Special Purpose Acquisition Companies: Advantages and Disadvantages of the Markets' Own Response to a More Stringent Regulation

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Abstract

Le SPAC, storicamente discendenti delle Blank Check Companies americane, costituiscono "scatole" di danaro il cui compito è quello di raccogliere fondi attraverso una ammissione a quotazione e di usare tali fondi per future attività economico-imprenditoriali. Ciò è fatto attraverso una fusione inversa ovvero una acquisizione. Nella realtà americana, la creazione delle SPAC costituisce la risposta del mercato alla legislazione congressuale (il controverso PSRA) e la rule 419 della SEC, la quale ha quale obiettivo di combattere le possibili truffe connesse alle Blank Check Companies.

Sulla scorta di tale premessa il contributo analizza, da una prospettiva legale, i vantaggi e svantaggi che hanno, nella realtà normativa anglo-americana, tali nuovi veicoli societari, ove da un lato tale strumento presenta l'innegabile vantaggio di favorire l'investimento nel mercato dei capitali, dall'altro i nuovi scenari normativi ed operativi pongono pressanti esigenze di tutela degli investitori.

1. Introduction. From a very general point of view, a Special Purpose Acquisition Company (SPAC) can be described as a cash shell, created with the sole purpose of raising funds through an Initial Public Offering (IPO) in order to complete the future acquisition - or a reverse merger[1] - of a target company.

More specifically, this newly created vehicle, which has been defined as 'something of a hybrid between an IPO and a M&A transaction',[2] is set up by one or more expert sponsors with a three-steps process in mind:

(1) the raising of public funds through an Initial Public Offering; (2) the 'acquisition hunt', *i.e.* the research of a suitable target, to be necessarily completed within a pre-specified, relatively short time framework (generally: two years since the IPO); (3) the business combination.

Thus, at the time of its creation, the SPAC has no previous business operations, no operating history, no specific assets or pre-earned revenues:[3] its sole and express purpose, its business plan, is the future 'combination' with a subsequently determined target company, either by way of an acquisition or, more commonly, through what is known as a reverse merger.[4]

The attractiveness of this tool is twofold: for private companies, it constitutes an interesting way to become public avoiding many of the costs generally related to the IPO process;[5] for sponsoring managers, it is a way to raise equity funds

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Although the contribution is the outcome of a mutual work, Chapter 1and 3 shall be bestowed upon M. Baio, whereas Chapters 2 and 4 shall be bestowed upon P. de Gioia Carabellese. Chapter 5 shall be attributed to both Authors.

[1] Vhernie Manickavasagar, Lucy Tarleton, 'The rise of SPACs in the IPO market' (Deal talk, PWC blog, 27 February 2018) available at: https://pwc.blogs.com/deals/2018/02/the-rise-of-spacs-in-the-ipo-market.html, accessed June 17, 2019.

[2] Robert Berger, Lazard, 'SPACs: An Alternative Way to Access the Public Markets' (2008) Vol. 20 n° 3, Journal of Applied Corporate Finance, 68.

[3] Bruce Rader; Shane du Bruce, 'SPACs: A Sound Investment or Blind Leap of Faith' (2006) Vol. 6, Journal of Taxation of Financial Products, 17.

[4] Davidoff explains that 'because of the general requirement that the initial acquisition comprise eighty percent of its assets, SPACs typically only acquire a single privately-held business' Steven M. Davidoff, 'Black Market Capital' (2008) Columbia Business Law Review, 173. According to other Authors, being a "one-shot deal" is what at a first glance distinguishes a SPAC from a private equity fund, generally based on a repeated business; Usha Rodrigues, Mie Stegemoller, 'Exit, Voice, and Reputation: The Evolution of SPACs' (2013), Vol. 37, Delaware Journal of Corporate Law, 849.

[5] Tim Castelli, 'Not Guilty by Association: Why the Taint of their Blank Check Predecessor Should Not Stunt the Growth of Modern Special Purpose Acquisition Companies' (2009) Vol. 50, Boston College Law Review, 237.

without the need to depend on an equity sponsor.[6] Moreover, given some of the peculiarities of this investment vehicle,[7] SPACs generate some advantages for investors as well: the invested money, held in escrow, will be used to complete the business combination only in case of the approval by a super majority (usually equal to the 80% of the raised capital) with the possibility for those who voted against it to withdraw the investment, converting the acquired stocks into a pro rata share of the escrow account.[8] Clearly, a great advantage in terms of investors protection against possible agency problems.

As an investment vehicle, SPACs' shapes is, first and foremost, a response to Markets' and Investors' needs: while the core structure of them is the same notwithstanding their 'provenience', some – albeit not paramount – differences arise as a consequence of different Regulators' interventions.

2. *Historical development of the SPAC – 2.1. The Blank Check Companies in the US: development and related issues*. Historically, SPACs can be seen as descendants of the so called *blank check companies* developed during the '80s in the US: 'shells' created with the sole purpose of raising money by issuing penny stocks through an initial public offering in order to subsequently acquire a target business.[9] More precisely, the Securities Act of 1933,[10] as amended by the PSRA,[11] defines blank check companies as follows:

[T]he term "blank check company" means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title)

[6] Lola M. Hale, 'SPAC. A Financing Tool with Something for Everyone' (2007) The Journal of Corporate Accounting & Finance, 67.
[7] Mainly: the creation of an escrow account, inaccessible to SPAC's managers until the business combination, where to deposit the raised funds, and the necessity to complete the business combination within a pre-determined time framework.
[8] Yochanan Shachmurove, Milos Vulanovic, 'SPAC IPOs' (2018), ZBW - Deutsche Zentralbibliothek für Wirtschaftswissenschaften, Leibniz-Informationszentrum Wirtschaft, Kiel und Hamburg.
[9] Daniel S. Riemer, 'Special Purpose Acquisition Companies: SPAC and Span, or Blank Check Redux' (2007) Vol. 85, Washington University Law Review, 931.
[10] Securities Act of 1933, § 77(g).
[11] Penny Stock Reform Act 1990.

that
(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.[12]

Penny stocks are low-priced, generally highly-speculative securities traded on over-the-counter (OTC) markets, not listed on a national exchange. Given these features, before the intervention of the PSRA penny stocks issued by the above-described companies where basically not subject to the regulation of the Securities Act of 1933.[13] As a consequence, it will be seen, they constituted a perfect instrument of fraud, being blank check companies the most suitable vehicle to implement these frauds.

According to § 3(a)(51) of the Securities Exchange Act of 1934 (as amended), penny stocks are nowadays defined as follows:

The term "penny stock" means any equity security other than a security that is
(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (ii) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.];

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[12] 15 U.S.C. §77g(b)(3) (2006). Blank Check Companies are also defined by the Security Exchange Commission (SEC) as 'A development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies, other entity, or person', http://www.sec.gov/answers/blankcheck.htm.

[13] Derek K. Heyman, 'From Blank Check Companies to SPAC: The Regulator's Response the Market, and the Market's Response to the Regulation' (2007) Vol. 2, Entrepreneurial Business Law Journal, 531.

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

Thus, three were the main aspects of a blank check company: (1) the absence of a specific and pre-determined business plan. The only thing investors would know when buying its security was that, at some point in the future, the raised money would have been used to purchase a target company or to merge with it. No information was given, however, about the kind of this business or its business record; (2) the issuance of penny stocks and the listing on the penny stock market; (3) the lack of effective and efficient disclosure obligations meant to protect investors.

As the name of these tools seems to suggest, investors were supposed to completely trust the company managers and their abilities, no useful criteria being given to them to assess the quality of the investment. These aspects, combined with other 'occasional' factors such as the sharp growth of securities firms in the US between 1980 and 1989,[14] the growth of technology, the possibility to acquire phone lists through which contacting potential clients and the general lack of financial knowledge among investors[15] determined what anticipated before: Blank Check Companies rapidly became a formidable fraudulent tool, which according to NASAA's reports in the late 1980s costed the US economy $2 billion annually.[16]

The victims of this system were primarily low-income, elderly individuals, who were offered penny stocks via unsolicited and insistently frequent phone

[14] S. REP. N° 101-337, at 2 (1990), available at 1990 WL 263550.
[15] Castelli (n 5).
[16] N. AM. SEC. ADM'RS ASS'N, THE NASAA REPORT ON FRAUD AND ABUSE IN THE PENNY STOCK INDUSTRY (PART 1OF 2) 44 (1989), *reprinted in Penny Stock Market Fraud: Hearings Before the Subcomm. on Telecommunications and Finance of the H. Comm.on Energy and Commerce,* 101st Cong. 198 (1989).

calls, in order to make them believe they were about to invest in a highly convenient business, with great potential of return.[17]

More precisely, the common scheme of these fraud was perpetrated by brokers and market makers: colluding, they were able to maintain the price of the penny stocks inflated and stable, withholding information about the future business combination and creating high levels of enthusiasm among investors when this was finally announced, usually by exercising their warrants as a mean to influence them. It was only in a later moment, when trying to cash out their investment, that victims could realize their stocks were almost worthless and not marketable (so called ‘pump-and-dump scheme’).[18]

In order to tackle the threat, Congress intervened in 1990, empowering the SEC to enact stringent regulations meant to protect investors.

2.2 *The regulatory intervention – 2.2.1 The Penny Stock Reform Act*. Even if blank check companies were completely outlawed in thirty-six States, the Congress decided not to eliminate them completely, as room for legitimacy was still existing when not connected with the penny stocks phenomenon.[19]

The three main lines of regulatory intervention were the Penny Stock Reform Act 1990; the Securities and Exchange Act 1934 rule 3(a)51-1 (which as mentioned above provides clear criteria to define penny stocks); the Rule 419 elaborated by the SEC in implementing the legal framework developed by the Congress.[20]

Particularly as regards the PSRA, section 503 provides a preliminary definition of “penny stocks”; section 505 imposes limits on the trading ability of penny stocks brokers, requiring them to inform potential investors of the risks connected to the transaction – investors have, more precisely, to sign a waiver

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[17] Riemer (n 9).
[18] Heyman (n 13).
[19] Ibid.
[20] James Murray, ‘Innovation, Imitation and Regulation in Finance: The Evolution of Special Purpose Acquisition Corporations’ (2017) Vol. 6, Review of Integrative Business and Economics Research, 1.

through which they declare their awareness of possible risks; section 508 imposes limits on the raising-funds activity by blank check companies.

