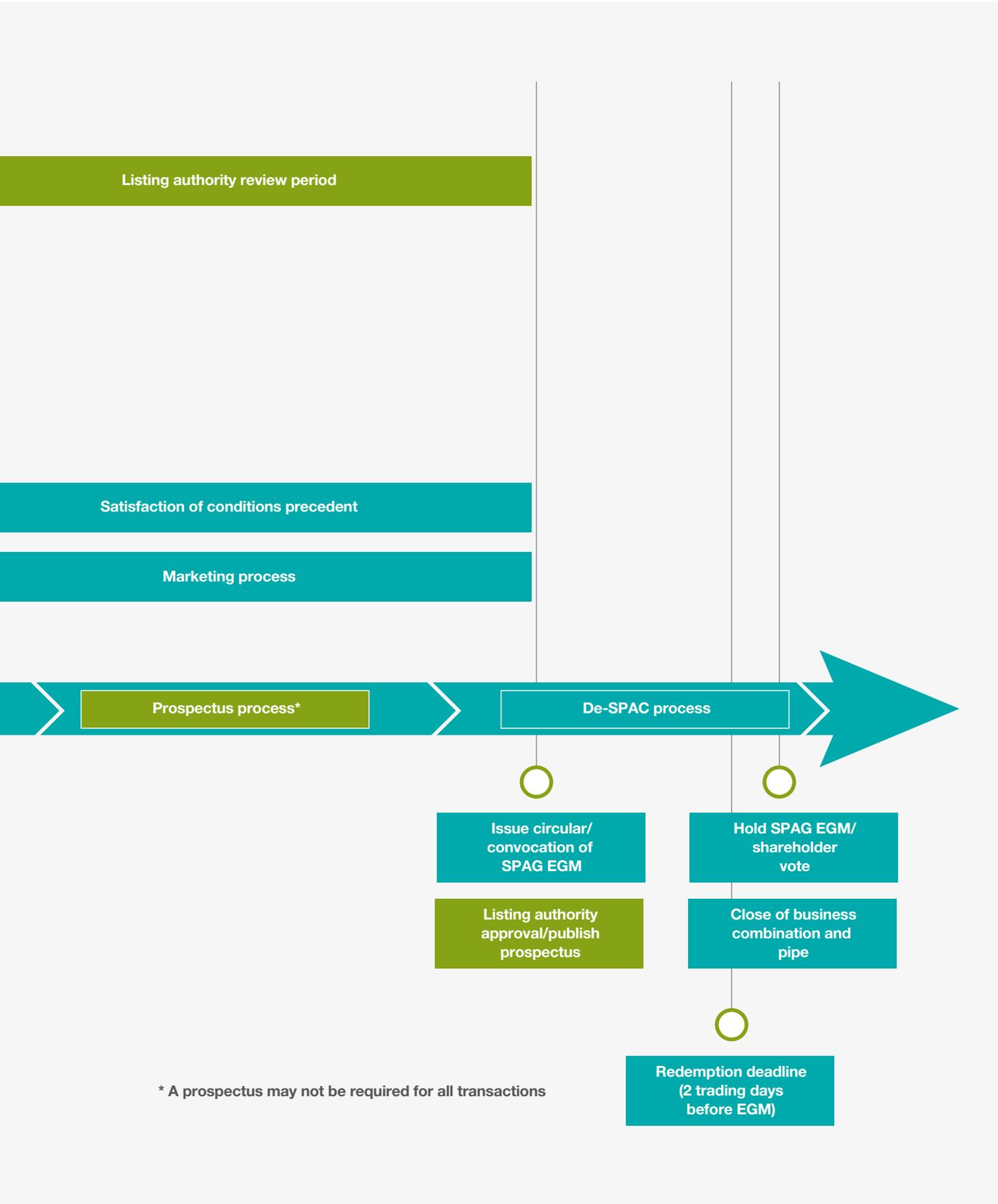


* Prospectus may also be published at start of roadshow



De-SPAC transaction





3. Key jurisdictional considerations

Regulators across Europe are starting to place specific requirements on SPACs ahead of approving a relevant listing, and in light of existing national level regulatory regimes. Whilst we expect ESMA to ultimately seek to harmonise these standards as far as possible for EU SPACs, panEuropean rules of this nature will take time to consult on and implement and will not override locally implemented regimes in all cases. For example, on 15 July 2021, [ESMA published a public statement](#) (ESMA Public Statement), addressed to NCAs, on the prospectus disclosure and investor protection issues raised by SPACs. ESMA seeks to clarify regulatory expectations regarding SPACs so that potential investors are provided with clear, comprehensible and comparable information when making their investment decisions. ESMA's guidance aims to ensure a coordinated approach across the EU, including expectations as to how issuers should satisfy the specific disclosure requirements of the Prospectus Regulation and how SPAC shares and warrants should be considered under the MiFID II product governance regime. However, this guidance is addressed to NCAs to promote coordination between them regarding the scrutiny of disclosure included in prospectuses relating to SPACs. The guidance does not establish a harmonized approach. Therefore, the tracker below lists certain key considerations when considering the launch of a SPAC in various jurisdictions.

Considering which jurisdictional regime applies

The approach to considering which jurisdiction's regulatory regime should be considered will generally depend on:

- a. The country of incorporation of the SPAC vehicle
- b. The country of listing of the SPAC vehicle
- c. The location of investors

“Regulators across Europe are starting to place specific requirements on SPACs ahead of approving a relevant listing”



It is important for national competent authorities within Europe to minimize the opportunity for regulatory arbitrage by encouraging a harmonized regulatory regime for the characterization, listing and marketing of SPACs, as well as the requirements applicable at the time of the de-SPAC. In line with general principles of EU law, the view of the 'home' Member State of the SPAC on characterization should equally apply in other EU Member States and, ideally, in the United Kingdom too. This is important for the following reasons:

- A cornerstone of the EU's single market is the removal of regulatory and non-regulatory obstacles to the free movement of capital across borders, thus increasing the financial and economic resilience of the EU. The European Commission has actively discouraged discrepancy in national laws, which it views as resulting not only in a distortion of competition in the various Member States but, more importantly, in a fragmentation of the European Market, which creates a hurdle for the distribution and marketing of financial instruments within the EU and the rest of Europe.
- In the case of European listed SPACs, the regulatory body of the listing venue runs detailed diligence and signs off on the instrument's status. The purpose of the listing is to allow those instruments to be freely tradable, the risks having been appropriately diligenced and disclosed. Such trading would be hampered if each European state could subsequently exercise judgement on the home state's instrument analysis. The exception to this might be where the SPAC is incorporated in one EU Member State and listed in another – in which case, there are two regulatory regimes to consider.

Where appropriate, this document provides guidance on which regulatory regime takes precedence when considering EU SPACs.

“This guide provides guidance on which regulatory regime takes precedence when considering EU SPACs”



Key jurisdictional considerations

Specific jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|---------|--|--|
| Germany | <p>All SPACs that have been listed in Germany so far were incorporated in Luxembourg.</p> <p>A SPAC could theoretically have a German legal form; however, important features that have become market standard for European/Germany listed SPACs could not be implemented under mandatory German stock corporation law:</p> <ul style="list-style-type: none"> • Statutory limits for authorized and conditional capital prevent issuance of sufficient number of warrants to structure market standard units; • Shareholder redemption rights enabling opt-out require a cumbersome and timeconsuming process of capital reduction with repayment of contributions to shareholders only after a sixmonth waiting period; • SPAC liquidation would be timeconsuming due to German creditor protection rules (takes more than oneyear waiting period); • Minimum nominal amount per share of €1.00 (no penny-stocks feasible under German law), which would require higher investment for purchase of founder shares; • In addition, German corporate governance rules are far less flexible than the corporate governance regimes of Luxembourg or, for example, the Netherlands; and • Listing of SPACs in Germany so far occurred on the regulated market (Prime Standard) of the Frankfurt Stock Exchange with the warrants being listed on the unregulated open market of the Frankfurt Stock Exchange. <p>Applicable German listing rules generally require that an issuer of shares must be in existence for at least three years before the admission date. SPAC-specific waiver can be obtained if the following criteria – which mirror the usual features of European SPACs – are met:</p> <ul style="list-style-type: none"> • The proceeds of the offering are paid into an escrow account²; • The intended use of the proceeds of the offering is detailed in the prospectus; • SPAC's existence is limited to a fixed period of time; proceeds held in the escrow account returned to the investors upon liquidation of the SPAC; and • Majority (50%+) shareholder approval required for business combination. | <p>N/A.</p> <p>No formal guidance has been provided by the Gerhman Federal Financial Supervisory Authority (BaFin).</p> <p>No additional rules apply to SPACs other than the regular notifications and required filings for all listed entities in Germany (i.e. MAR notifications, notifications of significant shareholdings, filing of regulated information, etc.)</p> |

² Note that the typical German IPO practice for German issuers is in two stages - (1) pre-funding of the nominal amount per share at subscription (in order to create the new shares) with (2) the delta to the actual placement price per share being transferred to the company at closing (meaning it is not necessary to prefund the escrow account with the gross proceeds of the shares to be created, ahead of closing).



