



Vinson & Elkins
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ALTERNATIVE CAPITAL: 144A EQUITY OFFERINGS AND SPECIAL PURPOSE ACQUISITION COMPANIES (SPACS)

Energy Series

velaw.com

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144A EQUITY OFFERINGS



144A EQUITY OFFERINGS

DEFINITION

- A Rule 144A equity offering is an unregistered offer and sale of equity securities issued by a U.S. or foreign company, the equity securities of which are neither listed on a U.S. securities exchange nor quoted on a U.S. automated inter-dealer quotation system
- Advantages
 - Speed of transaction
 - Less stringent disclosure requirements
 - Lower liability profile
- Disadvantages
 - Limited purchasers
 - Relatively limited liquidity

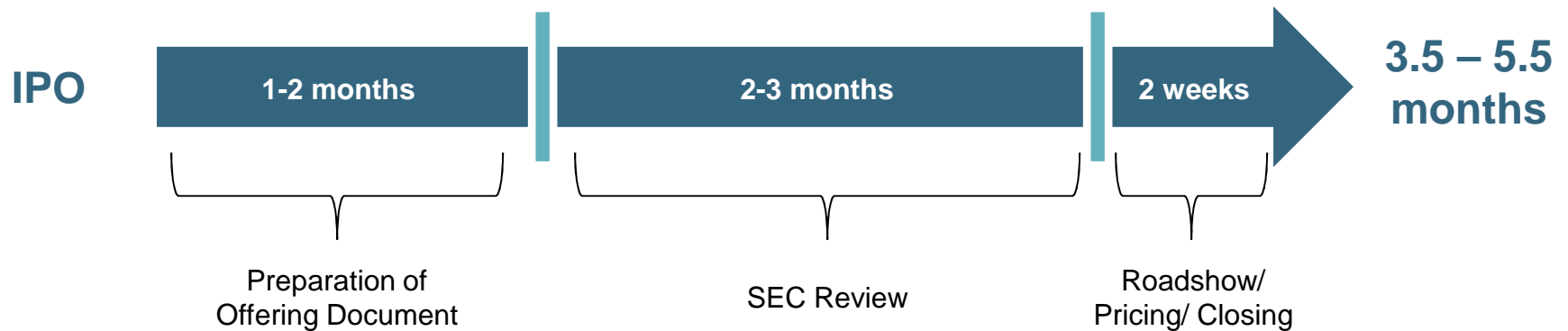
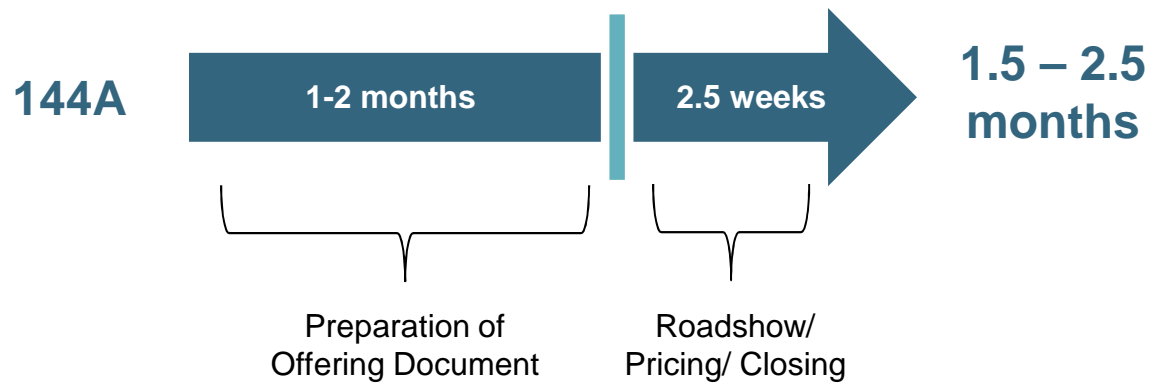
144A EQUITY OFFERINGS

