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SPAC transactions update:
Are space and satellite companies still good candidates?

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Through Aerospace and Defense Insights, we share with you the top legal and political issues affecting the aerospace and defense (A&D) industry. Our A&D industry team monitors the latest developments to help our clients stay in front of issues before they become problems, and seize opportunities in a timely manner.

Introduction

Since late 2019, space- and satellite-based companies and other companies in the aerospace and defense sector have been the focus of interest from special purpose acquisition companies (SPACs). Similarly, SPACs have been looked at by many startup space- and satellite-based companies as attractive vehicles for access to the public equity markets after their original venture capital rounds of funding. SPACs may provide an effective vehicle for going public and accessing the public capital market, as well as providing funds to help bring these space and satellite companies into commercial operation.

We saw the first recent space SPAC transaction in October 2019, when Virgin Galactic merged with Social Capital Hedosophia, a SPAC created by venture firm Social Capital. One year later, in-space transportation company Momentus announced its planned merger with Stable Road Acquisition Corp., a SPAC created by venture fund Stable Road Capital, followed by the announcement of New Providence Acquisition Corp.'s SPAC merger with satellite broadband specialist AST & Science. A number of space-related SPACs have followed, including Astra, Planet, Satellogic, Virgin Orbit, and Terran Orbital – in all, at least 13 space-related SPAC mergers announced through early Q4 2021.[1]

Companies	SPAC	Announced Date*	Deal Date**	Post Closing High Share Price	1/7/2022 Share Price	Estimated Closing Date
Virgin Galactic (NYS: SPCE)	Social Capital Hedosophia	09-Jul-19	25-Oct-19	$59.41	$12.45	Listed
Momentus (NAS: MNTS)	Stable Road Acquisition Corp.	07-Oct-20	12-Aug-21	$12.25	$4.00	Listed
AST SpaceMobile (NAS: ASTS)	New Providence Acquisition Corp.	16-Dec-20	06-Apr-21	$13.53	$7.46	Listed
Astra (NAS: ASTR)	Holicity, Inc.	02-Feb-21	30-Jun-21	$15.47	$6.13	Listed
BlackSky (NYS: BKSY)	Osprey Technology Acquisition Corp.	18-Feb-21	09-Sep-21	$12.80	$3.92	Listed
Rocket Lab (NAS: RKLB)	Vector Acquisition Corporation	01-Mar-21	25-Aug-21	$20.72	$10.86	Listed
Spire (NYS: SPIR)	NavSight Holdings, Inc.	01-Mar-21	16-Aug-21	$18.45	$2.93	Listed
Redwire (NYS: RDW)	Genesis Park Acquisition Corp.	25-Mar-21	02-Sep-21	$13.19	$6.32	Listed
Arqit (NAS: ARQQ)	Centricus Acquisition Corp.	12-May-21	03-Sep-21	$35.60	$18.65	Listed
Planet Labs (NYS: PL)	dMY Technology Group, Inc. IV	07-July-21	07-Dec-21	$11.35	$5.37	Listed
Virgin Orbit (NAS: VORB)	NextGen Acquisition Corp. II	23-Aug-21	28-Dec-21	$9.72	$8.06	Listed
Satellogic	CF Acquisition Corp. V	06-July-21	-	-	-	Q1 2022
Terran Orbital	Tailwind Two Acquisition Corp.	28-Oct-21	-	-	-	Q1 2022

** The date the transaction agreement was announced.* *** The date the closing of the transaction was announced.*

1. Some reports have counted as space-related a number of additional SPAC mergers involving companies ancillary to the space industry, like Archer Aviation, an electric vertical take-off and landing company, and Blade Urban Air Mobility. Other SPACs, like Endurance Acquisition Corp. and CEA Space Partners I Corp., have been formed and reported to be in process of seeking a space-related merger target.

