Vinson&Elkins

Alternative Routes to Going Public

Initial Public Offering, De-SPAC or Direct Listing

Fall 2020

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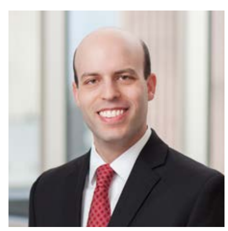

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Introduction

Which route is appropriate for a specific company and its shareholder base differs, based on the specific reasons for seeking to go public and circumstances of the company.

Private companies go public for a variety of reasons, including:

- raising capital
- providing liquidity for existing owners
- establishing publicly traded currency for acquisitions

This document compares three routes to going public:

- an initial public offering ("IPO")
- a merger with a special purpose acquisition company ("SPAC"), sometimes referred to as a "De-SPAC"
- a direct listing of shares on a national securities exchange

IPOs, in essentially their current form, have been the traditional way for a private company to become publicly traded for almost a century.

By contrast, De-SPAC transactions have only recently become widely accepted as a way to access public markets. De-SPAC transactions in the 2000s were commonly viewed as aggressive structures, with manipulative terms. This resulted in complaints about structural misalignment of the public investors and the SPAC sponsors and regulatory action (in particular by the U.S. Securities and Exchange Commission ("SEC")) in response. Following changes to stock exchange rules in 2011, a new SPAC structure evolved and became the standard, alleviating some of the concerns about the structure and the terms. As a result, new investors and sponsors have participated in SPACs, and De-SPAC transactions are now a mainstream alternative to IPOs.

While direct listings have been completed as far back as 2012, very few private companies have taken advantage of this opportunity to list their shares without an underwritten offering. Most, if not all, of the companies that completed direct listings from 2012 until early 2018 were real estate investment trusts ("REITs") that had sold securities registered with the SEC in continuous offerings, but did not list the shares in connection with issuance. Starting with the Spotify Technology direct listing in 2018, direct listings by private companies began receiving attention as an alternative to an IPO. Recently, direct listings have garnered further attention with Palantir Technologies and Asana completing direct listings on the NYSE and NASDAQ, respectively, on September 30, 2020. Direct listings are, in essence, a route providing a liquidity event for existing stockholders. Despite the promise of listing shares to go public without incurring all of the expense and time to complete a traditional IPO, direct listings so far remain relatively rare. This is in part due to the limits on direct listings under the national securities exchange rules and concerns about stock price performance and trading volume. However, with continued interest in direct listings and pending amendments to exchange rules that would permit companies to raise capital in connection with a direct listing (amendments are proposed, in the case of NASDAQ, and adopted but stayed, in the case of the NYSE), direct listings may become more common.

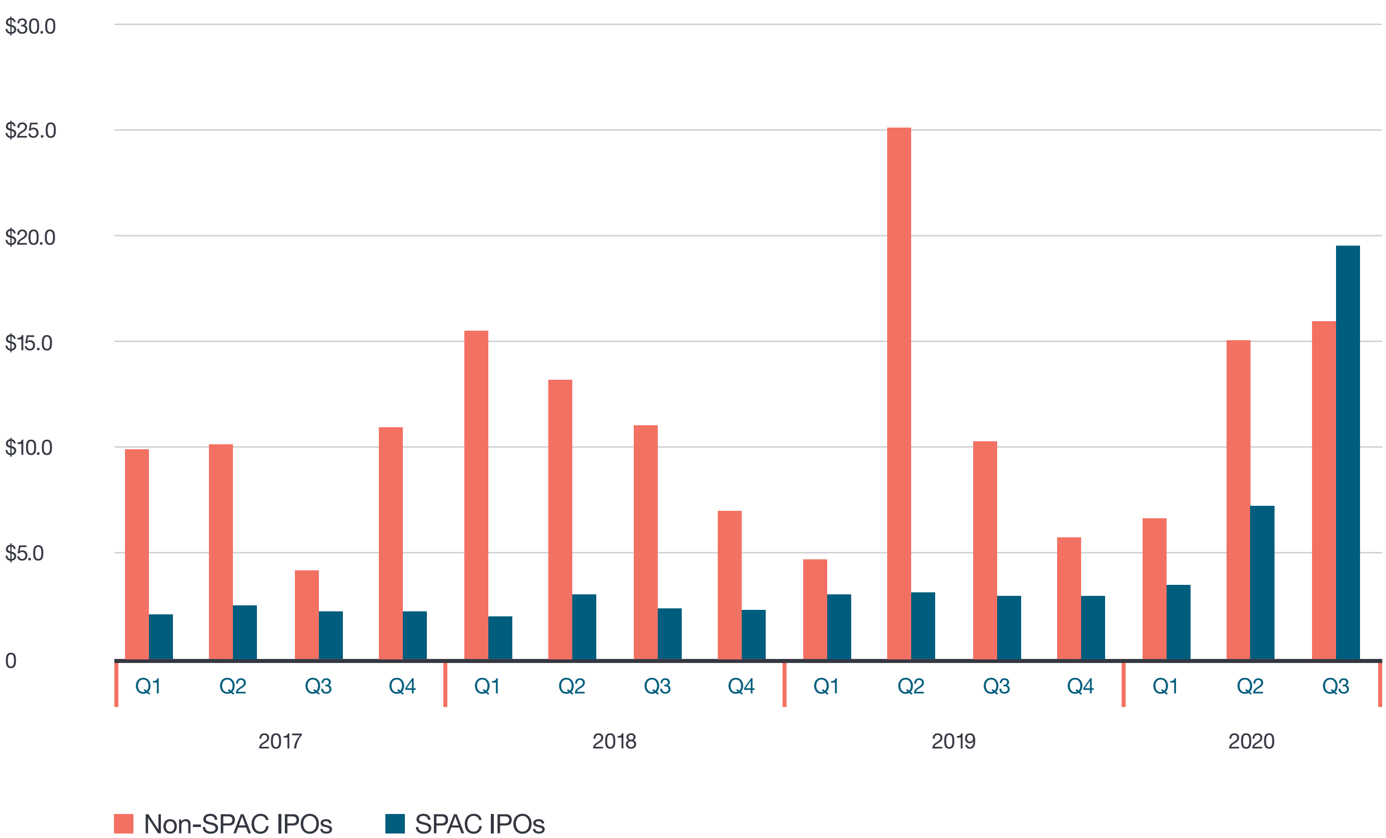
Each route to a publicly traded company presents different considerations, positive and negative, for the company and its shareholders. Which route is appropriate for a specific company and its shareholder base differs, based on the specific reasons for seeking to go public and circumstances of the company. The following is a summary of the process for each route, along with a discussion of the considerations for each. Appendix A to this comparison is a summary table of the considerations.