MARKET BACKGROUND

- **1997:** First 144A Equity Offering by NorthStar Realty Finance Corp.
- **2001:** Second 144A Equity Offering by American Financial Realty Trust (the “Bank REIT Deal”)
- **2000-2017:** More than 50 144A Equity Offerings completed
 - Large concentration in the REIT and specialty finance industries
 - In 2006 and 2007, a number of investment banks completed 144A equity placements for financial institutions
- **Recently:** Increase in activity in the energy space, with a particular focus on oilfield services



144A EQUITY OFFERINGS TIMING



144A EQUITY OFFERINGS

RECENT ACTIVITY

- Closing Date: December 20, 2016
- Initial Purchaser: FBR Capital Markets & Co.
- Size: 16,100,000 Shares of Class A-1 Common Stock
 - Approximately 25% of voting power; 25% of economics
 - Convertible into Class A Common Stock on a one-for-one basis
- Gross Proceeds: \$322,000,000 (\$20.00/share) (includes full exercise of shoe)
- Tax Receivable Agreement requires payment of 85% of net cash savings to certain holders; the remaining 15% to be retained by the issuer



-
- Closing Date: February 2017
 - Approximate Size: 8 million Shares of Class A-1 Common Stock
 - Approximate Gross Proceeds: \$130 million

Recent Deal 2

-
- Closing Date: February 2017
 - Approximate Size: 10 million shares of Class A-1 Common Stock
 - Approximate Gross Proceeds: \$120 million
 - Tax Receivable Agreement requires payment of 85% of net cash savings to certain holders; the remaining 15% to be retained by the issuer

Recent Deal 3

144A EQUITY OFFERINGS

OFFERING MEMORANDUM REQUIREMENTS

- No specific SEC disclosure requirements
- Issuers are obligated to provide purchasers, at their request, with “reasonably current” information, including:
 - Description of business, products and services as of a date within 12 months prior to date of resale
 - Most recent balance sheet (but must be as of a date within 16 months prior to date of resale), profit and loss statement and retained earnings statement
 - Any similar financial statements for such part of the two preceding years that the issuer has been in operation
 - Audited if audited financial statements are “reasonably available”

144A EQUITY OFFERINGS

OFFERING MEMORANDUM CONTENT

- Issuers typically prepare a confidential offering memorandum that is substantially similar to a registration statement prepared for an IPO
- The OM typically includes:
 - Cover Page
 - Foreign country and state securities legends
 - Summary section
 - Risk Factors
 - Dividend Policy
 - Use of Proceeds
 - Capitalization
 - Selected Financial Data
 - Management's Discussion and Analysis
 - Business and Industry Overview
 - Management
 - Executive Compensation
 - Insider and 5% Holder Beneficial Ownership
 - Related Party Arrangements
 - Organizational Structure
 - Description of Capital Stock
 - Registration Rights
 - Shares Eligible for Future Sale
 - ERISA Considerations
 - Material Federal Income Tax Considerations
 - Plan of Distribution and Private Placement
 - Legal Matters
 - Experts
 - Financial Statements and Audit Reports
 - Annexes
 - QIB Purchaser's Letter
 - Reg S Purchaser's Letter
 - Accredited Investor Subscription Agreement
 - Subscription Agreement for Investment Advisors
 - Form of Transferee Letter
 - Form of Registration Rights Agreement

144A EQUITY OFFERINGS

OFFERING MEMORANDUM CONTENT

- Issuers have flexibility to deviate in the OM from S-1 requirements when it is impractical or deemed unhelpful to investors to include certain information
- Typical examples of deviation are:
 - Presenting summary or selected financial information for fewer years than would be required in an S-1
 - Omitting detailed executive compensation disclosure such as the Compensation Discussion and Analysis

144A EQUITY OFFERINGS

POST-CLOSING INFORMATION REQUIREMENTS

- Issuers typically agree to provide investors with audited annual financial statements (within 90 days after fiscal year end) and unaudited quarterly financial statements (within 45 days after each quarter end)
- Issuers typically commit to holding quarterly investor conference calls similar to a public company earnings call

