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STIFEL

# PIPE and Other Capital Raising Transactions in Connection with De-SPACing

November 5, 2020

# Panelists

- **Craig DeDomenico** – *Stifel, Nicolaus & Company*
- **Don Duffy** – *ICR Strategic Communications & Advisory*
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- **Anna Pinedo** – *Mayer Brown*
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# What is a SPAC?

Special Purpose Acquisition Company buys a minority stake in a private company with a public outcome

Listed security made up of a unit: 1 common share + 1 warrant typically convertible into 1/3 or 1/2 of a share

24 month single asset investment vehicle with invested money placed in a trust

Redemption feature provides optionality for SPAC IPO investors

Generous promote to founders creates aligned incentives

No management fee / founders fund working capital out of their pockets

Founders could be PE managers or former public / private company executives

Generally equity value of a private company target will be 3x+ Cash in Trust

**Like a Single Asset Fund  
but Sold to the Public Market**

# SPAC PIPE Overview

- PIPEs (or other committed equity) can be arranged in a variety of ways
  - Included at the time of IPO in the form of a forward purchase agreement (FPA)
  - Arranged at the time of business combination to fund additional equity
  - Arranged at the time of business combination to backstop equity redemptions
- Investors in a PIPE receive the SPACs public securities at a price typically equal to the IPO price
  - Typical PIPE buyers include fundamental SPAC IPO buyers as well as sizable investors in comparable companies of the target business
  - Investors are typically reached in a wall-crossed fashion and sign subscription agreements prior to announcement of the business combination
  - The PIPE subscription agreement is conditional upon closure of business combination
- 10 out of 11 business combinations completed in October had PIPEs in place at announcement

# What Caused the SPAC Boom in the Past 10 Years?

## **Market Backdrop for Bringing More Private Companies Public has been Strong:**

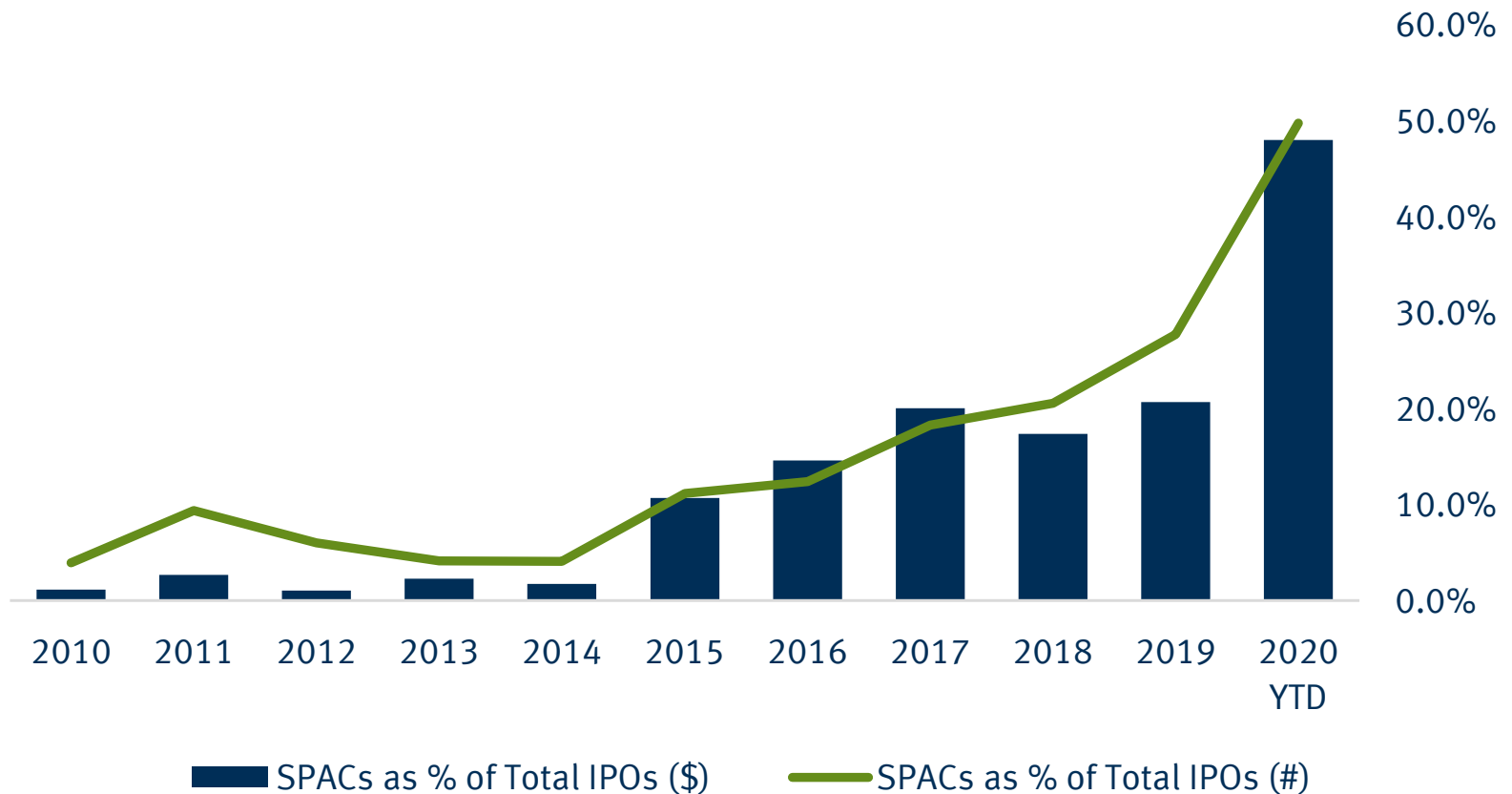
- Public company valuations versus M&A market bid
- Private equity and venture bias for new ways to list their portfolio companies
- Low interest rate environment and AUM rotation to equities

