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Key Considerations in SPAC IPOs and De-SPAC Transactions

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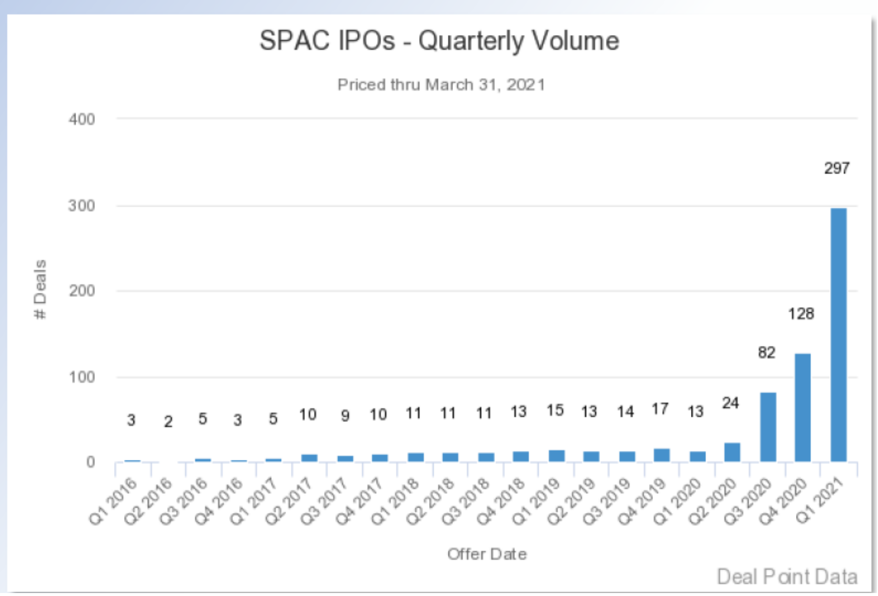
Agenda

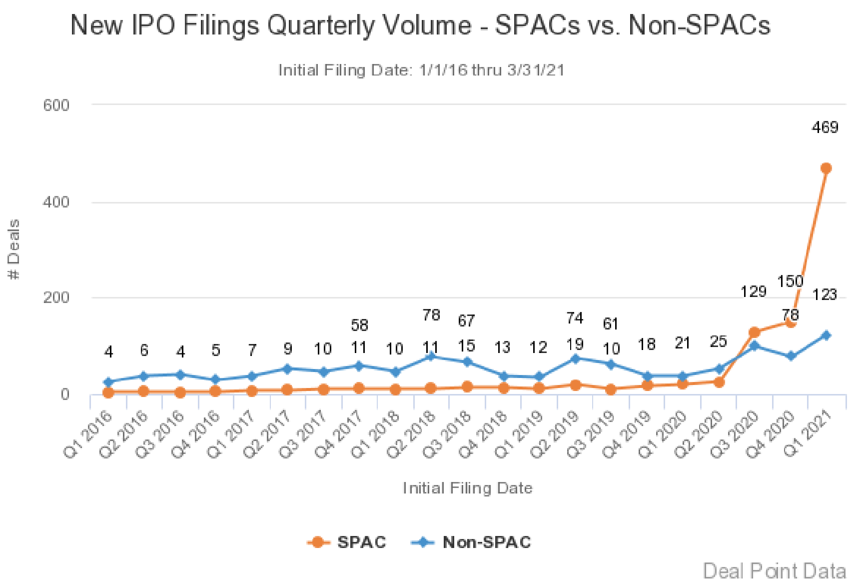
Today’s presentation will cover the following key topics:

- Trends and innovations in structuring SPAC IPOs
- Key considerations in using your SPAC to buy a target company
- Key issues to negotiate in selling your portfolio company to a SPAC

Trends and Innovations in Structuring SPAC IPOs

Market Overview





As of March 31st, 255 SPAC IPOs are still in registration.