As a general overview, this document does not purport to describe all considerations that apply to a specific business, and changing market conditions may change the relative attractiveness of these types of transactions.

SPAC and Non-SPAC IPOs

January 1, 2017 — August 31, 2020

IPO Proceeds (Billions)



Process Summary

IPO

In an IPO, a private company and its advisors, including investment banks that will underwrite the offering, prepare a registration statement for the offering of equity by the company and/or selling shareholders. The equity will be offered through the underwriters to public investors. The registration statement is required by SEC rules to contain extensive disclosure describing the company's business, the securities offered, risks of investment, management, governance structure, etc., as well as two or more years of audited financial statements. Such financial statements must be audited by an independent accounting firm in accordance with PCAOB (Public Company Accounting Oversight Board) standards. The registration statement must be filed with the SEC. The company successively revises the registration statement in response to SEC comments until the SEC has no additional comments.

During the SEC comment period, the company will obtain approval for the listing of its stock on a national securities exchange (e.g., the NYSE or NASDAQ). Early in the process, the company will host analysts at the investment banks participating in the IPO on an "analyst day," where the business of the company is discussed with the analysts and the company provides a multi-year financial model of its business to the analysts. Confidential "testing-the-waters" meetings are permitted with accredited investors to gauge interest in the company. Once the SEC has no additional comments on the registration statement, the company undertakes a marketing effort for prospective investors (referred to as the roadshow) lasting one to two weeks.

At the culmination of the roadshow, the SEC declares the registration statement effective and the underwriters and the company "price" the offering (i.e., agree on the price at which the underwriters will purchase the stock from the company and/or selling stockholders, as well as the price at which the underwriters will in turn offer the stock to public investors). Thereafter the stock begins public trading on a national securities exchange, the equity is sold to the underwriters and resold by the underwriters to public investors and the company becomes subject to ongoing SEC reporting and compliance obligations.

De-SPAC

In a De-SPAC, a private company enters into a merger agreement with a SPAC. A SPAC is a company formed for the purpose of seeking a business combination with an operating company. The SPAC raises cash in its IPO, deposits substantially all of its cash in a trust account, lists its securities on a national securities exchange and thereafter attempts to identify a merger target. The merger agreement will specify the consideration to be received by the private company and its stockholders, as well as conditions precedent to closing the De-SPAC transaction.

SPACs often obtain commitments for a private placement of equity ("PIPE"), either to supplement the cash in the SPAC's trust account or to backstop redemptions by the

SPAC's public investors (see below for more information regarding the redemption rights of SPAC shareholders). The PIPE commitments can be entered into concurrently with the merger agreement, or between entering into the merger agreement and closing of the De-SPAC.

Following execution of the merger agreement the SPAC files a proxy statement (or Form S-4/proxy or tender offer documentation, depending on the specifics of the transaction) with the SEC which will ultimately be used to seek approval of the SPAC's shareholders of the merger and to offer redemption rights to the SPAC's public shareholders. The proxy statement includes substantially the same information for the merger parties as would be included in an IPO registration statement for the company going public (including PCAOB audited financial statements), plus information specific to the De-SPAC, such as a background of negotiations between the parties, a description of the shareholder vote required to approve the transaction, a description of the redemption rights of the SPAC's public shareholders, etc. The proxy statement goes through an SEC review and amendment process similar to that of a registration statement in an IPO.

In the period during which the proxy statement is reviewed by the SEC, the SPAC and private company engage in investor outreach and "analyst days" to educate the SPAC's existing investors, potential new investors and research analysts about the business of the private company and the transaction. Research analysts covering the SPAC are permitted to publish research about the private company prior to the closing of the De-SPAC. When the SEC has no further comments, the proxy statement is mailed to the SPAC's shareholders and a vote to approve the De-SPAC occurs as few as ten days thereafter. In connection with the vote, the SPAC's public investors have the right to have their shares redeemed by the SPAC for the investors' pro rata share of the cash held in the trust account (approximately equivalent to what the SPAC's shares sold for in the SPAC's IPO, which is almost universally $10.00 per share). If the SPAC's shareholders approve the De-SPAC, and the other conditions precedent to the closing of the De-SPAC are satisfied (e.g., some De-SPACs contain a condition precedent that a minimum amount of cash remain in the trust account, after shareholder redemptions), then the transaction closes. Following closing of the De-SPAC, the equity continues to trade on a national securities exchange, assuming the resulting company satisfies the conditions for continued listing.

Direct Listing

In a typical direct listing, a private company lists its existing shares on a national securities exchange without an underwritten offering. The company and its advisors prepare a registration statement that includes generally the same information included in a registration statement for an IPO (including PCAOB audited financial statements). The company files the registration statement with the SEC, which goes through a review process. An investment bank is engaged to assist with preparation of the registration statement, communications with current and prospective investors, and in setting the initial reference price, but does not act as an underwriter (i.e., does not purchase the shares from the company or solicit offers).

