



Eumedion Position Statement

Special Purpose Acquisition Companies ('SPACs')

December 2021

1. Introduction

Recently thirteen SPACs were listed at the Euronext Amsterdam stock exchange. This memo discusses i) what a SPAC is, ii) what the benefits of and concerns regarding SPACs are, iii) what the current regulatory and listing requirements are and iv) what Eumedion's key messages in relation to the wave of SPAC IPOs are.

2. What is a SPAC?

A SPAC is a public shell company formed for the purpose of completing a business combination within a specified period of time with a private operating company. Combining with an already public shell company allows the private company to essentially complete an IPO at a lower cost than a traditional IPO. From the perspective of the private company, it can also provide greater deal certainty in uncertain times.

The SPAC founders have attractive upside potential for a relatively small investment of capital, often holding 10% - 20% or more of a SPAC's issued capital immediately following its IPO in the form of so-called 'founder shares', along with a significant number of warrants purchased in a private placement.

Holders of SPAC IPO shares also have upside potential following the business combination and enjoy downside protection, as typically the IPO proceeds are transferred to escrow accounts pending completion of a business combination and such holders have generally redemption rights at the time of the business combination. A SPAC must also return the funds held in the escrow accounts if it fails to complete a business combination within a specified period of time. Fundamentally an investor in a SPAC is investing in the ability of the founders or "sponsors" of the SPAC to find an appropriate target to acquire. Consequently, SPACs have also been described as "blank-cheque" companies.

3. Advantages and potential disadvantages of a SPAC

Advantages from a private company perspective

- SPACs are a cheaper and faster way for a private company of going public than a ‘conventional’ IPO, because the preparation of an extensive prospectus is not needed, there is more certainty in pricing and execution and there is no need to undertake multiple investor roadshows.¹
- SPACs are a vehicle by which companies shut out of the IPO market – due to complexity or uncertainty in their businesses – could go public.
- SPACs can in particular be interesting vehicle for ESG oriented companies as a large number of them are currently seeking growth financing.
- SPACs have been characterised as “poor man’s” private equity since anyone can invest in a SPAC and bet on the skills of its management in identifying an attractive target, negotiating a good deal, and helping the post-merger company create value.

Potential disadvantages from an external investor’s perspective

- The SPAC will be a newly incorporated entity with no operating results and it will not commence operations prior to obtaining the IPO proceeds. A SPAC lacks an operating history, and therefore, investors have no basis on which to evaluate the SPAC’s ability to achieve its objective of identifying and conducting a business combination. Moreover, because the SPAC is searching for a target company or business, it may be difficult for investors to evaluate the possible merits or risks of the target company or business in which the SPAC may invest the proceeds from the IPO. It is therefore a highly complex and speculative investment.
- A recent published US study of 47 SPACs that merged between January 2019 and June 2020 concludes that “costs built into the SPAC structure are subtle, opaque, and far higher than has been previously recognized”. The researchers find that SPAC shares tend to drop by one third of their value or more within a year following a merger.² According to the researchers “this suggests that it is the investors that hold shares at the time of SPAC mergers, and for a period of time thereafter, that are footing most of the bill for SPAC costs. From the perspective of companies going public, therefore, SPACs have indeed been cheap. But we wonder whether this is a sustainable situation. It is hard to believe that SPAC shareholders will continue to take these losses”.³
- External shareholders of a Dutch listed SPAC will be relying on the ability of the SPAC management to identify a suitable business combination. A shareholder’s only opportunity to evaluate a potential business combination will be limited to a review of the materials required to be published by the SPAC in connection with the shareholder vote on the business combination, such as a shareholder circular. No securities regulator approval is needed for such a shareholder

¹ Although this argument should be a bit downplayed. E.g. the Dutch private company EVBox Group announced on 10 December 2020 that it would become a public company, listed on the New York Stock Exchange, via a business combination with the US listed SPAC TPG Pace Beneficial Finance. This business combination is still not effectuated at the time this position statement was finalised.

² However, the only Dutch listed SPAC that already entered into a business combination was rather successful: the market value of CM.com increased by approximately 25% since the business combination became effective (21 February 2020).

³ M. Klausner, M. Ohlrogge & E. Ruan, ‘A Sober Look at SPACs’, *ECGI Working Paper* 746/2021, April 2021.

circular. The SPAC management can therefore easily present rosy financial projections and growth targets in relation to the business combination that are out of line with business fundamentals. The SPAC is only obliged to publish a prospectus (that needs approval of the securities regulator) if a substantial amount of new equity financing is needed via e.g. a private investment in public equity (PIPE) transaction and/or the issuance of (rights to acquire) new shares. Generally, the SPAC is also not obliged to obtain a fairness opinion in respect to a business combination. Consequently, external shareholders may have no assurance from an independent source that the price the SPAC is paying for the target company or business is fair to the SPAC from a financial point of view. This risk is amplified by the fact that the incentives on sponsors may result in poorer-quality transactions being proposed late in the lifespan of the SPAC or the sponsor's decisions being driven by other conflicts of interests around the proposed target.

