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From Darkness to Light: A Comparative Study of Special Purpose Acquisition Companies in the European Union, the UK, and the US

Daniele D'ALVIA*

"There is no force more powerful than an idea whose time has come"
Victor Hugo

Abstract
This article analyses the financial regulation of Special Purpose Acquisition Companies ('SPACs') in the European Union and SPAC reform in the UK against the main legal system where the SPAC originates: the US. I argue that the US and financial regulators in Europe have opposing views on SPACs, evidenced by the adoption of two different regulatory approaches. As opposed to a SPAC regulation by business or function and by enforcement in the US, the European Union and the UK are implementing a SPAC regulation by objectives, where general principles of company and financial law inform the SPAC legal discipline. This enormously enriches the SPAC current debate, and sheds new light on the subject.

Keywords: Acquisition Models, Financial Conduct Authority ('FCA'), Financial Regulation, IPO, Self-Regulation, Securities and Exchange Commission ('SEC'), Special Purpose Acquisition Company ('SPAC')

* Dr. Avv. Daniele D'Alvia, is a Lecturer in Banking and Finance Law at CCLS – Queen Mary University of London, an Associate Research Fellow in Regulation of Financial Markets at IALS in London, and Research Associate at the European Banking Institute in Frankfurt.

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I. INTRODUCTION

The Special Purpose Acquisition Company ('SPAC') has emerged as a novel mainstream financial product of Wall Street. By the end of 2020, more than 240 SPACs listed in the US (on NASDAQ or the NYSE), raised a record $83 billion.[1] SPACs overtook 2020's record in 2021 with over $115.6 billion raised via more than 400 SPACs,[2] but in the first quarter of 2022, the SPACs market saw 54 SPACs raise $9.9 billion in proceeds[3] (90% less than a year earlier, but still 82% by proceeds raised from the initial public offering ('IPO') market in the US).[4]

The SPAC's mechanism is simple: to make a private company public, mainly by virtue of a reverse merger or reverse takeover. Common wisdom tends to associate SPACs with reverse merger practices, and gives them the undeserved label of 'back-door listings':[5] a simple alternative route to the traditional IPO that is discredited by economists in several papers due to higher costs, a higher probability of share price manipulation, and value destruction.[6] On the other hand, SPACs are seen by some to be in competition with the traditional IPO,[7] while others consider that their possible economic role as 'non-bank certification intermediaries' fills a gap in the going-public market left by traditional investment banks, which prefer to underwrite

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[1] 'SPAC IPOs Ride the Recovery' (*White&Case Annual Review*, 2020), https://www.whitecase.com/insight-our-thinking/spac-ipos-ride-recovery.

[2] D D'Alvia et al, 'The UK SPAC Reform: Preliminary Remarks' (Oxford Business Law Blog, 6 September 2021), https://www.law.ox.ac.uk/business-law-blog/blog/2021/09/uk-spac-reform-preliminary-remarks.

[3] J Adelman, 'The SEC Has Signalled More Oversight of SPACs. Big Banks Are Getting the Message' (*Barron's*, 20 April 2022), https://www.barrons.com/articles/the-sec-has-signaled-more-oversight-of-spacs-big-banks-are-getting-the-message-51650477914.

[4] A Laszlo, 'Equity Capital Markets – Teach, Media & Telecom: Q1 2022 Review' (*Mizuho Group*, 8 April 2022), https://www.mizuhogroup.com/americas/insights/2022/04/equity-capital-markets—tech-media–telecom-q1-2022-review.html.

[5] I Naumovska, 'The SPAC Bubble Is About to Burst' (*Harvard Business Review*, 18 February 2021), https://hbr.org/2021/02/the-spac-bubble-is-about-to-burst; W Lee, 'The Listing Performance of Merger of SPAC and Small and Medium Sized Enterprises' (2017) 46(3) *Korean Journal of Financial Studies* 591; J Kolb and T Tykvova, 'Going Public Via Special Purpose Acquisition Companies: Frogs Do Not Turn into Princes' (2016) 40 *Journal of Corporate Finance* 80; P Brown et al, 'Choice between Alternative Routes to Go Public: Backdoor Listing Versus IPO' in M Levis and S Vismara (eds) *Handbook of Research on IPOs* (Edward Elgar 2013); C Carpentier and G Suret, 'The Canadian Public Venture Market' (2010) 19(7–8) *Strategic Change* 303.

[6] C Lee et al, 'Going Public in China: Reverse Mergers Versus IPOs' (2019) 58 *Journal of Corporate Finance* 92; IV Floros and TR Sapp, 'Shell Games: On the Value of Shell Companies' (2011) 17 *Journal of Corporate Finance* 850; M Aydogdu et al, 'Shell Companies as IPO Alternatives: An Analysis of Trading Activity Around Reverse Mergers' (2007) 17(16) *Applied Financial Economics* 1335; KC Gleason, L Rosenthal, and RA Wiggins 'Backing into Being Public: An Exploratory Analysis of Reverse Takeovers' (2005) 12 *Journal of Corporate Finance* 54.

[7] J Geiss, 'The IPO alternative: Special Purpose Acquisition Companies Are Gaining Traction in Private Equity' (2021) 1 *Journal of Corporation Law* 235.

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established operating companies via the traditional IPO.[8] Another recent paper takes a 'sober look' at SPACs'[9] 'dilutive effects' at the business combination phase, especially on retail investors.[10]

This article, rather than deeply examining economic concerns that SPACs might give rise to, would like to fill an important gap in legal studies related to comparative law where the literature in the European Union and worldwide is still scant.[11] To this end, it offers the most comprehensive overview of the current international financial regulation of SPACs in the EU and in the UK against the main legal system where the SPAC originates: the US.

The need for a comparative study is justified by a growing interest in the financial regulation of SPACs in terms of listing requirements that has been adopted by New York exchanges, and market practices that have become an international standard or model to be 'copied' or imitated in terms of international financial regulation.[12] Indeed, since 2020 many jurisdictions in the world have implemented or have started to discuss adopting specific SPAC listing requirements with some US features as well as distinguishing elements reflecting the interests of the different investment communities of each country. For example, new reforms have been implemented in Asia with the new listing requirements adopted by Hong Kong and Singapore; the Malaysian guidelines on SPACs issued in 2009 were updated in 2021; and new SPAC reforms have been implemented in the United Arab

[8] J Bai et al, 'Segmented Going-Public Markets and the Demand for SPACs' (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3746490.

[9] M Klausner, M Ohlrogge, and E Ruan, 'A Sober Look at SPACs' (2022) 39(1) *Yale Journal on Regulation* 230.

[10] B Reddy, 'Warning the UK on Special Purpose Acquisition Companies (SPACs): Great on Wall Street but a Nightmare on Main Street' (2022) *Journal of Corporate Law Studies*, https://www.tandfonline.com/doi/full/10.1080/14735970.2022.2036413?scroll=top&needAccess=true

[11] I first developed legal studies on SPACs from a comparative perspective by examining the US, Malaysian, and Italian legal systems (see D D'Alvia, 'SPAC: A Comparative Study under US, Asia and the Italian Corporate Framework. Soft Law vs. Hard Law (2014) Working Paper, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2476867). I extended those remarks with specific reference to the Italian legal system and first preliminary remarks on the European Union Law (see D D'Alvia, 'SPACs: Limiti e Prospettive tra Hard Law e Soft Law' (2017) 12(4) *Rivista del Diritto Societario* 1167). Subsequently, I provided a comparative vision to include Korea, Canada, and the UK before its SPAC reform (see D D'Alvia, 'The International Financial Regulation of SPACs between Legal Standardised Regulation and Standardisation of Market Practices' (2020) 21(2) *Journal of Banking Regulation* 107). Lastly, I wrote the first book on SPACs from a comparative perspective (D D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, 1st ed (Routledge 2022). To my knowledge a very recent study that examines the new SPAC reforms in Singapore and Hong Kong in Asia in comparative perspective is by Professor Umakanth Varottil (see U Varottil, 'Special Purpose Acquisition Companies (SPACs): A Discordant Tale of Two Asian Financial Centres' (2022) *European Corporate Governance Institute Law Series 648/2022* 1). However, no comprehensive study has ever taken into account two continents such as the US and Europe with specific regard to the emerging regulatory perspective occurring in 2022.

[12] D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 110.

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Emirates and Egypt between 2021 and 2022. India and Indonesia are still discussing the possibility of designing a SPAC legal regime in their jurisdictions. The same is occurring in Europe, with Belgium and Spain taking the first regulatory steps, and particularly in the UK, which has developed a unique harmonised SPAC framework in Europe (Part IV). This article will examine the European Union as a case study for SPACs due to its vast level of diversification of financial and corporate law frameworks at Member States' level.

The aim of this comparison is to shed new light on the subject by outlining how market practices and what I define as regulation by objectives will dominate the SPAC debate (Parts III and V) as opposed to a regulation by enforcement and by business or function that since April 2022 has caused the US Securities and Exchange Commission ('SEC') to reform SPACs. If this proposal is eventually approved, some of the established features of SPACs in the US are destined to change drastically and permanently (Part II, Section G). By contrast, flexible company law frameworks and/or innovative market practices, rather than lenient financial regulation, are the competitive features of a legal system that favours and attracts SPACs (Parts III and V).

In terms of comparative law methodology, I will achieve the stated objectives of comparison by examining the US (Part II) and the European Union (Part III), and I will perform a specific analysis of the UK's recent SPAC reform in Europe, adopted in 2021 (Part IV). I will do so by measuring the soundness and the quality of each SPAC legal regime by taking into account three main legal indicators based on three crucial features of SPACs under company and financial law: SPAC listing requirements in terms of financial regulation; shareholders' voting, especially in terms of redemption rights; and the SPAC's capital structure with a specific focus on founders' remuneration. The indicators are calibrated on the basis of the main legal formant of SPACs that also constitutes the main benchmark of this analysis, namely the US legal framework, in terms both of listing requirements and of market practices (Part II).

I will examine the three main European Union capital markets belonging to the Euronext Group: the Amsterdam, Milan, and Brussels stock exchanges; the analysis will also involve two capital markets outside the Euronext Group, namely the Frankfurt and Madrid stock exchanges. The selection of those capital markets is based on two main considerations: the fact that some of those exchanges have specific listing standards for SPACs, or are progressing towards an implementation of listing requirements, and the number of SPAC listings.

For this reason, this article provides important policy guidelines for Europe, and for the soundness and competitiveness of its financial markets within a Capital Markets Union. US SPACs will look at more targets in European Member States or in the UK to try to circumvent the new burdensome features that will likely apply to future business combination in the US, but also more significantly, US sponsors will further investigate the possibility of listing in Europe. Consolidating remarks are provided in Part V by taking into account the future prospect of SPAC offerings in Europe as well as worldwide.

II. SPAC: THE US LIMITS AND PROSPECTIVES

A. The SPAC Definition

Special Purpose Acquisition Companies are cash-shell companies[13] set up, as their name indicates, for a special purpose: to conduct an acquisition.[14] The capital is raised via an initial public offering of unit securities composed of common shares and warrants. The gross proceeds net of any upfront underwriting fees, operating expenses, and working capital are put into an independent trust or escrow account until the acquisition takes place. The acquisition phase where the capital is drawn down is defined in the specific SPAC jargon as 'de-SPAC' or 'de-SPACing', which will end with the liquidation of the vehicle.[15]

The acquisition and the subsequent release of funds for the acquisition generally takes place between 24 and 36 months from the listing of the SPAC. This period can vary depending on the practices of the exchange and jurisdiction in which the SPAC is listed. In case of failure of the acquisition, the SPAC will be wound up and the funds returned to investors.

B. The SPAC: A Risk-Free Investment Until the Business Combination

SPACs are presented as risk-free opportunities to their initial investors. In fact, investors are guaranteed full redemption of funds from the trust or escrow account until the acquisition materialises.[16]

By means of their structure, SPACs, in the US, issue units: a composite security of common shares and warrants structured so that an investor eliminates any monetary risk. Indeed, the SPAC offers a unique investment structure that allows public shareholders to invest alongside the sponsor team, but with downside protection. For example, a shareholder that prefers to exit prior to the initial business combination can sell their units in the market or choose to have their shares redeemed for a pro rata portion of cash from the IPO that is being held on trust.

With absolutely no downside risk, as all the funds from the IPO are deposited in an escrow account or in a trust, investors have nothing to lose. But the upside may be high. In fact, the acquisition must be approved by a certain percentage of shareholders, whose money may otherwise be returned at the expense of the SPAC's sponsors.[17]

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[13] W Sjostrom, 'The Truth about Reverse Mergers' (2008) 2 *Entrepreneurial Business Law Journal* 743, p 744. The author clearly defines the features of a cash-shell company.

[14] Y Shachmurove and M. Vulanovic, 'Specified Purpose Acquisition Company IPOs' in D Cumming and S Johan (eds) *Oxford Handbook of IPOs* (Oxford University Press 2017), p 320; D K Heyman, 'From Blank Check to SPAC: the Regulator's Response to the Market, and the Market's Response to the Regulation' (2007) 2(1) *Entrepreneurial Business Law Journal* 531, pp 546–49.

[15] D'Alvia, 'The International Financial Regulation of SPACs', note 11 above, pp 107–08.