The legal framework referred to a future SEC implementation is contained in subsection (b)(1) of the Act with

- subsection (b)(1)(A) forcing a timely disclosure of information related to the future business combination and the way the raised funds are to be used;
- subsection (b)(1)(B) combining the possibility to use these funds and to distribute securities to the disclosure requirements of subparagraph (A);
- subsection (b)(1)(C) granting to investors a right of rescission from the investment.

In elaborating these 'guidelines', the Congress empowered the SEC to implement them, imposing obligations and restrictions to brokers, market makers and managers. The primary goal of SEC's further intervention was to put investors in a position where they would be able to assess the quality of possible investments with more clarity and higher amounts of information;[21] also, the possibility of a stricter control on the proceeds of the blank check offering was made available to them.[22]

2.2.2 *The Rule 419*. Following this framework, the Security Exchange Commission developed what is commonly known as Rule 419, which main provisions[23] further implement the content of the PSRA as regards blank check companies and penny stocks trading.

The main aspects of it are (1) the necessity for blank check companies to create an escrow account where to deposit and keep the proceeds coming from

[21] Castelli (n 5).
[22] Heyman (n 13).
[23] In analysing the Rule 419 I have used the same approach of D. K. Heyman (n 13), which highlights six different parts of the document and refers to them as the main provisions. Differently, S. Riemer (n 9) explains the SEC proposal referring to eight different points.

the IPO and the securities issued during it until the completion of the business combination. Disclosure obligations have to be fulfilled through the publication of a prospectus, meant to give investors complete indications about the escrow account and the date of refunding should the business combination not be completed in time; (2) a post-effective amendment to the registration statement required at the time when the target company is identified; (3) a second post-effective registration statement required at the time of the business combination completion;

(4) rescission rights granted to investors should they not agree with the proposed business combination; (5) restrictions on the possibility to use the proceeds kept in the escrow account for purposes other than completing the business combination; the same restriction applies to the possibility to trade securities until the business combination is completed. Among these restrictions, the necessity to use at least 80% of the raised funds when completing the business combination appears to be of noteworthy relevance; (6) an eighteen-month time framework within which completing the business combination.[24]

As a consequence of Rule 419, Blank Check Companies where strongly limited in their possibility to conduct business and deal with penny stocks in a way likely to fraud or mislead retail investors and hamper the US economy.[25] However, the harshness of these restrictions has been seen by some as excessive, given that *de facto* they made blank check companies impossible to be efficiently used, even when the business purpose was absolutely legitimate.[26]

2.3 *The first SPAC: a reaction to Regulation.* The way to combine these two apparently incompatible instances – namely the statutory intention to protect

[24] Blank Check Offerings, Securities Act Release No. 6,891, Exchange Act Release No. 29,096, 48 SEC Docket 962, 1962 (Apr. 17, 1991).
[25] In particular, Riemer observes that 'Because shareholders were given the right to rescind their investment once a combination was announced, management could not know exactly how much capital was available to the company until the refund period passed. Because it was impossible to know the amount of proceeds at the company's disposal while searching for a combination, it became extremely difficult for blank check companies to effectively negotiate the acquisition of a business'. Riemer (n 9) 943.
[26] Ibid.

investors from frauds by limiting blank check companies' business in the penny stock area and the great positive outcomes deriving from a legitimate use of these kind of companies – was eventually found by David Nussbaum, at that time Chairman of GKN Securities.

His intuition was that of creating a company which (a) as a blank check company, had the sole purpose of raising funds through an IPO in order to complete a business combination within a certain limited period of time and (b) voluntarily complies with most of the rules provided by the SEC Rule 419, in this way giving to the Regulator a certain level of tranquillity for what regards investors' protection.[27]

In order to do so, two were the possible approaches, both related to point (*iv)* of the § 3(a) (51) of the Securities Exchange Act of 1934:

"*The term 'penny stock' means any equity security other than a security that is …. (iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph.*

The first possibility was to create a 'larger black check company', by pricing the IPO shares at a market value higher that $5. This way of bypassing such a stringent regulation, however, seemed to be dangerous, as a simple change in the definition of penny stock in relation to its minimum price would have meant a renewed impossibility to conduct business.[28]

On the contrary, what Nussbaum did was to avoid the applicability of the Rule 419 by creating a blank check company with net tangible assets[29] for more than $5 million;[30] thus, anchoring to a more certain criteria, he managed to obtain the same effect: the creation of a company with no purpose other than collecting

[27] For a clear analysis of the different approaches in granting Investors' and Financial Markets protection between the US and the EU see: Konstantinos Sergakis, *The Law of Capital Markets in the EU: disclosure and enforcement* (First Edition, Palgrave 2018).
[28] Murray (n 20).
[29] At the consummation of the IPO, the company usually files a Current Report on Form 8-K: by doing so, it declares and demonstrates the possession of enough net assets to be not considered a black check companies under Rule 419 description.
[30] Castelli (n 5).

money through an IPO in order to subsequently invest it in the acquisition of a private target company. Voluntarily complying with Rule 419, this new tool also avoided the possibility that the business was shot down by the SEC for reasons related to investors and market protection. The first SPAC was born!

As said, this voluntary compliance did not amount to a complete mirroring of the framework provided by Rule 419, some difference being detectable between it and the common SPAC.

Under the former, *90% of the IPO proceeds* are required to be deposited in the abovementioned escrow account and until the completion of the business combination they can only be invested in *specific securities*; the blank check company, as said, cannot complete the business combination unless the *fair value* of the target business is worth at least 80% of the offering proceeds, and *warrants* can be exercised before this moment at the condition of keeping the proceeds in the escrow account; lastly, the *time framework* within which complete the business combination is 18 months, and those voting against it are *automatically* returned the pro rata share of funds held in the escrow account.

Differently, the amount of SPACs' offering proceeds held in an escrow account is generally higher than 90%,[31] and they are typically invested in short-term US Government securities (this, of course, for US SPACs); Nussbaum, however, permitted the trading of his SPAC's securities before the completion of the business combination;[32] also, when measuring the fair value of the target business, SPAC are generally accounting working capital, investment income and other value-fluctuating factors, being however the minimum threshold still the 80% of the sums held in escrow; warrants cannot be exercised before completion day, for which a longer period is generally given;[33] lastly, dissenting shareholders have a conversion right, which as such must be actively exercised by them, no automatic refunding being granted.[34]

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[31] Presumably, this is due to the larger amount of money invested in SPACs by institutional investors, which allows to save enough proceeds to deal with administrative costs even when the total amount held in escrow is of a higher percentage.
[32] Riemer (n 9).
[33] Up to two years, sometimes three. Murray (n 20).
[34] Rader, d. Bruce (n 3).

Over the years, SPAC design and features have evolved, and it is possible to notice a higher level of differentiation from the first ones, which were much closer to the framework provided by Rule 419. However, some authors have highlighted that, due to the high pace at which financial markets and related needs are nowadays evolving, a converging phenomenon is still not clearly detectable.[35] Moreover, it is possible to notice how players involved in SPAC business have changed over the years, both among directors and shareholders, with a strong presence of institutional investors and hedge funds who seem to have replaced retail investors at large.[36]

These factors, alongside with the testified decrease in the use of debt-based financing method such as LBOs as a consequence of the subprime mortgage crisis,[37] have determined a rise in the number on SPACs created in the past decade and the amount of money raised through them. This is not only true in the US but in the rest of the World too, particularly in Canada, South Korea, Malaysia and in the United Kingdom.

3. *The development of SPACs in the United Kingdom – 3.1 Appealing reasons.* Although created in the United States, SPACs have been recognized as a viable investing option in other Countries too, where they have developed in the past years, generally involving more business operations and larger amounts of money raised through IPOs. Interestingly, it has been noted that it is precisely the renewed interest for SPACs in the US one of the key factors of their increasing appeal in other Jurisdictions.[38]

With specific regard to the United Kingdom, it is possible to highlight two different trends in the rising of this peculiar investing model: the first, comprised between 2009 and 2011, saw SPACs increasing attractiveness driven by the investors' need to find alternative ways to raise money in financial markets as a

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[35] Murray (n 20).
[36] Castelli (n 5).
[37] Ibid.
[38] According to Manickavasagar, Tarleton (n 1), in 2017 US SPAC IPOs raised $10bn (6% of global IPO values) and this had a "knock on effect" in the UK, where 15 out 103. IPOs have been completed through SPACs, with a £1.7bn raised.

consequence on the Financial Crisis;[39] the second and current one, differently, owes some gratitude to the increasingly-numerous high-skilled private equity executives who are nowadays acting as SPACs sponsors, being the well-known and certified level of their capabilities and skills a necessary factor in fostering investors'[40] confidence in SPACs.[41]

The reasons of this increased appeal, as anticipated, are also to be searched in the peculiar structure and functioning of SPACs. Their capability of sharping investors' confidence being mentioned,[42] the possibility investors have to capitalise their investment by selling shares in the stock exchange is another interesting factor, as the same possibility is not granted to them, for instance, when investing in traditional private equity funds. The comparison with private equity funds seems to be favourable for SPACs from the sponsors' perspective as well, given the increased marketability – and therefore an amplified firepower at the moment of the business combination – that derives from the possibility SPACs have to issue financial instruments (shares and warrants).[43]

Other attracting factors for investors – all related to the increased confidence they now have on this vehicle – are the ease of exit; the listed-

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[39] Cfr. n 38.
[40] Primarily Institutional Investors.
[41] Paul Amiss, 'Spac to the Future' (2019) Global Banking and Finance Review, available at: https://www.globalbankingandfinance.com/spac-to-the-future/. Accessed on June 18, 2019.
[42] For a clear a complete analysis of the importance that investors' confidence has in fostering Financial Markets activity and the related, not completely satisfactory steps taken towards this goal by the EU please refer to Sergakis (n 27).
[43] Amiss (n 41).

company status and the related benefits in terms of signalling;[44] the structure of the SPAC as an efficient tool to hedge and reduce agency problems.[45]

As regards the ease of exit, it is possible to notice how SPACs grant it to investors both when the business combination is successful and when it is not, as a whole or partly, because some of them did not agree with it.[46] As mentioned before, the possibility to trade and sell shares and warrants gives investors a freedom of choice as regard their permanence in the SPAC shareholding-structure which is much higher than it would be should they invest in a traditional private equity fund. This is particularly true after the business combination completion and the conclusion of the re-listing process of the newly-combined company (which is, as explained below, a peculiarity of UK SPACs).