144A EQUITY OFFERINGS

THE PURCHASE AGREEMENT

- At pricing following the roadshow, the issuer and the initial purchaser enter into a purchase agreement (similar in structure and scope to an IPO underwriting agreement)
- Key terms typically include:
 - 30-day 15% additional allotment option to purchase or place additional shares
 - 7% initial purchaser's discount and placement fee
 - Issuer reimburses legal fees of the initial purchaser/placement agent (sometimes subject to a negotiated cap)
 - T + 5 settlement
 - Shares are issued in book-entry form through DTC
 - Initial purchaser/placement agent typically has the right to defer closing on 3-5% of the Reg D shares for up to an addition 5 business days
 - Issuer representations and warranties
 - Covenants and closing conditions

144A EQUITY OFFERINGS

THE PURCHASE AGREEMENT

- Key terms typically include (con't):
 - Indemnity by issuer for:
 - Any untrue statement or alleged untrue statement made by the issuer in the agreement;
 - Any breach by the issuer of any covenant set forth in the agreement; or
 - Any untrue statement or alleged untrue statement of a material fact contained in the Preliminary OM, the Disclosure Package, the “roadshow” presentation or materials or the final OM, or as arises out of or is based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading
 - Termination provision similar to that in an IPO. Typically gives initial purchaser the right to terminate if:
 - Closing conditions not fulfilled;
 - Material disruption in securities markets or the securities settlement, payment or clearance services in the United States;
 - A banking moratorium; or
 - Declaration of war or material outbreak or escalation of hostilities or other national or international calamity or crisis or change in economic, political or other conditions of such magnitude in its effect on the financial markets of the United States as, in the judgment of the initial purchaser/placement agent, to make it impracticable to market the securities

144A EQUITY OFFERINGS

THE PURCHASE AGREEMENT

- Closing Deliverables:
 - Bring down officers' certificates
 - Secretary's certificates
 - Opinion of counsel as to corporate matters and the validity of the securities
 - Tax opinion if applicable
 - Negative assurance letters from both law firms
 - Comfort letters

144A EQUITY OFFERINGS

REGISTRATION RIGHTS AGREEMENT AND PENALTIES

- At closing, the issuer enters into a registration rights agreement with the initial purchaser/placement agent for itself and for the benefit of the investors and their transferees
- Key features:
 - Mandatory filing of a resale shelf registration statement within a specified period
 - Issuer must use commercially reasonable efforts to cause resale shelf to be declared effective and to have the issuer's stock listed on national securities exchange as soon as practicable, but in no event later than an agreed outside deadline
 - In the event of an IPO, issuer may defer obligation to cause resale shelf to go effective and shares to be listed "as soon as practicable" until 60 days after IPO is completed, but not past the agreed outside deadline
 - If no IPO and issuer cannot satisfy national securities exchange listing standards, issuer may register on Form 10 under the '34 Act and cause shares to trade OTC until it can get its shares listed on a national securities exchange

144A EQUITY OFFERINGS

REGISTRATION RIGHTS AGREEMENT AND PENALTIES

- Penalties for default on the above registration and listing obligations have taken different forms and have recently evolved:
 - Penalties for missing the initial resale shelf filing deadline have in the past included forfeiture by senior management of cash or equity compensation
 - Penalties for missing the resale shelf effectiveness and listing deadline have included a requirement that the company hold a special meeting of stockholders (at which only the 144A investors have the right to vote) to remove and replace some or all of the company's directors or to add directors
 - More recently, the penalties have been in the form of a special stock dividend payable only to the 144A investors
 - Requires separate class of common stock
 - Dividend accrues during each day the default continues up to a maximum number of days

144A EQUITY OFFERINGS

REGISTRATION RIGHTS AGREEMENT AND PENALTIES

- Piggy-Back Registration Rights
 - Investors receive piggy-back registration rights that apply if the company undertakes an IPO
 - Reg rights subject to customary conditions, including the requirements that the selling stockholders enter into the underwriting agreement and pay the IPO underwriting discounts and commissions on the shares they sell in the IPO
- Lock-Ups
 - Insiders agree to a lock-up until 180 days after an IPO
 - Investors agree to a lock up until 60 days after the IPO or, for investors who exercise their piggy-back rights, 180 days after the IPO on any shares they do not sell in the IPO