[16] See Klausner, Ohlrogge, and Ruan, note 9 above, p 230; D D'Alvia, and M Vulanovic, 'The Promise and Limits of a SPAC Revolution' (*Bloomberg Law - Professional Perspective*, September 2020), p 1.

[17] M Lakicevic et al, 'Institutional changes of Specified Purpose Acquisition Companies' (2014) 28 (C) *The North American Journal of Economics and Finance* 149, p 152.

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To avoid losing an acquisition approval vote, SPAC sponsors need to pay careful attention to planning and executing the solicitation of shareholder support. This proxy solicitation can be costly on the sponsor side, but it might also be difficult in respect of the identification of investors. Indeed, the identities of most retail shareholders are hidden as 'beneficial owners' behind broker intermediaries.[18] Furthermore, if the management cannot find a profitable business combination within the settled timeframe, then the SPAC must be liquidated, and investor funds returned. For example, in 2022 Burgundy Technology Acquisition Corp.—a SPAC listed in 2020—was dissolved because the SPAC could not consummate an initial business combination within the time period required by its amended articles of association,[19] or in 2021 the Chinese SPAC Yunhong International, listed on NASDAQ, disclosed in an 8-K filing its inability to complete an initial business combination within the time period. A shareholders' meeting was held to obtain an extension of the life of the SPAC. At the meeting 15% of the shares were redeemed and the CEO Patrick Orlando[20] decided not to make any additional contribution to the trust, as it had already had three deadline extensions.[21]

As can be seen, the uncertainty about closing a business combination, even after the extension of the SPAC's duration, is undeniable. Furthermore, even if an extension is granted, then there is a higher degree of chance that the SPAC sponsor might engage in opportunistic behaviours (ie moral hazard) just to close the business combination and avoid monetary losses on the sponsor side.[22]

C. The SPAC Promote (Founder Shares)

The SPAC's capital is raised via an IPO of unit securities composed of common shares and warrants. In the US, sponsors buy founder shares and founder warrants. Founder warrants serve the purpose of financing an upfront underwriting discount and post-IPO working capital, making certain that 100% of the IPO proceeds would be kept on trust.[23] If the SPAC does not complete a business combination within the settled timeframe, then the sponsor will lose this amount. Founder warrants are the 'skin in the game' of the sponsor, something that is not only limited

[18] Many companies can only communicate with them through intermediaries. Any retail investor who does wish to allow a company to contact them directly must consent to being a non-objecting beneficial owner. Even in such circumstances it might still be difficult for a SPAC to contact shareholders due to the high turnover of SPAC shares.

[19] SEC, Form 8-K Burgundy Technology Acquisition Corp., https://sec.report/Document/0001104659-22-012004.

[20] Readers might recall Patrick Orlando as the CEO of Digital World Acquisition Corp. (DWAC), which announced in 2021 a definitive merger agreement with Trump Media & Technology Corp.

[21] SEC, Form 8-K Yunhong International, https://sec.report/Document/0001104659-21-142009.

[22] L M Hale, 'SPAC: A Financing Tool with Something for Everyone' (2007) 18(2) *The Journal of Corporate Accounting & Finance* 67.

[23] See D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above.

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at the time of the IPO, but can also consist of a further injection of liquidity at the de-SPAC phase, as explained below. On the other hand, SPAC sponsors typically grant equity in the SPAC (founder shares) equal either to 25% of the capital raised at a symbolic nominal value (usually $25,000 in the US) or 20% of the fully diluted SPAC shares (ie shareholders of the target company paying the sponsor's fee in shares, which is known as the promote).[24]

Summing up, SPAC sponsors receive a promote that is usually defined as the sponsor compensation, or sometimes in a critical way as the SPAC bonanza.[25] For example Michael Klein had more than $60 million from a $25,000 investment in his founders shares in June 2020 (the merger between Churchill Capital Corp. IV and Clarivate Analytics PLC).[26] This means that the initial investment of $25,000 converts into a slice of the equity of the newly merged entity when the SPAC finalises a business combination.

The main justification for the promote has so far been its construction as compensation for the management's efforts in finding the target company and executing the merger, as well as providing the target company with 'extra financial value'.[27] On the other hand, the dilutive impact of these shares has contributed, in part, to the historical view that de-SPAC transactions can be more expensive from the seller's perspective than a traditional IPO.[28] Indeed, the SPAC typically pays investment banks a fee of 5.5% of the funds it raises (namely, less than the standard 7% fee of a traditional IPO), but such fees are eventually passed to the target company once it becomes public. The target—additionally—assigns to the SPAC sponsor 20% of its shareholding (ie the promote or founder shares, previously illustrated).[29] Finally, public investors in the SPAC hold warrants, namely call option rights that can be exercised 30 days after completion of the business combination. This means that public investors, by exercising their warrants at the strike price conventionally set at $11.50,[30] are potentially entitled to buy more shares of the target company at discount upon the occurrence of certain conditions (see Part II, Section F). These are some of the reasons[31] by

[24] D Cumming et al, 'The Fast Track IPO – Success Factors for Taking Firms Public with SPACs' (2014) 47 *Journal of Banking and Finance* 198, p 200.

[25] O Aliaj et al, 'The SPAC Sponsor Bonanza' (*Financial Times*, 13 November 2020).

[26] Ibid.

[27] D H Hsu, 'What Do Entrepreneurs Pay for Venture Capital Affiliation?' (2004) 59 *Journal of Finance* 1805. For example, because SPACs tend to target high growth companies, the management skills of the SPAC sponsor might benefit the target company.

[28] See Reddy, note 10 above; B Reddy, 'The SPACtacular Rise of the Special Purpose Acquisition Company: A Retail Investor's Worst Nightmare' (2021) 32 *Legal Studies Research Paper Series – University of Cambridge*, p 6; M Gahng et al, 'SPACs' (15 July 2022) Working Paper, p 6, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3775847; for an opposite view see C Boyer and G Baigent, 'SPACs as Alternative Investments: An Examination of Performance and Factors that Drive Prices' (2008) 11(3) *The Journal of Private Equity* 8, pp 9–10.

[29] M Levine, 'Money Stuff: Bill Ackman Wants a Mature Unicorn' (*Newsletter Bloomberg*, 23 June 2020).

[30] See Part II, Section F of this article.

[31] For a deeper analysis see note 28 above.

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which it has been argued that, from a seller perspective, SPACs are not cheaper than a traditional IPO,[32] although others have highlighted the beneficial effect of SPACs in providing better pricing certainty (see Part II, Section F) and avoiding the 'IPO pop'.[33]

Clearly, economic views on SPACs tend to be extreme, but they do have a competitive edge, in that private investment in public equity ('PIPE') offers SPACs (as well as other forms of debt financing) more equity leverage (see Part II, Section F).[34] Hence, the target company receives more than the SPAC funds deposited on trust (see Part II, Section A). Furthermore, sponsors often invest more cash in the SPAC at the de-SPAC phase. For example, a Mr. Palihapitiya invested $100 million in Virgin Galactic at a cost of $10 per share when it went public (ie this is an additional form of 'skin in the game').[35] At other times, sponsors have been creative in proposing alternative promote structures to align incentives and distinguish themselves.[36] One such case is when sponsors subject a portion of the founder shares to an 'earn-out' construct, with these shares vesting only if certain post-closing trading price targets are achieved. However, it has been noted that earn-out provisions cannot necessarily be universally construed by public investors as a signal of a 'good' merger, and so should be subject to specific disclosures.[37]

The sponsor promote is clearly generating discussion; it has received increasing attention from the SEC Division of Corporation Finance, and is still under review at the time of writing this article. Specifically, in December 2020, the SEC issued its first guidelines relating to disclosures in SPAC IPOs and de-SPAC transactions with respect to conflicts of interest and the nature of the sponsor team's economic interests in the SPAC.[38] The guidelines make it clear that, at the IPO stage, the SPAC should disclose the circumstances in which the financial incentives of a sponsor, director, officer, or their affiliate may not align with those of the public investors. The same approach can be found in guidelines, opinions, or market rules issued by financial regulators in Europe (Part III).

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[32] M Levine, 'SPACs Aren't Cheaper than IPOs Yet' (*Opinion Bloomberg*, 27 July 2020).

[33] S Hannes et al, 'SPACtivism' (2021) 2812 *University of Pennsylvania Carey Law School Faculty Scholarship at Penn Law* 1, p 18. Specifically, the IPO 'pop' refers to the fact that a traditional IPO is usually under-priced on the first day of trading relative to what the market is willing to pay. Furthermore, a SPAC IPO is less time consuming (eg eight plus weeks in the US) and a faster pathway to going public compared to a traditional IPO.

[34] See Levine, note 29 above.

[35] M Kruppa, 'The Ex-Facebook Star Back in the Spotlight with Virgin Galactic deal' (*Financial Times*, 11 July 2019).

[36] D Thomas and M Kruppa, 'British SPAC King Plans First European Blank Cheque Listing' (*Financial Times*, 11 May 2021).

[37] M Klausner and M Ohlrogge, 'Is SPAC Sponsor Compensation Evolving? A Sober Look at Earnouts' (*Stanford Law and Economics Olin*, 2022) Working Paper No 567, p 9.

[38] US Securities and Exchange Commission – Division of Corporate Finance, 'CF Disclosure Guidance: Topic No. 11' (22 December 2020), https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies#_ednref2.

Finally, it is worthwhile to highlight that the promote is mainly a US capital structure of SPACs that cannot be found in equivalent terms in Europe, and in the UK.

D. The SPAC and Self-Regulation

SPACs operate within market practices and self-regulation, rather than statute.

In the 1980s, SPACs were named 'blank check companies', and they were listed on the Penny Stock Market ('PSM')[39] where they performed 'pump-and-dump' schemes. Consequently, the Securities and Exchange Commission issued Rule 419, and the US Congress enacted the Securities Enforcement and Penny Stock Reform Act ('PSRA') in 1990. Minimum regulation standards were imposed and, furthermore, IPO funds had to be held on trust until the completion of the business acquisition or combination; the acquisition period was settled at eighteen months; and dissenting shareholders were entitled to a redemption right. As a result, blank check companies disappeared from the PSM.[40]

They reappeared in 2003, first on unregulated venues such as the OTC, next on Amex and then on regulated markets such as the NYSE and NASDAQ. SPACs on those markets did not issue penny stocks, but they complied voluntarily with rules such as Rule 419, the trust account rule, the requirement of minimum capitalisation, etc.[41] This evolution was incorporated in 2008 into listing regulations, both at the NYSE (Rule 102.06) and the NASDAQ (Rule IM-5101-2), and is referred to as SPAC 2.0.[42] Similar specific listing standards were then implemented in 2010 by NYSE Amex (Section 119). I define this as the codification of uncodified market practices.[43]

In December 2009, market practices evolved further; this was the first time a SPAC used a tender offer for the shares held by certain of its shareholders prior to completing an acquisition. This market practice was first implemented by 57th Street General Acquisition Corp. After that, a number of new SPACs filed a number of registration statements using the tender offer structure, several of which were declared effective. This uncodified market practice was rapidly codified. On 22 October 2010 NASDAQ filed a proposed rule change to its SPAC listing standards to allow, in lieu of a shareholder vote on the acquisition, a cash tender offer after the public announcement and before the completion of an acquisition. Shareholders who opposed the transaction could tender their shares in exchange for pro rata shares in the SPAC's trust fund. On 12 January 2011, NYSE Amex filed similar proposed rule changes, and on 21 January 2011 the SEC approved those proposed rules.

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[39] T Castelli, 'Not Guilty by Association: Why the Taint of Their 'Blank Check' Predecessors Should Not Stunt the Growth of Modern Special Purpose Acquisition Companies' (2009) 50(1) *Boston College Law Review* 237, p 238.

[40] D Riemer, 'Special Purpose Acquisition Companies: SPAC or SPAN, or Black Check Redux?' (2007) 85(4) *Washington University Law Review* 931, p 943.

[41] Ibid, p 943.

[42] D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 52.

[43] Ibid, p 43.

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This was followed by the NYSE on 8 December 2016 and approved by the SEC on 10 March 2017. That evolution marked the first major development for SPACs in terms of their listing standards.

E. The SPAC 3.0 and 3.5 Models

Since 2015, rather than codifying uncodified market practices, SPACs have developed diverse evolutionary transactional trends that can be defined as pure uncodified market practices.[44] These market practices directly relate to self-regulation as evolved instruments of company law and corporate governance structures, rather than as listing standards. Their main reason for existence is to find solutions to key SPAC company law issues, such as the redemption right. Indeed, among those corporate structures, the most important and best known is the decoupling of the right to vote and the redemption right.

This practice was first introduced in early 2010 with the GSME Acquisition Partners I SPAC (GSME) by Douglas Ellenoff. While in discussion with the SEC, he succeeded in getting GSME to consent to apply the decoupling mechanism. It has already been noted that in the de-SPAC phase, SPACs are required to offer shareholders the right to redeem their public shares for a pro rata portion of the proceeds held on trust. This was originally reserved only for shareholders who voted against a proposed business combination. Since 2015, SPACs have offered every shareholder the right to redeem their public shares by virtue of a mandatory redemption offer. This does not apply to warrants.