When the business combination is not completed, or when one or more shareholders do not agree with the project developed by the managing sponsors, they will have the possibility to vote against it and the subsequent right to have their invested money back, although some differences are detectable on this regard depending on which exchange SPACs have decided to be listed in.

[44] For investors, one of the main issues when deciding whether to invest in one or another company is given by the fact that they do not possess the same amount of information about the target business as its managers do (so called 'information asymmetry'); as a consequence, the risk is that of investing in a 'lemon', *i.e.* a company which seems to be well performing but it is not, for the detriment of those who decided to buy its shares (so called 'adverse selection'). George A. Akerlof, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism' (1970), Vol. 84 n. 3 The Quarterly Journal for Economics, Oxford University press, 488. Thus, an IPO and the related disclosure obligations are commonly perceived by scholars, experts and investors themselves as a risk-reducing factor, as the amount of information companies are obliged to release is likely to reduce the information asymmetry, hedging the risk to buy a lemon. Jeffrey J. Reuer, 'Avoiding lemons in M&A Deals: Three Methods of Obtaining Vital Information Before the Deal Happens', (2005), MIT Sloan Management Review, 15.

[45] Quoting the Authors: "An 'agency problem' - in the most general sense of the term - arises whenever one party, termed the 'principal', relies upon actions taken by another party, termed the 'agent', which will affect the principal's welfare. The problem lies in motivating the agent to act in the principal's interest rather than simply in the agent's own interest. Viewed in these broad terms, agency problems arise in a broad range of contexts that go well beyond those that would formally be classified as agency relationships by lawyers". John Armour, Henry Hansman, Reinier Kraakman, 'Agency Problems and Legal Strategies' in Reinier Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe, and Edward Rock (third edition), *The Anatomy of Corporate Law*, (Oxford University Press, 2017).

[46] Amiss (n 41).

For what concerns agency problems, the structure of SPACs and their main features are very interesting, as they seem to allow to reduce it, for the benefit of shareholders. More specifically, both the creation of the escrow account and the obligation to keep the funds raised through the IPO untouched until the completion of the business combination yield investors from the risk of opportunistic strategies plotted by managing sponsors to their detriment. On this regard, the abovementioned possibility to vote on the business combination increases this confidence, as the last say over the future of the company is left to shareholders, with the possibility to withdraw their investment should they not be satisfied with the proposed merger.[47] In both cases, the peculiar structure of the SPAC grants the possibility to align managers and shareholders' interests,[48] which is unanimously recognized as the main way to reduce agency issues and shareholders' value-extracting practices from managers.[49]

From a more general perspective, agency problems are tackled by the heavier regulatory framework surrounding SPACs – especially if compared with what seen about blank check companies – and the heavier set of disclosure obligation companies have to comply with when accessing Financial Markets.[50]

Another interesting reason why SPACs have lately been taken into good consideration in the UK relates to the improved market conditions for fundraisers, due to the lower interest rate and the high market valuation they are generally able to obtain in Financial Markets – a part of which is certainly given to the good reputation of SPACs managing sponsors.[51]

Last but not least, an interesting feature of UK-model SPACs, which is different from their American homologous, is that there is no statutory obligation

[47] The fact of giving final decisional power over business operation is generally defined as 'No Frustration Rule', and it is considered a way to eliminate agency problems in corporations. Armour, Hansman, Kraakman (n 45).
[48] Simon Schilder, Michael Killourhy, 'The resurgence of Special Purpose Acquisition Companies', (2016), available at: https://www.ogier.com. Accessed June 24, 2019.
[49] Armour, Hansman, Kraakman (n 45).
[50] Sergakis (n 27).
[51] James Innes, Anna Ngo, 'The Recent Resurgence of Special Purpose acquisition Companies', (2018), available at: https://www.latham.london/2018/02/the-recent-resurgence-of-special-purpose-acquisition-companies/. Accessed June 24, 2019.

to complete a business combination with a target of a fair value of at least the 80% of the funds raised in the IPO.[52] This means that, differently from the US, in Europe and in the UK such a vehicle can be set up to conduct more than just one single business, and this extra-flexibility seems to be appreciated by institutional investors and sponsors.[53]

3.2 *The choice of the Stock Exchange: driving rationales*. As regards which Financial Markets and trading venues have been chosen for SPACs listing in the UK, a strong preference is historically linked to the AIM,[54] presumably for its looser regulation – especially for what concerns disclosure obligation. After the Gate Venture scandal,[55] however, the situation has changed and a stricter approach has been implemented, causing a relevant shift of cash shells and SPACs towards the London's Main Market.[56]

Here, in the vast majority of cases SPACs are listed in the standard segment, given their 'incapability' in complying with the Premium Listing requirements,[57] and it seems that conditions are quite favourable for this choice to last. While admission on the AIM is subject to nomads' approval, having companies to retain one (and to pay his fees) for the time of their permanence in the Stock Exchange, this is not a requirement for listing in the Main Market, where disclosure obligations are complied with through the publication of a prospectus, meant to be approved by the UKLA.

[52] Colleen Marie O'Connor 'SPACs Take Flight on London's AIM' (2005), Investment Dealer's Digest, 7.
[53] 'We developed a structure which basically provides that they can make multiple acquisitions … It gives management more flexibility'. Ibid.
[54] Richard Beresford, 'Why cash shells have turned their back on AIM', (2017), available at: https://www.sharesmagazine.co.uk/article/why-cash-shells-have-turned-their-back-on-aim. Accessed on June 25, 2019.
[55] https://www.ft.com/content/a6cf61d0-2b40-11e5-acfb-cbd2e1c81cca.
[56] Beresford (n 54).
[57] Cash Shells and SPAC will generally be listed under Chapter 14 of the Listing Rules in the FCA Handbook. The possibility to access the Premium Segment is barred by LR 6, which requires an independent business and a financial track record covering at least three years, and LR 15, which requires company to comply with an investment-risks spreading policy. FCA Handbook, available at: https://www.handbook.fca.org.uk/handbook .

Another difference relates to the minimum level of cash SPACs are required to hold in order to be listed in the Market: while the threshold has been raised up to £6 million for what concerns the AIM, a listing on the London's Main Market requires companies to have as little as £700.000 at admission date.[58]

Moreover, while AIM regulation requires Shareholders' approval on acquisition, this is not necessary under London's Main Market Rules, and given what said before about uncertainty-related issues this is definitely to be considered an advantage from managing sponsors' perspective – although, at the same time, it weakens investors' protection against agency issues.[59]

Lastly, as mentioned before, the status of listed company is an attractive factor for both investors and sponsors, and given that being listed on the LSE – although not on the Premium Segment – is commonly perceive as more prestigious, the fact that SPACs tend to prefer it to the AIM is not of big surprise.

On the other hand, two seems to be the downsides to having a standard listing on the Main Market: (1) a weaker corporate governance structure and the less burdensome disclosure requirements could prove to constitute a problem particularly for institutional investors, for the detriment of the SPACs themselves; (2) the requirements that 25% of SPACs' shares are held in public hands in the EEA are, which could be seen as an inacceptable imposition by some.[60]

3.3 *The Business Combination and the Suspension of Listing*. The SPAC is not specifically mentioned or defined in the listing rules of neither of the abovementioned Exchanges, but a characterization of the model can be developed through an analysis of the FCA Handbook provisions.[61]

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[58] Beresford (n 54).
[59] In the US, NASDAQ and NYSE Amex rules have recently been changed in this sense as well, provided that when the SPAC approves the business combination without previously seeking for shareholders' approval it will conduct a tender offer to them, so as to give them the possibility to exit should they not agree with it. Schilder,, Killourhy (n 48).
[60] Beresford (n 54).
[61] To be precise, a legal definition of SPACs is today only provided by the Bursa Malaysia in its Equity Guidelines, and by the Korean Exchange, under section 6(4)14 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act. Daniele D'Alvia, 'The International Financial Regulation of SPACs Between Legal Standardised Regulation and Standardisation of Market Practices', (2019) Journal of Banking Regulation.

As mentioned, the business combination - the final purpose of the SPAC - will generally be completed through the acquisition of the target company or through a reverse merger.[62] The definition of a reverse merger can be found in the FCA Handbook under LR 5.6.4R, which finds that a transaction will be considered as such when (a) the percentage ratio is 100% or more; or (b) it will result in a fundamental change in the business or in a change in board or voting control of the issuer. Thus, the studied model will fall under provision LR 5.6.5AR of the FCA Handbook, and the related provisions will apply.