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|--|---|------------------------|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and, in turn, issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>EU Prospectus Regulation listing/offering prospectus approved by the competent regulator in the country of incorporation (e.g. Luxembourg) required for admission to trading on the regulated market of the Frankfurt Stock Exchange. Prospectus notified by competent authority to BaFin.</p> <p>Free float requirements of the Frankfurt Stock Exchange to be observed (for example, only shareholdings below 3% count towards the free float) and require early case-by-case engagement with the Frankfurt Stock Exchange.</p> | <ul style="list-style-type: none"> • Signing of BCA to be announced under Art. 17 MAR (or earlier in case of leak); • Requirement for prospectus depending on structure of business combination: in case of reverse takeover or contribution of target shares by way of contribution in kind, a prospectus is required for purpose of re-admission/ admission of new shares from the respective capital increase. (if new shares to be admitted account for >20% of the SPAC's share capital); and • A circular for the general meeting of the SPAC shareholders in compliance with law of country of incorporation needs to be published (see descriptions below). | <p>N/A</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|----------------------|--|---|
| <p>France</p> | <p>Euronext Paris has listed several SPACs in the past few years. All of them were done through French incorporated entities.</p> <p>French corporate law has been found flexible enough to replicate most of the features of standard US SPACs through the mechanism of preferred shares (actions de préférence).</p> <p>The French securities regulator (the Autorité des marchés financiers, the AMF) has been publicly supportive of SPACs, although it has not amended nor adapted any of the standard rules applicable to initial public offerings in France to accommodate SPACs.</p> <p>Main features of recent French SPACs are:</p> <ul style="list-style-type: none"> • All French SPAC listings have, thus far, been done on the Professional Segment of the French regulated market (Compartment Professionnel), hence did not involve retail offerings, although nothing would prevent SPAC IPOs from being done with retail offerings; • SPACs are structured through French limited liability companies (sociétés anonymes); • Units are issued as redeemable preferred shares with redeemable warrants attached (actions de préférence stipulées rachetables assorties de bons de souscription d'actions ordinaires rachetables); • Market shares are converted into ordinary shares at the time of the initial business combination (IBC), except for dissenting shareholders; • Market shares have priority over founders' shares in case of liquidation; • Dissenting shareholders can only ask for redemption of all, and not part, of their market shares; • Warrants become exercisable upon IBC and for a period of five years; • Warrants are redeemable during the exercise period based upon stock price parameters; • French SPACs do not require shareholders' approval with respect to the IBC; IBC only approved by majority of the board; • All French SPACs have been issued for a period of 24 months; recent SPAC provide for the possibility, subject to shareholders' approval and the implementation of a specific redemption right, to expend SPAC period; • AMF heavily focuses on potential conflict of interest with founders and board members; and • Standard French governance rules (Governance Code AFEP-MEDEF) is generally applied even before IBC. | <p>N/A</p> <p>No formal guidance has been provided by the AMF.</p> <p>No additional rules apply to SPACs other than the regular notifications and required filings for all listed entities in Germany (i.e. MAR notifications, notifications of significant shareholdings, filing of regulated information, etc.)</p> |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|-------------------------------------|----------------------------------|------------------------|
|-------------------------------------|----------------------------------|------------------------|

Note the ESMA Public statement sets out guidance applicable to NCAs (and, in turn, issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.

- Generally no prospectus required;
- IBC notice is not subject to the approval of the AMF; and
- New money through PIPE process might require shareholders' approval to issue new shares.