The volume of SPAC IPOs is now far outpacing traditional IPOs

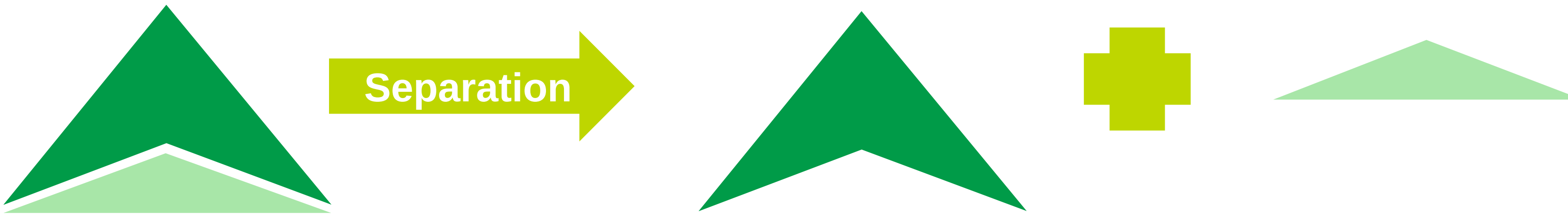
Source: Deal Point Data

Overview

What is a SPAC?

- A “Special Purpose Acquisition Company” (“SPAC”) is a newly formed blank check company that raises equity capital through an IPO in order to have available capital to complete a subsequent business combination with a target business within a set time period (usually 24 months)
  - At the time of the IPO, the SPAC does not have any operations or have any other assets other than certain de minimis amounts funded by its sponsor
- At the time of the IPO, the SPAC does not have an identified target company
- SPAC sponsors are often private equity funds, but may also be industry executives such as former CEOs

Typical SPAC Terms



Unit

- Typically sold for $10.00 in offering
- 100% of proceeds value held in trust until acquisition is completed or SPAC is liquidated
- Holder may elect to separate units beginning seven days after the expiration of the green shoe (typically 52 days after pricing of offering) unless underwriter decides to allow earlier separation
- Can vote on acquisition as holder of units if do not separate
- Elects to participate in transaction or to receive pro rata share of trust value in redemption

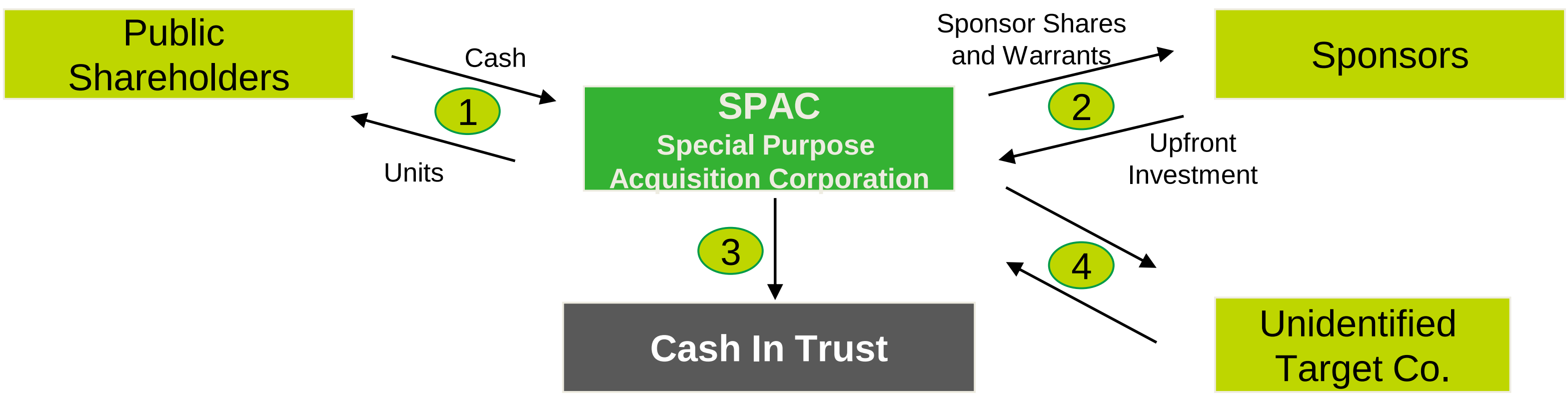
Common share

- Can vote on acquisition
- Elects to participate in transaction or to receive pro rata share of trust value in redemption

Warrant

- $11.50 exercise price
- Typically structured as 1/2, 1/3 or 1/4 of a warrant per unit
- Exercisable at any time commencing on the later of 12 months from closing of offering or 30 days from completion of business combination
- Exercise period is five years following business combination
- Once exercisable, may be redeemable for cash at $0.01 if common shares trading price is ≥ $18/share for any 20 of 30 trading day period
- Some SPACs also allow for warrant redemption for common shares if common shares trading ≥ $10/share based on agreed pricing grid
- The warrant is worthless without an acquisition