## **Recent “Generation III” SPACs have addressed a number of structural issues:**

- Shareholder vote is no longer mandatory and is not tied to redemptions:
  - Shareholder approval is still triggered frequently by exchange rules (when issuing 20%+ of stock)
  - Shareholders, however, may vote in favor of a business combination and still submit for redemption, which eliminates the need to vote against the deal in order to redeem
- No warrant holder vote
- Warrants are less dilutive - "out-of-the money" at close and convertible into a fewer number of shares:
  - A number of SPACs are still choosing to restructure warrants as a part of business combination to further reduce uncertainty of the future capital structure
- Restrictions on holders of 10%+ of stock with respect to redemptions (or those who collectively own 10%, acting in concert)
  - This further helps to de-link redemptions from the process of transaction approval
- IPO investors are provided with downside protection down to the size of their initial investment (\$10/unit)
  - While SPAC cash gets depleted by underwriting fees and target search expenses, in the latest SPAC structures, Founders typically "overfund" the SPAC at IPO through at-risk capital infusion to provide for \$10+/share at redemption or liquidation

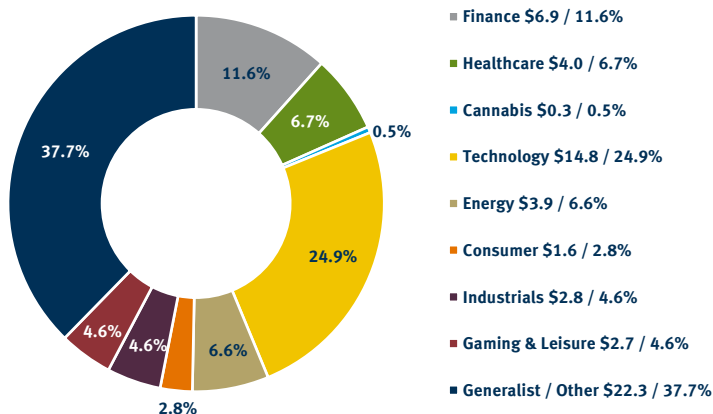
# US IPO Activity

- By volume, US-listed SPAC IPOs account for more than half of overall US-listed IPOs this year and \$57.8bn of the total \$120.1bn IPO proceeds raised to year to date

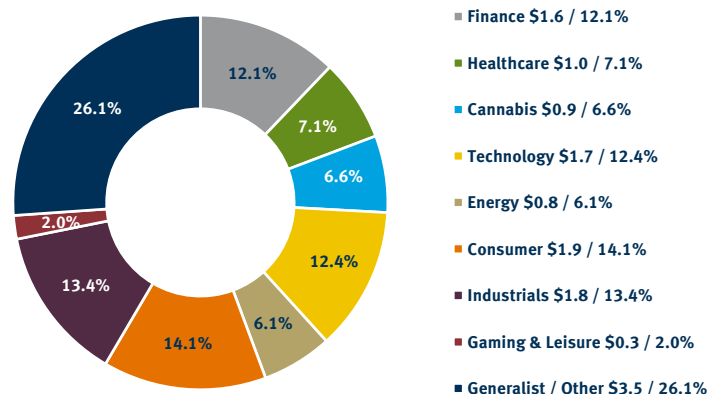


# US SPACs – Statistics and Trends

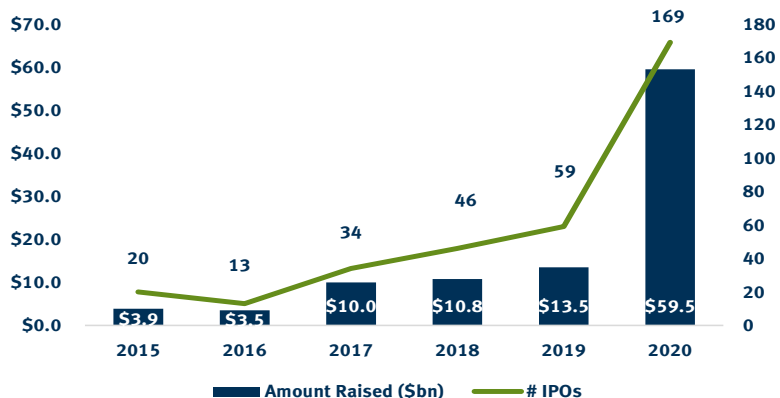
## 2020 SPAC Proceeds Raised by Target Sector (\$ in billions)



## 2019 SPAC Proceeds Raised by Target Sector (\$ in billions)



## Total SPAC Issuance – All Sizes Since 2015



## Summary Statistics – All Sizes Since 2015

SPACs Raised:	341
Liquidated:	8
Looking for Targets:	178
Acquisitions Pending:	49
Acquisitions Completed:	106