Thus investors can now vote in favour of or against a business acquisition or combination, are still able to redeem their shares, and need only keep the warrant. This shift in practice can be referred to as SPAC 3.0. It is not by chance that in 2015, 19 SPACs completed IPOs, raising $3.6 billion in a 120% increase over the amount raised in SPAC IPOs in 2014,[45] and seven more registered (for example, Double Eagle Acquisition Corp. completed an IPO that raised $480 million, and Pace Holdings Corp. completed an IPO that raised $400 million).[46] The SPAC 3.0 model adds distinctive features to the original model that is still codified in NYSE and NASDAQ rules (SPAC 2.0).

Furthermore, between 2019 and 2022 the fractional warrant practice become more regular despite its first being introduced in 2007 through Liberty Acquisition Corp. SPAC. This means that each whole warrant entitles the holder to purchase one common share and each unit is composed of one share and a fraction of one warrant. This is an incentive to buy more shares in order to be entitled to one full warrant. This can be seen as SPAC 3.5.

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[44] Ibid, p 52.

[45] C M Krus and H S Pangas, 'A Primer on Special Purpose Acquisition Companies' (*Sutherland Asbill & Brennan LLP*, March 2016), PPTs slide n 2, https://www.publiclytradedprivateequity.com/portalresource/SPACsOverview.pdf.

[46] D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 53.

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The table below summarises the evolutionary transactional trends in the SPAC spectrum:

	Evolutionary Transactional Trends in SPACs
SPAC 2.0	Abides by the SEC's Rule 419 (80% funds held on trust, redemption rights for shareholders, etc.) despite its non-applicability
SPAC 3.0	Decoupling of the right to vote from the right to redeem shares
SPAC 3.5	Fractional warrant structure

F. The SPAC and the Redemption Right

Under SEC rules, a SPAC cannot identify a target at the time of the IPO. As an inducement to IPO investors to deposit their money in the escrow account while the SPAC searches for a target, investors are granted the right to redeem their initial investment. Until 2015, redemption rights in SPACs were limited to a portion of the initial investment (around 85%) upon liquidation or a vote by the applicable investor against a proposed merger: the de-SPAC transaction.

From 2015, these features were broadened in the typical SPAC to give investors the right to redeem 100% of their initial investment,[47] with interest, upon liquidation or a business combination, regardless of whether the investors vote for or against a transaction. Indeed, SPACs usually permit IPO investors to retain their public warrants even if they have otherwise redeemed their public shares (the so-called SPAC 3.0 model, examined in Section E above). While a public investor can redeem shares, the public warrants can be retained in the hope of buying later, at discount, the shares of the new merged entity, post-business combination. However, all of this is possible if the new shares hit the warrant's strike price that is conventionally set at $11.50, otherwise public investors are 'out-of-the-money', and the warrants are worthless. The terms of the warrants may vary greatly across different SPACs. hence, public investors must be cautious. Furthermore, SPACs can redeem warrants pursuant to their contractual terms. In such circumstances it is vital for a public investor not to miss the notice of redemption, thereby failing to exercise within the given period; the warrant may then become essentially worthless.

On the other hand, from a sponsor perspective, the latter could in theory be in a position to win the acquisition vote, but have insufficient capital to complete the deal. This deal feature is an important reason for SPAC sponsors to actively engage with their investors once a target has been identified. A sponsor must motivate its public investors beyond the need to obtain sufficient positive acquisition votes.

Finally, the SPAC 3.0 model is also one of the reasons why the level of SPAC redemptions might sometimes be high: public investors' speculation. A good illustration of this point is what happened on 25 October 2019, when Virgin Galactic

[47] Ibid. Specifically, 100 percent of the SPAC's shares can be redeemed by shareholders in connection with the business combination as long as the SPAC at all times has minimum net tangible assets of at least 5 million dollars.

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announced a business combination with Social Capital Hedosophia Holdings Corp. At that time 12,106,110 investors redeemed their shares from Social Capital Hedosophia Holdings Corp.[48] That meant the trust lost £125 million.[49] The high number of redemptions was the result of a combination of SPAC investors waiting to see if the share price would go higher and 'long-only' investors waiting for the business combination to close.

Finally, the risk of a high number of redemptions is mitigated by private investment in public equity. Indeed, the PIPE investment finances part of the consideration price at the moment of the business combination and thereafter the SPAC announces both acquisition agreement and committed financing.[50] In other words, the PIPE investments de-risk the IPO completion and potentially avoid adverse selection by public investors; so SPACs that secure a PIPE are more likely to close a business combination.[51] This shows how terms have become more investor-friendly, and less favourable to sponsors.[52] This evolution partly lies behind SPACs' success, although is also fair to say that PIPE investment is currently facing a lack of investors in the US, and for this reason new transactional structures have appeared, such as convertible bonds issued by the target company,[53] facility agreements, or a combination of PIPE and one of those.[54]

G. Remarks on US SPACs

The new models of SPAC 3.0 in 2015, and subsequently SPAC 3.5, largely adopted between 2019 and 2022, show clearly that market practices are vital for SPACs and that without those market practices they cannot provide investors with safer corporate governance mechanisms to facilitate redemption rights at the same time as consolidating their share capital. Hence, I shall argue that for SPACs, the importance of financial regulation is within their own market practices, or better, their uncodified

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[48] Securities and Exchange Commission, Form 8-K of Virgin Galactic Holdings Inc. (29 October 2019), https://www.sec.gov/Archives/edgar/data/1706946/000119312519276659/d809452d8k.htm.

[49] 'Virgin Galactic Had More Redemptions than You Think' (*SPACInsider*, 29 October 2019) available at https://spacinsider.com/2019/10/29/virgin-galactic-redemption-amounts/.

[50] R Layne and B Lenahan, 'Special Purpose Acquisition Companies: An Introduction' (*Harvard Law School Forum on Corporate Governance*, July 2018), https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction.

[51] F Fagan and Ss Levmore, 'SPACs and PIPE as Efficient Tools for Corporate Growth' (*University of Chicago Law School, Coase-Sandor Institute for Law & Economics*, 2022) Working Paper, p 11. An important instance of PIPE is the one secured in April 2021 by the Singapore-based Grab. The company's agreement with the SPAC Altimeter Growth Corp. secured a valuation of nearly $40 billion and a $4 billion PIPE investment.

[52] D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 158.

[53] O Aliaj et al, 'SPACs Forced to Fund Deals with More Expensive Financing' (*Financial Times*, 19 July 2021).

[54] A Ramkumar, 'Westrock Coffee to Go Public in $1.2 billion SPAC Deal' (*The Wall Street Journal*, 4 April 2022).

market practices, that inform a more sophisticated system of corporate governance. Such corporate evolution has placed the US as the SPAC world market leader based on its competitive regulatory environment, and on the intuition that market practices can finally be codified by exchanges' listing requirements rather than federal or state law.

On the other hand, SPACs would never have achieved success without the SEC's understanding and recognition of these market practices (for instance, the 2010 decoupling mechanism negotiated with the SEC by Douglas Ellenoff, the codification of the tender offer practice, etc). This established over time a hybrid regulation model that is today opening up further discussions about establishing a principle of regulatory neutrality in relation to SPACs. In light of this, the European Union seems to have understood this principle by adopting for SPACs a form of regulation by objectives (Part III).

However, by the end of 2020, much had changed from a regulatory perspective in the US under the Biden administration and since April 2021, SPACs listings have decreased following warnings from the SEC. In March 2021, the SEC issued a specific warning concerning celebrities involved in SPACs,[55] and opened an inquiry into understanding how underwriters manage risks involved in SPAC transactions.[56] Subsequently, it raised accounting and reporting considerations for warrants issued by SPACs, suggesting their inclusion as liabilities rather than equity or assets of the company.[57] Although this latter warning was signed without an implementation date and legal force, it indirectly obliged SPAC sponsors to restate and address the accounting treatment of warrants as liabilities. This created a temporary disruption of the SPAC market at that time,[58] and as a result it has favoured neither sponsors nor investors.

In September 2021, the new approach of the SEC was intensified by what could be termed regulation by enforcement. The most salient instance of this new approach can be found in Prof. Gary Gensler's statement as the new SEC Chair under the Biden administration. He associated—at that time—SPACs with bitcoin when he spoke of the need for better investor protection, and he clearly set an agenda to

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[55] SEC, 'Celebrity Involvement with SPACs – Investor Alert' (*Investor Alerts and Bulletins*, 10 March 2021).

[56] J Godoy and C Prentice, 'Exclusive US Regulator Opens Inquiry into Wall Street's Blank Check IPO Frenzy – Sources' (*NASDAQ*, 25 March 2021), https://www.nasdaq.com/articles/exclusive-u.s.-regulator-opens-inquiry-into-wall-streets-blank-check-ipo-frenzy-sources-0.

[57] SEC, 'Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies' (12 April 2021).

[58] D D'Alvia, 'SPACs: Why Investors Fell in Love with These Stock Market Vehicles – And How the Bubble Burst' (*The Conversation*, 22 June 2021), https://theconversation.com/spacs-why-investors-fell-in-love-with-these-stock-market-vehicles-and-how-the-bubble-burst-162968. As I have highlighted: only 30 SPAC flotations took place in April and May 2021 compared with 299 in the first three months of the year, while total Wall Street investment bank revenues derived from these vehicles fell from over 20% to under 5% over the same period. In June 2021, the two largest US exchange-traded funds focused on SPACs (SPAK and SPCX) were down 26% and 12% in value, respectively, from their February highs.

implement further enforcement measures.[59] This approach is confirmed by the high-profile enforcement actions initiated in 2021 and concerning, among others, Momentus Inc. and Nikola Corporation.[60] As a result, SPACs had already started to cancel their planned IPOs at the start of January 2022.[61]

Shareholder lawsuits are on the rise too,[62] especially when SPAC sponsors do not fulfil their promises and breach fiduciary duties.[63] This aspect is for example addressed by the new SEC SPAC reform initiated in March 2022[64] that proposes specialised disclosure and financial statement requirements of SPAC sponsors to disclose any potential conflicts of interest and dilution in connection with the SPAC's IPO and de-SPAC transaction. This is in line with the first guidelines issued in December 2020 by the SEC (see Part II, Section C above). Furthermore, the SEC would like to make the target company a co-registrant when a SPAC files a registration statement for a de-SPAC transaction. This is also with a view to improving disclosures to investors by the target company.

Forward-looking statements, and overvaluation of target companies also constitute a serious concern.[65] To this end, the SEC is proposing to reform the safe harbour under the Private Securities Litigation Reform Act of 1995 ('PSLRA'). Indeed, a critical distinction between a de-SPAC transaction and a traditional IPO is the ability to include forward-looking financial projections in a proxy or registration statement rather than historical financial results. Financial projections made in relation to a de-SPAC currently fall within the definition of forward-looking statements provided under the PSLRA. The proposed rule would like to make the liability of safe harbour unavailable in disclosure documents filed by SPACs. However, this article will argue that as opposed to a 'backdoor listing' conception of SPACs (see Part I), the de-SPAC is an acquisition or a merger, and conventionally in M&A transactions long term financial forecasts are allowed to show a merger's benefits and synergies. In other words, the SEC would like to claim that the de-SPAC transaction is the SPAC target IPO, and one of the proposed rules would like to qualify the de-SPAC transaction as an offer of securities to existing SPAC investors. This

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[59] G Gensler, 'Testimony Before the Subcommittee on Financial Services and General Government US House Appropriations Committee' (14 September 2021), https://www.sec.gov/news/testimony/gensler-2021-09-14.

[60] A Hammond et al, 'How to Manage the Risks of SPAC Securities Fraud Actions in 2022' (*Client Alert – White&Case*, 3 March 2022), https://www.whitecase.com/publications/alert/how-manage-the-risks-spac-securities-fraud-actions-2022.

[61] N Megaw and N Asgari, 'Rising Number of Blank-Cheque Companies Call It Quits Before Listing' (*Financial Times*, 21 January 2022).

[62] 'SPACs: After the Boom Come the Lawsuits' (*Financial Times, Opinion Lex*, 31 March 2022).

[63] S Indap, 'A Court Battle that Has raised Concerns About SPACs' (*Financial Times*, 18 April 2022).

[64] SEC, 'Special Purpose Acquisition Companies, Shell Companies, and Projections' (30 March 2022), https://www.sec.gov/rules/proposed/2022/33-11048.pdf.

[65] Goldman Sachs, 'The IPO SPAC-Tacle' (28 January 2021) 95 *Global Macro Research* 1, p 4; E Warren, 'The SPAC Hack: How SPACs Tilt the Playing Field and Enrich Wall Street Insiders' (May 2022) Report prepared by the Office of Senator Warren, https://www.warren.senate.gov/imo/media/doc/SPACS.pdf.

means that the SPAC's business combination should be treated as a sale of securities that would require the filing of a registration statement under the Securities Act of 1933 as amended. This is a remarkable change if approved, but it is at the same time potentially misleading and inaccurate because SPACs are the reverse of the normal IPO procedure. Instead of an operating company seeking investors, investors seek an operating company.[66] To this end, a SPAC cannot be seen as a competitor or alternative to a traditional IPO,[67] because it serves a different purpose.[68] Specifically, a SPAC is an alternative acquisition model that might not necessarily be focused on reverse takeovers or mergers, and can be qualified under the 'multi-level' SPAC definition,[69] which is broader and can take into account acquisition of individual assets, cash-out deals, distressed M&A, financing, etc (see Part V).