N/A



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|---------|--|--------------------------|
| Italy | <p>SPACs can be listed either on the Regulated Market dedicated to AIFs and investment vehicles, named Electronic Investment Vehicles Market (MIV), or on the multilateral trading system AIM Italia (AIM), both managed by the Italian Stock Exchange (Borsa Italiana S.p.A., “Borsa”).</p> <p>Borsa requires that the SPAC meets the following main listing requirements:</p> <ul style="list-style-type: none"> • Professional Investors: MIV SPACs can only be listed on the professional segment which can be accessed by professional investors as defined in MiFID II; • De-SPAC timing/duration of the SPAC: up to 36 months, extension subject to approval by way of a shareholders’ meeting ahead of the expiry date (and the by-laws must not exclude or disapply the withdrawal rights of shareholders who do not approve or agree with the resolution extending the duration of the SPAC); the existence of concrete negotiations to complete the acquisition for MIV; up to 36 months, subject to extension approved by shareholders’ meeting for AIM; • Free float requirement/minimum investment: 25% for MIV, at least Euro 10 million of IPO proceeds for AIM; • IPO and further capital increase proceeds: must be ring-fenced to an escrow bank account for MIV; • Investment strategy/policy: the SPAC is required to adopt and pursue a detailed investment strategy/policy defining targets, limits, sectors, diversification of investments, financing policy; • Conflict of interest policy: for MIV the SPAC is required to adopt and comply with a policy to manage conflicts of interest in connection with the investments with a focus of attention on conflicts of interest of directors; • De-SPAC shareholders approval: in addition to the approval of the board of directors, for listing on both MIV and AIM, the shareholders’ meeting approve the de-SPAC transaction, that is typically structured as merger/reverse takeover approve the transaction. General corporate and disclosure rules on conflicts of interest, related party transactions, information package due to the shareholders apply; • Directors and investment team: for MIV at least three directors and/or investment managers must have at least three years of experience in the strategic management of the envisaged target of the SPAC; for AIM sponsors must have gained experience or acted as head in capital markets, private equity, investment banking, M&A transactions; • Related parties transactions: transactions with related parties are subject to procedures and disclosure rules set out in Regulation on related parties transactions no. 17221/2010 as amended approved by the Italian Securities Commission (Commissione Nazionale per le Società e la Borsa (CONSOB)); and • Redemption rights: shareholders not approving, dissenting or silent are granted redemption rights by Italian law (typically set around 30%) when the business combination causes: (i) significant change of the corporate purpose (i.e. change to the target’s corporate purpose as typical effect of the combination); (ii) delisting; and (iii) transfer of registered office abroad. | N/A |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|---|---|------------------------|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>EU Prospectus Regulation listing/offering prospectus approved by the Italian Securities Commission (Commissione Nazionale per le Società e la Borsa (CONSOB)) required for listing on MIV.</p> <p>Admission Document complying with AIM rules issued by Borsa required for listing on AIM.</p> | <p>No prospectus needed unless the de-SPAC is structured as reverse takeover and seeks readmission to MIV or the issue of >20% of share capital.</p> <p>Full information package for the shareholders' meeting convened to approve the de-SPAC (including the explanatory report of the board of directors detailing the proposed transaction and resolutions, an information document compliant with the form issued by Borsa providing all the necessary information on the reverse takeover for AIM, the details on the redemption rights, liquidation criteria, process and timing, fairness opinions and procedures in the event of related party transactions).</p> <p>Trading of SPAC shares is not suspended on announcement of de-SPAC on MIV unless the acquisition materially affects trading; trading of SPAC shares other than those listed on the professional segment only is suspended on AIM until the publication of the information document together with the statements due by the Nomad and the SPAC to Borsa.</p> | <p>N/A</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|---------|--|--------------------------|
| Spain | <p>The Ministry of Economy has approved a draft of an amendment to the Companies Act in order to add a chapter dedicated to Spanish SPACs. The idea is to solve any doubts as to the viability of SPACs in Spain. This amendment should be approved before year end, or in the Q1 of 2022 at the latest.</p> <ul style="list-style-type: none"> • The current draft of the amendment to the Companies Act envisages the addition of two new articles, which, at the moment, contemplate the following main aspects: • Definition of SPAC: a company that is incorporated for the purpose of acquiring all or part of the share capital of another listed or unlisted company or companies, whether directly or indirectly, through the sale or purchase, merger, spin-off, non-monetary contribution, global transfer of assets and liabilities or other similar transactions, and whose only activities up to that point are initial public offerings of securities, applications for admission to listing and those that lead to an acquisition, if any, approved by its General Shareholders' Meeting; • For acquisition purposes, the funds obtained by the public offering shall be held in an account opened with a credit institution in the SPACs' name; • These rules on SPACs should also apply to those SPACs listed on multilateral trading facilities; • Mechanisms for redemption of shareholders: Unless the SPAC undertakes to carry out a share capital reduction through the acquisition of its own shares for their cancellation, they should contemplate one of the following options: • The creation of a statutory right of separation once the planned acquisition or merger is announced, regardless of the shareholder's vote at the relevant meeting; • The issuance of redeemable shares. The redemption may be exercised within the term provided by the SPAC, at the request of the shareholders who were shareholders on a certain date, whether or not they voted in favour of the proposed acquisition; • The shares' redemption value, whether configured as a right of separation or as redeemable shares, shall be the subscription offer price prior to the admission to trading of the company's shares or, if lower, an amount equivalent to the proportionate part of the effective amount held up in the relevant temporary account. | N/A |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|---|----------------------------------|------------------------|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> | <p>N/A</p> | <p>N/A</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|------------------------|---|---|
| <p>The Netherlands</p> | <p>Euronext Amsterdam has listed several SPACs in the past which were different from the typical US SPAC. The current wave of new SPACs now increasingly mimic the US characteristics, e.g.:</p> <ul style="list-style-type: none"> • full proceeds go in escrow; • redemption for deferring and non-deferring voters; and • the goal is a merger and reverse listing, rather than achieving a majority stake. <p>The Netherlands Financial Markets Supervisory Authority (AFM) has not provided any additional guidance on SPACs. However, the AFM has provided comments in the prospectus approval process, which indicate its position and concerns.</p> <p>The following topics have come up in the context of SPACs in the Netherlands:</p> <ul style="list-style-type: none"> • Units, shares and warrants can be listed and traded separately on Euronext Amsterdam. In the Euroclear system, each type of security will have its own ISIN. It is not possible to have a stapled structure in which a unit represents two securities (i.e. the 'underlying' shares and the warrants); • Listing vehicle can be off-shore or onshore; • SPACs should be targeting one acquisition rather than multiple acquisitions (in light of AIFMD concerns); • The founder's(s') interest should be structured around mandatory take-over rules if there is a scenario (pre- or post-business combination) where the founder could end up with more than 30% voting right in the listed entity; • A great deal of flexibility regarding board composition; and • The impact of the negative interest environment for a Euro SPAC. | <p>N/A.</p> <p>No additional rules apply to SPACs other than the regular notifications and required filings for all listed entities in the Netherlands (i.e. MAR notifications, notifications of significant shareholdings (other than in a B.V. structure), filing of regulated information with the AFM etc.)</p> |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|---|---|------------------------|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>No formal guidance has been provided by the AFM.</p> <p>Nevertheless, the following topics and concerns have been highlighted by the AFM's comments throughout the prospectus approval process in different SPACs:</p> <ul style="list-style-type: none"> • AIFMD/investor protection-related disclosures (e.g. clarity on board involvement post-business combination, exit opportunities of shareholders upon business combination, the potential of combining with one versus more than one target); • Clarity on how to deal with the risk of negative interest on the escrow account; • What is the use of the proceeds from the warrants; • Dilution (with regard to units, ordinary shares and warrants, including any founder shares and founder warrants, and the dilution upon conversion/replacement of all such securities); • The treatment of warrants as derivative liabilities or as debt; • Whether the sponsors have already been in contact or had discussions with potential targets; • Potential conflicts of interest; • Units, shares and warrants held in treasury (and the repurchase mechanism) in connection with the over-allotment option, the replacement of units with ordinary shares and warrants and the replacement of warrants with ordinary shares; and • The extent to which compliance with the Dutch Corporate Governance Code will be ensured. | <p>A shareholder circular to be published no later than 42 calendar days (in the case of a B.V. or 21 calendar days in the case of a Cayman entity) prior to the date of the business combination EGM setting out material information on the business combination and other information as required by applicable Dutch law.</p> <p>In general, the following information should be included:</p> <ul style="list-style-type: none"> • main terms of the proposed business combination including conditions precedent; • consideration due and details, if any, with respect to financing thereof; • the legal structure of the business combination, including details on potential full consolidation with the company; • the reasons that led the board to select this proposed business combination; • the expected timetable for completion of the business combination; • the name of the envisaged target; • information on the target business: description of operations, key markets, recent developments, material risks, issues and liabilities that have been identified in the context of due diligence on the target business, if any; • certain corporate and commercial information; • certain audited historical financial information; • information on the capital resources of the target business; • information on the funding structure of the target business and any restrictions on the use of capital resources; • a statement informing the shareholders whether the working capital of the target business is sufficient for the target business' requirements for at least 12 months following the date of convocation of the business combination EGM; • financial condition and operating results; • a capitalisation table and an indebtedness table; • profit forecasts or estimates to the extent drawn up by and published on behalf of the target business; • the role of the sponsors within the target business (if any) and the company respectively following completion of the business combination; • the details of the redemption arrangement and the relevant instructions for shareholders seeking to make use of that arrangement; • dividend policy of the company following the business combination; and • composition of the board and their remuneration as envisaged following completion of the business combination. • Depending on the transaction structure, a prospectus or combined shareholder circular and prospectus may also be required. | <p>N/A.</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|-------------------|---|--|
| <p>Luxembourg</p> | <p>The Luxembourg Financial Supervisory Authority (CSSF) has not provided any additional guidance on SPACs. However, the CSSF has provided comments in the prospectus approval process, which indicate its position and concerns.</p> <p>The following topics have come up in the context of SPACs incorporated in Luxembourg:</p> <ul style="list-style-type: none"> • The founder's(s') interest should be structured around mandatory take-over rules if there is a scenario (pre- or post-business combination) where the founder could end up with more than 30% voting right in the listed entity; • A great deal of flexibility regarding board composition; and • The impact of the negative interest environment for a Euro SPAC. | <p>There is no specific Luxembourg legislation applying to SPACs, other than the regular notifications and required filings for all listed entities (i.e. listed in Luxembourg or having Luxembourg as home Member State under the Transparency Directive (e.g. MAR notifications, notifications of significant shareholdings and filing of regulated information with the CSSF under the Transparency Directive, etc.).</p> |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|---|---|------------------------|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>No formal guidance has been provided by the CSSF. However, the CSSF has provided comments in the prospectus approval process, which indicate its position and concerns:</p> <ul style="list-style-type: none"> • Compliance with the Luxembourg law of 19 May 2006 on takeover bids; • Details to be provided about the investment policy (including detailed description and definition of each target sector and sub-sector and clear definition of the geographic locations of each sector/sub-sector); • How to avoid the risk of negative interest to be paid by the cash contained in the escrow account; • The structure of the prospectus, including any warrants issued alongside shares and the terms of those instruments; • Structure of the issuer (subsidiaries); • Qualification as an AIF; • Funds in the escrow account can only be invested in the business combination; • No identification of a target company prior to the approval of the prospectus (otherwise the issuer would be in operation and additional disclosure requirements would apply); and • Bulldog provisions (limitation of redemption rights should not apply in order to ensure equal treatment). | <p>In case of a merger, the provisions for a merger would apply.</p> <p>In so far as the applicable law (Article 1021-7 of the Law on commercial companies, “Law 1915”) provides that at least one month prior to holding the general shareholder meeting called to deliberate on the common draft terms of merger, the shareholders must be able to consult the following documents at the company’s registered office:</p> <ol style="list-style-type: none"> 1) the common draft terms of merger; 2) the merging companies’ annual accounts as well as their management reports for the last three financial years; 3) where applicable, an accounting statement not less than three months old with respect to the merger if the last annual accounts relate to a financial year which ended more than six months before the draft of the common draft terms of a merger; and 4) where applicable, an independent expert report. <p>Article 1021-5 of the Law 1915 also provides that a report written by each of the merging companies’ administrative or management bodies explaining and economically and legally justifying the merger must be made available to the shareholders and personnel representatives, or if there are none, to the salaried employees themselves.</p> <p>Shareholders are also entitled to obtain a complete or, if they so wish, a partial copy of these documents free of charge on request.</p> <p>A company is relieved of the obligation to make the documents available at its registered office if, for a continuous period starting at least one month before the day set for the general shareholder meeting called to deliberate on the common draft terms of merger and not ending before the general shareholder meeting finishes, it makes them available on its website.</p> <p>Certain exemptions apply with respect to the supporting documents, thus shareholders can waive the independent auditor report and in certain cases the administrative body’s written report.</p> | <p>N/A.</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|-----------------------|---|--------------------------|
| <p>Belgium</p> | <p>The Belgian Financial Services and Markets Authority (FSMA) recommends that:</p> <ul style="list-style-type: none"> the investment decision regarding the business combination be taken by the general meeting of shareholders, and not by the SPAC's board of directors. Voting should take place per share class, with attendance quorum and majority set at 50% at least; founders who have acquired (additional) shares on the market should not be able to participate in the vote in the other share classes; the SPAC should have a right of first refusal on investment opportunities of founders/sponsors; if the acquisition of a company related to the sponsors is under consideration, a unanimous decision of non-conflicted directors to be able to submit the acquisition to a voting by the general meeting; the Dealing Code may prohibit the sponsors from trading in SPAC securities when a business combination is being negotiated. In the event that the negotiation does not (yet) constitute inside information, this regime is more strict than the one imposed by MAR; for investors holding shares and warrants and who cast a positive vote to seek to redeem their shares, they should not be able to continue to benefit from their warrants; and redemption of shares during the business combination should be reserved for shareholders who voted against it. <p>Further, the FSMA encourages issuers of SPACs to provide investors with maximum protection, which may include:</p> <ul style="list-style-type: none"> attaching conditions to the investment in terms of the minimum percentage of the funds that may be used, confirmation by an expert of the availability of the cash necessary for the investment and for the structural and the acquisition fees; requiring a very high rate of positive votes needed to accept the business combination in the general meeting; and linking the founder's(s') remuneration to the value creation and not to a payment up front by the allocation of shares. | <p>N/A</p> |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|--|----------------------------------|--|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>The FSMA expects extensive disclosures regarding the dilutive impact of the various steps. In particular:</p> <ul style="list-style-type: none"> • the dilution of the share value as a result of the difference in the conditions of the offer to the public, to qualified investors and to sponsors; • the additional dilution of the remaining investors' shares after reimbursement of the dissenting shareholders; and • a calculation of the annual return that the company needs to generate for the remaining investors to, at a minimum, break even in terms of the expected redemption value when the business combination is formed, taking into account the costs linked to the structure and to the acquisition process. <p>Several scenarios should be presented, that look at various rates of redemption at the time of the formation of the business combination.</p> <p>The FSMA will require a specific warning to be included on the cover page of the prospectus since a listing entails, in its view, an immediate shift in value to the sponsors (rendering the valuation of an investment in a SPAC share more complex).</p> | <p>N/A</p> | <p>SPAC shares listed on Euronext Brussels will have to carry a notice that they are reserved for professional investors since the FSMA considers that, in light of their complexity, SPACs should be traded only by professionals.</p> <p>In addition, the offer of units should be reserved for qualified investors within the meaning of the Prospectus Regulation.</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|---------|---|--|
| Ireland | N/A No Irish Guidance has been provided. | N/A No Irish Guidance has been provided. The standard listing rules and regulatory requirements apply. |

3 The Euronext Dublin Listing Rules defined a reverse takeover as “a transaction, whether effected by way of a direct acquisition by the issuer or a subsidiary, an acquisition by a new holding company of the issuer or otherwise, of a business, a company or assets: (1) where any percentage ratio is 100% or more; or (2) which in substance results in a fundamental change in the business or in a change in board or voting control of the issuer”.