This characterization is important in relation to the its regulatory consequences. According to the FCA practice, when a reverse takeover is announced or leaked, the concerned issuer will fall under a rebuttable presumption as regard the insufficient amount of public information about the transaction, and this will lead to the suspension of listing (so called 'rebuttable presumption of suspension').

According to LR 5.6.6 FCA Handbook, issuers – or, when listed on the premium segment, their sponsors – are required to contact the authority as soon as possible, so to discuss (a) the appropriateness of a suspension, given the peculiar situation and the likely effects that the formal announcement of the reverse takeover could have on the market or (b) to expressly request a suspension, should details related to the reverse takeover have been leaked.

The leading ratio of such a suspension is the necessity to assure the smooth operation of the market and the related need to protect investors.[63] An exemplificatory list of cases likely to trigger such a reaction is provided by LR

According to the Equity Guidelines a SPAC is 'a corporation which has no operations or income generating business at the point of initial public offering and has yet to complete a qualifying acquisition with the proceeds of such offering'. For further provisions in relation to SPACs in Malaysia please refer to http://www.sc.com.my/legislatio n-guidelines/equity/. As for the Korean Exchange, SPACs are defined as 'a corporation, the sole business objective of which is to merge the corporation with another corporation and issue the stock certificates through a public offering'.

[62] A reverse merger is a transaction in which a privately held company merges with a publicly held company that has no business purpose other than to find a private company to acquire, has no assets (other than possibly cash), and no or nominal existing business operations. For this reason, such a public company is called a 'shell'. At the end of the reverse merger, the private company is publicly held, instantly. David N. Feldman, Steven Dresner, *Reverse Merger: Taking a Company Public Without an IPO* (First Edition, Bloomberg Press, New York 2006).

[63] LR 5.1.1R.

5.1.2G, among which subparagraphs (3) and (4) should be particularly taken into account for the purposes of the analysed topic.[64] Moreover, the Regulator will generally cancel the listing of the issuer at the formal completion of the reverse takeover.[65] In deciding *whether* and *when* to contact the Regulator, issuers are supposed to take into account Listing Principle 2, which requires them to act openly and cooperatively, so to give to the FCA time enough to deal with potential issues such as volatility and abnormal price-movements around the time of the proposed business transaction; LR 5.6.7G gives examples of cases where the FCA will consider that a reverse takeover is in contemplation, thus making the issuers approach necessary.

After the completion of the business combination the issuer's equity shares will generally not be listed anymore (as a consequence of the abovementioned cancellation). If the intention is that of acquiring the listed status once again, the post-completion company needs to apply for a re-admission to listing, and this in turn will trigger further disclosure requirements. At this stage, the application to listing will be done pursuant to LR 6 – if the issuer complies with the necessary terms to be listed in the premium segment – or, more commonly, following LR 14, therefore seeking for a standard listing.[66]

4. *The functioning of a SPAC.* As appreciated before, SPACs can be seen as the solution to two different instances: the need to protect investors from possible fraudulent schemes related to Blank Check Companies and penny stocks, on the one hand; the willingness to exploit the possible advantages related to this kind of transactions when legitimately conducted, on the other.

More specifically as regards advantages, and peculiarly concerning nowadays SPACs, it is possible to highlight the followings: for the sponsoring

[64] According to subparagraphs 3, the FCA suspension can be triggered when the issuer is considered to be unable to assess with sufficient accuracy its financial position in order to inform the market accordingly; subparagraph 4 relates to the case, quite common in relation to SPACs' business combination, of an insufficient amount of information in the market about the proposed transaction.
[65] LR 5.2.3G.
[66] January 2018 / UKLA / TN / 420.2.

managers, the easiness of raising funds through the Markets and the lower cost of equity if compared to debt; for target companies, the possibility to become listed without having to deal with an IPO, which is significant both in terms of monetary costs, time and positive effects;[67] for investors, the possibility to participate in a low-risk investment, the high chances of capitalizing it and the connected ease of exit through the conversion right, and the possibility to get access to M&A-related investments, which is generally quite unusual for small/retail investors and where qualified private equity investors prevail.[68]

To fully understand how these advantages are exploited, an analytic description of a common SPAC is provided: firstly, I describe the life-cycle of this investment vehicle, from birth to death, from its creation and the following IPO to its conclusion, either in the form of the business combination or by mean of its liquidation. Secondly, I focus on the parties involved in a traditional SPAC-related transaction: sponsors, investors, underwriters, target companies. Lastly, I describe the main features of the analysed model: the escrow account, the limited time framework given to complete the business combination, the capital structure and the corporate structure.

4.1 *The Life-Cycle of a SPAC.* Metaphorically speaking, the life-cycle of a Special Purpose Acquisition Company could be assimilated to that of a butterfly: its birth, with the *establishment* of the SPAC and the filing of the application necessary for the IPO; a ‘gestation period’, during which the managing sponsors conduct what is more commonly known as the ‘*target hunt*’; the *transformation*: assuming that the proxy vote sees a positive outcome, the SPAC will incorporate the target company through a reverse merger or an acquisition, and the two will become one. Alternatively, should a number of shareholders equal to more than

[67] (n 44).
[68] Gül Okutan Nilson, ‘Incentives Structure of Special Purpose Acquisition Companies’, (2018) Vol. 19, issue 2, Eur Bus Org Law Review, 253.

20% of the equity capital of the SPAC[69] vote against the business combination, the vehicle will be liquidated, and investors will be returned their investment.

4.1.1 ***Creation and IPO phase.*** As mentioned, during this preliminary phase two are the main aspects to consider: the filing of the documentation necessary for the IPO and, the application being successfully completed, the issuance of equity instruments in the market.

As for the former, the goal is of course that of complying with the chosen Exchange's minimum listing requirements, as well as those imposed by national regulators. In the US, underwriters generally act on behalf of the SPAC sponsors, filing the Form S-1 to the SEC and providing all the necessary information[70] about the newly created SPAC;[71] subsequently, various other pieces of information will have to be provided periodically in relation to the target-hunting activity.[72] As observed by Hale 'The fact that there is no business or acquisition identified makes the registration and disclosure process for a SPAC much less complex than in a typical IPO of an ongoing operating business'.[73]

It will be further analysed in chapter 4 that the mean of complying with these numerous disclosure obligations is to protect investors, releasing useful information about the issuer so to assess the quality of a possible investment and all the related risks. In this way the informational asymmetry correlated to Financial Markets operations is reduced.[74]

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[69] Many authors however note that in the last year the minimum thresholds have been raised, and nowadays SPAC require that a number of shareholders equal to at least 35-40% of the share capital has to vote against the business combination for it to be blocked. Among the others: Selina Sagayam, Eleanor Shanks 'Too Regulated to Succeed', (2008) International Finance Law Review, 34.

[70] Namely: the creation of the escrow account, details about the ways the IPO proceeds will be used in case of a positive outcome in relation to the business combination, the financing needs of the company, the nature and characteristics of the to-be-issued securities, any underwriting agreements and possible conflict of interests between the SPAC funding sponsors and future investors.

[71] Shachmurove, Vulanovic (n 8).

[72] Form 10-Q and 10-K are respectively related to quarterly and annual report to be filed with the SEC. For a complete analysis of periodic disclosure obligations and the different approaches of the US Regulator and the European one please refer to Sergakis (n 27).

[73] Hale (n 6).

[74] This, of course, assuming that in case of a breach of the abovementioned rules an efficient and effective enforcement is provided.

As regards the issuing of equity instruments, the purpose is clearly that of raising funds in the Markets, targeting both sophisticated investors such as private equity funds and institutional investors and, albeit to a lower extent, small/retail investors.

Quite peculiarly, SPAC IPOs are generally characterised by the issuance of so called ‘units’, a hybrid form of security comprising shares and one or more warrants:[75] both will be freely and separately tradable one month after the IPO, but warrants can generally be exercised (*i.e.* converted into shares) only after the completion of the business combination, thus postponing their holders’ possibility to increase their equity participation in the post-business-combination company.[76] This separate trading system, in combination with the escrow account, allows investors to remarkably reduce the risk connected to their investment: until the business combination, shares are sold and traded at a price close or even equal to the initial investment (thus, volatility is very low), and when the business combination is announced investors are given the possibility to decide whether to support it or redeem their shares, cashing-out their investment. This system, in other words, allows shareholders to take part to an almost risk-free investment, with an option connected to the acquired warrants.[77]

Most recent SPACs, interestingly, structure the issued units as comprising half-warrant or one-third of a warrant per unit: given that, however, only whole warrants are exercisable,[78] this will increase warrants-related transactions in the

[75] Ellis Ferran, ‘Capital Structure – Fundamental Legal Accounting, and Financing Considerations’ in Ellis Ferran, Look Chan Ho, *Principles of Corporate Finance Law* (2nd Edition Oxford, Oxford University Press, 2008).
[76] It will be further explained in more details that only shares are redeemable by shareholders should they decide to vote against the business combination; also, should the business combination fail, warrants will expire worthless.
[77] Okutan Nilson (n 68).
[78] Ramey Layne, Brenda Lenahan, Vison & Elkins LLP, ‘Special Purpose Acquisition Companies: An Introduction’, (2018) Harvard Law School Forum on Corporate Governance and Financial Regulation, available at: https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction/. Accessed on July 26, 2019.

pre-business-combination phase, thus creating liquidity. The negative aspect of this system, as it will be seen, is connected to dilution issues.[79]

As for shares, it is possible to differentiate between so called "Public Shares" – those included in the units sold to the public at large – and "Funder Shares", bought by sponsor for a nominal amount and prior to the submission of the registration statement valid for the IPO,[80] for an amount equal to the 20% of the overall equity capital of the SPAC. While the formers are totally redeemable by shareholders, the latter are not, and therefore should the business combination fail to be concluded, sponsoring managers would find themselves holding a worthless stock.[81] Apart from the explained difference, sponsors do retain all the others stockholders' rights, such as the right to vote or to receive dividends.[82]