Prior to the listing, the company typically will provide public company style earnings releases, which may include guidance, and host investor calls and analyst days similar to those hosted by public companies after announcing earnings.

The private company also must prepare a listing application with the national securities exchange where the shares will be listed. The NYSE and NASDAQ each have a variety of corporate governance requirements that must be satisfied in connection with the listing. These are the same requirements that must be satisfied in connection with a typical IPO.

Following the registration statement being declared effective by the SEC, the company lists its shares on a national securities exchange, and existing shareholders are able to sell their shares in open market transactions or in privately negotiated transactions.

Historically, companies engaging in direct listings were not permitted to sell shares on a primary basis (i.e., raising capital for the company) in connection with a direct listing. Under a recently adopted, but currently stayed, NYSE rule, companies would be allowed to sell shares on a primary basis in connection with a direct listing by setting limit orders and selling within the range of prices specified in the registration statement. NASDAQ has proposed a similar rule. Under both exchanges' rules, the company would be required to meet minimum listing standards, but raising primary capital under the new rules (if they become effective) would increase the ability of private companies to meet listing requirements relating to the minimum number of holders of the company's stock.

For more information on SPACs and related capabilities, visit the following webpages:

SPACs
velaw.com/practices/special-purpose-acquisition-companies/

IPOs & Equity Offerings
velaw.com/What-We-Do/IPOs---Equity-Offerings/

Mergers & Acquisitions
velaw.com/What-We-Do/Mergers---Acquisitions/

Private Equity
velaw.com/What-We-Do/Private-Equity/

Proceeds to the Company; Liquidity for Selling Stockholders

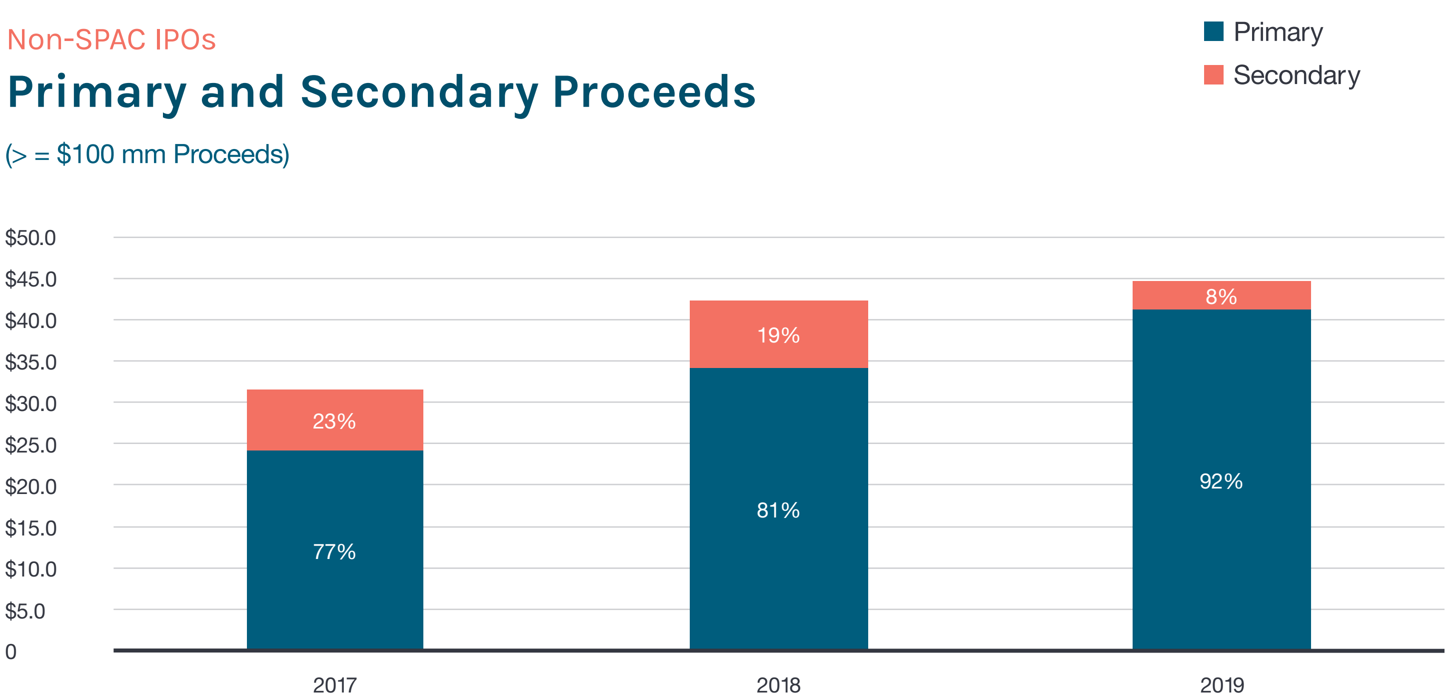
IPO

In an IPO, the aggregate amount of proceeds is a function of the percentage of the company sold and the price negotiated between the underwriters and the issuer (or selling stockholders). Ultimately, the size of the offering is largely driven by the amount of stock the underwriters believe they can allocate to accounts, and a goal to sell less than the total demand (often described as having the IPO "over-subscribed") by several multiples to ensure buy-side interest and orderly trading after the IPO. Underwriters will often suggest a price at a discount to public peers, with a goal of a modest bump in price between the initial price at which the underwriters offer the stock to the public and the price at which the shares trade in the secondary market after the IPO. In practice, the bump may be substantially more than "modest," with complaints that underwriters routinely underprice IPOs for the benefit of their institutional buy-side investor clients. For example, a proponent of direct listings reports that, for the ten years from July 1, 2009 to June 30, 2019, the average first-day return (offer price to first close) on U.S. IPOs was 16%.[1]

Non-SPAC IPOs

Primary and Secondary Proceeds

(> = $100 mm Proceeds)



1 Jay R. Ritter, University of Florida Warrington College of Business, *Why Don't Issuers Get Upset About Leaving Money on the Table in IPOs*? Presentation made at the Direct Listing Conference in San Francisco on October 1, 2019.