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|--|---|---|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>No Irish Guidance has been provided.</p> <p>The standard listing rules and regulatory requirements apply.</p> | <p>N/A</p> <p>No Irish Guidance has been provided.</p> <p>The standard listing rules and regulatory requirements apply.</p> | <ul style="list-style-type: none"> • There is no particular barrier to a SPAC listing in Ireland, however it is likely that the de-SPAC transaction would constitute a reverse takeover under the listing rules. • The Euronext Dublin Listing Rules (Rule 7) state that Euronext Dublin will often consider it appropriate to suspend listings where a reverse takeover is announced or leaked. In addition, when the transaction completes, the listing of the acquiring entity will be cancelled³. • Where the issuer’s listing is cancelled, the issuer must re-apply for the listing and satisfy the majority of relevant requirements for listing such as preparing a prospectus in respect of the enlarged group (in addition to paying the direct and indirect listing costs). • To date, Euronext Dublin has not announced any changes to the Listing Rules to better accommodate SPACs (for example an exception to the suspension requirement in relation to SPACs). • We are not aware of any SPACs listing in Ireland to date. However, we are aware of Irish entities being used as the SPAC entity and then listing in other jurisdictions (e.g. USA, the Netherlands) or an Irish entity being used as the consolidating holding company post transaction. • SPAC prior to any acquisition being completed if they are not happy with the target or the final terms of the deal. This would need to specify a predetermined price at which shares would be redeemed, and the terms would need to be set out in the prospectus. |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|---------|---|---|
| Sweden | <p>From 1 February 2021, a SPAC can be listed on the Nasdaq Stockholm Main Market (the "Exchange") in a separate SPAC segment. The SPAC can subsequently apply for admission to trading of the business combination (see below) on Nasdaq Main Market or Nasdaq First North Growth Market. No de-SPAC of a Swedish listed SPAC has been announced, as of yet.</p> <ul style="list-style-type: none"> • All general admission requirements for listing on the Exchange apply to the listing of a SPAC, except the requirements regarding historical financial information and business operations and operating history of the Issuer. In addition, the following specific admission requirements apply. • At least 90% of the gross proceeds from the initial public offering and any other sale by the issuer of equity securities must be deposited in a blocked bank account maintained by a financial institution independent from the Issuer. • Within 36 months of the date of admission to trading, or such shorter period that the Issuer specifies in its prospectus, the Issuer must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination. Until the Issuer has satisfied the condition, each business combination must be approved by a majority of the directors who are independent of the Issuer and the management of the Issuer. • Until the Issuer has satisfied the condition above, each business combination must be approved by a majority of the shares voting at the general meeting of shareholders at which the business combination is being considered. • Until the Issuer has satisfied the condition above, the Issuer must notify the Exchange as soon as possible about each proposed business combination prior to the disclosure of such business combination to the public. • Following the completion of each business combination, the combined Issuer must meet the Admission Requirements. If the Issuer does not meet the admission requirements following a business combination, the Exchange may decide to delist the shares of the Issuer. • Until the Issuer has satisfied the condition above, the Issuer's articles of association shall provide shareholders with the opportunity to redeem their shares into cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) provided that the business combination is approved and consummated in accordance with national law. The Issuer may establish a limit (set no lower than 10% of the Issuer's total share capital) with respect to which any shareholder, may exercise such conversion rights. This right of conversion does not apply in relation to members of the board of directors of the Issuer; management of the Issuer; founding shareholders of the Issuer; and certain closely related parties. • For any business combination that requires shareholder approval, (a) the Issuer must initiate a new listing process as soon as possible after the entry into definitive documentation relating to such business combination and (b) the Issuer cannot complete such business combination unless and until the Exchange has confirmed that the Issuer, giving effect to the business combination, fulfils the admission requirements. • As from the de-SPAC announcement, until the business combination has been approved for continued listing on the Exchange, the SPAC share will trade in a separate observation segment. | <p>The Issuer must notify the Exchange as soon as possible about each proposed business combination prior to the disclosure of such business combination to the public.</p> <p>For any business combination that requires shareholder approval, (a) the Issuer must initiate a new listing process as soon as possible after the entry into definitive documentation relating to such business combination and (b) the Issuer cannot complete such business combination unless and until the Exchange has confirmed that the Issuer, giving effect to the business combination, fulfils the admission requirements. The admission process is run in the same way as for any new company seeking admission to trading, i.e. a full review is performed to establish that the business combination meets all admission requirements (and the exemptions from financial and operating history applicable for SPACs are not applicable to the business combination). When the SPAC has demonstrated that the business combination satisfies the admission requirements, the Exchange will approve the Issuer for continued listing subject to the approval of the business combination by the general meeting of the SPAC and that all admission requirements must be satisfied by the latest at the closing of the business combination transaction.</p> |



| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|--|---|------------------------|
| <p>Note the ESMA Public statement sets out guidance applicable to NCAs (and in turn issuers) across the EU on which disclosures national regulators should expect to see when reviewing prospectuses for SPAC IPO transactions.</p> <p>In addition to the general listing prospectus disclosures of the EU Prospectus Regulation, the Exchange will expect that the prospectus includes the following detailed information.</p> <ul style="list-style-type: none"> • The objective, timeline and purpose of the SPAC; • The redemption process and terms; and • Information on the sponsor, the sponsor’s strategy and the reasoning behind the sponsor’s decision to sponsor the SPAC (including information about any fees or other rewards to the sponsor and/or other setups of beneficial nature for the sponsor). | <p>De-SPAC listing disclosures</p> <p>Considering that the Issuer’s shares are already admitted to trading on the Exchange, a prospectus for the business combination will only be required by the Exchange if required by the EU Prospectus Regulation (which can be the case in the event of a rights issue or a PIPE of a certain size). If no prospectus is required, the Issuer shall instead prepare an information memorandum that sets out sufficient information with respect to the business combination in order to enable the shareholders to make an informed decision as to whether they will approve the business combination at the general meeting of the Issuer. The information memorandum shall be included in the business combination’s application for continued trading of its shares on the Exchange.</p> <p>De-SPAC announcement disclosures</p> <p>The general disclosure requirements of the Market Abuse Regulation and the Nasdaq Rulebook for Issuers applies. In addition hereto, the Exchange has stated that shall information about the redemption process and terms and the approval process by the general meeting and the Exchange. The disclosed information shall enable complete, correct and timely assessment of the business combination and potential consequences, such as potential risks. The Exchange may require additional information to be disclosed to ensure fair and orderly trading and a reliable price formation process of the share of the SPAC.</p> | <p>N/A</p> |



Key jurisdictional considerations

| Country | SPAC features | Regulatory notifications |
|--------------------------|--|--|
| Norway | N/A | N/A |
| UK | <p>The FCA⁴ requires that the SPAC demonstrates the following investor protection features for the SPAC's shares not to be suspended when it announces the business combination:</p> <p>IPO size: £100 million to be raised when a SPAC's shares are listed.</p> <p>IPO proceeds: Must be ring-fenced (in an escrow or trust account) to either fund an approved acquisition, or be returned to shareholders (subject to deductions for running costs where amounts are disclosed in the prospectus).</p> <p>De-SPAC timing: within two years of IPO. (subject to an ability to extend its operations by 12 months with approval of public shareholders i.e. a maximum operating period of three years). This two or three year period can be extended by six months, without the need for shareholder approval, in limited circumstances such as where a business combination agreement is signed but not completed.</p> <p>De-SPAC approval: The Board and shareholders must approve the transaction (conflicted directors should not be permitted to vote and shareholders must receive adequate disclosure on the impact of the acquisition and dilution effects). In addition, neither the sponsor entity nor any other investor with a share of the promote is permitted to vote on the business combination (a different position compared to the rest of Europe, and neither are directors that have an existing or previous relationship with the SPAC's sponsors), receive compensation under the 'promote' structure, or where the target is a related party of the SPAC's sponsor.</p> <p>Conflicts management: Where SPAC directors have a close association with the target, a public statement that the transaction is fair and reasonable to shareholders is required. The statement would need to be based on advice from "an appropriately qualified independent adviser".</p> <p>'Redemption' option: allowing investors to exit a SPAC prior to any acquisition being completed if they are not happy with the target or the final terms of the deal. This would need to specify a predetermined price at which shares would be redeemed, and the terms would need to be set out in the prospectus.</p> | <p>FCA requires Board confirmation in writing that the SPAC satisfies the relevant conditions and will continue to do so until the acquisition is completed.</p> <p>Supporting evidence may also need to be provided on request.</p> |
| Switzerland ⁵ | N/A | N/A |

⁴ Currently, there is no particular barrier to a SPAC listing in the United Kingdom, but the United Kingdom Listing Rules include a presumption that a listing of a shell company (which includes a SPAC but note the exemption discussed below) should be suspended when a reverse takeover is announced or leaked. The overarching aim of these rules is to prevent disorderly markets at a time when limited information is publicly available. While this presumption can be rebutted, a company is required to provide detailed information to the market on a proposed target to avoid a suspension. On 27 July 2021, the FCA published a Policy Statement (PS21/10) setting out changes to the Listing Rules to better accommodate SPACs. The FCA has introduced an exception, effective from 10 August 2021, to the suspension requirement if a SPAC can confirm that it meets certain specified conditions and has made certain prescribed disclosures. In such cases, the FCA would be satisfied that sufficient investor protection measures were in place so that a suspension would not be required. The FCA intends to be "appropriately transparent and predictable" to market participants, meaning it will work with issuers and their advisers to ensure that comfort that the suspension presumption will be disapplied is provided as part of vetting the prospectus and assessing eligibility for listing. The changes provide an alternative approach for SPACs that must otherwise provide detailed information about a proposed target to the market to avoid being suspended.

⁵ This analysis does not cover the Swiss listing regime. It is intended to summarise the implications relating to a Swiss holding in EU/UK SPACs.

| SPAC listing prospectus disclosures | De-SPAC announcement disclosures | Ongoing considerations |
|--|---|--|
| <p>N/A</p> <p>The Norwegian Financial Supervisory Authority (NFSA) has not yet approved the listing of SPACs in Norway, as such there is no special prospectus or disclosure requirements specific to the listing of SPACs.</p> <p>According to the NFSA and Oslo Stock Exchange, there is an ongoing process reviewing potential new rules regarding the listing of SPACs, but they are awaiting further guidelines from ESMA before deciding on the issue.</p> <p>Consequently, at the moment, any prospectus regarding the listing of a SPAC would have to be drafted and reviewed in accordance with the regular EU prospectus rules and requirements, where the prospectus and listing application would likely be rejected.</p> | <p>N/A</p> <p>Please see the previous section.</p> | <p>N/A</p> |
| <p>The FCA also proposes that a SPAC must provide sufficient disclosures to investors on key terms and risks, from the SPAC's initial listing through to the announcement and conclusion of any acquisition:</p> <ul style="list-style-type: none"> • The full structure of the offer, including any warrants issued alongside shares and the terms of those instruments • Voting and redemption rights attached to shares • Information relating to ring-fenced arrangements • Time limits for making an acquisition • A commitment to publish a fair and reasonable statement • Details of the expertise of management • The strategy of the SPAC • Identified risk factors • Conflicts of interest | <ul style="list-style-type: none"> • A description of the target business, links to all relevant publicly available information on the proposed target company (e.g. its most recent publicly filed annual report and accounts), any material terms of the proposed transaction (including the expected dilution effect on public shareholders), and the proposed timeline for negotiations. • An indication of how the SPAC has, or will, assess and value the identified target, including by reference to any selection and evaluation process for prospective target companies as set out in the SPAC's original prospectus. • Any other material details and information that the SPAC is aware of, or ought reasonably to be aware of, about the target and the proposed deal that an investor in the SPAC needs to make a properly informed decision. | <ul style="list-style-type: none"> • The FCA intends to be "appropriately transparent and predictable" to market participants, meaning it will work with issuers and their advisers to ensure that comfort that the suspension presumption will be disapplied is provided as part of vetting the prospectus and assessing eligibility for listing. Nevertheless, SPACs would need to take care that any language included in the prospectus regarding the SPAC's intention to benefit from this regime to avoid a suspension reflects this position. • A notification obligation to require a SPAC to contact the FCA to request a suspension if it makes changes to, or removes, any of the specified investor protection measures such that the criteria are no longer met at any point after the Board provides its confirmation. |
| <p>N/A</p> | <p>N/A</p> | <p>N/A</p> |