Common Features of a Typical SPAC



1. The SPAC raises capital by issuing units to public investors
   - Each unit generally consists of one common share and a fraction of a warrant
   - Shares and warrants may trade separately after greenshoe period if the holder elects to separate them
   - Sponsors buy founder shares that represent the “promote” and invest in private placement warrants that do not participate in liquidation rights and have limited liquidity prior to the initial business combination. The private placement warrants represent their “at risk” capital and pay for offering expenses, operating expenses and the portion of the underwriter spread that is paid upfront (2%)
   - Approximately 100% of the capital raised from the public is deposited in a trust account
   - SPAC can use a portion of interest income to pay limited amounts, such as taxes
   - The portion of underwriter spread that is not paid at closing of the IPO (3.5%) is put in trust fund and is only paid to the underwriters if there is a business combination
2. The SPAC typically has 24 months to consummate an acquisition (sometimes with flexibility to 27 months under certain conditions)
   - Acquisition target must have an enterprise value of at least 80% of cash in trust
   - Acquisition must receive majority approval if submitted to a shareholder vote (typical to submit for a vote)
   - SPAC will liquidate and return its capital to public shareholders if an acquisition does not occur within 24/27 months
   - The Sponsor, its affiliates or third parties may commit to purchase additional units at the time of a business combination (forward purchase contract) or the SPAC may sell additional shares in a PIPE

Initial Capitalization/ Funding of Operations

- A Sponsor vehicle is formed and capitalized with $25,000
- The Sponsor then uses that $25,000 to purchase Class F shares in the SPAC ("Founder Shares") pursuant to a securities subscription agreement – representing the sponsor's "promote"
- Founder Shares automatically convert to Class A shares (public shares) at the time of the business combination
- Founder Shares are to represent 20% of the SPAC after the offering so the number of shares issued to the Sponsor for the $25,000 depends on the anticipated size of the SPAC and assumes full exercise of the greenshoe

Private Placement Warrants – Sponsor At Risk Capital

- The Sponsor commits to purchase a number of private placement warrants at the consummation of the offering – this is their "at risk" capital
  - The number of private placement warrants purchased depends on the size of the offering and additional warrants are purchased corresponding to any greenshoe exercise
  - The aggregate amount paid for the warrants is equal to the portion of the underwriting discount paid at closing plus the $2.0 to $3.0 million to be held outside of the trust at closing to pay offering expenses and to use for working capital following the offering
  - Price per whole warrant is $1.50 when the public deal includes 1/3 warrant and a whole warrant is exercisable for a Class A share at $11.50 per share
  - Currently, private placement warrants are not redeemable by the SPAC so long as they are held by the Sponsor, other insiders or their permitted transferees
  - Subject to certain exceptions, private placement warrants (including Class A shares issuable upon exercise thereof) cannot be transferred, sold or assigned until 30 days after the completion of the business combination

Key Trends in SPAC IPOs

Recent SEC Focus on Warrant Accounting

- SEC recently called into question the historical industry wide practice of accounting for the public warrants and private placement warrants as equity
- This potentially affects all SPACs, but may have different implications depending on where the SPAC is in its lifecycle (i.e., pre-IPO, post-IPO but pre announced business combination, announced business combination not yet closed and post business combination)
- Terms of existing warrant agreement are under review
- This has caused severe disruption in the market and will likely result in a large number of restatements

Lack of Warrants/Reduced Fraction of Warrants

- Even prior to the recent focus on warrant accounting, a small number of SPACs did not include any warrants in their structure
- Some repeat SPAC issuers have reduced the fraction of warrant to 1/8

Alignment Share Structure

- Some SPACs include the concept of a dual class founder share structure
- The typical founder shares represent only 10-15% of the post IPO capital structure (as opposed to 20%) and an additional class of shares are issued that are subject to vesting upon achieving certain hurdles in the stock price post business combination
- The additional class of founder shares may result in an additional 15% ownership if the hurdles are met (resulting in potential ownership of 25% to 30%)