**Estimated Success Rate ~95%**

# SPAC Market Update

## SPAC IPO Market Update

- 50 SPAC IPOs priced in October raising \$16.5bn in proceeds
  - Out of the 50 that priced, only 18 are trading above or at the \$10.00 issue price
- Trading dynamics in the secondary market led to a number of issuers to downsize, increase warrant coverage or overfund trust accounts
  - Of the 50 IPOs priced in October, 15 downsized their offerings, 6 overfunded trust accounts and 6 increased warrant coverage
  - Repeat sponsors and SPACs with high profile management teams have largely been able to hold onto terms
- The IPO backlog leveled off in the back half of October as the bar to clear the public market has risen
  - There are currently 59 SPACs in the backlog looking to raise \$12.5bn in proceeds, down from a high of 76 in mid-October
- SPAC IPOs year to date have accounted for half of overall IPOs compared to ~20% of total IPOs in 2019

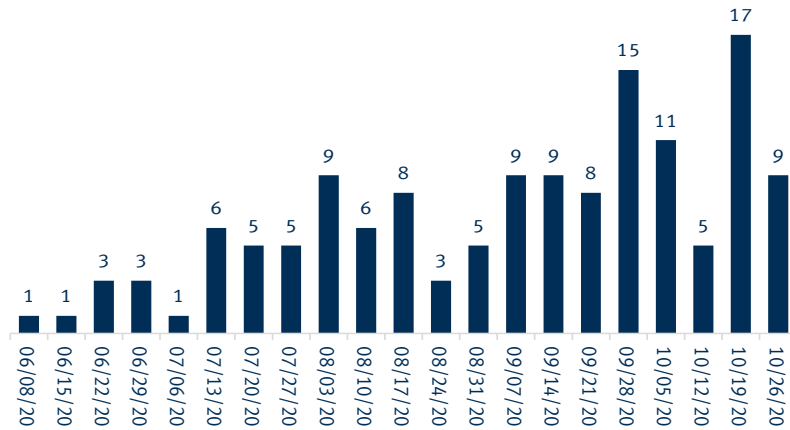
## De-SPAC Market Update

- 11 SPAC Business Combinations completed in October, representing \$3.4bn in IPO capital
- Of the completed transactions in October, 90% raised PIPE during the de-SPAC process with an average size of \$567mm
- Average transaction value of \$2.4bn
- There were 13 business combinations announced in October, and 2 signed LOI announcements
- Of the 13 announced business combinations, just two are trading above \$11.00
- There are 18 pending business combinations expected to close in Q4 2020 which would free up a significant amount of committed capital to rotate back into IPOs

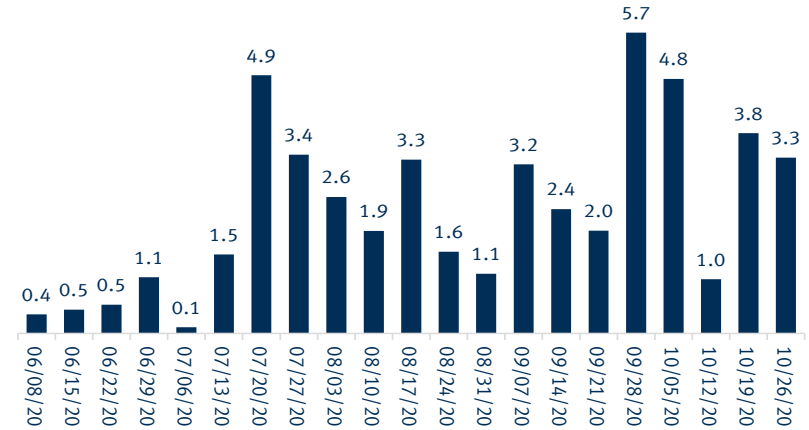


# SPAC IPO Pricing & de-SPAC Deal Announcements by Week

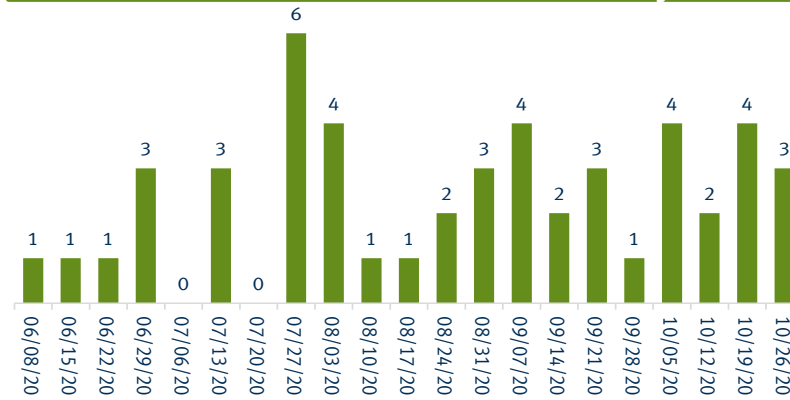
# of SPAC IPOs Priced by Week<sup>(1)</sup>



SPAC IPO Proceeds Raised by Week (\$bn)<sup>(1)</sup>



# of Business Combinations Announced by Week<sup>(2)</sup>



SPAC IPO Proceeds tied to Announcements (\$bn)<sup>(2)</sup>



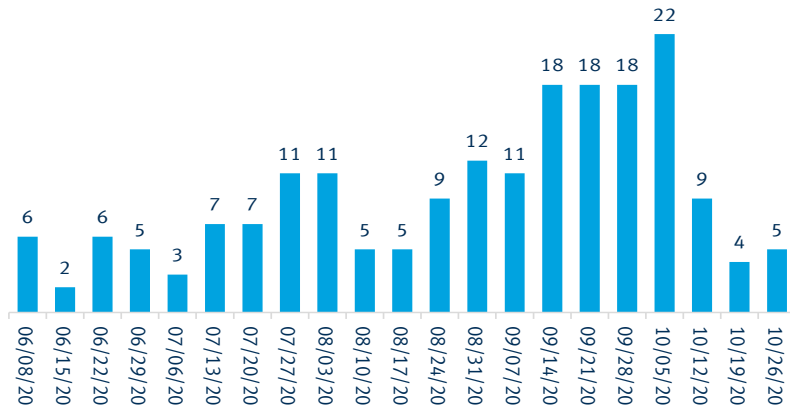
Source: Dealogic, SPAC Research as of 10/30/20.

