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SPAC Management Experiments with Ways to Boost Ownership

A resurgence of SPACs has resulted, in large part, from stronger protections for public investors and additional management investments. Sponsor warrants are practically standard, ranging from as little as several hundred thousand dollars to as much as $12 million, or 3% to 5% of the amount placed in escrow after a public offering.

During the past year-and-a-half, additional capital commitments from management have started cropping up in registration filings. **BPW Acquisition**'s management will purchase up to $25 million of its stock, **NRDC Acquisition**'s bought $20 million in a co-investment, and **Liberty Acquisition**'s management will buy $60 million in stock just prior to a business combination. All facets of SPAC participants view this as increasing the alignment of interests between investors and the management. There are differing opinions, though, on the effectiveness of the different ways sponsors can put up additional capital.

David Nussbaum of **EarlyBirdCapital**, laid out two principle types of co-investments. The seemingly more popular incarnation is a discounted unit purchase made after the acquisition is closed. Management agrees during registration to buy a certain number of units at the IPO price.

If the deal is successful, Nussbaum said, the units should trade well above the initial offering. Because management is agreeing to this at the beginning, before they know the outcome, it could be seen as a vote of confidence. However, Nussbaum said it is less a co-investment in a SPAC than it is a great deal for management.

The other way for sponsors to inject additional capital is by agreeing, under Rule 10b5-1 of the Exchange Act, to a limit order upfront during registration, in which after the preliminary proxy and before the shareholder vote, they promise to buy back up to a certain number of shares in the open market.

The latter is a much better deal for all parties involved, according to David Miller, a partner with law firm **Graubard Miller**, who has worked with Nussbaum in the past. Buying shares before the vote at market price is a clear sign that management feels strongly about a deal and gives them more to lose if they do not close a transaction, Miller said.

Buying back shares from investors intending to vote against a merger cycles out the no-votes, Nussbaum said. From the shareholder perspective they are liquidating their investment sooner instead of waiting for escrow shares to be converted.

Alan Annex, a partner with the law firm **Greenberg Traurig**, said both manners of management investment provide a larger stake in the SPAC or new company, and there is a lock on each for at least six months to a year. "You can spin it either way, if one or the other benefits the shareholders or management more," Annex said. They both put more on the line and relay a confident message to Wall Street.

Paul Sonkin, managing member at **Hummingbird Management**, a value-oriented family of funds and frequent investor in SPACs, said sponsor warrants are ecoming more of a problem: Management buys more warrants to get the trust closer to 100% of the public offering amount as demanded by the structural buyers, thereby increasing the dilution for the fundamental buyers. Sonkin says that "because the deals are trading down after the IPO, the structure needs to change. I'm not sure how, but something needs to change."

Additionally, Sonkin says there is a Catch-22 when, to entice investors, management buys more warrants and lowers the strike price on the public warrants. Investors may be more eager to buy into the SPAC, but will be less likely to vote for a deal if the new company will decrease in value once a large number of warrants are converted.

Don Ezzell, executive vice president at blank check company Heckmann Corp., stressed the importance of aligning the interests of SPAC management, and their "very serious and sophisticated institutional investors."

However, he does not feel that it is entirely necessary to be more creativewith SPAC structures. "I am not sure if they will be well-received. Rather than continuously increasing investments, management needs to focus on realizing a SPAC's value within the 18- to 24-month period," he said. —JS