4.1.2 ***The Target Hunt.*** Once the SPAC has successfully completed the IPO and the raised funds are put in escrow, the second phase of its life-cycle begins: the research of a suitable target company to acquire/merge with. During this 'screening period' the SPAC managers will explore opportunities and search for a company with high chances of successfully passing the proxy vote[83] – it will be seen further why they have a strong incentive for the business combination to be completed in time. Throughout this period, which generally amounts to eighteen months plus a six months grace period should the deal be announced but not completed by then,[84] the SPAC managers will enter confidential pre-

[79] On average, investors are owner of 78,2% of SPAC equity, but they provide, at the same time, almost the 97% of the cash held in escrow. Milan Lakicevic, Milos Vulanovic, 'A Story on SPACs', (2013) Managerial Finance, Vol. 39 Issue 4, 384.
[80] Layne, Lenahan (n 78).
[81] It will be further analysed how this interesting compensation scheme performs an aligning-interests function thought to reduce moral hazard and agency problems for the benefit of investors.
[82] Hale (n 6).
[83] Johannes Kolb, Tereza Tykvova, 'Going Public via Special Purpose Acquisition Companies: Frogs do not Turn into Princes', (2015) Vol. 40, Journal of Corporate Finance, 80.
[84] Lora Dimitrova, 'Perverse Incentives of Special Purpose Acquisition Companies, the Poor Man's Private Equity Funds', (2017), Vol. 63, n. 1, Journal of Accounting and Economics, 1.

agreement with around 30-40 companies, and among these will then chose the target.

As noted above, a target cannot be already found before the SPAC IPO, as this would trigger further disclosure obligations and connected costs.[85]

It is also interesting to note that recent SPACs have seen an increased involvement of underwriters during this phase: by agreeing to postpone the payment of their fees after the completion of the this phase, putting part of the owed money in the escrow account,[86] they determine an increase in the funds useful to complete the business combination, thus allowing managers to chase bigger targets. Intuitively, this determines an increased interest for underwriters to see the successful completion of the business combination and incentivises them to actively participate in the research. However, as it will be seen, given that there is a limited time framework within which the business combination has to be completed, this system could also determine the rising of moral hazard related issues.

Generally speaking, the research is conducted on the basis of the managing sponsors' expertise and this in the past has determined a prevalent focus on quite specific industries, such as technology, shipping,[87] mining, advertising, regional banking and healthcare. However, it has been noted that the increasing participation of private equity funds in SPAC-related transactions has determined a trend towards broader and more differentiate market sectors.[88] As for the target, SPAC deals usually involve smaller firms, which size makes it more difficult for them to chase and attract high-quality underwriters willing to support a successful

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[85] Hale (n 6).
[86] Rodrigues, Stegemoller (n 4).
[87] Yochanan Shachmurove, Milos Vulanovic, 'Specified Purpose Acquisition Companies in Shipping', Global Finance Journal, Vol. 26, 64. (2015).
[88] Sutherland Asbill & Brennan LLP 'Legal Alert: The SPAC Phenomenon: A Discussion of the Background, Structure and Recent Developments Involving Special Purpose Acquisition Companies', (2006), available at: https://us.evershedssutherland.com/mobile/portalresource/lookup/poid/Z1tOl9NPluKPtDNIqLMRV56Pab6TfzcRXncKbDtRr9tObDdEuKJCv0!/fileUpload.name=/The%20SPAC%20Phenomenin%20-%20A%20Discussion%20of%20the%20Background,%20Structure%20and%20Recent%20Developments%20Involving%20Specia.pdf Accessed on July 20, 2019.

IPO.[89] Moreover, in this way target companies will save the numerous expenses related to IPOs disclosure obligations. Also, given the necessity to acquire a business whose fair value equals at least to 80% of the escrow account value, in general SPAC transactions will involve the acquisition of only one target company.[90]

Lastly, it is interesting to note that, when the business combination takes the form of a reverse merger transaction, the likelihood of a successful completion is related to the fragmentation of the chosen industry: highly concentrated industries generally have low potential for further consolidation on themselves, and the further intervention of antitrust regulation and scrutiny will only make it even more complicated.[91]

4.1.3 *The Business Combination.* Once the target is found, the SPAC's life-cycle comes to its last phase: the business combination.[92] As indicated, for instance, by § 102.06 of the NYSE Listing Standards, this can happen in different ways: through a merger, a capital stock exchange, an asset acquisition, stock purchase, reorganization or similar ways.[93]

Generally, the chosen way to complete the business combination is through what is commonly known as 'reverse merger or 'reverse takeover', a technique by which a private target company is acquired by a public one with the management of the former replacing that of the latter after the acquisition; the surviving entity will be the newly public, previously private target.[94] In this way,

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[89] Kolb, Tykvova (n 83).
[90] Dimitrova (n 84). Unless, as seen, this cap is not a necessary requirement to comply with, such as in the UK.
[91] James C. Brau, Bill Francis, Ninon Kohers, 'The Choice of IPO versus Takeover: Empirical Evidence', (2003), Vol. 76 n. 4, The Journal of Business, 583.
[92] Or 'De-SPAC Transaction' (n 78).
[93] The choice is not only relevant for the SPAC management and shareholders, but for targets' shareholders too. While the acquisition of a private firm through a stock offer makes it possible for them to keep a non-controlling stake in the post-combination firm, the divestment is much greater in case of a cash takeover, and determines a clearer change in the ownership structure. Brau, Francis, Kohers (n 91).
[94] Kimberly C. Gleason, Ravi Jain, Leonard Rosenthal, 'Alternatives for Going Public: Evidence from Reverse Takeover, Self-Underwritten IPOs, and Traditional IPOs', (2008), Financial Decisions, Article 1.

Scholars observe, the target company saves many of the IPO-related expenses, and its shareholders are given a possibility to recover at least part of their previously made investment. However, it has also been noted that firms that go public through a reverse merger, if compared to those who did it through an IPO, tend to fail in generating the same extent of long-term wealth for shareholders.[95]

As mentioned before, for the business combination to be completed, a proxy vote must be taken, having public shareholders the last say on the matter. At this stage, shareholders are given the possibility to either cash-out their investment by exercising their conversion right – initial shareholders, on the contrary, usually do not have this possibility – or to vote on the business combination. For the vote to be successful, at least the majority of them has to vote in favour: however, this is enough only when disapproving shareholders – those exercising the conversion right – do not hold shares for more than, usually, 20% of the escrow account. Should this threshold be overcome, the business combination would fail, and the SPAC would be liquidated. In this scenario, stockholders won't be able to recover the hole amount of the invested money: the pro-rata share value is given back to them, but warrants will expire worthless.[96] In order to avoid the risk of a failure, recently some SPACs have incremented the abovementioned threshold from 20% to 35-40%:[97] if an allegedly positive outcome might derive from the higher chances of completing the business combination, the downside of this choice is that it lowers shareholders' power and, consequently, protection from agency issues and moral hazard related problems.

Another possible problem related to the exercise of shareholders' conversion right is dilution, and affects those whom, on the contrary, decided to trust the sponsoring managers' selection of a target, supporting it during the proxy vote. As a matter of facts, the exercise of the conversion right will determine a decrease of the SPAC's equity capital: however, given that original shareholders (*i.e.* the sponsors), holding 20% of it as a default compensation scheme, are not

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[95] Kimberly C. Gleason, Leonard Rosenthal, Roy A. Wiggins III, 'Backing Into Being Public: an Exploratory analysis of Reverse Takeovers', (2003), Vol. 12, Journal of Corporate Finance, 54.
[96] Hale (n 6).
[97] Sagayan, Shanks (n 69).

allowed to exit the company before the business combination, this would mean a decrease in the equity capital portion of public shareholders only, to their detriment and for the benefit – at least in term of control – of initial shareholders.[98]

In connection to the proxy vote system itself, a possible problem is the so called '*greenmailing'*: large holding shareholders, such as hedge funds, regularly used their power to influence the outcome of the vote in their favour,[99] presumably profiting from a massive sale of shares after the business combination completion. Thus, some SPACs have developed a different method of deciding on the business combination, using either tender offers[100] or buy-back programmes involving shareholders who do not agree with the proposed transaction.

4.2 *Parties involved in a SPAC transaction.* As for the main parties involved in a SPAC-related transaction, four are those to be identified: the sponsors and original shareholders of the SPAC; one or more underwriters; the investors; a target company. Given what has been described in the previous parts of chapter 3, the following is meant to be a summary of the main aspects and characteristics of each of these parties.

In a typical SPAC deal, sponsors are one or more experienced managers, who decided to exploit their knowledge and skills to set-up the described vehicle. In this way, even though they do not have a company backing them, they have the possibility to 'get back in the game', raising funds and 'buying' a company to run.[101] Differently from what used to happen at the time of Blank Check Companies, nowadays SPAC managers are generally highly qualified and trusted in the market sector of their expertise, which of course plays a role of paramount importance in fostering investors' confidence when assessing the

[98] Okutan Nilson (n 68).
[99] Kolb, Tykvova (n 83).
[100] The listing conditions of both NASDAQ (IM-5101-2(e) and NYSE-MKT Sec. 119(e)) require SPACs to make a tender offer and grant all shareholders the right to redeem their shares, unless the business combination is put to shareholder vote and a conversion right to dissenting shareholders. is granted. Okutan Nilson (n 68).
[101] Heyman (n 13).

possibility to participate in the SPAC.[102] As mentioned before, the usual structure of a SPAC does not provide any salary for the managing activity on the pre-business combination phase: the only form of compensation is represented by the 20% of the equity capital, which is given to sponsors in exchange for a nominal amount – way lower than the value of the same number of shares at the IPO date – some conditions and limits being imposed as regards conversion rights before the proxy vote. The way in which this compensation scheme works in reducing managers' moral hazard is analysed in chapter 4.