SPECIAL PURPOSE ACQUISITION COMPANIES



SPAC DEFINED

- **Special Purpose Acquisition Company**
 - Publicly traded company
 - Raising capital in an IPO
 - To seek an unspecified acquisition target

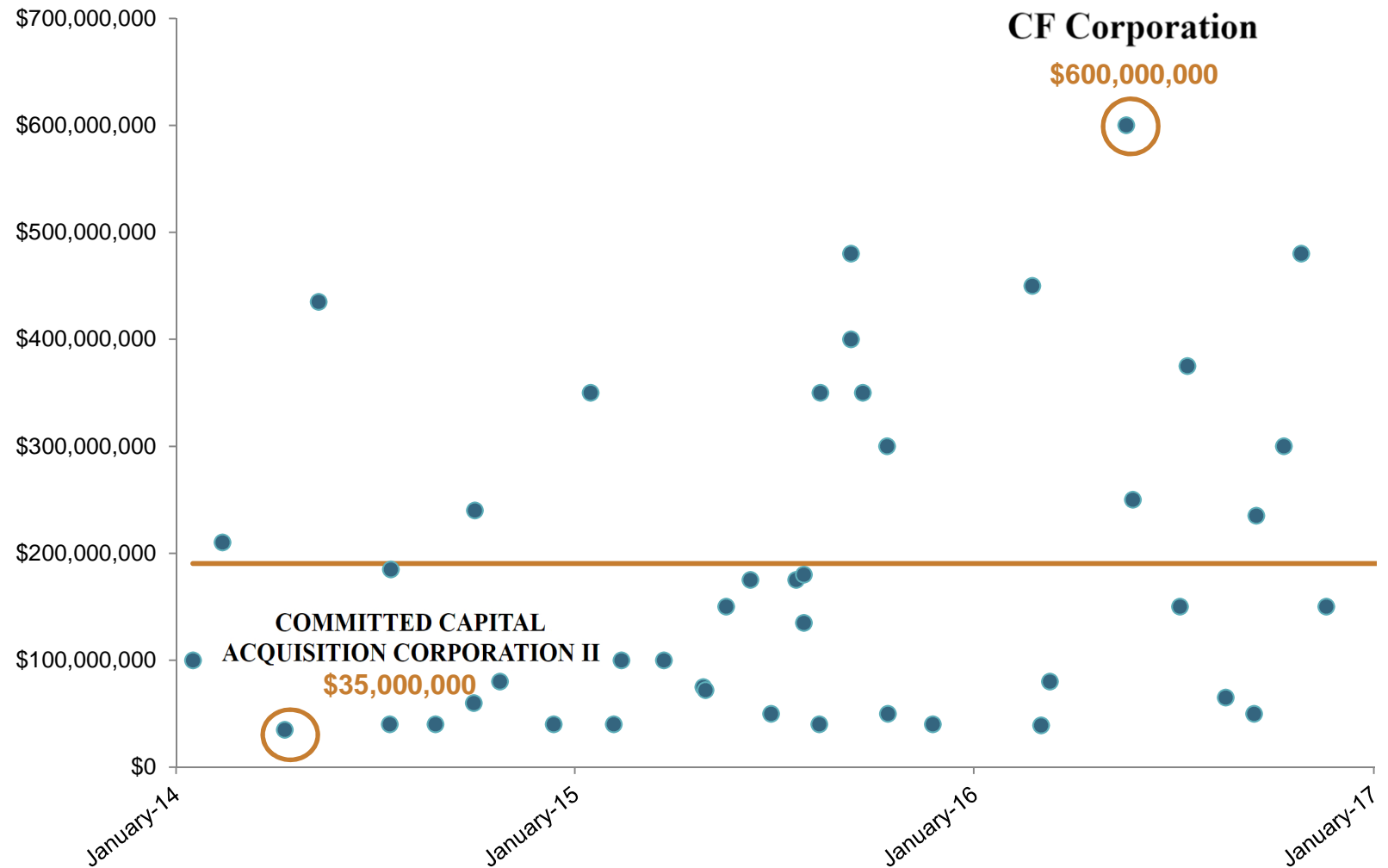
SPAC DEFINED

"I've got a special purpose!"