The space sector SPAC activity in 2021 has been tremendous, but has hit rough waters during the end of the year which has impacted SPACs across the board, including in the ability to attract private investment (PIPE) financing and in the SPAC redemption levels (with some redemptions approaching the ninety (90%) percent mark). These trends are discussed in greater detail below in this article.

After a brief description of a typical SPAC transaction and recent trends, we present some special considerations that apply to companies in the space and satellite area seeking to go public through a business combination with a SPAC and offer some suggestions for thought and action.

The SPAC transaction

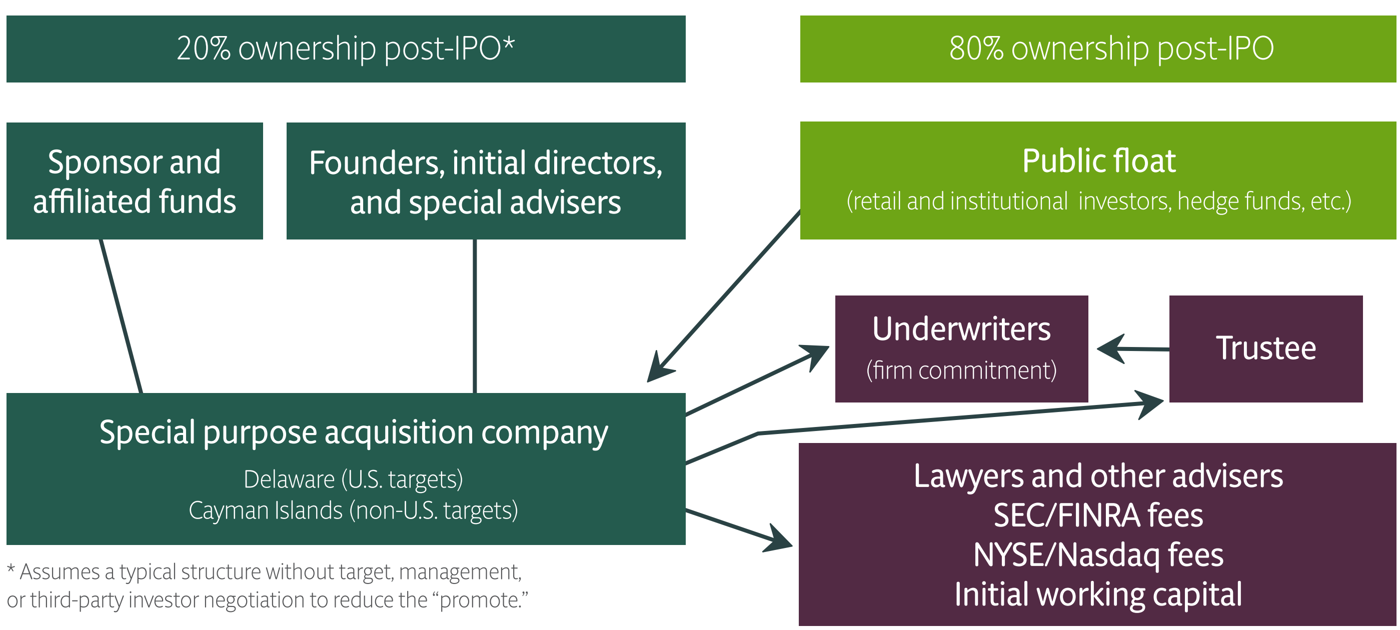
SPACs are entities formed by financial sponsors and/or individual founders to raise funds from the public through a special version of an initial public offering (IPO). In a SPAC IPO, investors buy units (consisting of shares and warrants to acquire shares) in a shell company with no assets or operating history for the purpose of providing the shell company with funds to be used to acquire a business to be identified in the future. The funds raised by the SPAC are held in a trust account for a specified period of time during which the SPAC searches for a target company. The funds must be returned to investors unless the initial acquisition of a target company occurs. In a SPAC, the investors and underwriters rely on the experience and network of the SPAC's founders and sponsors to source and negotiate the acquisition of an attractive and viable company (which will become a public company as a result of the SPAC's acquisition). The SPAC typically has a stated industry or product focus in which the sponsors or founders are experienced. After the target has been identified and a deal has been negotiated, the investors are given the opportunity to approve or reject the acquisition of the target company and are separately afforded the opportunity to have their SPAC shares (but not warrants) redeemed in lieu of remaining invested in the SPAC after the acquisition. For their efforts, and in exchange for a nominal purchase price (usually US$25,000), the sponsors and founders are issued convertible shares amounting to 20% of the SPAC's issued and outstanding share capital. The sponsors and founders also acquire warrants to purchase shares of the SPAC at a purchase price necessary to cover the