(1) Includes all SPAC IPOs that have priced by week. Proceeds raised do not include overallotment or upsize / downsize.

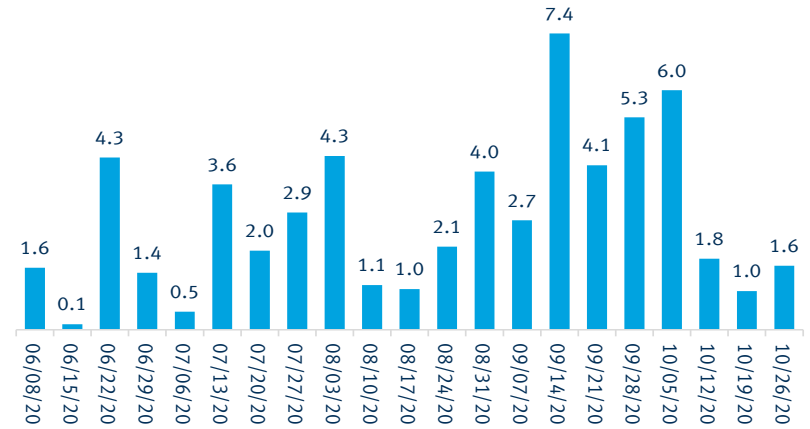
(2) Includes all SPAC IPOs that have announced a business combination. Proceeds raised indicate final deal size.

# SPAC Filing Activity

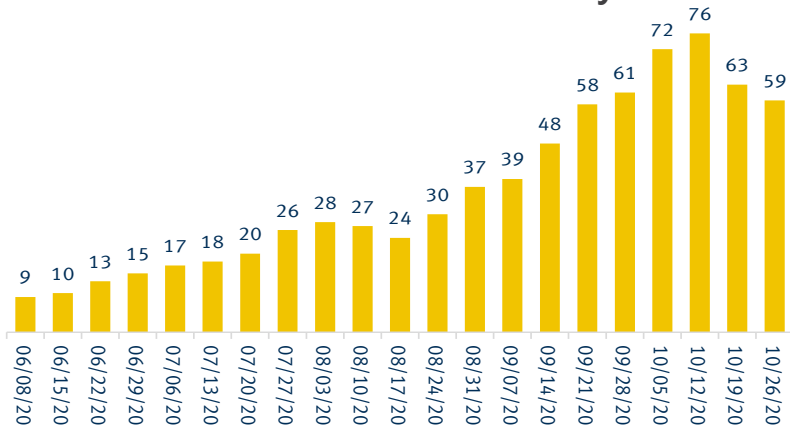
# of SPAC IPOs Filed by Week



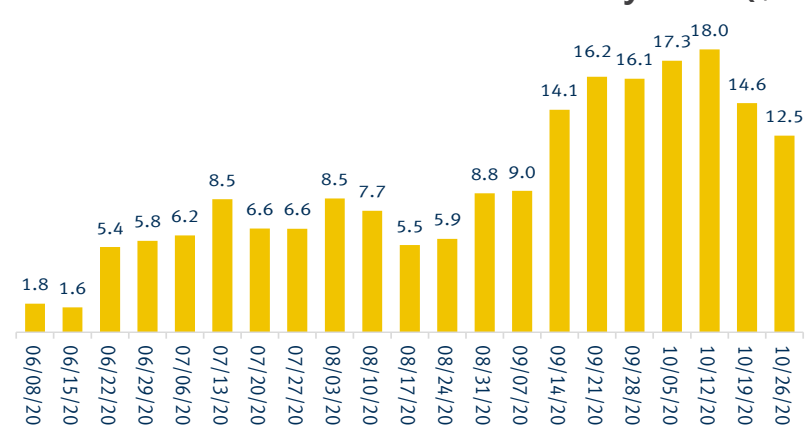
SPAC IPO Proceeds Filed by Week (\$bn)