Rising D&O Insurance Costs

- D&O insurance premiums have recently increased significantly

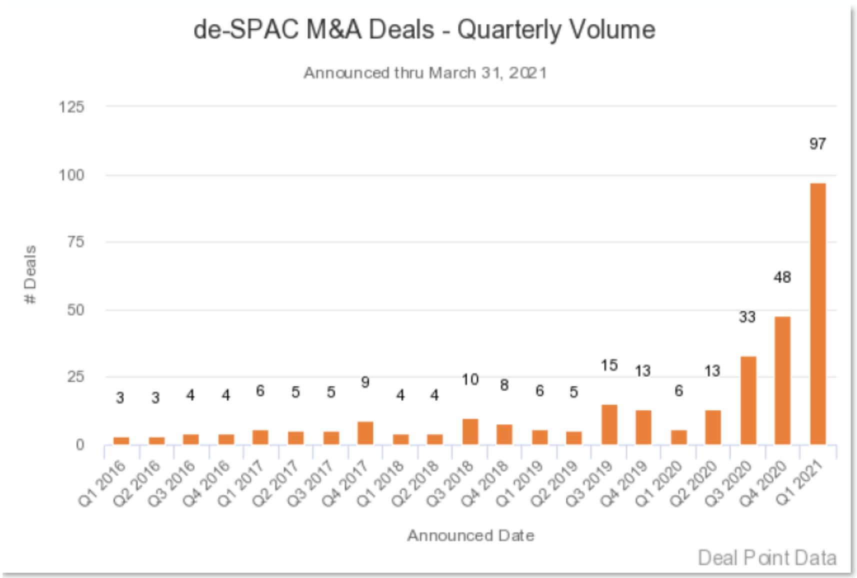
Key Considerations in Using Your SPAC to Buy a Target Company

Market Overview

Massive Amounts of SPAC dry powder currently available for acquisitions. As of March 31st, over $189 billion in SPAC "dry powder" is poised to be invested in M&A transactions

- 433 Priced SPAC IPOs are currently seeking an M&A target
- another 255 SPAC IPOs are still in registration

At the end of March, the number of pending de-SPAC M&A deals soared to 125 pending deals with a total equity value of $260.4 billion, a 30% increase from the end of February (96 deals / $200.6B)



Source: Deal Point Data

The Business Combination – De-SPAC Process

SPAC Completes IPO and begins search

- SPAC's IPO proceeds are deposited in trust (100% of public offering) and begins searching for an attractive Target(s)

Identifies a Target

- SPAC identifies attractive business combination target(s) and reaches a mutually beneficial agreement

Prepares for the Vote

- Completion of due diligence and arrangement of additional financing
- Negotiates and signs definitive agreement
- Issues 8-K announcing deal
- Proxy filed with SEC along with other materials
- SPAC/Target principles meets with investors to discuss the business combination

Shareholder Approval Process

Original SPAC investor can choose (a) or (b):

(a) Redeem shares

- Give up shares, keep warrants
- Receive $10.00 cash per share[1]

(b) Do not redeem shares

- Keep shares, keep warrants
- Cash remains in trust to fund business combination

Business Combination Closes

- Business combination closes with a combination of cash from SPAC IPO, cash equity from a PIPE and credit facilities and a tax efficient exchange of common stock

(1) Will account for additional funds added to the trust and interest earned less taxes and other permitted expenses.

Key De-SPAC Workstreams

Business and legal due diligence

1. Business diligence process
2. Financial projections, including impact of COVID-19
3. Legal and regulatory due diligence
4. Auditor due diligence
5. Final transaction structure

Financial

1. PCAOB audited financials/determine reportable segments
2. Historical and pro forma financials
3. MD&A (Proxy)
4. Determine go-forward reporting package and KPI's

Marketing

1. **Investor targeting (including PIPE)**
2. Financial forecasts
3. Equity valuation story
4. Management presentation preparation for SPAC
5. Investor presentation
6. Press release

Pre-announcement documentation

1. Non-binding LOI
2. Investor Deck
3. Subscription Agreement
4. Merger Agreement/disclosure schedules
5. Registration Rights Agreement
6. Charter and bylaws
7. Incentives/LTIP framework
8. Public company directors
9. Other ancillary agreements (*e.g.*, debt or warrant exchanges)
10. Announcement 8-K

S-4/Proxy

1. Business overview
2. Risk factors
3. Management/executive compensation
4. Corporate governance/exchange requirements

Overview of a SPAC PIPE Process

A SPAC PIPE process can be accomplished in an efficient manner that supports the longer-term execution process

- Potential PIPE investors are restricted by NDA – and only receive information that will be shared at announcement
  - They will typically receive access to a data room that includes at least an investor presentation and a subscription agreement
  - Other potential documents include the non-binding LOI, a draft merger agreement and audited financials
- Investors conduct ‘public-style’ due diligence – they do not receive information that is not shared with the general public
- However, PIPE investors do receive projections – which are shared with the public at announcement