Finally, the SEC would like to expand a definition of statutory 'underwriter' and liability in a de-SPAC transaction. It is proposed that the qualification of underwriter under Section 2(a)(11) of the Securities Act of 1933 belongs to whoever assists a SPAC IPO or facilitates any related financing transaction or otherwise participates in the de-SPAC transaction. This is an application of a 'gatekeeper' liability that can be retrospective for investment banks, and might include financial advisers, PIPE investors, or other advisers who acted in connection with a de-SPAC transaction or SPAC IPO.

It is undeniable that the SEC's activism has also affected investor sentiment, and the level of redemptions has dramatically increased since the start of 2022.[70] This trend has not gone unseen by SPAC sponsors. Indeed, in the second quarter of 2022, only 17 SPACs listed in the US raised $2.2 billion,[71] and in July 2022 for the first time in five years no new SPAC raised money in the US.[72] Important de-SPAC deals were abandoned, such as Forbes,[73] and well-known investment banks refrained from underwriting new SPAC offerings and acting as advisors in

[66] D D'Alvia and M. Vulanovic, 'A Rethinking of US Forward-Looking Statements in SPACs' (13 July 2021) *Fordham Journal of Corporate & Financial Law*, https://news.law.fordham.edu/jcfl/2021/07/13/a-rethinking-of-u-s-forward-looking-statements-in-spacs/; see D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 10.

[67] See Geiss, note 7 above.

[68] See Bai et al, note 8 above.

[69] D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 128.

[70] A Ramkumar, 'The SPAC Ship Is Sinking. Investors Want Their Money Back' (*Wall Street Journal*, 21 January 2022); N Asgari, 'Bankers for SPAC Deals Cut Fees as Redemptions Rise' (*Financial Times*, 28 March 2022). O Aliaj et al, 'SPAC Boom Dies as Wary Investors Retreat' (*Financial Times*, 9 June 2022).

[71] PWC, 'Q2 2022 Overview', https://www.pwc.com/gx/en/services/audit-assurance/ipo-centre/global-ipo-watch.html.

[72] A Sunderji and A Ramkumar, 'SPAC Activity in July Reached the Lowest Level in Five Years' (*Wall Street Journal*, 17 August 2022).

[73] O Aliaj et al, 'Forbes Abandons Plans to List Via SPAC' (*Financial Times*, 1 June 2022).

de-SPAC transactions, mainly due to the potential extension of liability and its retrospective effect.[74]

This is creating a destructive disruption of the SPAC market, especially in terms of completion of de-SPAC deals. Only in 2021, SPACs had raised capital in 613 IPOs[75] and as of 9 June 2022, there were 592 pre-deal SPACs yet to announce de-SPAC transactions.[76] If 2020 was defined as the 'Year of the SPAC',[77] then 2022 and 2023 can probably be qualified as the 'Years of the de-SPAC' and they do not look promising, with several SPACs announcing liquidation[78] or expecting to liquidate due to securities litigation concerns.[79]

The first preliminary remarks concern the fact that the proposed changes by the SEC are mainly related to the de-SPAC phase, in terms of increasing the level of disclosures; the due diligence that is expected both from the SPAC and the target company at the de-SPAC phase; and the extension of liability to any advisor involved in de-SPAC processes since 2020. As these changes have been under review since March 2022, this has created uncertainty over financial regulation in terms of rule-making processes.[80] Hence, the descaling interest in SPACs does not necessarily have to be construed as an extreme increase in de-SPAC deals and consequent difficulty in finding targets. Indeed, the concern raised by many financial regulators about competition issues involving business combination opportunities is unrealistic. The number of potential targets of SPACs is infinite, and competition (if it exists) extends far beyond the borders of the US to Europe and Asia, as shown by recent high profile business combinations such as Arrival, Cazoo, Grab, and Zegna.[81] By contrast, in the US, regulatory

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[74] O Aliaj et al, 'Goldman Sachs Pauses Work on New SPACs After SEC Takes Tougher Stance' (*Financial Times*, 9 May 2022); P Brewer, 'Analysis: SPACs Go Splat; I-Banks Refuse to Write Blank Checks' (*Bloomberg Law*, 18 May 2022), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-spacs-go-splat-i-banks-refuse-to-write-blank-checks.

[75] Data captured by Statista, https://www.statista.com/statistics/1178249/spac-ipo-usa/.

[76] G M Burnett, 'Analysis: Time Pressure Builds on De-SPAC Deals' (*Bloomberg Law*, 10 June 2022), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-time-pressure-builds-on-de-spac-deals.

[77] B Masters, 'Year in a Word: SPAC' (*Financial Times*, 1 January 2021).

[78] A notable instance is the $4 billion SPAC of Bill Ackman that announced its liquidation in July 2022 after the SEC challenged the proposed acquisition of 10% shareholding of Universal Music Group in 2021. See Seeking Alpha, 'Bill Ackman to wind down SPAC, return $4 billion to investors' (12 July 2022), https://seekingalpha.com/news/3856007-bill-ackman-to-wind-down-spac-return-4-billion-to-investors.

[79] K LaCroix, 'SPAC Unable to Find Merger Target Caught Up in Pre-Liquidation Litigation' (*The D&O Diary*, 14 August 2022), https://www.dandodiary.com/2022/08/articles/director-and-officer-liability/spac-unable-to-find-merger-target-caught-up-in-pre-liquidation-litigation/.

[80] R M Lastra, *International Financial and Monetary Law*, 2nd ed (Oxford University Press 2015), p 124.

[81] D D'Alvia and M. Vulanovic, 'What the SEC Is Not Saying About SPACs' (*Bloomberg Law*, 20 May 2021), https://news.bloomberglaw.com/securities-law/what-the-sec-is-not-saying-about-spacs. Arrival and Cazoo are British companies that are today listed on New York stock exchanges; the same has occurred in the case of the Italian fashion brand Zegna Group and the Singaporean mobile app developer Grab, both listed today in New York.

uncertainty has disrupted both SPAC offerings and de-SPAC deals and it has affected public investor sentiment by providing ground for new litigation. Notwithstanding that the proposed changes have not yet been approved, since 2021 the SEC under the Biden administration has implemented hostile regulation by enforcement. It necessarily follows that any financial entity would be irremediably confused or at least taking a 'wait-and-see' approach. Additionally, the current high level of inflation, both in the US and Europe, is not helpful and SPAC investors, seeking liquidity, prefer to redeem their shares and keep their warrants in the hope of exercising them at the de-SPAC phase by taking advantage of the SPAC 3.0 model (see Part II, Section E).

The decreasing interest in SPAC offerings does not affect the SPAC listing requirements that have already been codified under the SPAC 2.0 model. This hard law regulation is resilient, well received by market participants, and has already been copied or imitated in other legal systems (see Parts III and IV). However, if the proposed changes of March 2022 are eventually approved, then the de-SPAC phase will get closer to an IPO qualification rather than an M&A transaction, especially considering the proposed co-registrant role of the target company and the reform of the safe harbour under the PSLRA 1995.

This is additionally endorsed by the SEC's proposal to avoid a definition of SPACs in terms of investment companies under the Investment Act 1940 (US).[82] In this qualification there is a further confirmation of the stance that SPACs are mainly construed as 'backdoor' listings or at least as alternatives to traditional IPOs rather than alternative acquisition models (Part V). According to the SEC, the main special purpose of the SPAC must be confined to the de-SPAC transaction that is the target IPO. The US financial regulator sees this function as the traditional business model of SPACs. This provides direct evidence of what I define as a regulation by business or function. It means that if a SPAC differs in its 'special purpose' from the traditional business model as described by the SEC, it might be regulated differently this time by allowing a specific definition of SPACs as investment companies.[83]

The following Parts of this article will explore how financial regulators in Europe have implemented a different approach based on a regulation by objectives that is more open, dynamic, and flexible, with the UK leading the way in this new regulatory approach in Europe.

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[82] The SEC is proposing a safe harbour such that a SPAC is not considered an investment company under the Investment Company Act of 1940 (US) if three circumstances occur: (1) the SPAC keeps the IPO's proceeds on trust for the entire duration of the SPAC; (2) it seeks to complete a de-SPAC transaction after which the resulting merged entity is primarily engaged with the business of the target company; and (3) it enters into an agreement with a target company to engage in a de-SPAC within 18 months after its IPO and complete its de-SPAC transaction within 24 months of this offering.

[83] The reader might recall the case of Bill Ackman in August 2021 in the US, where the former SEC commissioner Robert Jackson and Yale Law School Professor John Morley filed a lawsuit on behalf of a Pershing Square Tontine Holdings (PSTH) shareholder alleging that Ackman's SPAC should be registered as an investment company under the Investment Company Act 1940 as amended. PSTH wanted a deal to acquire a minority stake (10%) in Vivendi-owned Universal Music Group, listed on Amsterdam Stock Exchange. This was an unconventional de-SPAC transaction. PSHT called off the plan following a backlash from the SEC.

III. A COMPARATIVE LOOK AT SPACS IN THE EUROPEAN UNION

A. *Towards the European* Ius Commune *in SPACs?*

In Europe, SPACs are a recent phenomenon. As opposed to the US, the Old Continent has experienced far lower number of listings and IPO proceeds. In 2021, 38 SPACs were listed, raising a total of almost €7 billion.[84] Among those offerings, the Netherlands has led the way with 16 SPAC listings in 2021, raising approximately €3.7 billion.[85] This means that in 2021 almost 40% of SPACs listed on European stock exchanges were listed on Euronext Amsterdam, according to the Netherlands Authority for the Financial Markets (AFM).[86] Although Europe is behind the US in terms of IPO volume raised by SPACs, the number of deals in Europe has tripled, and the IPO volume raised has multiplied eight times in 2021 compared with 2020.[87]

In Europe, there is no harmonised regime of secondary legislation for SPACs—such as a regulation or a directive that establishes a specific legal discipline. The European Securities and Markets Authority ('ESMA') once issued its guidelines in relation to the Directive 2011/61/EU on Alternative Investment Fund Managers ('AIFMD')[88] without mentioning SPACs, nor did it provide any clarification on whether the AIFMD can be applied to them. I believe that in very limited circumstances a SPAC might fall under the scope of the AIFMD, and might qualify as an Alternative Investment Fund if the intention is to invest the gross proceeds of its offering in other (short-term) financial instruments. This is a direct instance that shows the dynamicity of SPACs' 'special purpose', although as I claimed in 2020, it would be limiting to simply define them as financial intermediaries or pure investment companies, because they would be assimilated into hedge funds or qualify for the application of a bank-like regulation.[89]

Since 2017[90] I have argued that SPACs might also be characterised as a form of undertaking for collective investment in transferable securities, ('UCITS') especially if they focus on one single business combination. Indeed, in accordance with the ESMA guidelines, a UCITS:

- does not have a general commercial or industrial purpose;
- pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors; and
- its unit holders—as a collective group—have no day-to-day discretion or control.

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[84] AFM, 'The Dutch SPAC market: An Overview' (January 2022) 5 *AFM Market Watch* 1, p 2.

[85] Ibid, p 2.

[86] Ibid, p 2.

[87] T de Heredia et al, 'The SPACs Boom: Europe Picks Up the Pace' (*Deloitte Insights*, 14 July 2021), https://www2.deloitte.com/xe/en/insights/industry/financial-services/spacs-in-europe.html.

[88] ESMA, 'Consultation Paper – Guidelines on key concepts of the AIFMD' (19 December 2012), n 845.

[89] See D'Alvia, 'The International Financial Regulation of SPACs', note 11 above, p 112.

[90] D D'Alvia, 'SPACs: Limiti e Prospettive tra Hard Law e Soft Law' (2017) 12(4) *Rivista del Diritto Societario* 1167, p 1187.

According to this description, SPACs can be categorised as UCITS because they are cash-shell companies, hence they do not follow industrial aims, but aim to raise money in an IPO process, and they are directed by managers as opposed to unit holders, so that the latter do not have direct control or discretion over the firm. However, this is only a possible interpretation under the current financial legal framework of the European Union, which has not yet received a practical application. This interpretation also makes SPACs similar to private equity funds, at least because they are a specification, although some features distinguish them from the latter, such as their reliance on equity rather than debt (for instance, the well-known leverage buy-out process of private equity firms is not a common feature in SPACs). This statement is still true in Europe, but it is developing in the US, whereas outlined in Part II, Section F of this article, SPACs are further relying on other sources of finance at the de-SPAC phase with an important focus on debt instruments.

However, regarding European interpretations of SPACs, the apparent silence ended in July 2021, when the ESMA published its first public statement on SPACs.[91] The ESMA still does not take a definitive position on whether SPACs are to be qualified as UCITS, but provides arguments to position Europe under the paradigm of what I define as a regulation by objectives. Indeed, the public statement seeks to promote uniform prospectus disclosure and to protect investors in SPACs with a specific focus on retail investors. It encourages regulatory consistency among European national regulators. Hence, this is a key document that provides greater clarity in this area, and it applies to SPACs securities that are admitted to trading on an EU regulated market. The majority of ESMA's points are based on existing disclosure requirements under the prospectus regulation.[92] The prospectus regulation provides a harmonised legal framework across the European Union in terms of disclosure requirements. This means that with reference to SPACs in Europe, at least four sections of the prospectus will be relevant for European Union financial regulators:

- The risk factors: this will include that the SPAC has no operating history and that no specific targets have yet been identified.
- The business description: the issuer will explain the parameters that the SPAC will consider when seeking out a business combination.
- The offering section: where the SPAC's capital structure is described.
- The description of the management: it must contain a detailed description of the sponsor, founders, promoters, etc because the investment experience of the SPAC's governing bodies is an important driver of valuation.