Key jurisdictional considerations

Differentiating EU from US SPACs

In the 2021 wave of SPACs in Europe, there has been a trend to copy as many of the features from US SPACs as possible and it has largely been possible to achieve that. Below are key features of US SPACs that it has been possible to replicate in Europe:

- Escrow account or trust account for IPO proceeds;
- Redemption option for all shareholders at the time of the business combination;
- A shareholder vote on the business combination (noting the difference under the UK regime, cited above, where conflicted shareholders are not permitted to vote on the de-SPAC approval – see above);
- Three securities that trade, either just for the stabilization period or even for the life of the SPAC (units, ordinary shares and warrants⁶);
- A promote structure to reward the sponsor, which may be a tiered promote;
- overfunding in the escrow account or trust account; and
- Sponsor providing the at risk capital through the subscription of sponsor warrants to meet the running costs of the SPAC through to deSPAC and other costs such as underwriting commission.

That said there are some unique features of European SPACs due to the economic and regulatory environment in Europe:

- Funds raised in Euros attract negative interest rates in the escrow account; this cost is either passed on to investors through a deduction from the escrow account proceeds or met by the sponsor through the provision of additional at risk capital;
- In order to avoid the need for a prospectus for a PIPE, deSPAC consideration shares or for the listing of shares that are to replace the units and/or warrants, some SPACs on Euronext Amsterdam have issued and listed a large number of shares to be held in treasury for these purposes;
- SPACs in Europe undertake the following steps to reduce the chances of being classed as an Alternative Investment Fund:
 - Expressly state they are seeking a single acquisition target, including an explanation to the relevant supervisory authority that the company has a commercial (rather than an investment) purpose;
 - Do not invest the proceeds to offset the negative yield, rather the escrow proceeds are held in cash only;
- SPACs in Europe have to have their securities subjected to a target market assessment (see Section 7 below) and it has become usual to exclude retail investors from the warrants and from the units so as not to have to publish a “key information document”;
- The tax structuring work in connection with a European SPAC and its sponsor(s) is significant and, depending on the structure, may require a separate workstream; and
- SPACs with a US sponsor have to ensure that they meet the definition of a *foreign private issuer* for the purposes of the Securities Act in order not to fall into Regulation S category 3, which in Europe would mean having to put in place certificated settlement of shares for US investors.

⁶ In the United Kingdom the FCA has indicated that it is not currently possible to list units; currently, holding the underlying shares in treasury to satisfy the unit conversion is not consistent with the FCA’s free float requirements. In the UK, the current practice is for either for (i) shares to be issued with warrants automatically issued after the stabilisation period (i.e., after c45 days) or (ii) shares and warrants to be issued at closing and traded separately immediately, with no stabilisation.



4. AIFMD: managing AIF recategorisation risk

The AIFMD regulates all “alternative investment fund managers” (“AIFM”) (EU or non-EU) managing or marketing “alternative investment funds” (“AIFs”) (EU or non-EU) within or into the EU. These AIFMs are therefore directly regulated, whereas the AIFMD applies indirectly to the funds they manage.

The AIFMD has been implemented throughout the EU. However, in many cases, it co-exists within national Member State legislation alongside the local regime for funds and/or collective investment vehicles. Frequently on SPAC transactions, firms must consider the structuring of the SPAC vehicle to mitigate the risk of it being recategorised as an AIF.

An AIF is defined⁷ as a collective investment undertaking (“CIU”). Under the ESMA AIFMD Key Concepts Guidelines⁸, the following characteristics taken together will indicate that an undertaking is a CIU:

- a. the undertaking does not have a general *commercial or industrial purpose*^{9,10};
- b. it pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors from investments; and
- c. the unit holders, warrant holders or shareholders of the undertaking as a collective group have no day-to-day discretion or control. For the purposes of this limb, the fact that one or more, but not all, of the unit holders, warrant holders or shareholders are granted daytoday discretion or control should not be taken to show that the undertaking is not a CIU.

In applying each of the above limbs we can establish that at the point of an IPO, the SPAC will have the purpose of becoming a commercial or industrial business (limb (a) above is not satisfied), the SPAC will pool capital raised from investors but it is only at the point of the de-SPAC that a pooled return may be generated (limb (b) above is not satisfied) and investors will not collectively have “day-to-day discretion or control” of the SPAC (limb (c) above is satisfied). The definition of a CIU is therefore not met as limb (a) and (b) are not satisfied.

7 Note: Article 4(1)(a) AIFMD

8 Note: Guidelines on key concepts of the AIFMD - ESMA/2013/611

9 Note: PERG, Chapter 16.2, 2.18 - general commercial or industrial purpose is defined in the ESMA AIFMD Key Concepts Guidelines as the purpose of pursuing a business strategy which includes characteristics such as running predominantly: (i) a commercial activity, involving the purchase, sale, and/or exchange of good or commodities and/or the supply of non-financial services; or (ii) an industrial activity; or (iii) a combination of these.

10 Note: On 26 October 2021, ESMA wrote to the International Financial Reporting Standards Interpretation Committee asking it to clarify accounting requirements applicable to public (class B) shares in SPACs and, in particular, whether they qualify as equity or liabilities for reporting purposes. The focus of the letter is on how to categorise class B SPAC shares in line with the IFRS and summarises the various views currently in the market. Certain of these views touch on whether the acquisition of a target is a SPAC’s “sole business purpose”. Whilst the IFRS Interpretation Committee is unable to provide guidance on the interpretation of the AIFMD, this is a watch point for firms as it may be that any commentary it provides could intersect with the AIFMD analysis set out in this paper.



AIFMD: managing AIF recategorisation risk

The table below sets out a country-by-country analysis of the triggers for threshold obligations that a SPAC must satisfy in order to demonstrate it is not an AIF as part of the listing process in the relevant local market.

| Additional structuring considerations to avoid AIF recategorisation risk | |
|--|---|
| Germany | <p>To date, no SPAC has been set up using a German legal form (see above) or choosing Germany as its home Member State. Since all SPACs that have, to date, listed in Germany were incorporated in Luxembourg and had Luxembourg as their home Member State, we refer to the respective AIF analysis for Luxembourg set out below. In case of a SPAC incorporated in another EU country or with another home Member State, the AIF analysis of such country would need to be taken into account.</p> |
| France | <p>Although there is still some uncertainty, the position has been consistently taken in France that SPACs are not AIFs and fall outside of the scope of AIFMD.</p> <p>The analysis is generally based on French SPAC's governance and purpose, and in particular:</p> <ul style="list-style-type: none"> the SPACs have a general commercial or industrial purpose rather than an investment purpose with a view of generating a pooled return; and SPACs will not invest the proceeds in a discretionary manner and, depending on the outcome of the IBC, the SPAC could operate as a holding company. <p>However, qualification as an AIF remains a question of fact and should be determined on a casebycase basis. Moreover, there is no definitive guidance under French law or from any French regulator whether SPACs would qualify as AIFs and whether they would be subject to the French legislation implementing AIFMD in any relevant EU Member State.</p> <p>French SPACs' prospectuses generally include a risk factor stating that an EU administrative, regulatory or legal authority could, in the future, find that SPACs, pending their business combination, qualify as AIFs and that it could have material consequences.</p> |
| Italy | <p>The same analysis would apply in Italy. Note, in addition:</p> <ul style="list-style-type: none"> SPACs applying for listing on MIV shall not be AIFs and have to be established for the purpose of the strategic acquisition of a specific business, whose exclusive corporate purpose (to be expressly set out in the by-laws) is to invest mainly in a company or assets to perform the related instrumental activities, companies deriving from purchases made by the latter companies. To date, there is no additional guidance on AIF recategorisation analysis from CONSOB or the Italian Stock Exchange (Borsa Italiana) and the analysis is carried out case-by-case based on the actual features of the transaction in accordance with the relevant rules (AIFMD as transposed in Italy and ESMA AIFMD Key Concepts Guidelines). |
| Spain | <p>From a Spanish regulatory perspective, it is still unclear whether SPACs will be characterized as AIFs. The CNMV has not provided any guidance on this yet, and the relevant amendments to the Spanish Companies Act are still under public consultation/approval process.</p> <p>However, in the meantime, from our experience and legal analysis of the fact pattern, the same analysis would apply in Spain. See also the additional comments in relation to the Netherlands (below) which are equally relevant in Spain.</p> |
| The Netherlands | <p>The same analysis would apply in the Netherlands. In particular:</p> <ul style="list-style-type: none"> Commercial or industrial business: Limb (a) will not be satisfied since, in addition to the fact that the SPAC will have the purpose of becoming a commercial or industrial business, the management of the Company intends to contribute to that company's long-term value and its future commercial business in several areas. Defined investment policy: A SPAC's strategy will be described to include entering into a business combination with an existing company and as such contribute to that company's long-term value. This will be less specific and instructive than the investment policy of an AIF. Further, generally a shareholder of the SPAC may choose not to agree to the SPAC entering into a business combination with the target company and they or all shareholders may subsequently be redeemed, which points to the fact that there is no defined investment policy that is binding. Should a shareholder be redeemed due to their disapproval of the business combination, they will only receive the initial invested amount and will not receive any (pooled) proceeds (or 'return'). <p>In addition, the management of a SPAC may generally decide to deviate from the target criteria and guidelines which were identified to evaluate a prospective target as they have large discretion when searching for a target. Furthermore, the SPAC needs approval from its shareholders for entering into a business combination. These characteristics support the conclusion that there is no fixed or determined investment policy at the time of the IPO – which is the moment at which the shareholder's commitment to the Company becomes binding.</p> |