As for underwriters, the reason why their interest in SPAC deals has been increasing over the past years is, of course, profit. While in a standard IPO underwriters fee is usually around 7%, it increases to 10% when it comes to SPAC,[103] and this has led some underwriters to specialize on SPAC specifically (among them Early Bird Capital is probably the most famous). It will be seen in chapter 4 that some of the agency problems related to managers are relevant for underwriters too and must therefore be dealt with properly.

Investors too, of course, are a necessary player in the SPAC chessboard. While in the past years the majority of them was composed by hedge funds and private equity funds, to whom SPACs constitute a low-risk and low-cost way to leverage the Public Markets,[104] recently an upsurge can be noted as regards small investors involvement in these deals.[105] More specifically, it is the peculiar structure of the SPAC and its main features which play a major role in increasing investors' confidence in these kind of vehicles. As a matter of facts, disclosure obligations, the safety given by the escrow account, the possibility to have the last say about the business combination, the limited period of time given to

[102] The managers' expertise is sometimes defined as the only asset important in this regard, given that SPACs do not have any records of previous financial history to be analysed. Daniele D'Alvia, 'SPAC: A Comparative Study Under US, Asia and Italian Corporate Framework. Soft Law vs. Hard Law', (2014) Available at SSRN: https://ssrn.com/abstract=2476867 or http://dx.doi.org/10.2139/ssrn.2476867 .

[103] Heyman (n 13).

[104] Michael A. Pittenger, Cara M. Grisin, 'When SPACs Attack: The Role of Special Purpose Acquisition Companies in the M&A Market', (Potter Andreson Corroon LLP, News and Publications, October 1 2007), available at: http://www.potteranderson.com/newsroom-publications-57.html. Accessed on July 26, 2019.

[105] Heyman (n 13).

managers for finding a suitable target and the conversion right prove all to be very useful tools on this regard. They are indeed of great effectiveness in reducing the asymmetry of information and the related agency problems, albeit there is still room for improving. Moreover, divesting chances are way higher in SPAC-related deals if compared to venture capital or private equity funds: while in the latter cases investors are allowed to liquidate their investment only when a liquidity event is found, this is not the case for SPAC investors. As a matter of facts, divesting is an open choice to them at any given time, assuming of course that they find a buyer willing to bet on the SPAC project.[106]

Lastly, the target company. As previously mentioned, the industry of belonging used to be strictly linked to the SPAC sponsoring mangers' expertise, but a broadening trend is detectable as a consequence of the recent increased participation of bigger private equity funds in this 'sector' of the market. As for the reasons why a target company should positively embrace the business combination with a SPAC, as seen before, these are mainly two: (1) the possibility to become public and to exploit the related benefits without involving many of the costs related to the IPO; (2) for the target's shareholders, the possibility to divest, to an extent dependant on the specific method through which the business combination is completed.

4.3 *Main Features of a SPAC.* As for the main features of a typical SPAC, five are those to be identified: the use of an escrow account meant to secure the IPO proceeds until the earlier between (a) the completion of the business combination or (b) the liquidation of the SPAC; the capital structure, characterised by the issuance of units composed of shares and warrants; the corporate structure, with the last word about the business combination being given to public shareholders, who also retain a conversion right and thus the possibility to exit the SPAC before the business combination takes place; the time limit within which the business combination has to be completed; the fair value of the target

[106] Riemer (n 9).

company requirement, which as seen influences the target hunt. Given what has been described in the previous parts of chapter 3, the following is thought to be a summary of these main aspects. Chapter 4 focuses on the SPAC-related issues and analyses how these main structural features contribute to decrease and edge them.

An escrow account is, generally speaking, a locked arrangement where deals-related proceeds are held until the happening of a certain given future event, being “freezed” and therefore not freely disposable until that moment. In a SPAC deal, usually 90% - or more[107] – of the funds raised following the IPO are put in escrow, and are not released until the earlier of (a) the successful completion of the business combination or (b) the liquidation of the SPAC.[108] During this period, therefore, this money if not at the managers’ disposal, thus strongly reducing the chances of moral hazard-related conducts, detrimental for investors.

As for the net proceeds not held in escrow, the percentage of which will vary from SPAC to SPAC, these are used for expenses-covering matters mostly. As a matter of facts, when failing the required statements and documents necessary for the IPO, sponsors and underwriters will have to fully disclose how these funds will be used and in what percentage. By mean of example, these funds will be used to carry on the target research and to fund the related operating expenses, to cover accountant expenses related to the ongoing disclosure obligations SPACs are subject to during their life,[109] to pay due diligence activities preceding the business combination proposal to shareholders, and to reimburse directors’ expenses. As mentioned before[110] these sums and in general working capital funds of the SPAC are generally counted, in modern SPACs, when measuring the fair value of the target company – even though, as just observed, they are not held in escrow. This, clearly, increases managers’ firepower when conducting the

[107] See page 12.
[108] (n 88).
[109] Ibid.
[110] See page 10.

target hunt. Interestingly, some SPACs have used trust funds instead, being that the investors protection function is very similar.

The capital structure of a typical SPAC owes its composition to the issuance of a peculiar form of security – called 'unit' – which combines both shares and warrants.

As for the shares, it is possible to distinguish "public shares" and "initial stockholders shares": while the former are freely tradable after the IPO,[111] the latter are generally not transferrable during the escrow period,[112] thus obliging initial shareholders (*i.e.* the managing sponsors) to retain their ownership interest in the SPAC for some period after the business combination (so called '*lock-up agreement*').[113] In this way, arguably, they will have a greater incentive in conducting a proper target hunt, and the chances for opportunistic behaviours is reduced. Albeit both shares and warrants are freely and separately tradable in the period following the IPO – with the abovementioned distinction to be bore in mind – a difference between these two instruments relates to the redemption right. Indeed, when deciding not to support the proposed business combination, thus exiting the SPAC, shareholders have the right to convert their stock into a pro-rata value of their investment, and the same would happen should the vehicle be liquidated. In this second case, however, the same does not apply to warrants: as mentioned before, in case of liquidation they would expire worthless.

Strictly connected to the capital structure is the corporate structure of the SPAC. We have already seen that the last word on the business combination is given to public shareholders,[114] having them the possibility to exit the investment before its completion by using the redemption right. Initial shareholders, and in many cases underwriters too, do not have the same freedom, and are 'locked' to the company at least until the outcome of the proxy vote.[115]

[111] Albeit part of the same unit, shares and warrants are separately tradable. Hale (n 6).
[112] Ibid.
[113] (n 88).
[114] initial shareholders will vote on it only to the extent that they have bought other shares of the SPAC following the IPO
[115] chapter 4 will further analyse the way in which this "skin in the game" approach is useful in aligning their interests with those of shareholders, thus reducing moral hazard and, in theory, increasing the chances of an efficient outcome.

The business combination, albeit not in every jurisdiction,[116] is required to involve a target company whose fair value equals at least the 80% of the escrow account value, and as noted before this peculiar aspect of the described vehicle plays a major role in the target hunt and the determination of the most suitable company to acquire.

Last but not least, one of the very peculiarities of SPACs is the limited time framework within which the business combination has to be completed.[117] As further discussed in chapter 4, I find this feature very relevant for two, opposite reasons. If, on the one hand, it is indeed likely to foster investors' confidence in the vehicle, by assuring them that, in the worst-case scenario, their investment will be almost totally recovered after two years, on the other, I argue, it is likely to increase moral hazard risks as well. As a matter of facts, managers – and underwriters – are those risking more should the business combination fail, given that it is a condition precedent for their compensation.[118] As a consequence, particularly when the deadline is approaching, an inefficient-deal scenario is likely to appear to them as way more convenient than a no-deal one. The same logic, of course, does not apply to investors, whose protection is thus endangered.

5. *SPACs: Main Issues and Concerns.* Given that SPACs are investment vehicles, and specifically considering that their particular functioning allows them to issue securities in the Financial Markets, it comes naturally to understand that the main SPAC-related concern is investors protection. As noted above, giant steps have been walked by regulators towards this direction at the time of Blank Check Companies, and the SPACs invention itself can be said a response to this protecting regulation. However, both the Markets and Investors still need to be protected from possible frauds and dangers, and nowadays SPACs seem to be perfectible on this regard.

[116] (n 52).
[117] (n 33).
[118] The payment of part of the fees for underwriters.

From a general perspective, the core reason for the persistence of risks bore by investors is, not only for SPACs but in general in Financial Markets-related operations, a natural asymmetry of information between them and the issuers: the amount of possessed information about the deal is not the same between the two, and for this reason the less aware one risks to close a non-convenient deal – to buy a lemon.[119] This consequence, also known as *adverse selection* is edged in the M&A context in different ways[120], but while a reduction of the risk seems to be a feasible goal, the same cannot be said for its complete extinction. As a matter of facts, particularly when it comes to the possibility of exploiting this asymmetry to gain a personal profit, different parties act in different ways and assess the risk – of penalties – differently.[121] Thus, arguably, no artificial or contractual tool will ever be precise enough to level this tendency completely.

Being an issue on itself, informational asymmetry constitutes indeed an even bigger problem when one of the parties, the one withholding more information, leverages its position in order to gain a personal profit.[122] This phenomenon, commonly known as *moral hazard*[123] shows itself under particular shapes in the Corporate Law context, and goes under the name of *agency problem(s)*[124]. As many Authors have noted, the increased extent with which agency issues affect nowadays Corporate-related deals is a direct consequence of the modern ways in which corporations are intended, being the centre of control, the managing body, a separate entity – thus with different interests – from the centre of ownership, the shareholders. Whenever these two bodies' interests are not aligned, agency issues are very likely to arise.

[119] Akerlof (n 44).

[120] Ingemar Dierickx, Mitchell Koza, 'Information Asymmetries: How Not to Buy a Lemon In Negotiating Mergers and Acquisition' (1991), European Management Journal, vol. 9 n. 3.