[91] ESMA, 'Public Statement – SPACs: Prospectus Disclosure and Investor Protection Considerations' (15 July 2021).

[92] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the Prospectus To Be Published When Securities Are Offered to the Public or Admitted to Trading on a Regulated Market, and Repealing Directive 2003/71/EC.

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Given that the SPAC will not yet have any business activities or financial history, the financial sections of the prospectus can be very limited. Hence, the drafting and review of the financial sections will consume less time than a traditional IPO.

In addition to those sections of the prospectus, the ESMA would like the SPAC's sponsors to inform investors on future scenarios occurring at the de-SPAC phase. Specifically, the ESMA expects the SPAC prospectus to include at least: future remuneration of the sponsors and their role after the SPAC has acquired the target; information about possible changes to the SPAC's governance after it has acquired a target; information about the future shareholdings of the sponsors and other related parties; and details of possible scenarios that might arise if the sponsor fails to find a suitable target, such as SPAC de-listing and winding up.

However, this article will argue that such disclosures at the time of the IPO are often unknown. Hence, it would be desirable for European regulators to be more pragmatic and accept that pre-IPO disclosures are possibly illustrative rather than definitive, because most of those features are negotiated at the time of the de-SPAC process. A closer look will now be taken at individual European exchanges, as promised in the introduction to this article.

B. SPACs in the Netherlands

Euronext Amsterdam and the AFM do not provide specific listing requirements for SPACs; instead they are treated as regular IPOs and are subject to prospectus regulation, as explained in the previous Section. This means that the market issuance of SPACs is treated as a simplified IPO, so continuous trading is allowed, as in the US. Euronext Amsterdam has the reputation of being home to international and high growth companies, making it a more attractive venue than its European rivals and the best SPAC venue for European targets, and for SPACs' IPOs, especially related to IPO volumes.[93]

In addition to public limited liability companies (*naamloze vennootschap* or NV), Euronext Amsterdam also permits private limited liability companies (*besloten vennootschap* or BV)[94] to list, which has the following benefits: (1) permits lower voting thresholds to approve the combination; (2) makes the requirement of a prospectus

[93] To name a few of the most important SPACs listed in Amsterdam between 2021 and 2022: Odyssey Acquisition BV (€300 million), Energy Transition Partners BV (€175 million), VAM Investments SPAC BV (€210 million), Disruptive Capital Acquisition Company (€125 million), SPEAR Investment I BV (€175 million), European Healthcare Investment BV (€200 million), EPIC Acquisition Corp. (€150 million), GP Bullhound Acquisition I SE (€200 million). Specifically, in early 2021, Euronext Amsterdam saw very large offering volumes with Hedosophia European Growth (€441 million), European FinTech IPO Co 1 BV (€382 million), and Pegasus Acquisition Co Europe BV (€483 million). This is a remarkable market evolution in terms of IPO size and flexibility, also welcoming a variety of company forms from Dutch BV and NV, to European SE, and Cayman Islands or Guernsey Ltd. Historically the first SPACs listed on Euronext Amsterdam had lower IPO volumes, such as Dutch Star Companies ONE NV in 2018 (€55 million).

[94] A BV is similar to a private limited liability company under Belgian law in terms of corporate flexibility. It is also the most common form of limited company in the Netherlands and Belgium.

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redundant when using a vast pool of existing treasury shares as consideration on combination; and (C) mandatory offer and financial assistance rules do not apply under Article 5:70 of the *Wet Financieel Toezicht* or Financial Supervisory Act, and Article 2:98(c) of the *Burgerlijk Wetboek* or Dutch Civil Code that has excluded the application of financial assistance provisions to BVs since 2012.

The costs of the SPAC are usually borne by the sponsors. Usually promoters do not receive any salary or management fee.

Shareholders are allowed the redemption option, and the SPAC can buy back shares under Article 2:207 of the Dutch Civil Code if the SPAC is incorporated as a BV, and Article 2:98 of the Dutch Civil Code if the SPAC is an NV. The share repurchase agreement between the SPAC and its shareholders is governed by the prospectus. The structures of the financing and units are flexible in the Euronext Amsterdam market, allowing for replication of the US SPACs. For example, units are comprised of one share and one (or a fractional) warrant. One warrant typically entitles the warrant holder to acquire one-third or one-half of a share, and the warrant's strike price is usually set at 15% above the share price issue, although it can be flexible.

In terms of founder remuneration, the SPAC features on Euronext confirm that sponsors are not assigned with founder warrants.[95] Usually shares are issued in a separate class as special shares, which may be converted into ordinary shares after a successful business combination at par value. This is a consolidated market practice on the Euronext Amsterdam market.

C. SPACs in Italy

In April 2021, *Borsa Italiana S.p.A.* was acquired by Euronext and became part of the Euronext Group, the first leading pan-European market infrastructure.[96]

In Italy there was a wave of SPACs between 2017 and 2018, with over 30 listings[97] on the AIM (Alternative Investment Market) and MIV (Market for Investment Vehicles) segments (namely, the market segments dedicated to the listing of investment vehicles). However, since the 'SPAC boom' in 2020 in the US, Italy has seen only one notable example of SPAC listing: in May 2021 with Revo S.p.A. on the AIM for over €200 million.[98] The MIV and the AIM (renamed Euronext Growth market since October 2021) are segments under the umbrella of the *Mercato Telematico Azionario* ('MTA') market.

The AIM market in Italy has been, so far, the preferred market to list SPACs due to its flexible regulation and the absence of controls by CONSOB (Italian financial

[95] The possibility of issuing founder warrants in a reserved offer to the SPAC sponsor is not theoretically prohibited under Dutch law, but it is not common in practice.

[96] Euronext Press Release, 'Euronext Today Completes the Acquisition of the Borsa Italiana Group and Publishes Q1 2021 Results' (29 April 2021), file:///Users/danieledalvia/Downloads/20210429_Euronext_Q121_Results%20vFinale.pdf.

[97] See D'Alvia, 'SPACs: Limiti e Prospettive tra Hard Law e Soft Law', note 90 above, p 1168.

[98] 'Italy's REVO SPAC Aims to Raise 200 Mln Euros for Insurance Deals' (*Reuters*, 10 May 2021), https://www.reuters.com/article/revo-spac-ipo-idUSL8N2MX2V1.

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regulator). Indeed, to be listed on the AIM, the SPAC sponsor would need only three main comfort letters, namely from the nominated adviser which has been renamed Euronext Growth Advisor (ie an investment bank), the external auditor and the legal adviser. Those comfort letters are directly presented to *Borsa Italiana S.p.A.* (the Italian Exchange) which is then in charge of approving the pre-listing communication and overseeing the transparency of the book-building process.

Italy does not have a dedicated and harmonised financial regulation for SPACs, so prospectus regulation is applied. However, in 2017 the Italian stock exchange issued a specific communication for modifications on the AIM market: SPACs' sponsors must be experts, and qualified in terms of money management, or provide evidence of expertise in either public listed companies, investment banks or private equity operations.[99] Finally, in accordance with the new Euronext rules issued on 3 August 2021,[100] the SPAC on the AIM has to raise a minimum capital amount of 10 million, rather than 30 million, as originally stated in the 2017 communication. Those are the only listing requirements for SPACs in Italy, and they only apply to the former AIM market (currently, the Euronext Growth market). This means that company law finds residual application with some further specifications as outlined below.

The application of Italian company law to SPACs is indeed quite problematic, especially with respect to the MIV. In fact, according to Article 2437 paragraph 4 of the Italian Civil Code ('ICC'), public companies on the MTA, and therefore on the MIV market, cannot provide investors with a full redemption right. This feature can prevent SPAC investors collecting their initial investment in full unless the SPAC is listed on the AIM. Indeed, the AIM being a multilateral trading facility, companies are not subject to Article 2437 ICC. Another way to circumvent this corporate law limit is to establish the SPAC outside Italy by using Luxembourg company law as the law of incorporation. For instance, Italy1 Investment SA was incorporated in August 2010 under Luxembourg law, and was listed on the MIV in 2011 by raising €150 million in IPO proceeds. Furthermore, the major advantage of the public limited company (*société anonyme*) under Luxembourg company law is that, when the target is selected, the public limited company can merge with a target company governed by the laws of another EU Member State and subsequently become a European company governed by the laws of any EU Member State (either by Luxembourg law or by the law of the target company).

Furthermore, Article 2437 ICC states that public companies listed on the MTA can only provide redemption rights for the cases established by the law, namely when the SPAC is going to merge, or the certificate of incorporation is subject to changes. The Euronext Growth market in Italy is preferred due to its flexibility in modelling the

[99] 'Avviso n. 20406' (*Borsa Italiana S.p.A.*, 3 November 2017) ('A tal proposito, si prevede che i promotori di una SPAC debbano essere persone dotato di comprovata esperienza e/o aver ricoperto posizioni apicali in materia di (i) operazioni sul mercato primario dei capital; (ii) operazioni di private equity; (iii) gestione di aziende di medie dimensioni; (iv) settore dell'investment banking'.), https://www.borsaitaliana.it/borsaitaliana/regolamenti/avvisi/avviso20406aim_pdf.htm.

[100] 'Avviso n. 24575' (*Borsa Italiana S.p.A.*, 19 July 2021), https://www.borsaitaliana.it/borsaitaliana/regolamenti/avvisi/avviso24575-aimitalia_pdf.htm.

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redemption right on a US-style right, although the liquidity reached on this market is lower than the MIV market. An alternative way to imitate the US-style redemption is to select another applicable corporate law for the SPAC, such as Luxembourg law.

Finally, in terms of the SPAC's capital structure, public investors can buy units composed of common shares and warrants in the proportion of one warrant per share, meaning that the fractional warrant structure or the US equivalent of SPAC 3.5 is not a common feature in Italy. The sponsor does not hold founder warrants, but preference shares that are subsequently converted into ordinary shares after a successful business combination at par value.

D. SPACs in Belgium

In Belgium there is no financial law framework specifically regulating SPACs. Hence, the SPAC sponsors will follow general principles of corporate and financial law. As a listed company, the SPAC will be subject to prospectus regulation.

SPACs are new in Belgium, and no listing has taken place so far. The Financial Services and Markets Authority ('FSMA') has not yet developed a specific practice, nor issued any binding guidelines for SPAC prospectuses. However, the FSMA launched a consultation in May 2021,[101] and issued an opinion in June 2021.[102] The opinion is particularly significant because it shows the strict position of the FSMA which has raised concerns about the implementation in Belgium of a model of SPAC 3.0 where public investors might decide to redeem only shares and keep warrants. Specifically, the FSMA highlights minimum standards for the listing of SPACs with a specific focus on information on dilution at the de-SPAC phase. Furthermore, it recommends that the prospectus should provide a quantitative analysis based on the conditions of the offer. The prospectus will be approved by the FSMA,[103] and the application for admission to trading is to be filed with Euronext Brussels, which will conduct an in-depth analysis of the business model, finances, and features of the proposed offer as well as due diligence to identify key managers and board members.

Since the reform of company law, on 1 May 2019,[104] Belgium has enacted a new Belgian Code of Companies and Associations ('BCCA') to reduce, *inter alia*, previously available corporate forms to only seven permitted types of companies with

[101] FSMA, 'Public Consultation by the FSMA About a Proposal for Minimum Standards for the Structuring, Information Disclosure and Trading in SPACs on Euronext Brussels' (5 May 2021), https://www.fsma.be/sites/default/files/media/files/2021-05/20210505_consultation_spac_en.pdf.

[102] FSMA, 'Opinion on Minimum Standards Governing the Structure of SPACs, the Disclosure of Information About SPAC Shares and Trading in Those Shares on Euronext Brussels', https://www.loyensloeff.com/globalassets/02.-publications-pdf/02.-external/2021/fsma_opinion_2021_04_en.pdf.

[103] The FSMA is empowered under Article 24 §2 of Belgian law dated 11 July 2018. The Belgian law 11 July 2018 (Doc 52 3150 Publication in Belgian Official Journal on 20 July 2018) is replacing the law of 21 June 2006 on the offering of financial instruments to the public and the approval of the exchange of financial instruments on regulated markets has to be read in conjunction with the EU Prospectus Regulation.

[104] Statute n 09 of 23 March 2019 on the Introduction of a New Belgian Code on Companies and Associations (last updated on14 March 2022).

legal personality. In accordance with the objectives of this article, the BCCA allows both private limited liability companies (*société à responsabilité limitée/besloten vennootschap* or SRL/BV) and public limited liability companies (*société anonyme/naamloze vennootschap* or SA/NV) to list their shares on the market.