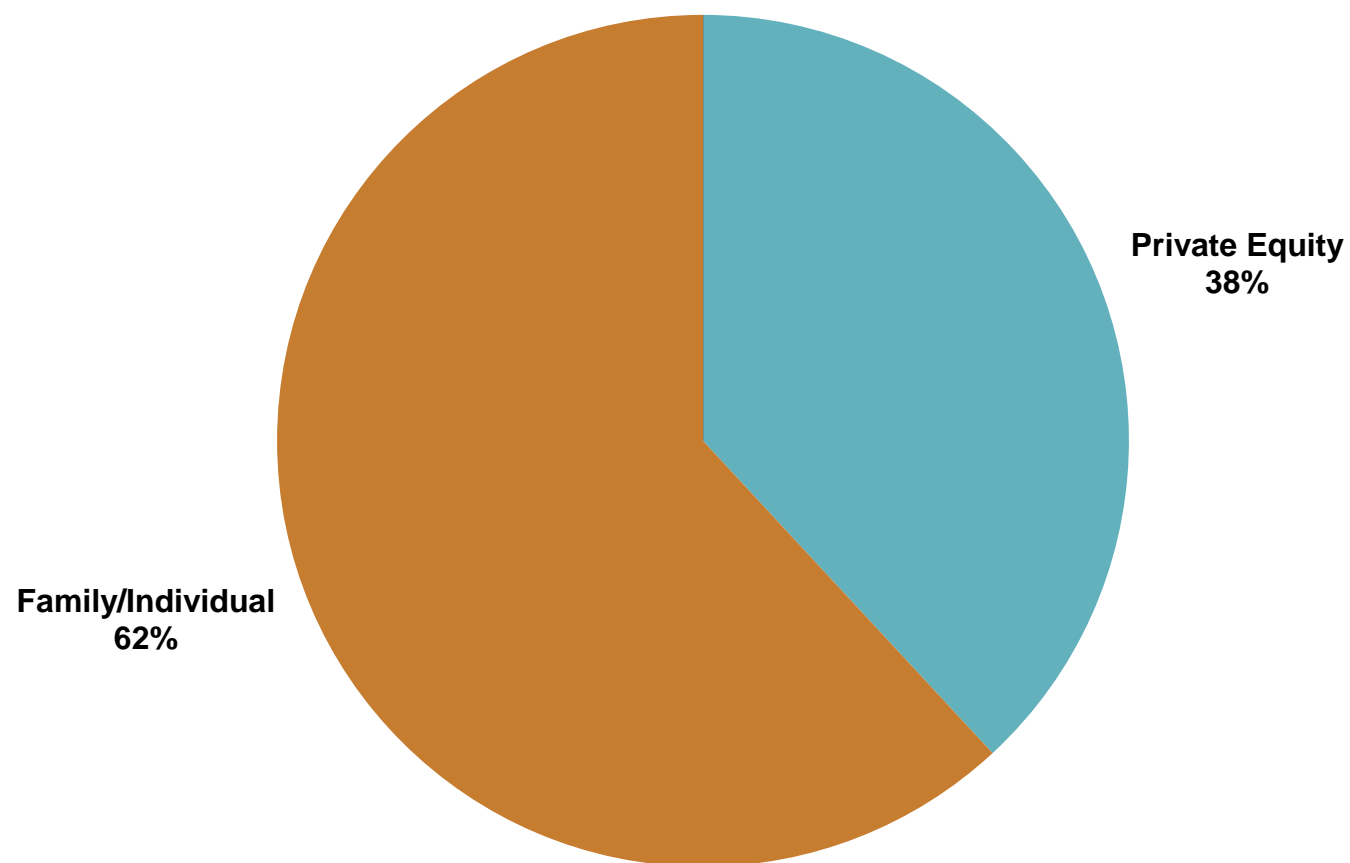
SPAC DEFINED/INTRODUCED

COMPLETED SPAC IPOs: 2014 TO 2017



SPAC INITIAL PUBLIC OFFERINGS: 2014-2017*