Week 1	Week 2	Week 3	Week 4
Preparation	***Marketing meetings***	***Negotiations***	***Prepare for announcement***
▪ Select investors ▪ Finalize documents ▪ Agree on wall crossing script ▪ Begin investor outreach	▪ Conduct roadshow under NDA ▪ Share management presentation ▪ Provide data room access	▪ Conduct targeted follow-up ▪ Negotiate subscription agreements ▪ Evaluate need for additional marketing	▪ Collect executed subscription agreements ▪ Finalize merger agreement ▪ Record announcement call ▪ **Prepare announcement**

Key Considerations in De-SPAC Transactions

- **Process is Important**
  - The background and history of the business combination is a critical disclosure item in the Proxy/S-4
  - SPAC management team should regularly update the board on deal pipeline and live opportunities
  - The board should be involved early and often once a letter of intent or term sheet is signed so the business combination is properly vetted
  - Advisors should be actively involved and interact with the board during the process
  - SPAC and the board need to establish a record to support the approval of the business combination and the recommendation that the stockholders approve the deal
  - Plaintiff's litigators are now active in the SPAC market
- **Auctions Impact SPAC Economics**
  - The recent competitive market has led numerous sellers to commence banker-led auctions to identify a SPAC partner
  - SPACs are asked to bid on form term sheets to stay involved in the process
  - Among other things, SPAC sponsors are asked to forfeit founder shares and warrants as a general matter or to cover excess expenses, transfer founder shares and warrants to sellers and re-vest founder shares and warrants over a longer period of time
  - Many first time SPAC sponsors have been aggressive in this area to win deals while more seasoned SPAC sponsor have avoided such actions at least in part

Key Considerations in De-SPAC Transactions continued

- **Importance of PIPE**
  - The PIPE financing is important third party validation of the transaction and the valuation
  - It's not uncommon for valuation to be reset based on early conversation with SPAC investors
  - Many potential transactions fall apart at the PIPE outreach stage or shortly thereafter if the PIPE interest does not materialize
  - In addition to new investors participating in the PIPE, "doubling down" by existing investors also sends a powerful message
- **Public Style Transaction**
  - The market has evolved over the years and most deals are now done with a fixed equity value without any closing or post-closing adjustments for debt, cash, working capital or transaction expenses
  - Reps and warranties are given to a relatively high standard and do not survive closing
  - There is no post-closing recourse in the form of indemnification or and escrow and the target stockholders are not on the hook
- **Timing of Target Stockholder Approval**
  - Recent SEC guidance has given the target stockholders the ability to approve a transaction by delivering a stockholder consent at signing
  - However, stockholders who deliver a consent at signing cannot get registered shares through the S-4 and instead will receive their shares on a private placement basis and become a party to the Registration Rights Agreement
  - Most market participants have welcomed this development, but some target stockholders are resisting and prefer to receive their shares through the S-4
  - In such case, the target stockholders should deliver Voting and Support Agreements to vote in favor of the transaction as soon as the S-4 is effective

Illustrative De-SPAC Timeline Overview

Relevant Stages of a SPAC Business Combination (4-5 Months)

Initial Due Diligence & Wall Cross	*Sign Deal (Post PIPE)*	*SEC Approval & Investor Marketing*	*Shareholder Notification, Vote & Closing*
~4 weeks	30–45 days	45–75 days	~20 days

Announce

Initial Due Diligence & Wall Cross (~4 weeks)

- CIP/Management presentation
- Populate data room and comprehensive DD access
- Testing the waters wall cross meetings with key SPAC holders, **with potential for PIPE process**

Sign Deal (Post PIPE) (30–45 days)

- Complete due diligence
- Prepare purchase agreement and ancillary agreements
- **Raise fully-committed PIPE**
- Sign definitive agreements and announce deal

SEC Approval & Investor Marketing (45–75 days)

- File S-4/proxy with SEC as soon as possible post announcement
- Launch investor roadshow after initial filing (~1 week, with follow-up calls thereafter)
- Initial SEC review of filing takes 30 days, with 2-3 rounds of comments thereafter

Shareholder Notification, Vote & Closing (~20 days)

- Shareholder notification and vote
- Shareholder redemption elections due 2 business days prior to shareholder meeting
- Deal closes 1-2 business days post meeting

Factors Influencing Timing

Manageable Factors

- Availability of PCAOB compliant financial statements
- Timing of S-4/Proxy
- Marketing materials
- Comprehensive marketing plan, inclusive of target investors and research analyst outreach post announcement

Unmanageable Factors

- Market conditions
- SEC turnaround time
- Earnings seasons
- Other seasonal market slowdowns (e.g., late-August/December)