Cumulative # of SPACs on File by Week

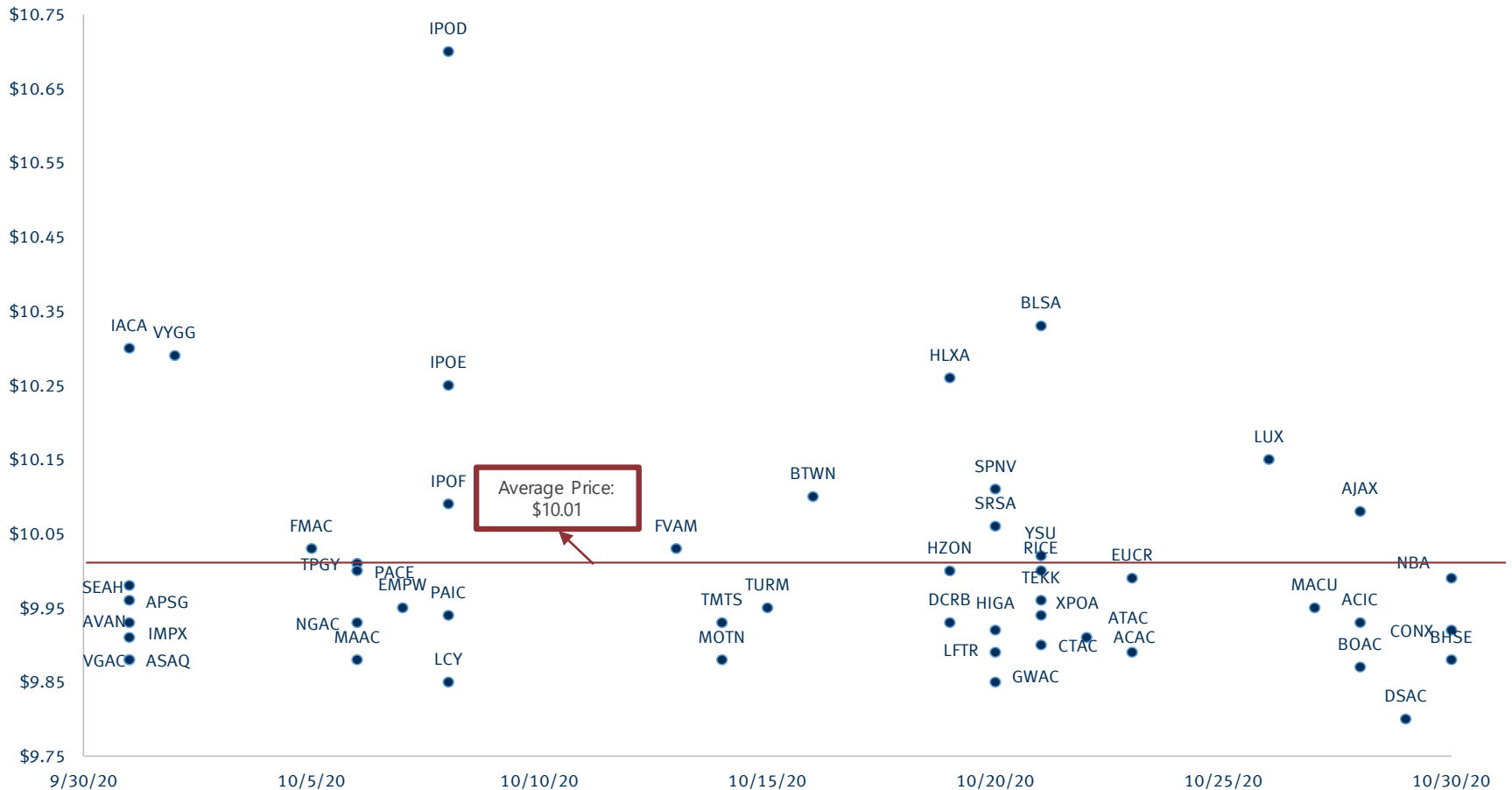


Cumulative SPAC IPO Proceeds on File by Week (\$bn)



# SPAC Trading Update

- Approximately 64% of SPACs that have priced since October 1<sup>st</sup> are trading below issue price



# Business Combination Activity During October

Business Combinations Announced in October														
SPAC IPO					SPAC Target					Trading Summary				
IPO Date	Liq. Date	SPAC Name	Size (\$mm)	Warrant	Date Announ.	Exp. Close	Target Name	Transaction Value (\$mm)	PIPE	Price at Ann.	Current Price <sup>(1)</sup>	% Change Since Ann.	Warrant Price <sup>(1)</sup>	% Implied Unit Return
10/23/18	4/26/21	Alberton Acquisition Corp	\$115	1/1	10/28/20	Q2 2021	SolarMax Technology	\$300	-	\$10.70	\$10.81	1.0%	\$0.23	10.4%
8/13/20	8/18/22	dMY Technology Group Inc II	\$240	1/3	10/27/20	Q1 2021	Genius Sports Group	\$1,500	\$330	\$10.26	\$10.05	(2.0%)	\$1.50	5.5%
8/28/18	11/30/20	Longevity Acquisition Corp	\$40	1/1	10/22/20	Q4 2020	4D Pharma	NA	NA	\$11.60	\$12.28	5.9%	\$0.54	28.2%
2/21/19	2/26/17	Acamar Partners Acquisition Corp	\$306	1/3	10/22/20	Q1 2021	Carlutz	\$827	\$125	\$10.61	\$10.50	(1.0%)	\$1.15	8.8%
6/30/20	7/6/22	Panacea Acquisition Corp	\$125	1/3	10/21/20	Q2 2021	Nuvation Bio	\$1,319	\$500	\$11.00	\$10.60	(3.6%)	\$1.95	12.4%
6/19/19	12/17/20	South Mountain Merger Corp	\$250	1/2	10/19/20	Q1 2021	Billtrust	\$1,300	\$200	\$12.50	\$12.32	(1.4%)	\$2.24	34.4%
8/12/20	8/12/22	FS Development Corp	\$105	-	10/15/20	Q2 2021	Gemini Therapeutics	\$216	\$95	\$10.70	\$10.00	(6.5%)	-	-
4/23/20	4/24/22	CC Neuberger Principal Holdings I	\$414	1/3	10/14/20	Q2 2021	E2open	\$2,565	\$520	\$10.19	\$10.00	(1.8%)	\$1.35	4.5%
11/7/19	5/7/21	Stable Road Acquisition Corp	\$173	1/2	10/7/20	Q1 2021	Momentum	\$1,200	\$175	\$10.29	\$10.10	(1.8%)	\$1.80	10.0%
4/21/20	4/24/22	Social Capital Hedosophia Holdings I	\$828	1/3	10/6/20	Q1 2021	Clover Health	\$3,700	\$400	\$10.97	\$10.02	(8.7%)	\$1.40	4.8%
2/7/19	2/7/21	RMG Acquisition Corp	\$230	1/3	10/5/20	Q1 2021	Romeo Power	\$1,330	\$150	\$10.37	\$10.11	(2.5%)	\$1.21	5.1%
5/5/20	5/8/22	Live Oak Acquisition Corp	\$200	1/2	10/5/20	Q1 2021	Danimer Scientific	\$890	\$210	\$10.25	\$10.99	7.2%	\$2.20	20.9%
7/17/19	7/17/21	Oaktree Acquisition Corp	\$201	1/3	10/1/20	Q4 2020	Hims	\$1,592	\$75	\$10.80	\$10.20	(5.6%)	\$1.69	7.6%
<b>Median:</b>			<b>\$201</b>					<b>\$1,310</b>	<b>\$200</b>	<b>\$10.70</b>	<b>\$10.20</b>	<b>(1.8%)</b>	<b>\$1.40</b>	<b>8.8%</b>
<b>Mean:</b>			<b>\$248</b>					<b>\$1,395</b>	<b>\$253</b>	<b>\$10.79</b>	<b>\$10.61</b>	<b>(1.6%)</b>	<b>\$1.33</b>	<b>11.7%</b>