SPONSOR TYPE

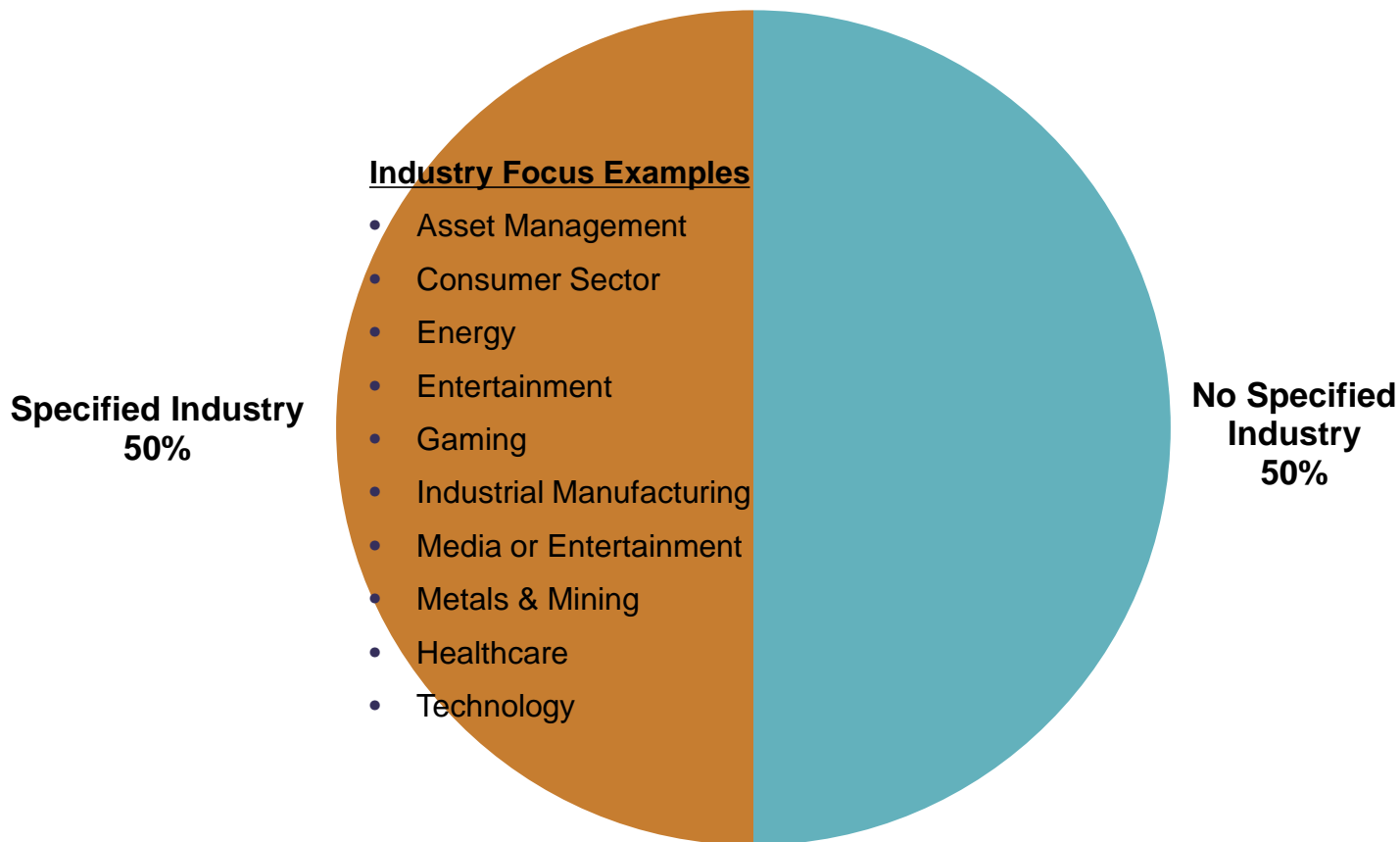


*SPAC IPOs > \$175mm

SPAC INITIAL PUBLIC OFFERINGS: 2014-2017*

THE “SPECIAL PURPOSE”