underwriting fees and discounts from the IPO (plus an additional amount to cover the SPAC's operating fees and expenses).

Typically, SPACs have three phases:

1. **The IPO phase**, in which the SPAC is incorporated, founders receive their shares and warrants, the registration statement for the IPO is prepared and finalized after receipt of Securities and Exchange Commission (SEC) comments, and the deal is priced and closed. The SPAC now has cash, and the time period to find a target begins.
2. **The search phase**, in which the SPAC (through its founders and sponsors) conducts a search for a suitable target business. Once a target business is identified, preliminary negotiations occur to establish general deal terms, the SPAC completes the commercial and legal due diligence phase, and the parties negotiate and execute an acquisition agreement. Typically, the SPAC will also seek to obtain separate private commitments for additional equity and/or debt financing during the search phase (that will be closed concurrently with the acquisition by the SPAC) to ensure that the SPAC has sufficient capital to complete its targeted acquisition. Given that SPAC investors are afforded the right to have their shares redeemed after a target business has been identified, it is often critical to have these additional sources of financing available. During the search phase, the SPAC (as a public company) needs to file regular periodic reports with the SEC.
3. **The de-SPAC stage** is the final stage in the process and begins when the acquisition agreement is signed and publicly announced. At this point, the SPAC shareholders vote on the transaction and are also given the right to elect to have their shares in the SPAC redeemed. Materials for these matters (e.g., proxy statement, tender offer document, etc.) are filed and cleared with the SEC. If the shareholders approve the transaction, then the transaction proceeds to closing and the target company is now a public company. After the closing, the SPAC files a current report on Form 8-K disclosing all required Form 10 information about the combined company.

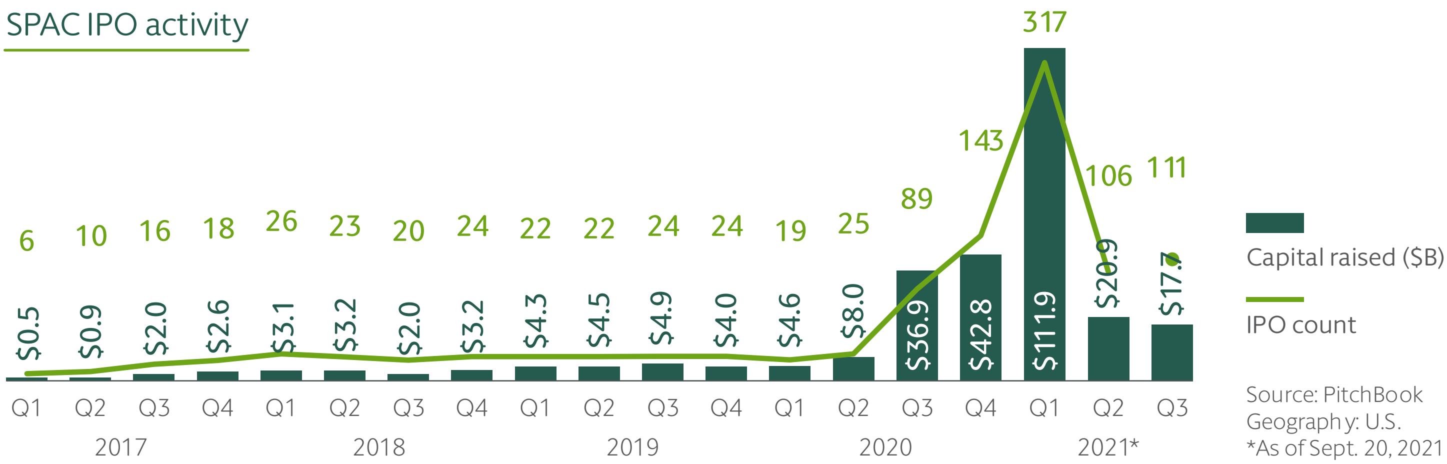
The key players and basic structure of the SPAC pre- and post-IPO can be summarized as follows in the chart below:



* Assumes a typical structure without target, management, or third-party investor negotiation to reduce the "promote."

SPACs in 2020 and 2021

The data and graph below show the high level of SPAC activity in 2020 and 2021.



In 2020, sources have calculated between 248 and 276 SPAC IPOs raised an aggregate of between US$82 and US$92 billion, accounting for 55% of all U.S. IPOs.[2]

SPACs have had distinct highs and lows in activity during 2021. Data from SPAC Analytics for 2021 reported that SPACs made up 63% of all IPOs of US$40 million or more, raising nearly 50% of the proceeds of such IPOs, such proceeds aggregating over US$160 billion.

There was a peak in SPAC transactions in March 2021, when a record 109 SPACs were issued, but after some months of many fewer SPACs a total of 57 began trading in October, according to SPACInsider. The drop in mid-year seems to have resulted from SPAC deals being held up by accounting and other regulatory issues, in particular new accounting guidance on SPAC warrants issued by the SEC in April 2021 that required sponsors to restate financial information, slowing a number of transactions. Similar headwinds arose in late September 2021 with the SEC staff moving away from accounting industry treatment of redeemable share and requiring "temporary" equity treatment on the balance sheet. Nonetheless, the rate of SPAC issuances began to rebound in November, but its future prevalence remains questionable.

In de-SPAC transactions during 2021, SPAC redemptions have been increasing steadily with average redemption rates exceeding 50% in the 3rd quarter of 2021, including a few recent deals with average redemption rates over 90%. The rate of redemptions can also face pressure from the SPAC trading price after the announcement of the de-SPAC transaction. If the SPAC stock trades below the redemption amount at the time the redemption decisions are made, SPACs will see significantly higher redemption requests. Reduced proceeds from high redemption rates often result in either additional funds invested by other parties at closing, or the waiver of the minimum cash condition in the business combination.

Benefits of a SPAC transaction

Someone questioning the need for, or popularity of, SPAC transactions would certainly raise the obvious point that its end result is the target company having become publicly traded and having raised funds for pursuit of its business, although by quite a circuitous route. Target companies can certainly undertake their own public offerings to accomplish these goals without the complexity and dilution that comes with SPAC transactions. Why would investors give their money to sponsors before a target business is identified, taking the risk of some leakage if no suitable business can be found, and then accept the sponsors taking a significant share of the equity in return for having identified and valued the target business? This is not the place to debate these issues as there are other articles on this subject, but it is worth noting that the public shareholders are in effect

2. Sources: PitchBook, SPAC Analytics

buying the expertise of the founders to identify a suitable company to go public and deploy the funds raised by the SPAC. And further they have the option (through the redemption process) to decide not to invest in the target, retain their warrants, and have their funds returned to move on to a new investment opportunity. On the company side, the owners of the target business are taking the company public and raising funds, but they're doing so by being acquired and going through an acquisition process rather than a public offering process. This presumably benefits the owners from a lower risk of transaction completion, once an acquisition agreement is reached (only needing a shareholder vote), than would be encountered in a public offering process that includes retaining underwriters, filing a registration statement, going through an SEC review process, accepting a market (rather than negotiated) valuation, and taking the risks of market movements during the process.