[121] David A. Cather, 'A Gentle Introduction to Risk Aversion and Utility Theory', (2010) Risk management and Insurance Review, vol. 13, n. 1, 127.

[122] Albeit opportunistic, this behaviour has been proven to be totally rational. Mark V. Pauly, 'The Economies of Moral Hazard: Comment' (1968), The American Economic Review, Vol. 58 n 3, part 1, 537.

[123] Christine Hurt, 'Moral Hazard and the Initial Public Offering',(2005) Vol. 26, Cardozo L. Rev. 711.

[124] Harmour, Hansman, Kraakman (n 45).

The following is a description of the ways these two slightly different issues, namely the informational asymmetry on itself and the consequential agency problems, are edged in SPAC-related deals.

5.1 *Adverse Selection.* The obvious reason why in SPAC-related deals there is some risk for investors to "buy a lemon" is that, by definition, SPACs are cash-shells created for a specific purpose, with no previous-activity books to be analysed and no financial records to be considered when assessing its quality. The only asset of a SPAC, on this regard, is the group of managing sponsors and their reputation, which investors are required to trust.[125] Moreover, another consideration has to be made: notwithstanding that, as seen, the majority of SPACs investors are hedge funds or other institutional investors,[126] the number of small investors has been recently increasing. While a deep knowledge of Financial Markets dynamics is certainly measurable among the formers, the same cannot always be said for the latter category, and intuitively a lower degree of financial know-how drives a growth in the risk of making fool investments.[127] The necessity, therefore, is to lower this asymmetry, giving investors more information through which making an informed choice and more generally fostering their confidence in these operations on the basis of objective criteria.

First and foremost, disclosure obligations play a determinant role on this regard. As previously mentioned, SPACs managers are required, both when filing the required documentation for the IPO and periodically during the target hunt, to comply with various disclosure requirements, under the supervision of national agencies.[128] The ultimate goal of these obligations is precisely that of pushing issuers' disclosure of sensible information, thus allowing investors to be informed on a specific basis when deciding whether to invest or not. As a matter of facts, however, the imposition of disclosure obligations alone is not sufficient on this

[125] D'Alvia (n 102).
[126] which is presumably due to both the niche nature of the studied vehicle and the specific rules of at least some of the Exchanges where SPACs are generally listed.
[127] For an analysis of the of the need for Regulators to improve retail investors' "financial education" refer to Sergakis (n 27).
[128] the SEC in the US; the ESMA and the various National Agencies in the EU.

regard. For the issue to be efficiently tackled, this *ex ante* approach must be accompanied, *ex post* by an effective supervision and, when required, enforcement reaction.[129] Moreover, in the path towards increasing investors' confidence in the market, an effective enforcement must be both 'public' – i.e. perpetrated by National Agencies and Regulators – and 'private'. In other words, investors should be granted the power and the possibility to enforce their rights directly, through specific tools such as, for instance, class-actions.[130] While a good level of protection is effectively granted in the US by the SEC, the same cannot be said when it comes to the EU and its various Member States, where they are usually seen as a substitute for public enforcement.[131] Not only this deficiency is detrimental for single investors and their compensation purposes, but it can also be disadvantageous for the market as a whole, given the proven connection between a functioning private enforcement system and the market's increasing efficiency and development.[132]

A second generally recognized way that issuers have for fostering investors' confidence is by signalling them their quality and trustworthiness, edging the chances for an adverse selection and convincing them to invest on the basis of some objective criteria. As for SPACs, this can be done referring to two main factors: sponsors' reputation and underwriters' reputation. As for the former, it is intuitive that the higher the reputation of those sponsoring the SPAC in the market the higher the chances of investors to trust them. This is generally true not only for the obvious logic that specific expertise drives trustworthiness – or at least it should – but for a second reason too: as market operators, these skilled managers have an interest in maintaining their good reputation, as with it come opportunities and benefits. Thus, generally speaking, we could expect this 'reputational incentive' to play an important role in sponsors' signalling activities,

[129] Sergakis (n 27).
[130] Stefano M. Grace, 'Strengthening Investor Confidence in Europe: U.S.-Style Securities Class Actions and the Acquis Communautaire' (2006) J. Transnat'l L. & Pol'y 281.
[131] Ian MacNeil, 'Enforcement and Sanctioning' in Moloney, Ferran, Payne *The Oxford Handbook of Financial Regulation* (Oxford University Press 2015).
[132] Rafael la Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, 'What Works In Securities Laws?' (2006) the Journal of Finance, 1.

and there is evidence indeed that, actually, reputation of managers is a factor which positively increases the likelihood of mergers in the M&A sector.[133]

The same reasoning is applicable to underwriters: given that they are not obliged to take part in the deal by exposing themselves, one is certainly allowed to presume that the deal is not a complete lemon. As further explained, however, these factors are not substitutes for certainty, and other instruments are suggested for increasing investors' protection in SPAC-related deals.

Lastly about signalling and investors' confidence, it should be noted that the specific structure of SPACs plays a role on this regard too. As mentioned before, elements such as the escrow account, the exit right by way of redemption, the proxy vote, are all driving factors in reducing the risks related to the investment, at least for what concerns its initial phase, before the business combination. As a matter of facts, they concur in signalling investors that the upsides of their investment are generally higher than the possible downsides,[134] therefore increasing their confidence.

5.2 ***Agency Problem.*** *An 'agency problem' - in the most general sense of the term - arises whenever one party, termed the "principal," relies upon actions taken by another party, termed the "agent," which will affect the principal's welfare. The problem lies in motivating the agent to act in the principal's interest rather than simply in the agent's own interest. Viewed in these broad terms, agency problems arise in a broad range of contexts that go well beyond those that would formally be classified as agency relationships by lawyers*.[135] (Italics added).

Generally speaking, two are the main ways to reduce agency problems: (1) limiting the possibilities for agents to exploit their own advantage in a detrimental

[133] Haksoon Kim, 'Essays on Management Quality, IPO Characteristics and the Success of Business Combinations' (PhD Thesis, Louisiana State University and Agricultural Mechanical College, 2009).
[134] Pitteger, Grisin (n 104).
[135] Harmour, Hansman, Kraakman (n 45).

way for principals; (2) aligning agents' interests to those of principals', giving them incentives on this regard.

5.2.1 ***Structure-related mechanisms to limit Agents' opportunism.*** As for the former category, the main features of a common SPAC are once again relevant. As previously mentioned, the core function of an escrow account is precisely that of "freezing" the money held in it pending a certain condition – in SPACs' case: the business combination or the liquidation. Given that during the target hunt the SPAC's managers are not allowed to use these funds, and that the way in which non-escrowed funds are supposed to be used is described in details in the IPO disclosure documents, they are naturally impeded from implementing fraudulent activities. It has already been seen, however, that this argument is related to a logical condition: the effectiveness and efficiency of the enforcement phase should these rules be breached. Only when this is true, indeed, the escrow account can effectively be considered a resourceful tool in protecting investors from agency issues.

The same function – i.e. limiting managers' opportunistic behaviours – is performed by two other peculiarities on the described vehicle, namely (1) the redemption right granted to investors both before the business combination and in case of liquidation and (2) the proxy vote as a necessary requirement – where the tender offer system is not preferred – for the business combination to be completed. From a general perspective, both can be seen as the practical application of one of the most commonly known ways to reduce agency problems: the 'no-frustration rule'. By allowing principals a decisional power on matters potentially subject to agency problems these will be reduced, as the possibility agents have to exploit their personal interests is sharply lowered.[136] In other words, where there is no agency relation there cannot be any agency problem.[137]

[136] Ibid.

[137] The determination of whom, between directors and shareholders, should have the last word about events of paramount importance for a corporation, such as mergers, acquisition, transformation etc., is discussed in many Jurisdiction. Matteo Gatti, 'The Power to Decide on Takeovers: Directors or Shareholders, What Difference Does it Make?', (2014) Vol. 20, Fordham Journal of Corporate 6 Financial Law, 73.

I see, though, a downside related to this approach. When saying that giving the power of choice to shareholders is an efficient way to reduce opportunistic behaviours at their detriment, it is also assumed that, on their own, shareholders are capable of making the best choice for their interests. While this is generally true for institutional shareholders and hedge funds, the same cannot always be said for those we have called ‘small investors’, whose financial-education seems not be in the agenda of most of the Regulators.[138]

Another way shareholders have to protect themselves from ‘bad managers’ is by dismissing them and appointing new and trustworthy ones.[139] This, however, is not commonly possible when it comes to SPACs, as the limited time framework useful for completing the business combination prevents it from being a feasible option.[140] As a consequence, other ways have been chosen.