An IPO is often undertaken to raise capital for the company (primary proceeds) or to provide liquidity for selling stockholders (secondary proceeds). To the extent the use of proceeds is to provide liquidity for selling stockholders, there may be a marketing impact — sending IPO proceeds to selling stockholders is often less favored than using IPO proceeds to delever the company or finance future operations or expansions. IPO proceeds to the company are often supplemented with new debt, or at least a new revolving credit facility.

From 2017 through 2019, there were 333 IPOs (excluding SPAC IPOs) with offering proceeds greater than $100 million. These IPOs raised an aggregate of approximately $119 billion, with an average of approximately $356 million. Of these IPOs, 143 (or roughly 43%) included a secondary component. Of the 143 with a secondary component, the average secondary offering was approximately 48% of the total offering size. By value, of the approximately $119 billion of IPO proceeds raised, approximately $19 billion (or roughly 16%) was secondary proceeds.

De-SPAC

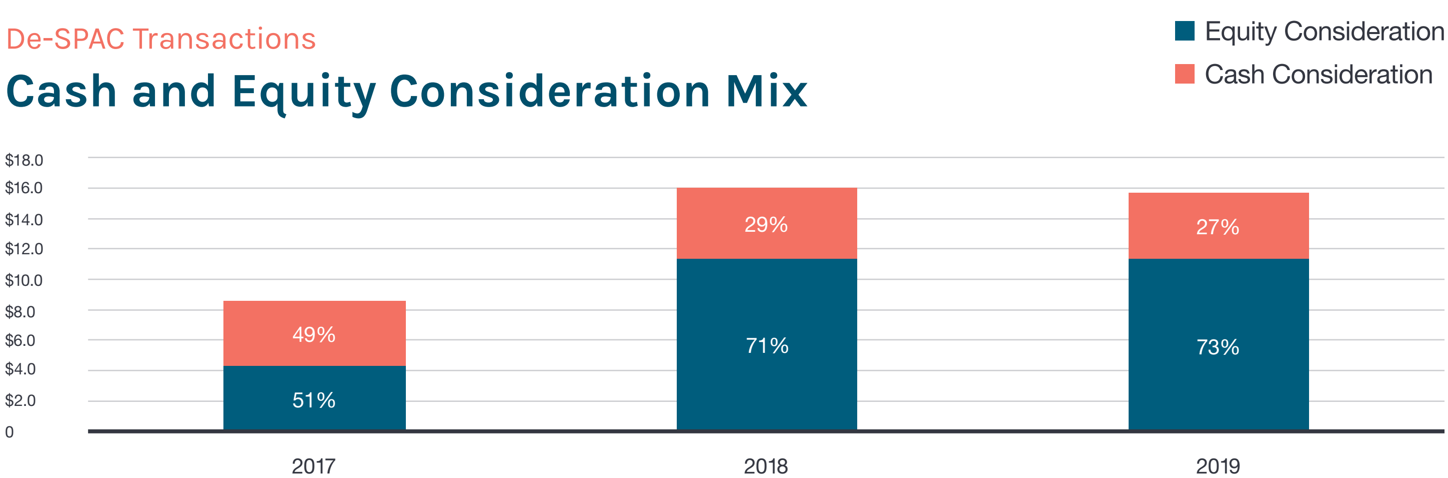
In a De-SPAC, the aggregate amount of cash ultimately raised (and either retained by the resulting company or used to pay cash consideration to selling stockholders) is a function of the number of SPAC investors that exercise their redemption rights, as well as the amount of PIPE proceeds the SPAC raises to supplement its cash in trust or offset redemptions. Proceeds from the SPAC trust account are routinely supplemented with proceeds from a PIPE, and occasionally with new debt. The valuation of the private company is driven by negotiation between the private company and the SPAC, as well as negotiation with PIPE investors.

In a De-SPAC, the use of proceeds is negotiable between the target company and the SPAC. Consideration payable in a De-SPAC to the owners of the private company can consist of equity in the SPAC, cash, or a combination thereof, and excess cash may be retained by the combined company for future use. To the extent the target company needs substantial proceeds to delever or fund operations, there may be little to no proceeds available to selling stockholders. To the extent proceeds to selling stockholders is prioritized (for example, where the target company is owned by a private equity firm), cash proceeds to the selling stockholders can be substantially all of the capital raised. As compared to IPOs, De-SPACs typically have more cash paid to the sellers (the equivalent of secondary proceeds in an IPO) than cash retained by the company (the equivalent of primary proceeds in an IPO).

From 2017 through 2019, there were 47 De-SPAC transactions involving a SPAC that had IPO proceeds greater than $100 million. These transactions resulted in aggregate cash from equity (either from the SPAC's IPO or from PIPEs by the SPAC) to the company and selling stockholders of approximately $17 billion, with an average of approximately $371 million. Of these transactions, 29 (or roughly 78%) included cash proceeds to the selling stockholders. By value, of the approximately $25 billion of De-SPAC proceeds raised (cash from the trust account plus PIPE or debt proceeds), approximately $8.2 billion (or roughly 33%) was paid to selling stockholders. Of the 29 with cash paid to the sellers, the average amount of the cash payment was slightly more than 66% of the total cash proceeds in the De-SPAC.