The space companies that have gone public through SPAC transactions have raised substantial funds towards achievement of their business plans. A few of them, including Rocket Lab, Spire, and Astra, have not only funded their core business plans, they have announced plans to branch out into related lines of business, including manufacture of space components, a new focus on the internet-of-things, and a satellite constellation. It has also opened doors to new acquisition possibilities. Although the stock prices for most of the space-related SPACs have not traded up significantly (and in some cases have traded down significantly), the companies themselves have largely moved into a new stage of growth and left behind some of the previous concerns about raising enough funds to complete their business models. In that sense, the early SPACs so far may be said to be successful for the companies involved.

Suitability of target company for a SPAC transaction

Again, there are many articles on the issue of suitability, but at a high level a target company should be a company that is suitable to be publicly traded, and able to handle the costs and risks that come with being a publicly reporting entity. Also, the target company should be able to deploy the large pool of capital that has been raised by the SPAC fairly quickly, for which it is worth accepting the dilution that comes with that pool of capital. From the sponsor's point of view, the target company should be within the original scope or general area for which capital was raised, able to complete a transaction in a reasonable time, and exciting enough so that the public investors feel the sponsor has delivered something they wish to own.

Special issues encountered in SPAC transactions with space- and satellite-based companies

Space- and satellite-based companies do very clearly meet some of the key suitability features for being taken public through a SPAC transaction. Most significantly, they tend to be very capital intensive, and can benefit (and hopefully produce the returns expected) from investment of a large pool of capital over a fairly short time frame. While space companies can be very high risk ventures – one of the major risks is the need to raise large amounts of capital – the SPAC transaction goes a fair way to address that risk. Space companies also are often exciting and have "movie quality" technologies, and as there are currently few such companies publicly traded, space companies offer public investors relatively unusual investment opportunities.

However, space companies can also be heavily regulated. While many regulated companies do well once they are public, the process of taking a heavily regulated company public can take some time and potentially not be as smooth as desired. Next, we identify some of the areas that pose risks which potential target companies can address to increase their attractiveness as a SPAC target and improve the probability of successful deal execution.

Government contracts: Evaluate effects of a change in status

Many pre-commercially operational space companies, often the ones who would benefit most from the large pool of SPAC capital, have a series of government contracts for the development of various technologies. Some of these commercially advantageous government contracting programs do not adapt readily to the company going public on short notice. There may be governance issues, where the company has structured itself to protect classified (or non-classified, but sensitive) technologies, that have to be re-examined and re-vetted with government agencies before the company can go public. Some of the technology contracts and grants are made under small business qualification programs, and while those programs may tolerate significant growth following the award, they may not fit as well when a company is acquired and becomes publicly traded.

Since the SPAC likely does not want to spend months sorting through these issues, and may not have the expertise to appreciate their complexities, the target company may want to take upon itself (before being approached by its SPAC suitor) an evaluation of the issues under its government contracts and grants, and develop a strategy to handle these issues relatively quickly once it seems like a SPAC deal might happen.

Export controls and other regulations: Upgrading programs and managing voluntary disclosures

Satellite and other space industry companies are heavily regulated under U.S. export control laws, including registration and licensing requirements. Acquisitions of space industry companies regularly trigger pre-closing notifications and/or post-closing filing requirements. In addition, the global reach of satellite services and global supply chains, and the frequent presence of non-U.S. investors in U.S. space companies often generate significant compliance risks, Committee on Foreign Investment in the United States (CFIUS) concerns, and even issues under economic sanctions regulations.