Completed Business Combinations in October														
SPAC IPO					SPAC Target					Trading Summary				
IPO Date	Liq. Date	SPAC Name	Size (\$mm)	Warrant	Date Closed	Target Name	Transaction Value (\$mm)	PIPE	% Shares Redeemed	Price at Close	Current Price <sup>(1)</sup>	% Change Since Close	Warrant Price <sup>(2)</sup>	% Implied Unit Return
12/12/19	12/12/21	Healthcare Merger Corp	\$250	1/2	10/30/20	SOC Telemed	\$721	\$165	NA	\$9.22	\$9.22	-	\$0.31	(6.3%)
8/9/18	8/9/20	Spartan Energy Acquisition Corp	\$552	1/3	10/29/20	Fisker	\$2,940	\$500	3.6%	\$8.96	\$10.14	13.2%	\$2.68	10.2%
7/17/19	7/17/21	Conyers Park II Acquisition Corp	\$150	1/4	10/28/20	Advantage Solutions	\$5,200	\$700	NA	\$8.86	\$8.99	1.5%	\$1.11	(7.3%)
6/4/20	6/9/22	ARYA Sciences Acquisition Corp II	\$150	1/3	10/27/20	Cerevel Therapeutics	\$847	\$320	NA	\$10.10	\$10.30	2.0%	\$2.14	10.1%
3/5/19	3/5/21	DiamondPeak Holdings Corp	\$280	1/3	10/23/20	Lordstown Motors Corp	\$1,640	\$425	0.0%	\$18.21	\$13.05	(28.3%)	\$4.22	44.4%
11/15/18	11/15/20	FinTech Acquisition Corp. III	\$345	1/2	10/16/20	Paya Holdings Inc.	\$1,300	\$200	16.5%	\$11.37	\$10.97	(3.5%)	\$2.40	21.7%
8/2/18	8/2/19	Forum Merger II Corp.	\$200	1	10/15/20	Tattooed Chef, Inc.	\$482	-	0.0%	\$24.07	\$17.15	(28.7%)	\$6.25	134.0%
11/19/19	5/19/21	Software Acquisition Group Inc	\$150	1/2	10/14/20	CuriosityStream	\$331	\$250	83.9%	\$10.10	\$8.63	(14.6%)	\$1.16	(7.9%)
3/19/19	9/19/20	Insurance Acquisition Corp.	\$150	1/2	10/13/20	Shift Technologies, Inc.	\$416	\$185	0.0%	\$11.98	\$8.90	(25.7%)	\$2.14	(0.3%)
2/13/20	7/15/20	Churchill Capital Corp III	\$1,100	1/4	10/8/20	Multiplan	\$11,138	\$2600	6.3%	\$9.84	\$7.30	(25.8%)	\$1.27	(23.8%)
2/27/19	7/15/20	Tortoise Acquisition Corp	\$233	1/2	10/1/20	Hyllion	\$1,097	\$325	0.0%	\$44.91	\$18.92	(57.9%)	\$5.86	118.5%
<b>Median:</b>			<b>\$233</b>				<b>\$1,097</b>	<b>\$323</b>	<b>1.8%</b>	<b>\$10.10</b>	<b>\$10.14</b>	<b>(14.6%)</b>	<b>\$2.14</b>	<b>10.1%</b>
<b>Mean:</b>			<b>\$324</b>				<b>\$2,374</b>	<b>\$567</b>	<b>13.8%</b>	<b>\$15.24</b>	<b>\$11.23</b>	<b>(15.3%)</b>	<b>\$2.69</b>	<b>26.7%</b>

Source: FactSet, SPAC Research, Company Filings as of 10/30/20.