Additional structuring considerations to avoid AIF recategorisation risk

| | |
|------------|---|
| Luxembourg | <p>Although SPACs resemble private equity funds, they, typically, do not qualify as an AIF under the Law of 12 July 2013 on alternative investment fund managers, as amended (the “AIFM Law”) as they</p> <ul style="list-style-type: none"> • pursue a commercial purpose; • do not have a defined and specific investment policy as an AIF would typically have; and/or • might potentially qualify under the AIFMD holding company exemption. In the event that a SPAC will not merge with the target after the acquisition, it will remain a holding company of the target. In that scenario, a SPAC could qualify as a holding company under the AIFM Law and, as such, fall outside the scope of the AIFM Law. In accordance with the AIFM Law, a holding company is a company, with shareholding in one more other companies: <ul style="list-style-type: none"> - in order to contribute to their long-term value by carrying out a business strategy or strategies through its subsidiaries, associated companies or participants; and - which is either a company: <ul style="list-style-type: none"> - operating on its own account and whose shares are admitted to trading on a regulated market in the EEA; or - not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents. <p>On the European market, SPACs, typically, only acquire a shareholding in one target, which target will be an operating company with an actual business (i.e. a company with a commercial purpose) that is not itself an AIF. The commercial purpose of the SPAC would then be to carry out its business strategy through this target. Furthermore, in line with the requirements set by the AIFM Law, the SPAC will be operating on its own account and have its shares admitted on a regulated market and then be the sole shareholder (or majority shareholder) of the target. In such capacity it is able to exercise effective control over the target. Furthermore, in line with the requirements set by the AIFM Law, the SPAC is not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies.</p> |
| Belgium | <p>The same analysis would apply in Belgium. See also the additional comments in relation to the Netherlands which are equally relevant in Belgium.</p> <p>Special attention should be taken, however, when drafting the prospectus and the section on the use of proceeds in view of the “defined investment policy” criterion.</p> |
| Ireland | <p>The same analysis would apply in Ireland. We are not aware of any additional guidance having been provided by the Central Bank of Ireland in the context of a SPAC listing or otherwise.</p> |
| Sweden | <p>The Swedish Financial Supervisory Authority (Sw. Finansinspektionen) has not issued any guidelines on this. The market appears to have taken the position that SPACs are not AIFs. The Exchange has issued separate admission requirements for AIFs, which have not been applied by the Exchange in relation to the admission of SPACs. We believe that a SPAC, typically, does not qualify as an AIF as they pursue a commercial purpose, do not have a defined investment policy and/or qualifies under the AIFMD holding company exemption.</p> |
| Norway | <p>From a Norwegian regulatory perspective, it is still unclear whether SPACs will be characterised as AIFs. The NFSA has not provided any guidance on this. In the analysis above, it is stated that the SPAC will have the purpose of becoming a commercial or industrial business, and although the SPAC will pool capital raised from investors, it is only at the point of the de-SPAC that a pooled return may be generated. On this basis, it is concluded that neither limb (a) nor limb (b) above is satisfied, with the result that the SPAC is not an AIF. However, it remains to be seen whether the NFSA will share this interpretation. It is still unclear as to whether the AIF assessment should be based on the characteristics of the SPAC at the time of the IPO on an isolated basis, or if the assessment should take into consideration the characteristics the SPAC will have at the point of the de-SPAC. If the characteristics of the SPAC at the time of the IPO should be assessed on an isolated basis, it could for instance be argued that the SPAC will not have an industrial or commercial purpose before the de-SPAC. Further, it can also be argued that the intention of the SPAC is to generate a pooled return, even though this will only occur at the de-SPAC. Thus, the SPAC could be considered an AIF under Norwegian law.</p> <p>The SPAC set-up is currently being considered by the Oslo Stock Exchange and the NFSA. Based on conversations with the Oslo Stock Exchange and the NFSA, it seems as if they are still in the initial phase of their assessment of the set-up, and the NFSA has signalled that they are waiting for guidelines from ESMA before they draw any conclusions.</p> |



| Additional structuring considerations to avoid AIF recategorisation risk | |
|--|--|
| UK | <ul style="list-style-type: none"> • Commercial purpose: Monies raised from public shareholders must be ring-fenced to either fund an approved acquisition, or be returned to shareholders. A SPAC would be able to deduct any amounts agreed to be used for the running costs of the SPAC, where these amounts were clearly disclosed to investors in the prospectus. The FCA is not proposing to specify that ring-fenced monies must be held in trust or in an escrow account. • Shareholder discretion/control: There are approval requirements for any proposed acquisition, such that the Board and shareholders must approve the transaction. Public shareholders must be given sufficient disclosure on all terms and information on a proposed transaction necessary to allow them to make a properly informed decision. • No pooled return: There is a 'redemption' option, allowing investors to exit a SPAC prior to any acquisition being completed if they are not happy with the target or the final terms of the deal. This would need to specify a predetermined price at which shares would be redeemed, and the terms would need to be set out in the prospectus. • Combining with multiple targets: Where the business combination between the SPAC and the target(s) is constituted of more than one acquisition by the SPAC, those acquisitions are completed on a simultaneous basis, and the merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination involving the SPAC and the businesses must also occur simultaneously. |
| Switzerland | <p>AIFMD does not apply to Switzerland, although the general principles outlined above should also be relevant to assess whether, from a Swiss law perspective, a SPAC is a collective investment scheme. More specifically, one would typically consider two elements:</p> <ul style="list-style-type: none"> • Self-management of the SPAC: A key criterion to consider from a Swiss law perspective is whether the SPAC can be deemed to be self-managed. A company is self-managed if its assets are not managed by a third party company. From this perspective, it generally helps if shareholders have a formal right to approve the de-SPAC transaction. • Commercial purpose: Although not spelled out explicitly in the relevant Swiss legislation, if a company is created to ultimately operate a commercial business, it should not be considered as a collective investment scheme. |



Considering which jurisdictional regime applies

Where banks act in capital market syndicates it is important for a common approach to regulatory analysis to be adopted. Further, it is important to recognize when that analysis needs to be run at the Member State level and in respect of which Member State.

The AIFMD was introduced with the goal of harmonizing the regime for unregulated funds across the EU. The Member States polled have not expressly sought to gold plate the analysis as regards what constitutes an AIF so as not to directly contradict this objective. Accordingly, this guide recommends the following approach to considering which regulatory regime should be considered when determining whether the SPAC might be recategorised as an AIF¹¹. The table below assumes the investors in the relevant jurisdiction are institutional. In the case of distributions to retail investors, local advice should be sought.

| Country of incorporation | Country of listing | Location of investors | Jurisdictional analysis |
|--------------------------|--------------------|-----------------------|--|
| Non-EU | Non-EU | EU/UK/Switzerland | <ol style="list-style-type: none"> Each relevant EU Member State where investors are located UK Switzerland |
| Non-EU/UK | EU | EU/UK/Switzerland | <ol style="list-style-type: none"> Relevant EU Member State of listing UK (due to UK investors) Switzerland (due to Swiss investors) |
| UK | EU | EU/UK/Switzerland | <ol style="list-style-type: none"> Relevant EU Member State of listing UK (due to UK incorporation¹² and UK investors) Switzerland (due to Swiss investors) |
| EU | EU | EU/UK/Switzerland | <ol style="list-style-type: none"> Relevant EU Member State of listing Relevant EU Member State of incorporation UK (due to UK investors) Switzerland (due to Swiss investors) |

¹¹ The table at 4.5 above sets out the AIF recategorisation risk in the key EU and non-EU jurisdictions surveyed. The table here is an overlay to 4.5 and is a guide to the jurisdiction(s) in which the AIF analysis should be run in four key scenarios.

¹² Note: In the absence of UK – EU equivalence arrangements, the United Kingdom no longer remains bound by the principles of the EU’s single market in remaining aligned on the definition of an AIF under the UK’s on shored AIFMD.



5. UK and EU MAR considerations

The EU Market Abuse Regulation (EU MAR) (and/or UK’s onshored equivalent (UK MAR)) (EU MAR and UK MAR collectively referred to as MAR¹³) should be considered at an early stage of a European SPAC transaction structuring process. There will be a number of MAR touchpoints throughout the transaction that are broadly set out below.

Step 1: Identify entities with MAR in scope instruments

The table below sets out a checklist for identifying entities with MAR in-scope instruments and flags the primary assumptions in relation to what stage in the transaction considerations related to the price sensitivity of information and related disclosure obligations might apply. Note the considerations set out below should be assessed on a casebycase basis; the table sets out starting assumptions only.

| ✓ | Scenarios: SPAC/Target/ Sponsor with MAR in scope instruments | Potential inside information concerns? | Consideration |
|---|---|--|--|
| | EU or UK SPAC vehicle <i>EU or UK listed equity</i> | Merger of Target with SPAC inside information (for SPAC’s equity)? | <ul style="list-style-type: none"> • YES (working assumption) |
| | Parent / S/h of Target <i>EU or UK listed equity</i> | Sale of Target by EU or UK listed Parent inside information (Parent’s equity)? | <ul style="list-style-type: none"> • Profile of the Target within the Parent group such that a sale is material to the equity value of the Parent • Parent remaining as an investor? • Consider through the lens of a leak: What might be the impact on the Parent / S/h share price? |
| | Parent / S/h of Target <i>EU or UK listed debt</i> | Sale of Target by EU or UK Parent inside information (Parent’s debt)? | <ul style="list-style-type: none"> • Impact of the transaction on the credit position of the Parent and its ability to repay debt |
| | Target <i>EU or UK listed debt</i> | Merger of Target with SPAC inside information (for Target’s debt)? | <ul style="list-style-type: none"> • Fact of deSPAC on the credit position of the Target and its ability to repay debt |
| | Sponsor <i>EU or UK equity/debt</i> | Merger of Target with SPAC inside information (for Sponsor’s equity/debt)? | <ul style="list-style-type: none"> • Proportion of Sponsor’s £/€/ \$ investment as compared with the value of its listed instruments |

13 Note that the scope of UK MAR is different compared to EU MAR. Notwithstanding this difference in scope and the UK government’s ability, post-Brexit, to diverge from EU rules, as at the date of this Guide, there has not been any material divergence between the rules and market practice associated with the application of UK MAR and EU MAR. References, therefore, to the application of MAR in this Guide currently relate equally to UK MAR and EU MAR. Future divergence in the rules and/or market practice should remain an ongoing watch point for firms.