Although both SA/NV and SRL/BV can be listed companies, in practice only SA/NV have been so far. Nonetheless, for SPAC purposes the listing of a SRL/BV might be a competitive option, having corporate features similar to Dutch BVs (see Part III, Section B). Indeed, Belgian corporate law establishes some constraints in relation to share buybacks of public companies that can be superseded in the case of SRL/BV.[105]

Shareholders can vote on the business combination as well as change the articles of association pre- and post-business combination under Belgian corporate law.[106] The management is in charge of decisions on all matters, unless they are reserved by law or by the articles of association to the shareholders' meeting. Hence, it is possible to provide in the articles of association of the SPAC that any business combination would need shareholders' approval to replicate the US model. Shareholders who vote against the business combination can redeem their shares, but with similar limits to those for Italian SPACs on the MIV. Investors cannot be provided with a fixed price for share redemption (Article 5:145 BCCA), however, shareholders can be granted a put option, allowing them to sell their shares at a predetermined price to the sponsor of the SPAC. Specifically, SRL/BV can be preferred in terms of SPAC incorporation because the new BCCA provides for an 'exit at the expense of the company's assets' (Article 5:154 BCCA) that is not available for SA/NV. According to this new procedure, a dissenting shareholder can exit the company by redeeming shares to the company against the payment of an exit fee whose amount is freely determinable in the articles of association. This mechanism can be—for example—implemented in the event of a business combination, and can replicate the US-style SPAC in terms of redemption rights.

Finally, in terms of capital structure, Belgian company law does allow both the issuance of warrants (Article 5:55 BCCA) and shares or preference shares to structure a possible SPAC project. Hence, US-style founder remuneration can be replicated in Belgium, although it is very likely that the FSMA will not approve a highly dilutive promote.

D. SPACs in Germany

With the launches of Lakestar SPAC I SE, 468 SPAC I SE, 468 SPAC II SE, OboTech Acquisition SE, and GFJ ESG Acquisition I SE, modern SPAC listings

[105] A Coibion et al, 'Is Belgium Ready for the Rise of the SPAC?' (*Linklaters Publications*, 3 December 2020), https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2020/december/02/is-belgium-ready-for-the-rise-of-the-spac.

[106] Specifically, in relation to SRL/BV (see Article 5:100 BCCA that allows amendment of the articles of associations; and Article 5:101 BCCA that allows the amendment of the objectives of the company); in relation to SA/NV (see Article 7:153 BCCA that allows amendment of the articles of association; and Article 7:154 BCCA that allows the amendment of the objectives of the company). Please note that each of those changes will require different quorums under BCCA.

similar in structure to the most recent wave of US SPACs reappeared on the Frankfurt Stock Exchange in Spring 2021 with the last SPAC IPO to date in early 2022. While the Frankfurt Stock Exchange saw SPAC listings in 2008 and 2010 with the IPOs of Germany1 Acquisition Ltd, incorporated in Guernsey, and Helikos SE and CleanTech I SE, both set up under the European company model in Luxembourg, their structures differed from modern SPACs (Part II).[107]

In Germany and on the Frankfurt Stock Exchange, there are no specific listing requirements for SPACs, therefore the SPAC will be subject to the prospectus requirements and the Frankfurt Stock Exchange rules governing the listing of shares on the regulated market. Generally, only companies with at least three years of historical balance sheet can be listed (Section 3(1) German Stock Exchange Admissions Regulation or *BörsZuIV*), but SPACs can be listed on regulated markets of the Frankfurt Stock Exchange (Section 3(2) *BörsZuIV*) if it is in the interest of the SPAC to be listed, and the offering is in the interest of the general public, namely public investors. The Frankfurt Stock Exchange has set out that this criterion is fulfilled as long as the SPAC states in its prospectus: (1) the main corporate features and its potential targets; (2) the fact that any disbursement of the funds held in escrow must be approved by at least a 50% majority in a shareholders' meeting; and (3) a repayment requirement of the escrow funds in case of a SPAC liquidation. Shareholders' voting is a standard corporate feature.[108]

In terms of capital structure, IPOs of companies formed in Germany are typically completed either in the form of German stock corporations (*Aktiengesellschaft*) or the European Company (*Societas Europaea*). Both entity types follow the rules set out in the German Stock Corporation Act (*Aktiengesetz*) with certain regulations for the European company deviating from the German Stock Corporation Act.

The rules of the German Stock Corporation Act raise a number of legal issues for the implementation of a US-style SPAC. Firstly, according to Section 37(1) of the German Stock Corporation Act, the proceeds raised in the IPO must be freely disposable to the management board of the SPAC. As a result, depositing the full amount of the proceeds in an escrow account has raised legal concerns in relation to the restrictions placed on proceeds from a capital increase as part of the SPAC IPO.[109] Additionally, the minimum share capital (*Grundkapital*) is one Euro per share, which is subject to specific capital requirement rules after raising funds in the SPAC IPO.

Secondly, according to Section 11 and Section 139 et seq of the German Stock Corporation Act, the articles of association may provide for two classes of shares, namely common shares and preference shares (preferred in relation to dividends). Warrants as required in US-style SPACs may potentially be issued by German stock corporations or German SEs, although there is considerable legal uncertainty

[107] J Eichborn and K M Schanz, 'Deutsche SPAC unter gesellschaft – und aufsichtsrechtlichen Aspekten' (2021) 3 *Recht der Finanzinstrumente* 186.

[108] 'Special Purpose Acquisition Companies (SPAC)' (*Deutsche Börse*), https://www.deutsche-boerse-cash-market.com/dbcm-en/primary-market/going-public/listing-trends/SPAC.

[109] See Eichborn and Schanz, note 107 above, p 544.

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in the literature as to whether their specific terms can be implemented under German corporate law.[110] Consequently, the only legally straightforward way under German law to replicate the US model would be to issue preference shares. However, as preference shares (*Vorzugsaktien*) under German law grant a preference in profit in return for waiving the right to vote, this is not in line with a US SPAC model.

Thirdly, with respect to the redemption right, shareholders might face difficulties under German law. In accordance with Section 71 et seq of the German Stock Corporation Act, own shares can be acquired on the basis of an authorisation adopted at the annual general meeting. Despite the fact that the authorisation resolution is valid up to five years, and the time limitation is in line with the functioning of a SPAC, the legal limit is a maximum of 10% of the share capital existing at the time of authorisation (Section 71(8) German Stock Corporation Act). This is another hurdle for the implementation of a SPAC model for a German stock corporation or German SE. Other ways to repay redeeming shareholders face various obstacles that also limit the ability to implement a functioning redemption model similar to a US-style SPAC.

For these reasons, all five SPAC IPOs since the spring of 2021 in Germany have been launched under Luxemburg law and Dutch law, both of which have more flexibility in terms of corporate law. This—as I have already explained for other Member States—can replicate the majority of US-style shareholders' voting and redemption rights as well as capital structure and a founder remuneration scheme.

F. SPACs in Spain

There are no specific SPAC listing requirements in Spain, and therefore general provisions of corporate and finance law will still apply, including the prospectus regulation. So far no SPAC listing has ever occurred in Spain.

Listed companies in Spain are regulated under the *Ley de Sociedades de Capital* (Companies Act 2010). Under Title XIV of the Act, there is no specific prohibition to list a cash-shell company on regulated exchanges. Article 495 of the Companies Act 2010 identifies joint stock companies (*sociedades anónimas*) as those deputed to be listed on the market. Preference shares can be listed according to Article 498 Companies Act 2010, making this a preferred mechanism for founder's remuneration in SPACs.

For these reasons, since 2021, Spain has been examining a possible SPAC reform to further adapt its legal system to this new investment vehicle. In one of the last newsletters[111] from the Spanish Security Exchange Commission ('CNMV'), the financial regulator provides an update and summarises the regulation it expects to implement in Spain by the end of 2022. The SPAC qualifies within the European

[110] See Sections 192(3) and 202(3) of the German Stock Corporation Act.

[111] CNMV, 'Boletín de la CNMV – Trimestre III' (2021), https://www.cnmv.es/portal/Publicaciones/BoletinCNMV.aspx.

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strategy as an important investment vehicle to build a Capital Markets Union. The financial regulator has highlighted the importance of the public statement on SPACs by the ESMA. This has been used as the main parameter to design a possible future Spanish SPAC reform. Specifically, the SPAC must, *inter alia*, state in the prospectus: (1) any conflict of interest that the SPAC sponsor might have; (2) the founders remuneration; (3) the competences of the SPAC directors; (4) the possible dilution of public shareholders at the de-SPAC phase deriving from the exercise of founder warrants; and (5) the description of the industrial sector of the possible target company.

Furthermore, the CNMV highlights that because SPACs tend to acquire companies whose corporate valuation is from two to three times the value of the IPO proceeds held on trust, the SPAC must have a market capitalisation of at least 50 million, although this feature must be interpreted as a flexible parameter providing that at least 25% of outstanding shares are in public hands.

Finally, the CNMV makes reference to the preliminary draft law bill on the securities market and investment services, which has been recently subject to public consultation in Spain. This preliminary draft includes an amendment to the Companies Act of 2010 that seeks to introduce a new section in Title XIV of the Act, which regulates public companies, in order to contemplate the features of the regime that are applicable to SPACs.

According to such reform, the SPAC must include in its corporate name the indication '*sociedad cotizada con propósito para la adquisición*' or its abbreviation 'SPAC SA' until the business combination is completed. Furthermore, under Spanish regulations, the 'redemption right' itself is not contemplated in the legal framework of the securities market. However, since it is one of the most attractive features of SPACs, it has been defined in the Draft Bill of the Securities Market and Investment Services Law. The purpose of this reform is to guarantee that the investor's capital is adequately protected by allowing the SPAC to use either a statutory right of withdrawal (unlike what Article 346 of the Companies Act 2010 provides for legal causes of withdrawal) or the issuance of redeemable shares (without applying the maximum limit and the provisions of Articles 500 and 501 of the Companies Act 2010) as the redemption mechanism. Finally, if the SPAC undertakes to carry out a share capital reduction through the acquisition of its own shares for subsequent redemption, a SPAC might be required to file a takeover bid due to capital reduction.

However, any of the three repayment mechanisms could lead to a takeover of the SPAC by one or several shareholders. Under Article 7 of the Royal Decree 1066/2007 any such shareholder(s) must then file a takeover bid for the SPAC within three months unless: (1) enough shares are sold within that term to reduce the voting right percentage below control threshold of 30%; and (2) a waiver is obtained from the CNMV if there is another shareholder with a higher interest in the share capital (Section 4(2) of the Royal Decree 1066/2007).

The investor's redemption value will be the price of the subscription offer prior to the listing of the SPAC shares or, if lower, the amount equivalent to the aliquot part of the effective amount immobilised in the escrow. As opposed to the Italian and

Belgian legal frameworks, this feature might make Spain more competitive by consenting to a full redemption right by the withdrawing shareholder.[112]

The redemption right is expected to be regulated further; for example it could be advisable to provide an exemption from the mandatory takeover bid that could arise from the de-SPAC process. More details of the coming SPAC reform are expected, as one of the main allegations, *inter alia*, against the draft bill has been precisely the lack of specific protections for minority shareholders (defined process of redemption, consequences of the breach of this right by the SPAC, coverage in case the de-SPACing does not take place, etc).

On 27 June 2022, the Council of Ministers approved the draft law bill on the securities market and investment services, the full text of which was published on 12 September 2022 to be submitted to the Spanish Parliament for approval.

G. Remarks on European SPACs

In terms of SPACs there is a general shared sentiment in European exchanges to prefer to be free from imposed rules and harmonised rules (regulations and directives). The ESMA public statement released on 15 July 2021 confirms this intuition, and it has established what I define as a SPAC regulation by objectives, in that the main parameter that European exchanges must follow is the prospectus regulation, as well as listing requirements that focus on sponsors' disclosures at the de-SPAC phase, and retail investors' protection.

The European exchanges have embraced these suggestions and some of them have also implemented or started to implement SPAC regulatory reforms (see Italy, Belgium, and Spain). It can be seen that in Europe, when the exchanges have not issued a specific discipline (for example, the Netherlands and Germany), it is mainly the national company law framework that applies to SPACs, in addition to common exchange requirements in terms of disclosure and registration. As I said, the prospectus regulation in the European Union still applies to SPACs. Hence, two main remarks can be made:

- Firstly, the total absence of rules both at the level of state regulation and exchange rules can be an incentive to the phenomenon of SPAC self-regulation, so that the most virtuous SPAC is the one that voluntarily follows the US international standards based on some of the parameters set forth in Rule 419, and today implemented in the SPAC 2.0 model.
- Company law represents a legal constant,[113] but at the same time it can be the ground for a diversified discipline on shareholders' redemption rights.

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[112] Draft bill of the Securities Market and Investment Services Law Investment Services, Chapter VI, https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/ECO_Tes_20210405_AP_LMV.pdf.

[113] For a general theory of legal constants in comparative law, see D D'Alvia, *International Insolvency and Finance Law: Legal Constants in Times of Crises*, 1st ed (Routledge 2022); D D'Alvia, 'Legal Constants and the "Constant" Outside of the Law: Mobile Payments in Comparative Perspective

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Diversified corporate law frameworks can therefore generate a disparity between, for instance, a SPAC incorporated under Italian corporate law, or one set up in accordance with the more permissive and flexible Dutch corporate law regime, etc. This can constitute an incentive for forum shopping for SPACs in the European Union. However, at the same time it can also generate regulatory competition, where countries that recognise the value of SPACs can try to establish a more SPAC-friendly environment. SPACs in Europe are essentially characterised in terms of regulation by competition.