5.2.2 *The “skin in the game” method.* As mentioned before, the second way to reduce the chances of agency problems is by aligning agents’ and principal’s interests, giving to the formers an incentive to pursue the latter’s, as a profit could arise for both parties. These incentives can be of different types, but when it comes to SPAC they generally are of a monetary nature. More specifically, they are connected to the managers’ compensation scheme, and are built in a way that, for managers, acting opportunistically before the business combination, hampering its success for the detriment of shareholders, would prove non-convenient, as they would receive no compensation for their work. Firstly, as seen, this ‘skin in the game’ approach[141] is perpetrated by the general decision of assigning to sponsoring managers the 20% of the equity capital of the SPAC during the pre-IPO phase, albeit without the possibility, on the contrary granted to public shareholders, to redeem their shares before the proxy vote. Thus, the possibility to effectively profit from their shares in the SPAC is only

[138] (n 127).
[139] J C Coffee, 'Regulating the Market for Corporate Control: a Critical Assessment of the Tender Offer's Role in Corporate Governance' (1984) Vol. 84 Columbia L R, 1145.
[140] Okutan Nilson (n 68).
[141] Hale (n 6).

granted to sponsoring managers if the business combination is successfully completed, giving them the greatest of the incentives to make this happen. A similar approach consists in giving SPAC sponsors a stock or warrants with a value of 3-5% of the IPO proceeds, placing the amount in escrow during the target research phase. Given that, as mentioned, in case of liquidation these warrants will expire worthless, representing a loss for the management, they will once again be incentivised in doing their best for the deal to go through.[142]

The same logic – *i.e.* the 'skin in the game' tactics – goes behind the self-imposed decision of some underwrites to postpone part of their fees to the post-business combination phase, actively engaging themselves in the target research.[143]

Albeit the undeniable positive effect these devices have in reducing agency problems, I see a major limit to their effective and efficient functioning, strictly related to one of the peculiarities of SPACs: the limited time framework within which the business combination has to be completed. As a matter of facts, notwithstanding the great incentive that the skin in the game approach generates for both managers and underwriters to profitably engage the target hunt, it can turn to be threat for shareholders too. As the deadline approaches the perspective of liquidation – and the connected economic loss – grows bigger, and this is likely to generate a distortive incentive for managers: finding a target, whatever its quality is, and closing the deal. Even a bad one, if necessary.[144] The risk is given by the fact that, as mentioned before, both managers' compensation and underwriters' fees payment are generally linked to the completion of the business combination on itself, with no regard to its outcome in term of value creation or profit generation.[145] Accordingly, from managers' perspective a value-destroying deal is not very different, at least in theory, from a value-generating

[142] Okutan Nilson (n 68).
[143] This decision can be seen as a way to signal their trustworthiness too, given that the abovementioned decision is, at the end of the day, self-imposed by the same underwriters.
[144] Dimitrova (n 84).
[145] Tim Jenkinson, Miguel Sousa, 'Why SPAC Investors Should Listen to the Market', (2009). Available at SSRN: https://ssrn.com/abstract=1331383 or http://dx.doi.org/10.2139/ssrn.1331383.

one: its completion will release their compensation, and given the abovementioned asymmetry of information they will be in the best position to assess whether it is more convenient to immediately divest – profiting from the sale of their equity stock – or not.

A partial solution to this problem is given by the so called 'lock-up provision' generally provided when SPACs are created. When given the equity stock for a nominal value in the pre-IPO phase, initial shareholders are also imposed the condition to keep their shares, which are therefore not tradable, for a certain period of time following the business combination.[146] As a consequence, should they decide to act opportunistically and close a non-profiting deal, the negative outcome of it will partially affect them too, generating a loss. This contractual device is certainly of some help, but its short-term perspective cannot be said of decisive importance in lowering agency problems in a consistent manner. The partial functioning of the described approach is testified, more than by my analysis, by a new trend followed by more recent SPACs, where at least part of the managers' compensation is given to them already in the pre-business combination phase,[147] thus rewarding their activity on a continuative basis.

From a personal perspective, I still believe that the skin in the game approach is the more profitable and effective when it comes to the reduction of moral hazard and agency problem, albeit it should be differently thought. More precisely, the above-described inefficiency is not conclusively caused by some ontological incompatibility between the limited time framework for the business combination and the business combination-connected compensation scheme. The reason of this approach inadequacy is that, when anchoring managers' economic incentive to an objective criterion, the wrong one is chosen. On top of a general lock-up provision, which effectiveness on the short-term has been analysed, new SPACs should relate managers' compensation and underwriters' fees to either the value created from the business combination or the profit it

[146] Okutan Nilson (n 68). Layne, Lenahan (n 78).
[147] M. Ridgway Barker, Randi-Jean G. Hedin, 'Special Purpose Acquisition Corporations: Specs to Consider When Structuring your SPAC – Part II', (2006) CCBJ.

generates for shareholders. By shaping the compensation scheme as composed by different stages, it would be possible for instance to relate managers' reward to the growth of post-business combination shares price;[148] another approach would be that of linking managers' fees and shareholders own profit, structuring the distribution of dividends to the formers in accordance with the level of the latter.[149] These two quite similar approaches, which resemble what is generally known as an 'earnout'[150] would impose a long-term perspective in the way managers and sponsors run the SPAC in the pre-business combination phase, effectively putting them in a position where their skin in the game matters and influences their decision on the long run.

Of a similar fashion is the idea of maintaining the pre-business combination management team in the post-completion phase. Directors will be forced to deal and respond to shareholders for a longer period of time, with the reputational risk connected to a possible dismissal being higher and spread on a longer period of time. Once again, evidence seem to show that this approach pays profitably, and that where SPAC sponsors are involved in the merged firm's governance long-term performances increase.[151]

5.3 *Shareholders' opportunistic behaviours.* As intensely analysed by the specialised literature[152] moral hazard and agency problems do not arise between directors and shareholders only. On the contrary, the exploitation of a stronger position for the maximisation of a personal profit can be employed by shareholders too, and in the M&A context this generally happens either in the way of freeriding activities or through what is known as holdout conducts.[153] In our case the latter in particular seems to have quite an importance, and its execution has been previously described under the name of greenmailing: high-

[148] This generally happens in PE funds. Okutan Nilson (n 68).
[149] See the Prospectus dated 11 April 2014 of Nomad Holdings Ltd, a BVI company listed in the London Stock Exchange. Ibid.
[150] Dierickx, Koza (n 120).
[151] Dimitrova (n 84).
[152] Harmour, Hansman, Kraakman (n 45).
[153] Lloyd Cohen, 'Holdouts and Free Riders', (1991), Journal of Legal Studies, Vol. 20, n. 2, article 5, 351.

stake shareholders such as hedge funds could leverage their position of strength before the proxy vote, threatening sponsors to vote against it should a premium price on shares not be granted to them when they will sell their stock in the post-completion phase.[154] In other words, in exchange for a positive vote – which we have seen is of paramount importance for SPAC initial shareholders – big shareholders are in theory capable of forcing sponsors to buy their shares in the future and for an higher price. The consequence of this practice, which as seen can be restrained by substituting the proxy vote with a voluntary tender offer system, is potentially detrimental for non-greenmailing shareholders too. The business combination will indeed be successfully completed notwithstanding its low worth, but while hedge funds are in the position to rapidly divest and generate a profit from a bad deal too, the same does not work for small investors.

Thus, they will find themselves locked to a non-profitable company, with low divesting chances and – in the worst case scenario – a worthless equity stock.

A second approach meant to reduce this practice is related to the development of so called 'bulldog provisions',[155] through which the possibility for shareholders to exercise – or threaten to – their conversion right is capped and limited to a maximum amount.[156]

6. *Conclusion.* A Special Purpose Acquisition Company is, broadly speaking, a cash shell created for one very specific purpose: finding, within a given period of time, a suitable target company to merge with, supporting this operation with the funds raised through an Initial Public Offering. Its creation and nowadays fashion are the consequence of US Regulators' – the Congress and the SEC – intervention in limiting SPACs ancestors' fraudulent schemes with the goal of protecting retail investors[157]. In other words, SPACs are the product of the

[154] Okutan Nilsson (n 68).
[155] Rodrigues, Stegemoller (n 4).
[156] By mean of example: NYSE-MKT Company Guideline, 119(d).
[157] It is worth noting that non-English speaking literature too has started taking an interest in the SPAC. This paper is not focused on non-English speaking jurisdictions. However, in Italian, see Pierluigi De Biasi, 'La SPAC, uno Speciale Veicolo di Investimento e Quotazione", (2018), Rivista delle Società, pp. 713-742; Filippo Garramone, 'Una Panoramica in tema di Special Purposes Acquisizione Companies (SPAC)', (2020), Banca Impresa Società, pp. 131-171.

business response and adaptation to a more stringent regulation framework: the effectiveness and efficiency of this self-imposed compliance is testified by the recent upsurge of this investment vehicle in various jurisdictions and the increasing appeal it is having in different types of industry.

Thanks to its peculiarities, SPACs are indeed capable of offering interesting investment opportunities for all the parties involved in these deals. Through it, skilled managers can act as sponsors in the creation of the SPAC, which constitutes to them a very useful tool to raise public funds in the market – thus at a lower price if compared to debt financing methods – to be used for the acquisition of a private company. Underwriters, whose number and active commitment in these deals have increased constantly in recent years, are granted a profit opportunity given by the higher percentage of fees they are generally given in SPAC-related deals if compared with normal IPOs. Private target companies see in SPACs an easiest and cheaper way to access public markets – and to obtain the listed company status, a possibility which would otherwise not be granted to them as a consequence of the paramount costs of an IPO. Lastly, investors are given the possibility to participate in an at-first-glance low-risk highly-profitable investment, in a market sector, the M&A one, which would otherwise be difficultly accessible for small players.

Some major risks, as seen, must be however dealt with: the informational asymmetry connate in financial transactions and its potential consequences – namely adverse selection and agency problem – constitute indeed a serious threat for small investors particularly. As for the former, regulatory disclosure obligations and signalling activities certainly play an important role, but improvement is needed, especially in the EU, as regard the effectiveness of the enforcement phase should these rules be breached. Enhancing small investors' financial education appears to be step of great importance on this regard too, and Regulators should update their agendas accordingly.

Concerning the latter, it has been noticed that agency problems manifest themselves in many different fashions, and the way to reduce them is either by limiting agents' freedom or by aligning their interests with those of principals'. In

the first case, some of the main features of SPACs – the escrow account, the redemption and conversion right, the proxy vote on the business combination – have a relevant importance, but they are not sufficient on themselves. Possible issues, as mentioned, can arise as a consequence of the limited time framework managers have to complete the business combination.

Thus, aligning interests seems to be both the most effective and farsighted approach, when accomplished with a long-term perspective in mind.

Only if market operators will follow this lead, SPACs are likely to become, in the next years, an increasingly appealing tool in Financial Markets, thus allowing their benefits to be felt by more and more investors.