Current price as of close on 10/30/20. (2) Warrant price as of close on 10/30/20, except for warrants that have been redeemed, where latest price available is shown.

# PIPE Transactions

# PIPEs

- A **PIPE** (Private Investment in Public Equity) is a private placement of a public issuer's equity or equity-linked securities to investors, where the sale is conditioned upon a resale registration statement being filed with, and declared effective by, the SEC subsequent to closing (permitting prompt resale).
- Generally, a PIPE is structured to comply with the Section 4(a)(2) exemption and Rule 506(b) of Regulation D to selected accredited investors. Investors irrevocably commit to purchase a fixed number of securities (common stock or fixed rate/price preferred stock) at a fixed price, not subject to market price or fluctuating ratios. The issuer undertakes to file a resale registration statement covering the securities.
- In the case of a PIPE in connection with a de-SPAC, the PIPE transaction may provide additional capital (in the event that there are significant redemptions), and it also may provide an opportunity to bring in sector investors who are interested in the target.

# Key documents in a PIPE transaction

- An engagement letter between the issuer and placement agent
- Trading restrictions/confidentiality agreements with investors
- An investor presentation
- A purchase agreement/registration rights agreement
- Legal opinions
- Closing documents
- A press release/Form 8-K to announce the transaction and file material agreements
- A resale registration statement

# Engagement letter

- This is often the only binding agreement between the issuer and the placement agent
  - With a de-SPAC, it is often the case that the target may be a party to the engagement letter
- Describes the placement agent's fees
  - The engagement letter should address the rights of the PIPE placement agent to compensation vis-à-vis other advisors to the SPAC and/or the target
- Expense reimbursement
- Exclusivity period – “tail”
  - Frequent subject of negotiation: As to which investors does the issuer pay the placement agent? What is the duration of the tail?
  - Is there a right of first refusal for future financings for combined company?
- Indemnification provisions:
  - This can be challenging, given that a SPAC cannot access the trust account
  - Do you include target as a named party in the engagement letter and to provide indemnification?



# Purchase agreement

- This agreement is between the issuer, which usually is the SPAC, and the investors
  - The placement agent is not usually a party, unless it is also investing
  - The placement agent’s counsel or a lead investor’s counsel usually prepare
  - The placement agent generally will be a named third-party beneficiary so that it receives the benefit of the representations and warranties. This is particularly important in the case of a de-SPAC PIPE, as we discuss in the context of diligence.
- Issuer representations and warranties
  - Issuer business representations
    - How will you address representations about the target?
    - Will the representations be brought down at the closing? Will representations, when brought down, be made by the combined company?
  - Private placement representations
    - Will the PIPE be undertaken in reliance on Section 4(a)(2) and/or Rule 506(b)?
  - Investor will not have material non-public information (MNPI) once the transaction is announced
- The issuer covenants to promptly make the transaction public
- Investor representations (limited):
  - Private placement representations; “accredited investor” representations
  - No violation of trading restrictions

# Negotiating the registration rights

- Consider that the SPAC/former SPAC will not be able to rely on Form S-3 for the resale. This means that a Form S-1 resale will need to be filed and kept effective.
- Will there be a time limit for filing of the resale registration statement following the execution of the purchase agreement?
- Length of time given for the issuer to have the resale registration declared effective?
- Penalty payments for failure to file a registration statement or to go effective? Cap on the amount of penalty payments?
- Can any other registration statement be declared effective before the rLimitation on the length or number of black-out periods?
- Registration statement relating to the PIPE?

# Closing a PIPE – Physical certificates

- **Note:** Some investors, such as certain mutual funds and other investment funds, must close offerings electronically on a "delivery vs. payment" basis and may not accept physical stock certificates at closing.
- **Practice tip:** Determine early if any investors of this kind will be participating in your offering, and prepare the settlement mechanics and related provisions for the transaction documents accordingly. Share certificates will need to be issued by the transfer agent prior to the closing and held by a "custodian".

# Diligence Practices

# FINRA communications rule

- If a registered broker-dealer is participating in a private placement, it will want to ensure that:
  - It has identified the group within the bank that will be involved
  - It has undertaken training to make certain that each member understands the requirements under FINRA Rules 2210 and 5123
    - Communications must be fair and balanced
    - Communications will be subject to review and record-keeping requirements

# FINRA and due diligence

- In the context of a Regulation D offering, FINRA Rule 2310 requires broker-dealers to conduct a suitability analysis when recommending securities to both accredited and non-accredited investors that will take into account the investors' knowledge and experience
- FINRA issued Regulatory Notice 10-22 in April 2010, reminding broker-dealers of their diligence obligations in connection with Regulation D offerings
- In order to ensure that it has fulfilled its suitability responsibilities, a broker-dealer in a Regulation D offering should, at a minimum, conduct a reasonable investigation regarding:
  - The issuer and its management;
  - The business prospects of the issuer;
  - The assets held by or to be acquired by the issuer;
  - The claims being made; and
  - The intended use of proceeds of the offering

## FINRA and due diligence *(cont'd)*

- The scope of the broker-dealer's investigation also will depend upon a number of factors, including the broker-dealer's role in the transaction and other facts and circumstances of the offering, including whether the offerees are retail customers or more sophisticated institutional investors
- In addition, a firm that engages in Regulation D offerings also must have supervisory procedures under NASD Rule 3010 that are reasonably designed to ensure that the firm's personnel, including its registered representatives:
  - Engage in an inquiry that is sufficiently rigorous to comply with their legal and regulatory requirements;
  - Perform the analysis required by NASD Rule 2310;
  - Qualify their customers as eligible to purchase securities offered pursuant to Regulation D; and
  - Do not violate the anti-fraud provisions of the federal securities laws or FINRA rules in connection with their preparation or distribution of offering documents or sales literature.