Key Issues to Negotiate in Selling Your Portfolio Company to a SPAC

Advantages/Disadvantages of “De-SPACing” Transaction vs. IPO

	SPAC	IPO
Use of Projections in Marketing	✓	✗
Confidential Negotiation Prior to Pricing	✓	✗
Immediate Research Coverage	✓	✓
Large Diverse Shareholder Base	✓	✓
Public Currency for M&A	✓	✓
Public Currency for Employee Comp	✓	✓
Fast Execution	✓	✗
Ability to Structure Earn-outs and Incentives	✓	✗
Ability to Retain Freely Tradeable Listed Common Stock	✓	✓
Three Years of PCAOB Audits[1]	Likely	Sometimes

* An IPO typically requires only 2 years of PCAOB audits for emerging growth companies (EGCs) and smaller reporting companies (SRCs). However, for marketing purposes, bankers sometimes prefer 3 years. 2 years of PCAOB audits are required in SPAC context for SRCs.

SPACs Can Provide Sellers with a Variety of Benefits

Greater Cash Proceeds	SPACs can result in greater cash proceeds than a traditional IPO. A PIPE and/ or debt capital can be raised pre-announcement to generate cash proceeds in excess of the cash held in trust
Disclosing Projections	SPACs typically incorporate projections and other descriptions to better articulate growth story to public investors
Structural Flexibility	SPACs can provide targets with earn-out structures to bridge valuation gaps, and utilize other structural enhancements not available in a traditional IPO
Shareholder Time Horizon	SPAC can accommodate multiple shareholders' needs in a single transaction. It is possible for early investors to monetize, while more recent investors can maintain or increase their ownership
Speed to Market	SPAC merger can be a faster path to a public listing versus a traditional IPO (~3 months vs. 4+ months)
Sponsorship	SPAC sponsor can complement the existing management team and often creates a halo effect
Ease of Execution	Can be less burdensome to target's management team as SPAC is incentivized to complete transaction as quickly as possible, however go-forward reporting, governance and accounting regime are time consuming to implement
Tax Efficiency	A SPAC can execute a tax-free transaction, providing sellers with liquid, publicly-traded shares it can sell at a later date

Previous Sellers to SPACs

APOLLO
SILVERLAKE
THE CARLYLE GROUP
ONEX
GTCR
TPG
LG&P
Permira
MDP
L CATTERTON
Blackstone
Platinum Equity
TDR Capital
CERBERUS Capital Management, L.P.
ROARK CAPITAL GROUP
CORSAIR
Virgin
HRG GROUP
BLUE MOUNTAIN
FTV CAPITAL
NORWEST VENTURE PARTNERS
OAKTREE
IRVING PLACE CAPITAL
NGP
E|C|P PRIVATE EQUITY
BERNHARD CAPITAL PARTNERS

Key Issues to Negotiate for Sellers

Economic issues	▪ Pro forma ownership and amount of cash proceeds ▪ Allocation/forfeiture of founder shares/warrants ▪ Imposition of earnout/return hurdle thresholds to sponsor shares and target equity ▪ Lock-up of warrants owned by SPAC sponsor and target stockholders ▪ Vesting of sponsor shares/warrants based on stock price thresholds ▪ Purchase price adjusted and any escrows
Mitigating execution risk	▪ Entering into subscription agreements with PIPE investors at signing to ensure committed capital ▪ Sellers may ask for third party beneficiary rights to be able to directly enforce subscription agreements against PIPE investors ▪ Entering into voting and support agreements with the SPAC sponsor and large shareholders of the SPAC to lessen the risk of the shareholder vote ▪ Entering into non-redemption agreements with a limited number of shareholders to provide greater certainty regarding the amount of cash in trust at closing ▪ Having a seller closing condition that the SPAC has a minimum amount of cash at closing through the trust account (after taking into account any redemptions) plus any PIPE proceeds committed through subscription agreements, and any proceeds from forward purchase agreements
Limited recourse	▪ Monetary recourse against the SPAC in the event that closing fails to occur (including in the event of a breach by the SPAC) is very limited because the funds are held in trust, solely for the benefit of the SPAC shareholders. Sellers have come to accept this, which is why they insist on as much committed financing as possible at the time of signing
Other terms to consider	▪ What will the Board composition be of the combined company? ▪ How will the go-forward management team be incentivized? ▪ Portability of target debt financing? ▪ Termination fees ▪ Tax receivables agreements

Questions?