Furthermore, it can be seen that different treatments of redemption rights have given rise to innovations, such as the listing of a SPAC in the form of SE (European Company or *Societas Europaea* in Latin) or the incorporation of a SPAC in a different Member State from the one where the investment vehicle is actually listed. It is the case that German or Italian SPACs set up in Luxembourg are able to replicate in full US-style features in corporate law.

Indeed, European corporate frameworks are generally more rigid in comparison to those of the US, with the exception of Dutch and Luxembourg law, which are closer to the flexibility of US corporate law.

The importance of Dutch and Luxembourg law is not only related to SPAC formation and incorporation, but also to the de-SPAC phase, when a US SPAC targets a European company. Structuring a European de-SPAC might be complex. Each European jurisdiction has its own rules on business combination and its own taxation regime. Hence, the de-SPAC structure must be analysed for each proposed de-SPAC transaction. For example, a US SPAC looking for a European target might involve a de-SPAC placing a newly formed parent company above both the SPAC and the target, with the SPAC and the target being acquired or reverse-merging into subsidiaries of the new parent company most often incorporated under Dutch or Luxembourg law. This might be the case—for instance—of a US SPAC trying to combine with a German target because Germany imposes more technical requirements than other European jurisdictions.

Additionally, one of the main features that European markets have in common is the general doubtful approach they have with respect to excessive dilution of public investors at the de-SPAC phase (see Belgium and Spain in particular). This has historical roots. In fact, European markets and European legislation in particular have been long focused on designing protections for consumers of financial services and investors, and retail public investors are at the heart of the Markets in Financial Instruments Directive II (MiFID II).[114] ESMA, in its public statement on SPACs, expects firms subject to the product governance requirements under

(F'note continued)
Under European Union Law' (2021) 28(3) *Maastricht Journal of European and Comparative Law* 332, p 337.

[114] Directive 2015/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (12 June 2014) L 173/349.

MiFID II to carefully assess whether retail clients should be excluded from the target market for SPAC shares and warrants, or even included in the negative target market. On this point, it will be argued that, unlike in the US, retail investors are not the main investors in SPACs in Europe, and until now, SPACs have been a sophisticated investment mainly reserved for institutional investors. Indeed, if it is essential to protect retail investors, it is also true in the same measure that retail investors represent a consistent minority in comparison to the universe of institutional investors who gravitate around SPACs. Specifically, early investors in SPACs—often hedge funds—obtain warrants that allow them to buy more shares at a pre-set price in the future. They also typically sell their SPAC shares before deals are completed to limit their risk. Hence, hedge funds are those that usually profit from SPACs as early investors, both in Europe and the US. Indeed, even if the SPAC shares fall, early investors are protected by the right to withdraw. Throughout the whole process, they can sell warrants or hold on to them. When SPAC shares surge, warrants grow more valuable. On the other hand, small investors or retail investors buy at market price and tend to hold shares after the merger, exposing themselves to the risk of a subpar deal. Markets evolve, and investors can determine their risk-appetite for investments and price them accordingly, or not invest at all. For instance, a retail investor who does not redeem shares when these are trading below their net asset value is surely negligent and should avoid investing. It necessarily follows that as SPACs are a new financial product, financial literacy is remarkably important, and financial regulators in Europe as well as in the US might consider adopting specific non-binding guidelines to provide investors with acumen in financial knowledge of SPACs. This is a preferable and more reasonable choice rather than over-burdening SPAC sponsors with excessive levels of disclosures that in relation to the de-SPAC phase—in any case—might necessarily be illustrative rather than definitive (see Part III, Section A).

Finally, compared to the US, European sponsors buy equity and avoid warrants. In Europe, founder shares are assigned in the form of preference shares that have a more favourable tax treatment, and can be converted into common equity post-business combination. Sponsors cover the running costs of the SPAC during its existence and like the US, only SPACs directed by highly reputable managers can afford an unwarranted structure, namely a SPAC that offers only common shares to its public investors. Furthermore, in Europe, new structures are aligning founder shares to the SPAC's performance (eg Ian Osborne's Hedosophia on Euronext Amsterdam, or Arietti's Industrial Stars of Italy four on Euronext Growth market in Italy) and they try to mitigate criticalities of SPAC investors' dilution. This confirms the importance of market practices in SPACs, and market practices in the European Union are likely to be the future for the design of SPACs, rather than strictly imposed rules.

IV. THE UK SPAC REFORM AND THE *AQUIS* STOCK EXCHANGE

In terms of the UK market, during the period between 2016 and 2017 there was a significant increase in the formation of SPACs, with 15 SPACs listing on the

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London Stock Exchange ('LSE') in 2017 alone, raising £1.7 billion.[115] Since 2017 over 50 SPACs have listed in the UK and over £2 billion has been raised by SPACs on the LSE.[116] The UK market has been dominated by a small number of large IPOs. The four largest SPAC IPOs in the UK (J2 Acquisition, Landscape Acquisition Holdings, Ocelot Partners, and Wilmcote Holdings) represented 99.1% of total funds raised by UK SPACs in 2017.[117]

Typically, SPAC sponsors in the UK are experienced individuals who will invest nominal capital in exchange for preferred shares or founder shares (the promote). This investment may fund all, or a portion, of the IPO costs and the ownership of these shares results in 10–20% of the share capital of the company on completion of the IPO. At the IPO phase, the founders are issued a combination of ordinary shares, founder shares, and warrants. Those securities are usually locked up for at least one year following the business combination and ensure the alignment of interests between founders and investors. Upon business combination, the founder shares automatically convert into ordinary shares equivalent to usually 20% of the share capital of the new listed entity. This represents their compensation scheme for finding a suitable acquisition target, and sponsors during the life of the SPAC do not receive any salary and serve as directors on the board of the SPAC.

Public investors in the UK typically receive both shares and warrants (ie units).[118]

In the UK, the premium segment of the Main Market of the LSE is not available to SPACs. This is because SPACs do not meet the independence and track record requirements that apply under the Listing Rules for a premium listing of a commercial company. These eligibility requirements do not apply to a listing on the Standard segment of the LSE, which means that it is the favoured UK listing venue for SPACs. However, SPACs can also be admitted on the AIM market of the LSE because AIM companies are not required to have a minimum track record. The AIM is a multilateral trading facility that does not impose the drafting of a prospectus but only an admission document which is more flexible, and as in Italy, it is subject to the final approval of the Nominated Adviser and the exchange without the involvement of the financial regulator (ie the FCA). Finally, another trading venue for SPACs in the UK is the *Aquis* Stock Exchange ('AQSE') which is examined in the following Sections.

Historically there were two main differences between SPACs in the UK and the US. Firstly, the redemption right for investors, who choose not to support the acquisition of an identified target, has never been imposed as a listing requirement on the Standard segment of the LSE, but only as a feature of the AIM market under the AIM rules. This has also historically been the reason for an increased interest on the Standard segment. Secondly, once the SPAC announces a business combination, the trading of shares is suspended. Those features came to the attention of the UK

[115] Price Waterhouse Cooper, 'IPO Watch Europe 2017', https://www.pwc.co.uk/audit-assurance/assets/pdf/ipo-watch-europe-2017-annual-review.pdf.

[116] London Stock Exchange, 'Special Purpose Acquisition Companies', https://www.londonstockexchange.com/raise-finance/equity/spacs.

[117] See D'Alvia, 'The International Financial Regulation of SPACs', note 11 above.

[118] See D'Alvia et al, 'The UK SPAC Reform: Preliminary Remarks', note 2 above.

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Government at the inception of the 'SPAC boom' in 2020 in the US, and the following Sections illustrate the steps that have been taken by the UK Government and the FCA to improve the SPAC legal framework on the Standard segment of the LSE.

A. SPACs and the LSE

On 3 March 2021, the UK Listing Review,[119] chaired by Lord Jonathan Hill and commissioned by Chancellor Rishi Sunak, recommended a series of reforms to make the UK a more attractive venue for IPOs post-Brexit. It is the LSE's much-needed answer to the 'SPAC boom' in the US that started in 2020. This historical reform aims to introduce, for the first time, specific listing requirements for SPACs in the UK, and therefore the UK would like to position itself as the new sophisticated jurisdiction for accommodating SPACs.

The UK Takeover Code imposes a presumption that a SPAC has to suspend the trading of shares once a target is acquired because of reverse takeover rules.[120] This approach does not accommodate SPACs, and it is considered not to be competitive, because once a SPAC suspends the trading of shares, investors are then barred from trading again until the deal completes—which could be three to five months.[121] This increases sponsors' costs.

It has been noted that in Europe, the regulation of SPACs is mainly by competition (Part III). Hence, the Hill Report wanted to reformulate this rule with respect to SPACs, and also to evaluate the introduction of a new financial innovation to lure high growth technology companies to the LSE: dual-class shares on the premium tier of the LSE. However, those preliminary objectives were rapidly overturned by the FCA with the adoption of a conditional acceptance of those models.[122]

The FCA opened its Consultation Paper ('CP') (CP 21/10) in April 2021.[123] The CP highlights the complexity of SPACs as investment vehicles, and their high-risk profiles for investors. In particular, the CP was seeking, *inter alia*, feedback from market participants by 28 May 2021.

As a result of the consultation process, the FCA published the final Policy Statement on 27 July 2021 (PS21/10).[124] The revised changes came into force on 10 August 2021. The final outcome of the new UK SPAC regime confirms the

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[119] UK Listing Review (3 March 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966133/UK_Listing_Review_3_March.pdf.

[120] B Elder, 'UK SPAC Market Under Scrutiny for Safety-First Approach' (*Financial Times*, 7 January 2022).

[121] H Osmond, 'Time for UK Regulators to Open Door to SPACs: London Listing Rules Badly Need Reform to Help Companies Access Capital' (*Financial Times*, 17 December 2020).

[122] B Reddy, *Founders without Limits: Dual-Class Stock and the Premium Tier of the London Stock Exchange*, 1st ed (Cambridge University Press, 2021).

[123] FCA, 'Investor Protection Measures for Special Purpose Acquisition Companies: Proposed Changes to the Listing Rules' (April 2021) CP21/10, https://www.fca.org.uk/publication/consultation/cp21-10.pdf.

[124] FCA, 'Investor protection measures for special purpose acquisition companies: change to the Listing Rules' (July 2021) PS21/10, https://www.fca.org.uk/publication/policy/ps21-10.pdf.

main recommendations of the Hill Report, but with some crucial differences that specifically concern:

- A minimum size threshold of £100 million[125] that the SPAC has to raise, excluding any funds the sponsors have provided, either in cash or shares.
- Obtaining shareholder approval of the acquisition, the founder and associates being excluded from voting.
- The recommendation of allowing dual-class shares for SPACs, which has been dropped.[126]

Furthermore, the FCA imposed a procedure by which money from public investors must be ring-fenced to either fund an acquisition or be returned to shareholders; shareholders should approve and have the right to redeem their shares in their entirety and exit the SPAC; and the SPAC must have a period of two years to find an acquisition target upon admission to listing with a possible extension of up to twelve months. Finally, specific disclosures were imposed on sponsors in order to establish a system through which the SPAC sponsor(s) disclose any risk related to the IPO, announcement and conclusion of a reverse takeover.

SPAC sponsors unable to meet such conditions, or those choosing not to, will continue to be subjected to a presumption of suspension. This has created a dual system of regulation in the UK on the Standard segment of the LSE.[127]

B. SPACs and the AQSE

Historically, smaller companies have sought to list on the AIM market of the LSE, but the pace of such listings slowed following a change to the AIM rules, implemented in 2016, which increased the fundraising threshold at the time of listing from £3 million to the current threshold of £6 million. One of the results of this rule change was that companies turned their attention instead towards listing SPACs on the Standard segment of the Main Market of the LSE, given that this only required a minimum market capitalisation of $700,000 in order to secure a listing on this market. However, following the rule changes made to the Listing Rules in July 2021, SPACs must now raise—as previously noted—a minimum of £100 million to be able to list on this market. This means that smaller SPACs that are not able to meet these minimum fundraising thresholds need to look elsewhere for a suitable

[125] This threshold was reduced from the initial proposal of the FCA Consultation Paper that was suggesting £200 million. It is important to highlight that this threshold does not refer to the market capitalisation under LR 2.2.7R of the FCA Listing Rules that refers to the aggregate market value. By contrast, the thresholds refer to the amount raised from public investors at the IPO.

[126] In the US, dual-class shares have been allowed since the 1980s, and SPACs have used these structures. One notable case is Grab holdings Inc. whose CEO Anthony Tan received in April 2021 a majority voting control with 60.4% of the voting power while owning a stake of 2.2%.

[127] See D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 116.

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listing venue in the UK. One suitable exchange is the *Aquis* Growth Market of AQSE, as this only requires a fundraise of £2 million for SPACs.