De-SPAC Transactions

Cash and Equity Consideration Mix



Direct Listing

In the direct listings completed to date, there has been no primary component as stock exchange rules have at least historically prohibited it. The NYSE has recently modified its rules to allow a primary component, but the new rule is currently stayed by the SEC. In historical direct listings, stockholders who decided to sell shares after the listing sold based on market-driven prices, not negotiations with the underwriters or SPAC, bookbuilding of an IPO or marketing of a PIPE. Shareholders of companies that pursue a direct listing have flexibility to sell their shares immediately after the listing or at any time afterwards, which gives them flexibility to sell shares at times and prices that are attractive to them. In an underwritten IPO with a large primary component, selling stockholders often must commit to selling their shares at the IPO and at prices negotiated by the company and the underwriters.

Due to the structure of direct listings, it is impossible to quantify (using publicly available information) an exact amount of proceeds from secondary sales from pre-listing holders and when those sales occurred. For example, trades reported on the NYSE may represent initial sales by existing stockholders, or may represent subsequent resales. However, based on insider trading reports required to be filed by directors, officers and certain 10% shareholders (collectively, "insiders"), it appears that in the 180 days after the direct listing, insiders made open market or private sales of approximately $601 million of stock in Slack Technologies (2019).[2] Based on similar reports, institutional insiders in Slack made in-kind distributions to their owners (e.g., limited partners in venture capital or private equity funds) of a substantial amount of stock — the value distributed during the 180-day period after the direct listing was approximately $2.6 billion (based on the closing sales price of the stock on the dates the distributions were made). In total, approximately 108 million shares of Slack were sold or distributed by insiders, representing approximately 20% of the total shares of Slack outstanding.

Of the two direct listing transactions mentioned, one raised private capital approximately nine months before the direct listing at a more than 50% discount to the reference price published by the NYSE, and an almost 70% discount to the closing price on the first day of exchange trading. In the other, the company had raised private capital roughly at a 2% premium to the reference price and at a roughly 10% discount to the first day closing price, and had issued securities in exchange for retirement of its outstanding indebtedness at a roughly 50% and 55% valuation discount to the reference price and closing price, respectively.

On September 30, 2020, Palantir and Asana completed direct listings on the NYSE and NASDAQ, respectively. At the time of publication, it was unknown how many shares of stock had been sold or distributed by insiders since Palantir's and Asana's direct listings. However, Palantir entered into "lock-up" agreements with its executive officers, directors and certain of its stockholders restricting sales and other transfers of their stock (subject to certain exceptions) until the third trading day after Palantir publishes its 2020 financial results.

2 This data is not available for Spotify because insider trading reports under Section 16 of the Exchange Act are not required for foreign private issuers.

Transaction Pricing for Sellers; Price Discovery from Prospective Investors

In an IPO, a range of the expected initial offering pricing is included in the registration statement toward the end of the SEC review process. The price range is set following a negotiation between the company and the underwriters, based on a number of factors, typically including company information available to the underwriters (including financial information), the company's prospects and history and industry prospects, an assessment of management, general condition of the securities market and comparable company trading prices and demand. The negotiation of the range may take into consideration the views of analysts following the analyst day meetings and feedback from accredited investors following testing-the-waters meetings. Following clearance of SEC comments and inclusion of the range in the prospectus, the offering is marketed through a multi-day roadshow. At the culmination of the roadshow, the underwriters will propose a price and size of offering to the company and any selling stockholders based on demand generated from the roadshow. The company and selling stockholders can negotiate the public offering price with the underwriters, but it rarely is modified meaningfully from what is proposed by the underwriters based on their bookbuilding efforts. The price can be above or below the disclosed range of expected prices, but the company is limited in its ability to price materially outside of the range by SEC rules.

In a De-SPAC, the valuation of the company is agreed between the target company and the SPAC at the time of signing the merger agreement. The valuation is often validated by the pricing for a PIPE by the SPAC to finance the De-SPAC, which can be marketed confidentially prior to the public announcement of the De-SPAC transaction. Subject to compliance with the proxy rules and fair disclosure rules, a limited number of SPAC investors can be approached prior to public announcement to ascertain the investors' support for the transaction. The valuation may be modified between signing and the SPAC shareholder vote on the De-SPAC through an amendment to the purchase agreement and revised proxy filing.

In a direct listing, trading prices will be based on quoted buy and sell orders. Prior to the first day of trading, the exchange will publish a "reference" price, which will be set by the designated market maker (a role required for trading on the NYSE) following discussions between the designated market maker and a financial advisor to the company. The determination of the reference price will take into consideration pre-listing private trades and demand. However, the reference price is merely a suggestion by the designated market maker of what an appropriate price might be, and does not constrain prospective sellers from placing sales orders at higher or lower prices. Accordingly, the trading price can deviate meaningfully from the initial reference price.