- No Identified Target Allowed



*SPAC IPOs > \$175mm

SPACS

STRUCTURAL ELEMENTS

- Exchange Listing
 - NASDAQ and NYSE MKT have more flexible initial listing requirements. NYSE has proposed amendments to its rules that would more closely align them to NASDAQ and NYSE MKT
 - Initial listing requirements apply post-M&A transaction, with NYSE requirements higher than NASDAQ and NYSE MKT
- Warrants
 - Public warrants
 - Included in units sold in IPO, typically \$11.50 strike price and public trading post IPO
 - Sponsor warrants
 - Sold to sponsor to cover IPO and pre-acquisition expenses
 - Typically 30-40% of total warrants
 - \$18.0 typical forced exercise price for public warrants (styled as redemption right)
 - Cash exercise for public (unless registration is not effective), cashless for sponsor

SPACS

STRUCTURAL ELEMENTS

- Founder Shares
 - Purchased for nominal amount pre-IPO
 - Designed to be 20% of equity post-M&A transactions
- Escrow
 - Amount deposited
 - Minimum 90% of IPO proceeds
 - Typically 100%
 - Use of trust corpus and interest
 - If combination is not consummated within specified period, corpus used to redeem shares
 - Investments limited to comply with '40 Act
 - Disbursements may be permitted solely for income tax payments

UNUSUAL FEATURES OF SPACS

- Length of green shoe is typically 45 days
- Deferral of ~2/3 of underwriting discount
- Founders' Shares Lock-Up
 - 1 year post-business combination
 - Early expiration if shares trade above specified prices (e.g. \$12.00 starting 150 days post-business combination)

M&A CONSIDERATIONS

- Outside Date
 - 18 to 24 month outside date
 - Extension would require vote and an obligation to provide redemption right for non-approving stockholders
- Required Minimum Size: FMV of at least 80% of escrowed funds
- Deposits/Break-Up Fees/Indemnities
 - Limited due to restrictions on use of escrowed cash
 - Possibility to use third-party backstop as alternative purchaser
- Shareholder Approval May Be Required by Applicable Law or Exchange Requirements
- Redemption
 - Option to impose limitation on large block redemptions (typically 15-20% cap)

RECENT SPACquisitions



RECENT SPAC M&A TRANSACTIONS

SPAC Buyer	Target	Transaction Value	IPO Date	Signing Date	Transaction Status
Global Partner Acquisition Corp.	Sequel Youth and Family Services	\$317 million	7/29/15	01/11/17	Pending
Pacific Special Acquisition Corp.	Borqs International	\$303 million	10/14/15	12/27/16	Pending
Hennessy Capital Acquisition Corp. II	Daseke	\$626 million	7/22/15	12/22/16	Pending
KLR Energy Acquisition Corp.	Tema Oil and Gas	\$445 million	3/10/16	12/20/16	Pending
Pace Holdings Corp.	Playa Hotels & Resorts	\$1.1 billion	9/10/15	12/13/16	Pending
Silver Run Acquisition Corporation	Centennial Resource Production	\$1.528 billion	2/23/16	7/07/16 (RS) 7/22/16 (SPAC)	Closed 10/1/16
Gores Holdings	Hostess Brands	\$2.198 billion	8/13/15	7/05/16	Closed 11/4/16
Easterly Acquisition Corp.	Sungevity	\$357 million	7/29/15	06/29/16	Didn't close – terminated
GP Investments Acquisition Corp.	WKI Holding Company	\$566 million	5/19/15	4/19/16	Didn't close – terminated
Hennessy Capital Acquisition Corp. II	USI Senior Holdings	\$337 million	7/22/15	4/04/16	Didn't close – terminated
WL Ross Holding Corp.	Nexeo Solutions	\$1.61 billion	5/11/14	3/21/16	Closed 6/9/16
FinTech Acquisition Corp.	CardConnect	\$438 million	2/12/15	3/07/16	Closed 8/1/16

Source: Capital IQ; includes all transactions valued over \$300 million and announced since January 1, 2016

RECENT SPAC M&A TRANSACTIONS – AT A GLANCE

KLR ENERGY ACQUISITION CORP. (NASDAQ: KLRE) – TEMA OIL AND GAS COMPANY



- SPAC sponsored by the KLR Group and longtime oil and gas executive, Gary Hanna
- Announced December 2016, currently pending
- Transaction value: \$445 million
- Utilized an Up-C structure and Tax Receivable Agreement, with target equity holders retaining approximately 70% of economics through subsidiary LLC
- Oil and gas industry, focused on Delaware Basin

HENNESSY CAPITAL ACQUISITION CORP. II (NASDAQ: HCAC) – DASEKE, INC.