# Due diligence in a de-SPAC PIPE transaction

- The placement agent should consider how it will satisfy the FINRA standard, as well as its own internal requirements in the context of a de-SPAC PIPE
  - It may be sensible to conduct diligence on the target that is comparable to the diligence that the placement agent would undertake for a late-stage or pre-IPO private placement
  - At the very least, the placement agent should schedule business, auditor, legal and regulatory calls and should diligence the investor presentation materials and the target projections



# Liability considerations

- Private placements **are** subject to:
  - Section 17(a) (the anti-fraud provision) of the Securities Act
  - Section 10(b) (the anti-fraud provision) and Section 20(a) (the “control person” provision) of the Exchange Act
  - State securities laws (“blue sky” laws)
  - State common law of fraud and negligent misrepresentation
  - FINRA suitability, advertising and supervisory rules
- Who “made” the misstatement?
  - Under Rule 10b-5, it is unlawful for “any person, directly or indirectly, . . .[t]o make any untrue statement of material fact” in connection with the purchase or sale of a security

# Investor Outreach

# Investor outreach

- More often than not, the de-SPAC PIPE transaction will be marketed to prospective investors while the M&A transaction is being negotiated so that both the M&A and PIPE transactions can be announced together
- How will prospective PIPE investors be wall crossed?
  - The “usual” PIPE transaction wall cross script will need to be revised
    - Consider whether the target has any shares that trade, including shares trading on any foreign market or any private secondary market
    - Consider whether trading needs to be restricted in the securities of both the SPAC and the target
    - Consider the length of confidentiality obligation
  - What information will be used to market the deal?
  - Will a cleansing release ever be required?

## Investor outreach *(cont'd)*

- Usually, the PIPE transaction will be marketed using an investor presentation that will contain information about the SPAC, information about the proposed M&A transaction and information about target
  - It is essential to consider whether the information that is included in the investor presentation will be either in the proxy/prospectus or whether the investor presentation (or some version of it) will be included in a Form 8-K when the M&A deal is announced
  - Specifically, consider the projections shared in the investor presentation versus the projections disclosure that will be included in the proxy/prospectus
- Will there be one-on-one meetings? Will there be a “live” investor presentation?
  - All of the limitations on communications applicable to SPACs will apply in the context of the PIPE transaction
- After deal terms are announced, SPAC sponsors and management will also meet with new investors and analysts
  - The investor presentation is usually released in conjunction with the M&A announcement

## Investor outreach *(cont'd)*

- If new investors purchase stock, the SPAC stock price will rise above trust value
  - Rising stock prices will encourage existing shareholders to keep their shares and not redeem them
  - Will also support strong after-market performance

# What others say about our *Capital Markets Practice*....



**Chambers Global** – Leading firm for Capital Markets: Structured Finance, Securitisation and Derivatives (Europe-wide, Global-wide, UK, and US); Included in International Transactions: Capital Markets & Finance Specialists spotlight table for the US.



**Chambers UK** – Leading London firm for Capital Markets: Debt, Securitisation, Structured Finance & Derivatives



**Chambers USA** – Individuals ranked for Capital Markets: Debt & Equity. Leading firm for Capital Markets: Derivatives, and Securitisation



**U.S. News/Best Lawyers' Best Law Firms** – Ranked for Derivatives and Futures Law; Securities/Capital Markets Law; Securitization/ Structured Finance Law



**IFLR 1000** – Leading firm in the United States for Capital Markets, ranked in the Debt, Equity, Derivatives, Structured Finance and Securitisation categories.



**The Legal 500** – Ranked for Capital Markets: Debt, Equity, and Global Offerings categories for our advice to issuers and underwriters in the US.

Also ranked for Structured Finance: Derivatives & Structured Products, and Securitization. Ranked for Financial Products Tax. Ranked for Equity and Debt Capital Markets; Derivatives and Structured Products; and Securitisation in the UK.



**IFLR Americas Awards** – Structured Finance and Securitisation Team of the Year, 2020, 2017, 2016



**GlobalCapital Americas Derivatives Awards** – US Law Firm of the Year – Transactions, 2020; Americas Law Firm of the Year (Overall) 2019, 2018; US Law Firm of the Year—Regulatory, 2017, 2016

**GlobalCapital Global Derivatives Awards** – European Law Firm of the Year—Transactional, 2020, 2017, 2016; Global Law Firm of the Year (Overall) 2019

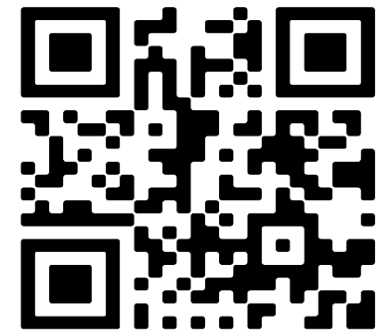
**GlobalCapital Securitization Awards** – Best Overall Securitization Law Firm, 2017

# Free Writings + Perspectives

## FREE WRITINGS + *Perspectives*

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