Regarding Guidance

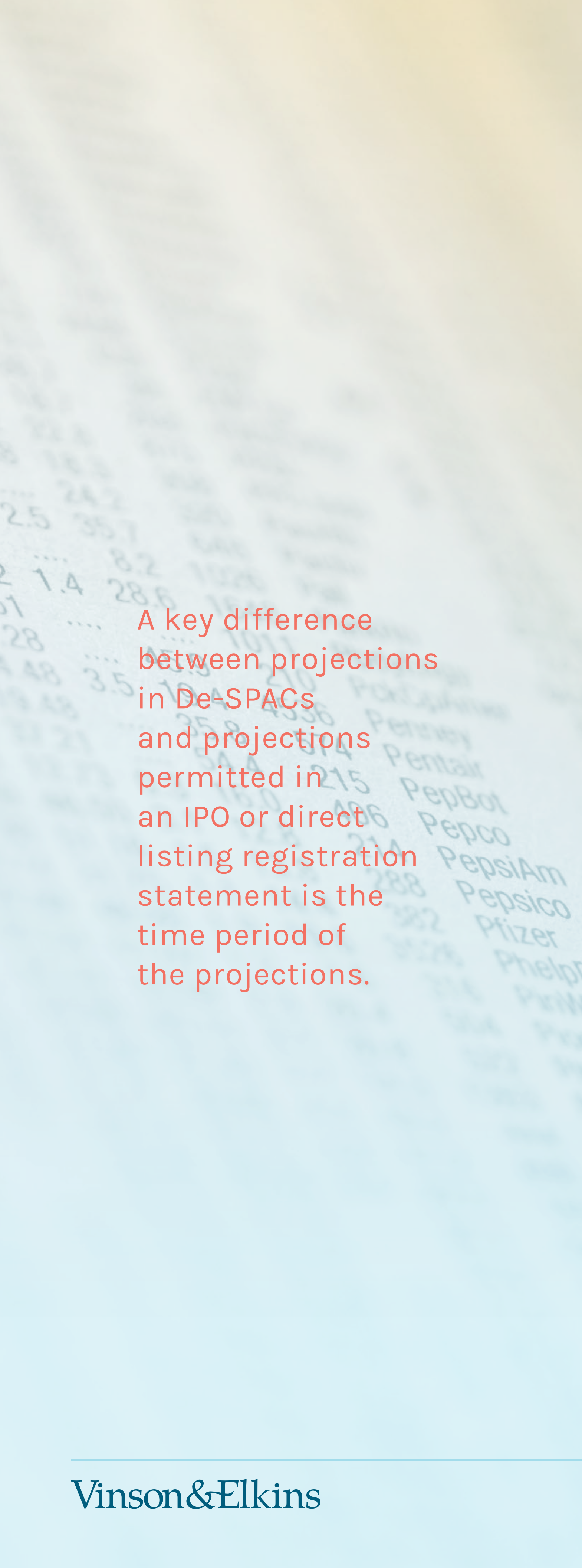
A commonly held misperception is that SEC rules prohibit inclusion of guidance in an IPO registration statement. From this misperception follows the claim that De-SPAC transactions are competitively advantaged to IPOs because the SPAC is able to disclose forward-looking financial projections (i.e., guidance) in the proxy statement for a De-SPAC.

In fact, SEC rules expressly encourage the use of management's projections of future economic performance in IPO registration statements (as well as De-SPAC proxy statements and direct listing registration statements), so long as the projections have a reasonable basis and are presented in an appropriate format. However, financial guidance is rare in IPOs, with the exception of a few industries (e.g., MLPs and YieldCos, where a one- or two-year projection is market practice, and REITs, where anticipated dividend levels are often included). This is largely due to a preference to omit guidance because of the perceived high risk of liability if the projections are not met.

By comparison, in a De-SPAC the proxy statement is required to include the basis upon which the board of the SPAC is recommending the transaction to the SPAC investors. To the extent the board relied on projections, those projections are required to be disclosed. A key difference between projections in De-SPACs and projections permitted in an IPO or direct listing registration statement is the time period of the projections — in a De-SPAC it is not uncommon to have five or more years of projections, with the SPAC focusing the board and investors on transaction multiples many years in the future.

In the direct listings of Palantir, Asana, Spotify and Slack, the companies published guidance (quarterly and/or annual outlooks) in advance of the public listing. Guidance beyond the then-current year generally was not provided, but Palantir did provide revenue growth estimates for one additional year. Longer term projections likely would have been hard to rationalize as an ordinary course communication for purposes of "gun-jumping." If the guidance were included in the direct listing registration statement, the same SEC rules regarding management's projections that apply to IPO registration statements and De-SPAC proxy statements would apply.

Thus, while guidance is more common in connection with De-SPACs and direct listings, it is due to perceived risk of inclusion in IPOs, not due to SEC prohibition. The substantive distinction between the transactions is that De-SPAC transactions customarily contain multi-year projections, similar to other public company mergers.



A key difference between projections in De-SPACs and projections permitted in an IPO or direct listing registration statement is the time period of the projections.

Ability to Offer/ Retain Earn-Outs

De-SPACs routinely feature earn-outs for the selling stockholders in the form of equity issuable upon satisfaction of conditions (such as reaching certain trading prices or achieving certain operational or financial targets), warrants or tax-receivable agreements (a “TRA”). A TRA is an agreement that generally provides that the tax benefits to the public company, significantly from the impact of the Up-C structure, are shared through a cash payment by the company to the pre-IPO/De-SPAC owners when such benefits are realized by the company, or for a payment on a change of control of the company.

In an IPO, earn-outs are rare, likely because as complicated earn-outs would have a potentially deleterious impact on the marketing of the IPO. One exception is the use of TRAs, which are common if an Up-C structure is utilized.

Transaction Certainty and Execution Risk

IPO

In an IPO, the issuer (and selling stockholders, if any) do not have certainty of closing until the execution of the underwriting agreement, which occurs at the end of the process after the roadshow. Pricing will depend on the ability to clear SEC comments on the registration statement and, thereafter, market reception to the company, influenced by industry and broader market trends. It is not uncommon for IPO processes to begin when market conditions are promising, but for the IPO to be delayed or abandoned due to changing market conditions between beginning the process and being ready to launch the roadshow. Occasionally an IPO is abandoned or further delayed after a full roadshow has been conducted because the proposed price was not considered by the company to be acceptable.