Following certain changes made to the AQSE rules in December 2020, now the AQSE Growth Market is composed of two segments: the Access segment and the Apex segment. The Apex segment is for more established companies and requires a minimum market capitalisation of £10 million, whereas the Access segment is designed for early-stage companies, and SPACs.

Under the new AQSE Access Rulebook, updated in 2021, a SPAC is now referred to as an 'Enterprise Company'. An 'Enterprise Company' is defined in the following terms:

> an issuer whose predominant purpose or objective is to undertake an acquisition or merger, or a series of acquisitions or mergers, or to finance and/or invest in securities or business.[128]

According to those rules, the SPAC must appoint and retain an AQSE Corporate Adviser, who manages the application process and provides advice on the continuing obligations of the applicant. Hence, there is no need for the involvement of an investment bank or underwriter. The SPAC has within two years of admission to execute its stated strategy, and if it fails to do so, AQSE can suspend the trading of its securities. The SPAC has to publish an admission document that is the equivalent of a simplified version of a classic prospectus, and at least 25% of the SPAC's shares must be in 'public hands'. This is to maximise liquidity and limit volatility. Once the SPAC, or rather the Enterprise Company, has been listed, the acquisition can occur in a variety of forms, but if it is following a reverse takeover structure, then specific rules apply. Upon the announcement of the business combination, trading in the Enterprise Company's securities will be suspended until the publication of an admission document in respect of the issuer as enlarged by the reverse takeover. However, this suspension can be disapplied if AQSE is satisfied that there is sufficient publicly available information in the market about the reverse takeover. The acquisition is conditional upon shareholder approval, and the company's admission will be cancelled once it completes the reverse takeover, and it must therefore re-apply for the enlarged group to be readmitted to the AQSE. This requires a new draft of the admission document to include information about the enlarged group.

C. Remarks on UK SPACs

SPACs today in the UK have specific listing requirements, and the UK is the first harmonised regime for SPACs in Europe. It has been noted that SPACs can list on different exchanges, each with their own specific requirements for listing, such as the AQSE, AIM, and Standard segment. Following the SPAC reform in 2021, the redemption right of shareholders is a compulsory feature in each of those markets, but the exception from the suspension of shares is today possible only for

[128] *Aquis* Stock Exchange, 'AQSE Growth Market – Access Rulebook' (2021), https://www.aquis.eu/aquis-stock-exchange/rules-and-regulations/consultations.

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Standard listed SPACs that follow the specific requirements imposed by the FCA (see Part IV, Section A).

Furthermore, the FCA has also highlighted the importance of disclosures of key terms and risk factors at the point of the SPAC IPO and following the business combination. This feature is similar to the ESMA public statement, although—as I said—such disclosures can only be illustrative rather than definitive. In light of this, the UK seems to be consistent with the international trend of guaranteeing more public investors' protections in SPAC deals.

However, the new rules in the UK on the Standard segment prevent sponsors and anchor investors who participate in a SPAC's at-risk capital from voting on the acquisition.[129] This is a major difference from other listing venues, and it might impact London's ability to compete in the SPAC market. This is not a requirement on other exchanges such as NYSE, NASDAQ and Euronext (Parts II and III). Additionally, to avoid the suspension of share trading on the Standard segment of the LSE, the SPAC has to raise at least £100 million from public investors alone without counting the sponsors' or strategic investors' contributions pre-IPO. This is not in line with the US or with any other venue for SPACs in Europe (Parts II and III). However, this threshold imposes the formation of a sound share capital with the investment by institutional investors, whose monitoring would, in turn, operate as a mechanism for investor protection; on the other hand, it is not competitive and might discourage sponsors from being listed in London.[130]

Such predictions have been confirmed in reality; only four SPACs[131] listings have so far been witnessed under the new UK SPAC reform: Hambro Perks Acquisition Company Limited with an IPO of £140 million in November 2021; Hiro Metaverse Acquisition I SA (a Luxembourg-based SPAC) that raised over £115 million in February 2022; New Energy One Acquisition Corporation PLC backed by Italian oil and gas group Eni S.p.A. with £175 million in March 2022; and Financial Acquisition Corp. that offered units for the equivalent of £150 million. Additionally, by the end of March 2022, a new SPAC was trying to list on the Standard segment of the LSE for £500 million, but without using the new SPAC regime, and by designing different corporate features: Marwyn Acquisition Company II Ltd, which allows different classes of shares to be raised privately; these can then be converted into a public listing when the terms of business combination are agreed.[132] Furthermore, the sponsor incentives are aligned to long-term equity performance and no discounted shares/warrants or upfront promoter fees are assigned to founders to avoid the US critiques of the SPAC sponsor's bonanza, as explained in Part II. Interestingly this SPAC, or rather search fund, also confirms

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[129] See D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above, p 118.

[130] See D'Alvia et al, 'The UK SPAC Reform: Preliminary Remarks', note 2 above.

[131] Clifford Chance, 'Recent Trends in European SPAC IPOs as of April 2022' (May 2022), https://www.cliffordchance.com/briefings/2022/05/recent-trends-in-european-spac-ipos-as-of-april-2022.html.

[132] D Thomas, 'Acquisition Company to Raise Up to $500mn on London Market' (*Financial Times*, 9 March 2022).

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the increasingly close relationship between SPACs and private equity transactions, because Marwyn would like to implement a new transaction process which allows the SPAC to execute a reverse takeover on a timetable that is comparable with private equity.

Further differences between the UK and the US SPAC regimes concern the funds held on trust such that under both the NYSE and NASDAQ rules, 90% of the gross proceeds raised during the IPO must immediately be deposited and held in a trust account and are subject to strict investment criteria. Furthermore, the SPAC must complete a business combination that has a fair market value equal to at least 80% of the trust account at the time of the business combination. The UK does not have such requirements. This can allow UK directors to have more autonomy when identifying a target because founders have more flexibility in the use of the funds in the short term, although they have a fiduciary duty to deploy the funds in the best interests of the company and in the manner disclosed in the IPO prospectus/ AIM admission document.

In the UK, SPACs usually issue founder shares in the form of preferred shares along with warrants for additional founder preferred shares. This is a major difference from the US promote (founder shares and founder warrants) and a common European trait. In the US there is also a deferred underwriting fee, with a portion of the fee paid at the closure of the IPO, and the remainder deferred until the closure of the initial acquisition. This is not the case in the UK, where underwriter fees are structured in the same way as for any other IPO.

One further commonality that the UK shares with Europe is that entities listed on the AIM market in London or Standard segment may, either on completion of the acquisition or subsequently, seek admission to a different market if that is considered more appropriate for the acquired business. This could involve, for example, moving to a premium listing on the LSE or to a listing venue in another jurisdiction, such as the NASDAQ or the NYSE. The same practice, for instance, has been followed in Italy by several SPACs. Hence, sometimes a SPAC can be seen as a 'bridge company' to plan and secure more prestigious listing venues.

Finally, London also offers a few advantages because operating under English law may be preferable to the US culture of securities litigation, and a non-US SPAC may also appeal as a way to sidestep some onerous obligations around US GAAP accounting standards and the new disclosure requirements that are likely to be implemented in the US by the end of 2022. There is also another financial incentive to choose the UK over Amsterdam or European exchanges. Negative interest rates apply on escrow accounts in Europe, and this means that European SPAC sponsors are expected to make cash top-ups to the account out of their own funds, thus providing the SPAC with more at-risk capital.

V. CONCLUSIONS

SPACs are risk-free investments until the moment of a business combination (Part II, Section B), but risk in financial terms is an objective and immanent concept that

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cannot be eradicated *tout court*.[133] SPACs—it has been seen—are non-operating companies, and this means that investors do not have access to previous balance sheets, and the management investment decisions become the only valuable asset.[134]

In light of this, the SEC is right, for instance, in stressing the importance of disclosures in terms of management's conflict of interests, and to some extent the proposed SPAC reform is progressive. However—as shown in Part II—the regulatory uncertainty established by the SEC, and its regulation by enforcement, are the main triggers of negative market conditions for both SPAC sponsors and investors. This has also been exacerbated and amplified by the current rise in inflation and the Russian invasion of Ukraine at the start of 2022. In other words, alike in Europe, in the US, the economic circumstances are broadly not in favour of the IPO of private companies.

It has been seen how historically, in the US, SPACs are informed by self-regulation and uncodified market practices (SPAC 3.0 and 3.5 models), and by the uncodified-codification of market practices into listing requirements (SPAC 2.0). It is undeniable that the SPAC is a unique financial innovation, and the US has established itself as the main legal formant in respect of the SPAC's corporate governance practices and listing requirements. Indeed, since the SPAC boom in 2020 in the US, European regulators, especially including those in the UK, have studied the implementation of relevant financial regulation to facilitate SPAC listings in their jurisdictions and lure investors away from New York.

When a European Union Member State does not have specific legislation or market rules on SPACs, then general principles and provisions of corporate and financial law are legal constants (Parts III). It applies to my saying that 'SPACs are without law, but not outside of the law'.[135] Indeed, any time there is no specific financial regulation in terms of listing requirements, then national corporate law will be applied. Furthermore, financial regulation of SPACs in Europe, if ever implemented at domestic level, must abide by a minimum level of protections in respect of both retail investors and sponsors' disclosures, with the necessary clarifications as illustrated in Part III, Sections A and G. This is a regulation by objectives.

After examining European Member States through specific legal indicators outlined in Part I of this article, it is clear that in terms of SPACs, the jurisdiction most resilient to US standards is the Euronext Amsterdam. Although that exchange does not have a specific financial regulation for SPACs, the flexibility of Dutch company law (such as BV entities) allows sponsors to replicate US-style features in their entirety; this is also by virtue of uncodified market practices such as preference shares in terms of founders' remuneration. The Amsterdam case directly illustrates

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[133] D D'Alvia, 'Risk, Uncertainty, and the Market: A Rethinking of Islamic and Western Finance' (2020) 16(4) *International Journal of Law in Context* 339; G Gigerenzer, *Risk Savvy: How to Make Good Decisions*, 1st ed (Penguin Random House, 2014); F Knight, *Risk, Uncertainty, and Profit*, 1st ed (Houghton Mifflin Company, 1921); see D'Alvia, *Mergers, Acquisitions and International Financial Regulation: Analysing Special Purpose Acquisition Companies*, note 11 above.

[134] U Rodrigues and M Stegemoller, 'What All-Cash Companies Tell Us About IPOs and Acquisitions' (2014) 29(C) *Journal of Corporate Finance* 111.

[135] See notes 12 and 90 above.

the point: market practices and self-regulation matter. It is not fundamental to have lenient financial regulation for SPACs if sponsors can implement market practices under their national corporate legal framework.

In fact, currently Italy, Spain, Germany, and Belgium have diversified legal regimes concerning redemption rights under their national company laws. This is creating difficulties for public investors, and has obliged sponsors to be creative in setting up SPACs in other jurisdictions (see the case of Italy and Germany) by using more flexible corporate laws such as Dutch or Luxembourg law, which are also closer to the flexibility of US corporate law from a de-SPAC perspective (Part III, Section G). Although this kind of forum shopping in Europe might act against the harmonisation aims of domestic corporate law frameworks, the establishment of a regulation by competition is not necessarily negative (Part III, Section G).

Finally, the new SPAC reform in the US would like to claim that the de-SPAC transaction is the SPAC target IPO. This is a form of regulation by business or function that sees SPACs as 'backdoor' listings. As opposed to common wisdom, a SPAC can propose an unconventional transaction that includes features that deviate from the normal SPAC structure (namely, the reverse merger or reverse takeover). Indeed, the de-SPAC transaction has seen remarkable development in recent years. Reverse takeovers are not the only function of SPACs. SPACs can: (1) target distressed entities and conduct possible restructuring procedures (for instance, Broadstone Acquisition Corp.); (2) cash out deals by which a SPAC can be a company vessel to facilitate a group's expansion (think of Accor Acquisition Company on Euronext Paris); and (3) acquire individual assets such as vessels of shipping companies.[136] This function can be assimilated to a banking function and, therefore, might give rise to possible issues of 'shadow banking' and alternative access to finance by SPACs; (4) merge with high growth companies or zero-revenue companies (see Arrival in the UK or Grab in Singapore). This function can assimilate SPACs to venture capital late-stage rounds of financing.[137]

This short excursus demonstrates that neither the law nor financial regulators can anticipate the different levels of complexity of the de-SPAC transaction. This is the multi-level definition of SPACs. It means that there is no single possible definition, but different ones based on the different qualities and features that a study of SPACs deals reveals. The UK case of the AQSE in 2021 is self-explanatory. SPACs there are defined as 'Enterprise Companies' that are able to provide finance or carry out acquisitions or takeovers. This is another direct instance of the theory of a multi-level SPAC definition. SPACs are enterprise companies, and they are becoming always more a specification of private equity[138] as the emergence of new financing techniques at the de-SPAC phase in the US also shows (Part II, Section F). To this end, SPACs constitute a unique alternative acquisition model rather than a pure alternative to the traditional IPO, as some would like to claim.

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[136] Y Shachmurove and M Vulanovic, 'Specified Purpose Acquisition Companies (SPACs) in Shipping' (2015) 26(C) *Global Finance Journal* 64.

[137] See Gahng et al, note 28 above, p 10.

[138] See D'Alvia, 'The International Financial Regulation of SPACs', note 11 above, p 108.

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