- If the SPAC seeks shareholder approval of the business combination, the sponsors (the SPAC founders), the management and the directors are expected to vote in favour of such business combination. Generally, they control a substantial interest in the SPAC and thus will exert a substantial influence on the general meeting's decision regarding the business combination. External shareholders can easily be outvoted.
- The 'SPAC route' is not only open for small and medium-sized companies to become publicly listed, but also for very large companies. Large companies can use a SPAC to circumvent the more stringent disclosure requirements in relation to a 'conventional' IPO.⁴

4. Current rules and regulations to mitigate potential disadvantages for external investors

SPACs are not unregulated entities. All companies, including SPACs, seeking admission to Euronext Amsterdam have to meet the eligibility requirements set out in the Euronext Amsterdam listing rules. Besides that, Dutch company and securities law are applicable to SPACs and the Dutch corporate governance code as well. Below an overview is presented of current key regulatory and listing requirements in the Netherlands.

Key elements for investor protection	Are these elements incorporated in regulatory and listing requirements?
When a SPAC goes public: Full disclosure of material risks, the business, the strategy, the corporate, capital and governance structure, the allocation of shares to founders and directors, potential conflicts of interest and the track record and experience of management and (supervisory) directors.	SPACs are obliged to prepare a full prospectus that needs approval of the Dutch securities regulator, AFM.
Management and directors' liability to investors for misstatements or omissions in prospectus.	Full prospectus liability.
Continuing obligations and disclosure requirements after a SPAC has gone public.	Dutch listed SPACs are subject to the Market Abuse Regulation: obligation to disclose price-sensitive information as soon as possible and obligation to disclose insider dealings. The SPACs are also obliged to publish annual and semi-annual financial statements.

⁴ E.g. on 13 April 2021 the US listed SPAC Altimeter Growth Corp. announced a business combination with the Singaporean start-up tech company Grab Holdings Inc. The market value of Grab Holdings was estimated at \$ 39.6 billion.

	<p>The Transparency Directive is in principle applicable, but Dutch listed SPACs generally use the legal form of a private company with limited liability ('BV') instead of a public company with limited liability ('NV'). Fewer company and securities law requirements apply for a BV. E.g. BV shareholders are not subject to the obligation to publicly notify substantial capital and voting interests. Takeover rules do not apply and in principle management instead of the general meeting decides on share issuances and the disapplication of pre-emptive rights.</p>
<p>When a business combination is announced: full disclosure of the material risks, the proposed business, the strategic rationale, the value and return prospects of the target company, material financial information of the target company, the proposed legal and governance structure and the terms on which the SPAC external shareholders will receive shares in the combined entity versus the terms for the SPAC sponsors.</p>	<p>Dutch listed SPACs are not obliged to prepare a full prospectus that needs approval of the AFM when a business combination is announced. The Dutch corporate governance code only stipulates that a proposal that needs approval by the general meeting should be explained in writing. In that explanation the management should deal with all facts and circumstances relevant to the approval. The notes to the agenda should be posted on the company's website. Although the event is rather similar, the Euronext reverse listings policy is not applicable to business combinations proposed by SPACs. This reverse listings policy contains several information requirements in connection with reverse listings (reference is made to the appendix).</p>
<p>Shareholder approval of business combination.</p>	<p>In contrast to NVs, the letter of Dutch company law does not require BVs to ask shareholder approval for business combinations. However, there is discussion in Dutch legal literature whether that should actually be the case and it cannot be excluded that shareholder approval may be deemed applicable by a Dutch court. It should be noted that the articles of association of the seven recently listed Dutch SPAC-BVs require shareholder approval for any proposed business combination. Five of the recently listed Dutch SPACs require a simple majority of the votes cast at the general meeting; the other two require a supermajority of 70% of the votes cast.</p>
<p>Measures against conflicts of interest among the SPAC sponsors.</p>	<p>Dutch regulations do not restrict SPAC sponsors from voting their shares in connection with the business combination. A fairness opinion, issued by an independent third party, on the proposed business transaction is not needed.</p>
<p>Redemption right for shareholders.</p>	<p>Dutch regulations do not require SPACs to redeem the shares of a shareholder who voted against the business combination. However all four recently listed Dutch SPACs permit their shareholders to redeem their shares if they vote against the business combination. Under Dutch law, a listed NV cannot redeem more than 50% of its shares. However if a SPAC is listed as a BV, the 50% cap on redemptions does not apply and the SPAC can redeem an amount of shares up to the amount of its statutory reserves.</p>
<p>Target size.</p>	<p>Dutch regulations do not stipulate a minimum or maximum market value of the target in relation</p>

	the value of the assets held in the escrow accounts. Dutch SPACs are free in their choice of a target and can choose to acquire multiple targets.
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5. Eumedion position