De-SPAC

In a De-SPAC, closing certainty is often based on market conditions at the time of the SPAC public shareholders' redemption decision, unless a PIPE commitment is secured, the proceeds of which can be used to offset the proceeds from the SPAC's trust account used to fund any shareholder redemptions. In a De-SPAC, similar to other public company mergers, certainty of closing depends on the satisfaction (or waiver) of the conditions precedent in the merger agreement. These conditions will typically include approval by the SPAC's shareholders (a majority vote). More importantly, the merger agreements may include a condition that a minimum amount of cash remain in the SPAC after shareholder redemptions, such that excess redemptions may cause the De-SPAC transaction to fail a condition precedent.

Direct Listing

In a direct listing, certainty of the listing depends on the ability of the company to obtain a listing on a national securities exchange, and the ability to clear SEC comments on the registration statement. Whether the stock trades at pricing that is viewed as a success depends on market demand for the company, and the condition of the securities market at the time of the direct listing and the months that follow.

Lockup

IPO

In an IPO, it is customary for the company, executive officers, directors and principal shareholders to enter into "lock-up" agreements with the underwriters, agreeing not to sell or otherwise transfer any stock or stock equivalents for a specified period of time usually beginning as of the pricing of the IPO. Such lock-up agreements are designed to allow for an orderly distribution by the underwriters — essentially to provide investors with some assurance that the market for the equity security being offered will find its own price level before having to absorb the additional equity that is the subject of the lock-up agreements. The duration of the restriction is typically 180 days for IPOs and typically all of the equity held by such parties is subject to the lock-up agreement. IPO lock-ups often have certain carve-outs, including sales that are approved by the managing underwriter.

De-SPAC

With respect to a De-SPAC, at the time of the SPAC IPO, the executive officers, directors and SPAC sponsor will enter into a letter agreement with the underwriters which includes, among other things, lock-up provisions, including certain carve-outs thereto. The typical lock-up runs from pricing of the SPAC IPO until one year from the closing of the De-SPAC, subject to early termination if the stock trades above a fixed price (usually $12.00 per share) for 20 out of 30 trading days starting 150 days after closing of the De-SPAC. In addition, equity owners of the private company merging with the SPAC who receive a substantial amount of SPAC equity often enter into lock-up agreements with respect to their equity consideration. Of the 47 De-SPAC transactions referenced above, 33 (or roughly 70%) had lock-ups on equity consideration paid to the sellers. The durations of the lock-ups varied, ranging from six months to three years from closing of the De-SPAC.

Direct Listing

In a direct listing, there is typically no comparable lock-up period. Anyone holding shares, including executive officers, directors and large shareholders, can sell their shares immediately. This is credited as being one of the more compelling reasons for a company to choose a direct listing. In Palantir's recently completed direct listing, the company entered into lock-up agreements with its executive officers, directors and certain stockholders restricting sales and other transfers of their stock (subject to certain exceptions) until the third trading day after Palantir publishes its 2020 financial results. In the recently completed Asana direct listing, no stockholders were subject to lock-up agreement. In some of the REIT direct listings, the REIT listed its shares in multiple tranches to reduce the supply of shares into the market in an effort to have the stock price perform well after the listing. While this approach attempts to match the supply of shares with anticipated market demand, it results in phased liquidity to stockholders.

Creation of Liquid Trading Market

All three transaction types have the potential to result in a liquid trading market for the resulting public company. An IPO, if successful, may be most likely to have substantial resulting demand, due in part to the marketing efforts of the underwriters. The absence of a lock-up in direct listings increases the ability of existing shareholders to sell into the market, and thus might increase the supply of shares as compared to an IPO (where trading volume is successive resales of the same shares sold in the IPO). If the company is not well-known, a direct listing could fail to generate sufficient demand in the stock unless the company is able to successfully educate the market prior to listing. In a De-SPAC, the public float at closing depends primarily on the redemption levels of the SPAC shareholders, and further, sale of additional shares into the market may be delayed due to contractual lock-ups or SEC registration requirements.

Preparing for life as a publicly traded company goes well beyond successful execution of an IPO, De-SPAC or direct listing. To make sure the resulting public company is able to comply with the rules and expectations for publicly traded companies, a company will need to assess and make personnel and process modifications as needed.

Expense

While the expenses involved with each of these three alternatives is not likely to be determinative of the route chosen, the differences are worth pointing out. The following focuses on costs directly associated with the execution of each of the three alternatives. Note that preparing for life as a publicly traded company goes well beyond successful execution of an IPO, De-SPAC or direct listing. To make sure the resulting public company is able to comply with the rules and expectations for publicly traded companies, a company will need to assess and make personnel and process modifications as needed to such things as governance and leadership, internal controls, accounting and financial reporting, tax, legal, human resources, media and investor relations, and treasury and financial risk management.

IPO

The underwriting discount makes up the largest component of expenses of an IPO. The "standard" underwriting discount is 6% to 7% of the gross proceeds raised in the offering; however, smaller discounts on larger IPOs and IPOs of well-known companies are not uncommon. Selling shareholders are generally responsible for paying the underwriting discount on their portion of shares sold. After the underwriting discount, legal counsel and accounting fees is the next most significant expense and varies with the complexity of preparing for the IPO. Generally, the underwriters are responsible for almost all the costs of their legal counsel, but companies typically reimburse the underwriters for other out-of-pocket fees and expenses. The company going public must also pay costs of the financial printer to prepare and process the registration statement and print hard copies of the prospectus. There are also a host of other lesser costs, such as the SEC filing fee, NYSE or NASDAQ listing fee, FINRA filing fee and transfer agent fee.