Transaction-related due diligence often reveals areas where export compliance programs need to be upgraded, or even instances of non-compliance that may trigger the need for "voluntary disclosures" to regulatory agencies. Well-advised acquirers (including SPACs) will want all of this handled prior to closing, particularly because these regulations may be enforced against successors-in-interest on a strict liability basis and because such enforcement actions may result in significant reputational risks and disruptions to the business. In the case of a public company, it may be required or advisable to disclose the compliance-related risks and any pending voluntary disclosures or enforcement actions in the SEC public filings as well. Although most voluntary disclosures ultimately are resolved with no penalty, the agencies may take months or even years to respond. If the agencies decide to impose penalties or other enforcement actions, it may take some time to work through the settlement agreement process. Plus, if these issues are emerging for the first time just before the SPAC transaction, the risk will seem more substantial than if a voluntary disclosure was made months or years before and no enforcement action has been taken. In many cases, the only way to establish that enforcement action is unlikely is to have a significant period of time elapse without any further agency action or for the parties to engage with the agencies proactively to seek closure (which may increase the risk of enforcement action). In any case, the timing for resolution of such regulatory compliance and enforcement matters may not be consistent with the timetable for the SPAC transaction, forcing the parties to consider escrow arrangements, valuation adjustments, or other measures to address the pending enforcement risk.

To head off potential issues in this area, the target company may want to undertake an internal review prior to engaging with the SPAC suitor. That review likely will lead to an upgrade of the company's compliance program. It is frequently the case that as companies grow, they outgrow their compliance programs. Without a natural reason to revisit the compliance program on a regular basis, it is quite easy to reach a situation where the compliance program is no longer adequate to cover the company's business risks. If a company is only revisiting its compliance program in the context of a transaction every two or three years (or longer), the company should expect to identify potential compliance issues. If more serious issues are discovered, and a voluntary disclosure is advisable, it will be important to consider the appropriate course and allow time for resolution of the matter.

Communications licenses

Often, space and satellite companies require or hold licenses from one or more regulatory bodies such as the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or the National Oceanic and Atmospheric Administration (NOAA). In some cases, regulatory approvals may be required prior to the SPAC transaction. Agency actions are typically public and subject to notice and comment, and such processes may take months to complete. In addition, these processes are subject to scrutiny by the Department of Justice, Department of Defense, and other national security agencies.

For that reason, it may be important to prepare in advance for the regulatory process so that it can be completed during the third phase of the SPAC transaction, when the acquisition agreement has been

announced and the process for obtaining shareholder approval is underway. There may be limited actions that can be taken that actually reduce the time needed for the standard regulatory approval, but heading off other matters that may extend the regulatory approval process could be quite important. A company may therefore want to make sure it is in full regulatory compliance prior to going into a SPAC transaction, and that all potential issues that could result in delays by the agency have been flagged for the agency well in advance and worked through, to the extent possible.

Public disclosure/SEC filings

Most private companies do not give much thought to what their SEC disclosures would look like, and how they would manage "ugly" disclosures. Private companies often encounter significant regulatory risks, delays, and hurdles that are treated as ordinary business occurrences, without a thought as to whether the matter would have to be disclosed and what the company's response would look like in print. By contrast, public companies spend a substantial amount of time worrying about making disclosures and how those disclosures would be assessed by investors.

Therefore, a disclosure review, with the assistance of lawyers or financial advisers, should be placed squarely on the list of good practices to be undertaken prior to the SPAC process. Issues will inevitably be identified, and the company will have time to take actions that can put the required disclosures in the best light. Some of the issues may be financial, and the process of working through disclosures with auditors can use up a lot of time. The company will also need practice in becoming a public company. The normal IPO process barely leaves enough time to put in the relevant plans and processes, and getting ready to be a public company can be even more challenging in the context of a SPAC transaction. Preparation time is quite helpful, and should be created and used well.

Conclusion

SPACs can provide a great opportunity for space and satellite companies to obtain critical access to capital, and there are likely many interested companies. However, SPACs present many of the same issues as going public through an IPO, made more complicated because there is an acquisition transaction before the IPO-equivalent disclosure. Space and satellite companies can take key steps to prepare, both to increase their attractiveness to a SPAC and thereby improve the likelihood of successful deal execution, and to get themselves ready to be successful as public companies.

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