Step 2: Monitor at what stage in the de-SPAC process the fact of the merger will become sufficiently precise

Identify whether this is relevant to:

- a. The Target Group
- b. The SPAC vehicle

Notes:

- The transaction will generally announce¹⁴ at the time of signature of the merger agreement/PIPE subscription. Therefore, to the extent that the SPAC is in possession of inside information ahead of announcement, it may be able to rely on an ability to delay disclosure in line with its legitimate interests and must apply MAR controls around the sharing of inside information.
- Consider also a situation where exclusivity is signed and the news leaks. *Leaks memo should be systematically recommended.*

Step 3: Considerations when approaching PIPE investors

Is the approach to PIPE investors in relation to the deSPAC a 'market sounding'¹⁵?

The 'transaction' for the purposes of the market sounding regime = buying shares in the SPAC vehicle.

- a. Yes, if SPAC is EU or UK listed or admission to list is made + prior to the announcement of the deSPAC.
- b. No, if SPAC is non-EU or non-UK listed OR the deSPAC has been announced.

Notes:

- Where the Target is owned by a listed parent, consider wall crossing potential PIPE investors noting any inside information regarding both the listed parent of the Target and the SPAC
i.e. the Target's (or any Parent / S/h) shares are not the subject of the market sounding. But the market sounding may nevertheless involve the sharing of information which is material to any Target (Parent / S/h) MAR in scope instruments.
- Alternative approaches may be contemplated. E.g. the number of PIPE investors is small and there is no sounding to gauge potential interest, rather the PIPE investors have already expressed an interest and are directly negotiating the PIPE investment.¹⁶

14 Consider RNS: include PIPE investor presentation; other elements achieve cleansing for MAR?

15 The definition of market sounding is contained in Article 11(1) of MAR, stipulating that a "market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors".

16 Inside information issues should be considered regardless of the application of the market sounding regime.



Sharing information with PIPE investors

Keep under review the impact of information shared with the PIPE investors on the cleansing strategy (when deSPAC is announced) based on the following working assumptions on what amounts to inside information.

Background considerations:

- US PIPE investors are used to the free flow of financial projections through the S4 proxy process.
- EU PIPE size can sometimes be three to four times the initial SPAC. Timeline for EU PIPE investors' investment committee processes can be longer. PIPE investors require significant levels of disclosure.
- SPACs will frequently involve high growth companies where longer term financial projections are of particular interest to PIPE investors.

Leads to the following primary MAR considerations for SPACs:

1. What information needs to be cleansed at the time of announcing the deSPAC? Consider 'price sensitivity' under MAR

Information: Any 'material' information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments (see 5.2 above), and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments. Consider the materiality of company business plan and financial projections.

Analysis (facts and circumstances specific): Sharing of business plans/financial projections may not amount to inside information:

- The draft business plan does not (typically) include inside information (this will be a casebycase assessment).

A company's management is always aware of its draft business plan. However, there is nothing in MAR that suggests knowledge of the company's plans reach the threshold of inside information for the purposes of restricting trading of management in the company's stock.

- Any financial projections are 'medium' to 'long' term.

We have seen bankers (via their research desks) take the view that projections more than two years out may not be deemed sufficiently certain/precise as to influence the price of the issuer's securities. Also, mid-term guidance is sometimes qualified as "objectives" as opposed to "projections", which might be relevant to the analysis. In other words management states what it "intends" to do, not what it "expects" to do.

- Disclosure of short term (next two years) financial projections are more likely to be inside information and therefore have to be disclosed in the press release and listing prospectus to cleanse.

Ensure there is no date for achieving a profit number e.g. 'medium term'. It is also possible to disclose revenue targets without it being a profit forecast.



- Inclusion of a profit forecast triggers Prospectus Regulation disclosure requirements and banks will require private comfort but may not be in a position to require this in the case of a listing prospectus.

Any prospectus will not be an offering prospectus but will be a listing prospectus after the PIPE has been signed. PIPE investors sign placing letters before the prospectus is published.

Bank(s) are not involved in the listing prospectus¹⁷ although they may be named as placing agent (for a placing that has already taken place)¹⁸. Therefore the Board decides the level of comfort.

2. Handling different PIPE investors requiring different levels of due diligence/different data room

If a 'market sounding' for MAR purposes:

- Note the 'same level' of information must be shared with all PIPE investors during the period of the sounding
- This could become problematic where investors require differing levels of diligence as negotiations progress
- Therefore, draw a clear line on where 'sounding' ends and 'execution' begins. For example:
 - *The terms of the PIPE investment are being bilaterally discussed with investors, post initial sounding meetings.*
 - *A new phase of discussion with a smaller group of investors than those originally sounded.*
 - *A signed NDA triggering more fulsome disclosure of information on the Target to PIPE investors.*

3. What if the deal fails after PIPE investors are approached?

- Wall cross scripts should customarily have an estimated date after which the information disclosed to PIPE investor(s) will cease to be inside information and they are deemed cleansed.

This is intended to cover the fact of the deSPAC being price sensitive to the SPAC vehicle/Target. If the deSPAC fails, consider whether this information has become stale and the PIPE investors can be privately cleansed.

- Consider also whether information disclosed in relation to the Target is price sensitive (e.g. short term financial projections):

Requirement to cleanse: No, as long as:

- Target (Parent / S/h Board decision) – Demonstrate the information was only shared in line with MAR 'need to know' standards. Target is then not obligated to cleanse.
- Investors - Drop dead date is not relevant to this point given the deal is not going ahead. Placement agents to consider need to privately cleanse PIPE investors. In parallel, PIPE investors are required to keep under review and to decide when the information has become stale (i.e. announced in next company financials or otherwise through passage of time). PIPE investors who are not willing to carry this risk may seek to agree a cleansing strategy with the Target.

¹⁷ Note: The German position is being monitored in this context: a bank will be named in the listing prospectus if a SPAC competent authority is in Germany.

¹⁸ It is important to ensure that PIPE placing banks and/or M&A financial adviser banks' names and logos are not on the cover of a listing prospectus, are not used in a prominent way that could lead to responsibility for the contents being attributed to such banks, and do not state they take any responsibility therefor.



Stabilization and over allotments

- On an IPO of an operating company there will be significant shareholders from whom the stabilizing manager can borrow shares in order to over-allot shares on the first day of trading.
- With a SPAC there are no existing shareholders from whom to borrow shares, and deferred settlement with some of the IPO investors is not seen as attractive.
- It is, however, possible to have the SPAC issue an additional number of shares to the sponsor(s) at nominal value which it subsequently repurchases against payment at par value to be held in treasury.
- Those treasury shares are lent by the SPAC to the stabilizing manager for the purposes of settling the initial over-allotments in the IPO.
- The stabilizing manager then returns equivalent shares to repay the loan by either buying shares in stabilizing transactions or exercising the over-allotment option, or a mixture of the two.



6. Prospectus regulation: profit forecast

if financial projections have been shared with PIPE investors, in particular short-term projections, it is likely to be necessary to cleanse the PIPE investors of that information at the time of announcing the PIPE and the business combination.

There is likely to have to be a published prospectus at the time of the PIPE (i.e. at the time the shares underlying the PIPE are issued) and the business combination for two reasons:

- The shares being issued in the PIPE or as consideration shares for the business combination represent over 20% of the SPAC's issued share capital; and/or
- There is a new successor entity being put in place as part of the business combination as a new holding company for the SPAC shareholders and the target shareholders.

Note that such a prospectus is technically a listing prospectus; it is not a prospectus for a public offer as there is no public offer of shares.

It is possible to avoid the need for a prospectus at least on Euronext Amsterdam if at the time of the IPO a sufficient number of shares are issued by the SPAC to be held in treasury which are listed using the IPO prospectus and can be issued out of treasury for the PIPE/de-SPAC. A prospectus would still be needed if the listed entity after the business combination is not the SPAC itself.

If a prospectus is required for the business combination, any projections shared with PIPE investors will likely have to be included in the prospectus. There are potentially ways to cleanse this forward looking information without constituting a profit forecast for the purposes of the Prospectus Regulation Rules – for example by referring to targets rather than a forecast and not referring to a specific financial period (by for example, referring to short term or medium terms targets or goals). However the definition of “profit forecast” is very wide under the Prospectus Regulation Rules (see in particular Question 7.3 of the ESMA Questions and Answers on the Prospectus Regulation) so issuers should plan for how they would approach the publication of a prospectus containing profit forecasts in connection with a business combination as there is no liability “safe harbour” unlike in the United States.

A prospectus containing a profit forecast has to comply with the contents requirements of items 11.2 and 11.3 of Annex 1 of the [Prospectus Regulation Rules]. There is no longer a requirement for an auditor to publicly report on the profit forecast in the prospectus.

It is however market practice for underwriters and issuers outside the SPAC context to request the auditors to prepare a private commentary report on the profit forecasts and their basis of preparation.

We expect the same approach to be taken on any prospectus for a SPAC business combination, noting that the prospectus will be a listing prospectus and the financial institution will not be acting as a bookrunner or underwriter on the PIPE and therefore it may be the SPAC that has to request this commentary report.



7. MiFID II product governance

The MiFID II product governance regime requires that a target market is assigned to financial instruments such as shares and warrants issued by the SPAC vehicle to investors. Typically, shares issued in the context of a traditional IPO will attract a target market of eligible counterparty (ECP) professional *and retail* investors. However, considerations for SPACs may differ, due to the different nature and package of financial instruments being created throughout the SPAC lifecycle and the fact that certain instruments may constitute PRIIPs. Where an instrument does constitute a PRIIP, a separate consideration is whether it is intended for retail distribution, thereby requiring a Key Information Document (KID) to be produced (see Section 8 below for more information).