De-SPAC

In a De-SPAC, the primary expense is financial advisory fees and placement agency fees for a PIPE and other advisor fees (legal, accounting, etc.). Due to the complexity of the transaction, the legal and advisory fees of the SPAC can equal or exceed those of an IPO. In addition, the private company and its equityholders will have legal and advisory fees, which are often paid by the surviving company. Finally, the underwriters from the SPAC's IPO are typically entitled to deferred underwriting compensation from the IPO in an amount equal to 3.5% of the amount of proceeds raised in the IPO. While 3.5% compares favorably to the typical underwriting discount in an IPO, the amount in a De-SPAC is calculated without regard to redemptions by the SPAC shareholders — the higher the redemptions, the higher the percentage if calculated based on the amount of IPO proceeds actually available for use to finance the De-SPAC.

Where aggregate fees payable by a SPAC are perceived to be too large, occasionally they may be paid by third parties (such as the SPAC's sponsor) or advisors may agree to be paid in SPAC equity rather than cash.

In addition to cash expenses, where target company shareholders receive substantial equity consideration, the typical SPAC capital structure (which involves founder shares to the SPAC's sponsor and substantial warrants held by the SPAC's public shareholders and sponsor) may be viewed as expensive in terms of dilution.

Direct Listing

Direct listing expenses are similar to IPO expenses, including fees to investment banks, legal expenses, accounting fees, financial printer fees, SEC filing fees, exchange listing fees and transfer agent fees. Notably, the financial advisory payments to investment banks acting as financial advisors are substantially less than underwriter fees in an IPO. The financial printer costs should also be substantially less than in an IPO, and there would be no FINRA filing fee. Typically, the fees and expenses paid in connection with a direct listing are substantially less than in an IPO.

Other

Timeline

The time required to achieve a closing of any of the three transaction types can vary widely, due in large part to the SEC process, time needed to prepare required financial statements, negotiation between the parties, etc. Commentators often state that a De-SPAC can be accomplished faster than an IPO — while this is generally true, the differences between the minimum time necessary to get to closing are not meaningfully different. The practical difference is that companies preparing for an IPO or direct listing often begin preparing for the needed financial statements, internal and financial controls and any necessary staffing changes earlier than companies that pursue De-SPACs.

Management

Preparation for and operation as a public company, either through an IPO or direct listing, may require a company to replace or expand members of its management team or board. In a De-SPAC, resulting company management is sometimes comprised of officers of the private company and sometimes comprised of officers of the SPAC. Among SPACs, there are many with a management team with deep experience in the target industry of the SPAC, providing potential candidates for post De-SPAC directors or officers.

Conclusion

Companies seeking to go public have a choice of possible routes facing different considerations for the company and its shareholders. IPOs and De-SPACs are now well-established and accepted options. If the pending changes to stock exchange rules to permit capital raising in connection with direct listings are approved, companies may find direct listings to be more appealing than in the past. The considerations of one route or another may be more compelling to a specific company or its shareholders, and each will present tradeoffs as compared to the other options. Because of these tradeoffs, companies should explore all alternatives when considering the best way to go public. As demonstrated by the meteoric rise of De-SPACs over the last few years, and particularly the last several months, companies as well as investors appear to be increasingly open to and interested in alternatives to the traditional IPO.

Appendix A:

Summary of Considerations

	Traditional IPO	De-SPAC	Direct Listing
Proceeds to the Company	Varies based on market	Varies. In some industries, greater than IPO in current market	None, under current stock exchange rules
Liquidity for Selling Shareholders	Varies based on market — currently low	Substantially greater than IPO in recent transactions	Depends on extent of buy-side interest
Transaction Pricing for Sellers	Depends on negotiation with underwriters at time of pricing (end of transaction), subjecting transaction to market volatility	Determined by negotiation between SPAC and sellers — at time of signing M&A transaction. May be revised via renegotiation through closing	Determined by trading prices post-listing. Valuation is dependent on large and diverse pre-listing shareholder base and sufficient buy-side and sell-side interest
Price Discovery from Prospective Investors	Confidential testing-the-waters meetings with accredited investors permitted, but generally does not provide meaningful price feedback. Underwriters provide range of potential pricing based on interest following road-show (immediately pre-pricing)	Confidential marketing of a PIPE pre-announcement, along with limited discussions with existing SPAC investors, provide opportunity for price discovery before signing M&A transaction. Post-announcement roadshow and investor meetings intended to generate interest from long term/ fundamental investors	Initial "reference" pricing on the exchange based on private transactions prior to listing and discussions between financial advisors and the stock exchange to determine the opening trading price. A formal roadshow is not permitted
Ability to Offer/Retain Earn-Outs	Rare	Earn outs/warrants are fairly common considerations for sellers	Not included to date
Transaction Certainty and Execution Risk	Ability to consummate IPO depends on market conditions at time of pricing	Subject to market risk and potential third-party conditions precedent Closing likely as long as stock trades above $10/share after deal is announced	Listing is within control of registrant. However, success depends on suitability of registrant, a diverse shareholder base and sufficient sell-side and buy-side interest

	Traditional IPO	De-SPAC	Direct Listing
Creation of Liquid Trading Market	Results in an exchange-traded security and should result in a trading market for retained equity. Underwriters prefer a sufficient overallocation and pricing discount to promote buy-side interest post-IPO	Similar to an IPO	Similar to an IPO, but with potential for more selling shareholders. Liquid market reliant on market demand, which can be dependent on educating the market
Lockup	Typical 180-day lockup for issuer, directors and officers and major shareholders	Lockup for sellers' roll-over equity negotiable. SPAC sponsor, directors and officers will have a minimum six-month lockup with the IPO underwriters	No lockup
Expense	Expensive process due to underwriting discount and professional fees	Can be more expensive in total	No underwriting discount, but financial advisor and professional fees can be substantial
Timeline	Minimum 5 months	Minimum 3.5 months (from LOI)	Minimum 3.5-4 months

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