Securities Regulation Daily

Wolters Kluwer

August 25, 2020

Graubard Miller's David Alan Miller, co-creator of SPACs, discusses dynamics of 2020 blank check IPO frenzy

By *John Filar Atwood*

Blank check companies, including the subset known as specified purpose acquisition companies, or SPACs, are in the midst of an historic IPO run. As of mid-August, SIC 6770 had produced a new issuer in 17 consecutive weeks, an IPO streak never before seen by any industry classification. The group, which led all IPO sectors in 2019 with 59 offerings, has already tallied 70 deals through August 14th, and accounts for 40 percent of the 2020 IPO market. It also claims the year's most lucrative IPO—and the largest ever by a blank check company—a $4 billion deal completed by Pershing Square Tontine Holdings July 21.

Blank check momentum built slowly early in the year, but the group was one of the few that was getting deals done in the early days of the pandemic. The frenzy really began this summer with 18 SIC 6770 IPOs in July and another 15 in the first half of August. In the last week of July, blank check companies accounted for six of the 12 completed offerings and 12 of the 16 new public registrations. With 20 blank check filers from this year still in the queue to go public, the rush shows no signs of abating.

To help us understand the dynamics surrounding this unprecedented run, we turned to David Alan Miller*, managing partner of Graubard Miller. Mr. Miller helped to create the SPAC back in 1993, and has served as counsel on well over 150 SPAC IPOs since that time. He discusses why he believes that a SPAC is preferable to a traditional IPO as a means of going public, and what 2020 says about the future of SPACs in the IPO market.

Tell me about the circumstances surrounding the creation of the SPAC? What market or other considerations gave rise to this financial vehicle?

In the early 1990s, some very small blind pool/blank check companies were going public raising very limited amounts of money. These vehicles had a bad reputation and were fraught with the potential for manipulation. In discussing these vehicles with an investment banking client, the banker mentioned that he loved the idea of raising public money for a group of experts in a particular sector or industry who would then use the funds to locate and acquire a target business in that sector, thereby taking it public. This banking client wanted to start doing his own blind pool/blank check deals, but he wanted us to create and implement the necessary mechanisms and investor safeguards to better align the blind pool sponsors with the IPO investors and protect the investors from the risks previously inherent in these vehicles. By adding these protective mechanisms and investor safeguards, we turned the blind pool/blank check company into a SPAC.

In 1993, did you ever envision a rush like we have seen this year, especially this summer (70 IPOs so far in 2020, 42 since the start of June)?

There is no way, in 1993, I could have envisioned the number of SPAC IPOs and the dollar amount of SPAC IPO proceeds raised thus far in 2020. In fact, I don't think anyone could have foreseen this 2020 rush even at the end of 2019.

What are the drivers behind the 2020 frenzy over SPAC IPOs?

I believe the biggest driver behind the 2020 frenzy is that, as a result of some very well-received, high-profile SPAC business combinations, privately held targets have finally realized that merging with a SPAC is not just an alternative means of going public; it is actually a *better* path to going public than a traditional IPO. SPAC sponsors no longer have to educate target businesses on the SPAC alternative and more privately held targets are now seeking SPAC mergers rather than traditional IPOs as their path to become publicly held. Since there are so many more targets wanting to merge with SPACs, more SPACs are needed, hence supply and demand results in more SPAC IPOs. The post-business combination performance of SPAC securities has also fueled investors and there are many more SPAC IPO buyers than in the past, with a seemingly endless supply of money to invest.

I have seen SPACs described as a tool for volatile times. However, they led the IPO market in number of deals in each of 2017, 2018, and 2019 so there is clearly appeal that goes beyond an unstable market environment. How do you feel that market conditions impact the appeal of a SPAC?

SPACs are a better path than a traditional IPO in any market environment, but unstable market conditions tend to take their toll on traditional IPOs, thereby further enhancing the SPAC's appeal.

Why is a reverse merger with a public SPAC currently seen as a preferable way for a private company to go public?

There is far greater certainty of successfully becoming public at a pre-determined agreed-upon valua- tion with a SPAC merger than a traditional IPO. For the most part, SPAC mergers are also quicker and less expensive than traditional IPOs. SPAC mergers can also be structured to provide target management with tax-free earn-out equity in the future, something that cannot be accomplished in a traditional IPO. I also note that a SPAC typically offers the target the many years of marketplace and industry experience gained by the SPAC sponsors, something a company doing a traditional IPO cannot typically access. SPAC sponsors can assist with the transition from private to public company status and continue to generate added value in the post-combination company.

Most SPACs now include a private investment in public equity (PIPE) component or a forward purchase agreement to provide additional capital at the time of the initial acquisition. Why do sponsors feel this is necessary, and was it part of the original design of the SPAC or has it developed over time?

Even the original design of the SPAC could accommodate a PIPE to provide additional capital, but it has become much more prevalent in recent years. Sponsors want to be able to respond to a target's fear that the SPAC shareholders' right of redemption could reduce the anticipated amount of cash available for the target after closing. PIPEs and committed forward purchase agreements alleviate that concern.

Pershing Square Tontine broke a long tradition of SPACs pricing their units at $10 by selling at $20 per unit. Has Pershing Square Tontine started something here, or are there reasons why $10 is the accepted price for SPAC units?

Pricing units at $20 per unit does nothing but reduce the number of outstanding shares. It has zero impact other than that and is really of no consequence. However, Pershing Square did make some profound structural changes to the accepted SPAC structure by dramatically altering both the war- rant component of the unit and the SPAC sponsor's "promote." It remains to be seen if Pershing Square will be an outlier or copied in other deals. So far, it appears to be an outlier.

Legal fees for a SPAC are somewhat lower than those for a typical IPO. Pershing Square Ton- tine was an outlier, but our database shows average legal fees for SPACs in the $300,000 to $500,000 range, whereas non-SPAC IPOs routinely generate legal fees of $2 million or more. Do you expect IPO practitioners to pivot toward SPACs as a new normal, or to fight to preserve the more traditional IPO approach?

I believe my legal brethren will pivot towards SPACs if the marketplace demands that pivot, as it currently seems to be doing. Don't feel bad for the lawyers though - SPACs also require a significant amount of legal work on the backend business combination.

How long do you think this rush of SPAC deals will continue, and what do you see as the future of SPACs in the IPO market?

I don't think things can continue at their current pace, but I do believe that SPACs have cemented their place in the going public process and are here to stay.

---

* **David Alan Miller** is the managing partner of Graubard Miller and head of its Corporate and Securities Department. Mr. Miller has a wide-ranging practice that includes representing domestic and international clients, including many broker-dealers, in a variety of corporate transactions such as public and private offerings, mergers and acquisitions, and restructurings. He has been practicing securities law for over 40 years, during which time he has represented clients in more than 400 public offerings and many more private offerings of securities. He was one of the creators of the financial product called a SPAC, or Specified Purpose Acquisition Company, in 1993. Mr. Miller has personally handled more than 200 SPAC IPOs and 75 successful SPAC business combinations since that time.

Celebrating 70 Years
Graubard Miller
1948–2018

Graubard Miller
The Chrysler Building
405 Lexington Avenue
11th Floor
New York, N.Y. 10174-1101
(212) 818-8800
www.graubard.com