Typically, at IPO, a SPAC vehicle will only offer its units (comprising shares and warrants) to professional investors and ECPs (although the units, and after between 30 to 40 days, the separated shares and warrants will, for the most part, be listed on the main markets of stock exchanges and will, in turn, be accessible to retail clients at that stage). At the time of the deSPAC transaction, there is an expectation that the shares of the merged SPAC vehicle will also be available to retail investors (like other listed companies).

Accordingly, a more selective approach to the target market of the SPAC's instruments will be appropriate¹⁹ to take account of the fact that at IPO the package and nature of the units being offered will be more involved than vanilla shares of an operating company, meaning banks will likely determine the following:

- a. *Positive target market analysis for the units (including the shares and warrants that comprise the units (and which will trade separately approximately 30 to 40 days following closing))*: Eligible counterparties and professional investors (no KID required). [In this case, distributors of such instruments are on notice that notwithstanding the fact that those instruments may have been tradeable on retail accessible trading venues, the manufacturers' target market excludes retail.] If any retail distribution of the warrants is considered, PRIIPs analysis will be required (see section 8 below).
- b. *Negative target market analysis*: Typically, no negative target market would be assigned to the instruments, other than in the case of instruments which constitute a PRIIP and the issuer and banks want to limit such distribution by flagging that no PRIIP KID is available and by reinforcing the fact that the units are only being offered to professionals and ECPs with no retail tranche available.

Example of precedent target market language is set out below:

Information to EEA Distributors

Solely for the purposes of the product governance requirements contained within: (a) EU Directive 2014/65/EU on markets in financial instruments, as amended ("**MiFID II**"); (b) Articles 9 and 10 of Commission Delegated Directive (EU) 2017/593 supplementing MiFID II; and (c) local implementing measures (together, the "**MiFID II Product Governance Requirements**"), and disclaiming all and any liability, whether arising in delict, tort, contract or otherwise, which any "manufacturer" (for the purposes of the MiFID II Product Governance Requirements) may otherwise have with respect thereto, the Units, Ordinary Shares and Warrants have been subject to a product approval process, which has determined that: (X) the Units are: (i) compatible with an end target market of investors who meet the criteria of eligible counterparties and professional clients only, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels to eligible counterparties and professional clients as are permitted by MiFID II; (Y) the Ordinary Shares are: (i) compatible with an end target market of investors who meet the criteria of eligible counterparties and professional clients only, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels to eligible counterparties and professional clients as are permitted by MiFID II; and (Z) the Warrants are: (i) compatible with an end target market of investors who meet the criteria of eligible counterparties and professional clients only, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels to eligible counterparties and professional clients as are permitted by MiFID II (each, an "**EEA Target Market Assessment**").

¹⁹ Which aligns with EMSA's Public Statement: SPACs: prospectus disclosure and investor protection considerations, ESMA32-384-5209, 15 July 2021 which recommends that manufacturers and distributors "carefully scrutinise" SPAC shares and warrants in light of their "risk and complexity".



Any person subsequently offering, selling or recommending the Units, the Ordinary Shares and/or the Warrants (a “**Distributor**”) should take into consideration the manufacturers’ relevant EEA Target Market Assessment(s); however, each Distributor subject to MiFID II is responsible for undertaking its own target market assessment in respect of the Units, the Ordinary Shares and/or the Warrants (by either adopting or refining the manufacturers’ EEA Target Market Assessments) and determining, in each case, appropriate distribution channels.

[In respect of the Ordinary Shares, notwithstanding the EEA Target Market Assessment, Distributors (for the purposes of the MiFID II Product Governance Requirements) should note that: (i) the price of the Ordinary Shares may decline and investors could lose all or part of their investment; (ii) the Ordinary Shares offer no guaranteed income and no capital protection; and (iii) an investment in the Ordinary Shares is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom.]²⁰

The EEA Target Market Assessments are without prejudice to the requirements of any contractual, legal or regulatory selling restrictions in relation to the Units, the Ordinary Shares and the Warrants. Furthermore, it is noted that, notwithstanding the EEA Target Market Assessments, the Sole Global Coordinator will only procure investors who meet the criteria of professional clients and eligible counterparties.

For the avoidance of doubt, the EEA Target Market Assessments do not constitute: (i) an assessment of suitability or appropriateness for the purposes of MiFID II; or (ii) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to the Units, Ordinary Shares and Warrants.

Information to UK Distributors

Solely for the purposes of the product governance requirements of Chapter 3 of the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK Product Governance Requirements**”), and disclaiming all and any liability, whether arising in tort, contract or otherwise, which any “manufacturer” (for the purposes of the UK Product Governance Requirements) may otherwise have with respect thereto, the Units, Ordinary Shares and Warrants have been subject to a product approval process, which has determined that: (X) the Units are: (i) compatible with an end target market of investors who meet the criteria of eligible counterparties and professional clients only, each as defined in the FCA Handbook Conduct of Business Sourcebook (“COBS”), and professional clients, as defined in COBS; and (ii) eligible for distribution through all distribution channels to eligible counterparties and professional clients; (Y) the Ordinary Shares are: (i) compatible with an end target market of investors who meet the criteria of eligible counterparties and professional clients, each as defined in COBS; and (ii) eligible for distribution through all distribution channels to eligible counterparties and professional clients; and (Z) the Warrants are: (i) compatible with an end target market of investors who meet the criteria of eligible counterparties and professional clients only, each as defined in COBS; and (ii) eligible for distribution through all distribution channels to eligible counterparties and professional clients (each, a “**UK Target Market Assessment**”).

A Distributor (as defined above) should take into consideration the manufacturers’ relevant UK Target Market Assessment(s); however, each Distributor subject to UK Product Governance Requirements is responsible for undertaking its own target market assessment in respect of the Units, the Ordinary Shares and/or the Warrants (by either adopting or refining the manufacturers’ UK Target Market Assessments) and determining, in each case, appropriate distribution channels.

[In respect of the Ordinary Shares, notwithstanding the UK Target Market Assessment, Distributors (for the purposes of the UK Product Governance Requirements) should note that: (i) the price of the Ordinary Shares may decline and investors could lose all or part of their investment; (ii) the Ordinary Shares offer no guaranteed income and no capital protection; and (iii) an investment in the Ordinary Shares is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom²¹.]

²⁰ To be included where a decision is taken to deem the Ordinary Shares compatible with a retail target market.

²¹ To be included where a decision is taken to deem the Ordinary Shares compatible with a retail target market.



MiFID II product governance

The UK Target Market Assessments are without prejudice to the requirements of any contractual, legal or regulatory selling restrictions in relation to the Units, the Ordinary Shares and the Warrants. Furthermore, it is noted that, notwithstanding the UK Target Market Assessments, the Sole Global Coordinator will only procure investors who meet the criteria of professional clients and eligible counterparties.

For the avoidance of doubt, the UK Target Market Assessments do not constitute: (i) an assessment of suitability or appropriateness for the purposes of Chapters 9A or 10A of COBS; or (ii) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to the Units, Ordinary Shares and Warrants.



8. PRIIPs

A PRIIP is a packaged retail and insurance-based investment product where the product value or repayment is linked to the performance of certain securities or reference values, such as shares. Warrants issued by SPAC vehicles will often track the value of the vehicle's shares and therefore an analysis as to whether the warrants constitute a PRIIP is required. Although not subject to the EU PRIIPs KID Regulation, Switzerland's Financial Services Act contemplates a similar regime.

Where a warrant triggers the definition of a PRIIP and the warrants are intended for UK/EU/[Swiss] investor distribution, a key information document (KID) must be produced and published on the issuer's website. A KID is a 3 page standard form document. It provides the retail investor with information on the main features of the instrument, focusing on the risks, reward profile and costs:

- a. Product description including determination of the target investor and the intended purpose of the investment;
- b. A summary risk indicator which depicts the market and credit risk in quantitative terms and which must be supplemented to include qualitative statements on liquidity;
- c. Three performance scenarios and a stress scenario on the term or recommend holding period of the PRIIP;
- d. A summary cost indicator and a breakdown of the costs, including for interim periods;
- e. Information on the consequences of an early exit from the PRIIP;
- f. For the investor: possible complaint procedures.

The KID is a live document and therefore must be kept up to date to the extent there are changes in the above information. This will be the case where the summary risk indicator or performance scenarios deviate materially from those originally published. Therefore, the SPAC issuer must be aware of the risks associated with taking on this liability at the time of accepting retail distribution of the warrants in contemplation of the likely liquidity of volatility in the trading price of the warrants.

Where a KID is not required under the EU or UK PRIIPs KID Regulation, and the transaction involves distributing to Swiss investors, instruments that are not plain vanilla equity securities or bonds will require analysis under the Swiss Financial Services Act to determine the applicable requirements.



Contacts

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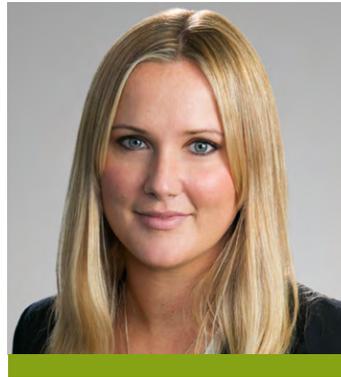


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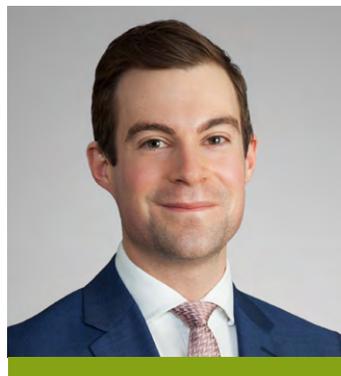
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/ About AFME

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues.

We represent the leading global and European banks and other significant capital market players.

We advocate for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society.

We aim to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work.

Focus

on a wide range of market, business and prudential issues

Expertise

deep policy and technical skills

Strong relationships

with European and global policymakers

Breadth

broad global and European membership

Pan-European

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