- SPAC formed to focus on the industrial manufacturing, distribution or services sector in the United States
- Announced December 2016, currently pending
- Transaction value: \$626 million
- Transaction is expected to result in former Daseke stockholders holding a majority of the combined company
- Transportation and logistics industry

RECENT SPAC M&A TRANSACTIONS – AT A GLANCE

WL ROSS HOLDING CORP. (NASDAQ CM: WLRH) – NEXEO SOLUTIONS

- SPAC sponsored by WL Ross, a global distressed private equity firm
- Announced March 2016, Closed July 2016
- Transaction value: \$1.61 billion
- TPG Capital, majority owner of Nexeo prior to sale, retained approximately 35% stake
- Chemicals and plastics distribution industry



SILVER RUN ACQUISITION CORPORATION (NASDAQ: SRAQ) – CENTENNIAL RESOURCE PRODUCTION

- SPAC formed by Riverstone and longtime oil and gas executive Mark Papa with a focus on the energy industry
- Announced July 2016, Closed October 2016
- Transaction value: \$1.528 billion
- Oil and gas industry, focused on Permian Basin
- Silver Run backed by Riverstone Holdings and Centennial backed by Natural Gas Partners
- Riverstone signed agreement with Centennial first with right to assign to SPAC
- Riverstone Holdings' related funds provided equity backstop



PROMOTING DEAL CERTAINTY

- Equity and/or debt financing commitments to backstop redemptions
 - Provide assurances if SPAC equity trades poorly upon announcement
 - Pre-signing vs. post-signing commitments
 - If sponsor has access to external capital, can also utilize backstop purchaser (*Silver Run*) or staged sale (*Del Taco*) to provide incremental certainty
- Willingness of seller to rollover incremental equity
 - Can be structured to be at option of seller, providing for deterrent effect
 - Impact of seller's rolling over increasing amount of equity on governance rights and sharing in sponsor economics can be negotiated pre-signing or in the event of greater than expected redemptions
- To the extent seller will be a sponsor going forward, negotiate charter amendments and other key items as part of M&A transaction

MINIMIZE TIME TO CLOSE

- At closing, Form 10 disclosures must be filed (Reg. S-K compliant business section, MD&A, etc.), together with audited financial statements
- M&A related disclosures should mirror anticipated Form 10 disclosures to the fullest extent practicable
- Typically very light SEC review of merger proxy statement, including target-related disclosures
- Shareholder base promotes high turnout, so extended solicitation period is unnecessary

ANTICIPATE “RECUT” OF TRANSACTION

- To date, of the 12 large SPAC deals (\$300 million+) that have signed since January 1, 2016, 4 have closed, 3 were abandoned and the remaining are pending
 - All 4 of the large deals that have closed involved pre-closing amendments to merger documents
- Ensure seller has a seat at the table to participate and approve of any arrangements with new investors, or otherwise has appropriate safeguards on economics, governance and registration rights
 - Oftentimes redemptions and vote come in the last day or two
 - Utilize bankers and/or solicitors with touch points in shareholder base to monitor redemptions

LIMITED SELLER PROTECTION IF DEAL FALLS THROUGH

- Typically limited rights against trust account
- Post-termination indemnification or reimbursement obligations are of little value, given SPAC's limited assets
- Debt Financing Considerations: SPAC has limited cash to pay commitment fees, ticking fees, etc.
 - You may seek obligations requiring SPAC to pay buy-side related costs (financing cooperation, etc.) in advance, as opposed to reimbursing such costs
 - Costs may ultimately be borne by SPAC sponsor in such circumstances
- Use SPAC expiration clock to align incentives



THANK YOU

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