From the analysis in this memo and from the table above, the following conclusions can be drawn:

1. A SPAC is a risky and complex investment, but for a professional, institutional investor in a SPAC this should not come as a surprise. The full prospectus regime is applicable to SPACs. Therefore, SPAC shareholders have ample opportunity to adequately assess and understand the risks and opportunities of the SPAC when it is going public.
2. Shareholders of a listed BV should have a similar level of protection and rights as shareholders of a listed NV. Therefore, company and securities legislation should be similar for all kinds of listed entities, whether BV, NV or other legal forms. This should include the legal requirement to submit a business combination for shareholder approval, a requirement for shareholders to notify substantial capital and voting interests and general meeting authorisations of share issuance and the exclusion of pre-emption rights.⁵
3. Current market practice should be formalised (either in the Dutch corporate governance code or in the Euronext Amsterdam listing rules): i) the option for shareholders to redeem their investment, at least if they vote against the approval of the business combination, ii) the funds raised at the IPO should be held in escrow accounts pending the approval and completion of a business combination and iii) the intended maximum operating period of the SPAC.
4. Improvements in disclosures are needed when a business combination is submitted for approval by the general meeting. The Euronext Amsterdam reverse listing policy (incorporated in the appendix to this statement) should therefore also be applicable to the business combination as proposed by the SPAC.
5. In order to further mitigate the effects of potential conflicts of interest amongst SPAC sponsors, a business combination should be approved by a supermajority of the votes cast at the shareholders meeting or by at least a simple majority of the votes cast by 'independent' shareholders (not related to the SPAC sponsors).
6. SPACs should only be used as an instrument for the listing of smaller and medium-sized companies.

⁵ Eumedion has published a separate position statement on the protection of shareholders of listed BVs .



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EURONEXT AMSTERDAM REVERSE LISTINGS POLICY

INTRODUCTION

Euronext Amsterdam applies a policy with respect to reverse listings (as defined below) on the Amsterdam Market in accordance with Rule A - 5.4 of Euronext Rule Book, Book II and in line with the general policy on listings as set out in Chapter 6 of Euronext Rule Book, Book I. This policy shall apply from 1 January 2018.

DETAILS

1. In order to complete a reverse listing, the customary review and assessment policy of Euronext applies. In addition the issuer will need to inform investors by publishing a document containing at least the information as specified in the Annex to this Notice. This Annex has been drawn up in consultation with the AFM.
2. Euronext will not complete steps in relation to the reverse listing (e.g. name change, etc.) until assessment and approval on the application request has been completed.
3. The following requirements apply to reverse listings on Euronext Amsterdam:
 - The Issuer is required to submit an application form together with ancillary documents;
 - Euronext assesses whether listing conditions are satisfied, including:
 - A sufficient number of Securities must be distributed to the public as referred to in Rule 6702/1(i) Euronext Rule Book, Book I;
 - 3 year track record as referred to in Rule 6702/1(ii) Euronext Rule Book, Book I;
 - Appointment of a listing agent;

The Euronext Markets comprise the markets operated by Euronext Amsterdam, Euronext Brussels, Euronext Lisbon, Euronext Paris and Euronext London, referred to respectively as the Amsterdam, Brussels, Lisbon, Paris and London markets, as relevant. Euronext refers to Euronext N.V. and its affiliates.

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- Know Your Customer checks;
 - The Issuer is required to inform investors by publishing a document on its website containing at least the information as specified in the Annex;
 - Euronext may require additional documentation and information from the Issuer;
 - A decision (approval or refusal) is taken by the Board of Directors of Euronext Amsterdam N.V.
4. In the context of this policy a “reverse listing” is a transaction by an Issuer that lacks any meaningful assets (as determined by Euronext in its sole discretion), whether effected by way of a direct acquisition by the issuer or a subsidiary, an acquisition by a new holding company of the issuer, a legal merger, demerger or otherwise, of a business, a company or assets which in substance results in a fundamental change in the business.
 5. For the purpose of this policy Euronext considers that the following factors as indicators of a fundamental change:
 - the extent to which the transaction will change the strategic direction or nature of the issuer’s business; or
 - whether the issuer’s business will be part of a different industry sector following the completion of the transaction; or
 - whether the issuer’s business will deal with fundamentally different suppliers, clients and end users.
 6. For reverse listings the listing fees will consist of an administrative fee of EUR 40,000 and the subsequent admission fee for the listing of shares to be issued and listed in connection with the contribution (if and when occurring).

ANNEX

Where appropriate, the (financial) information included in the document should relate to the business, company or assets of the company being acquired by the new holding company or otherwise. This approach is consistent with article 4a of Commission Regulation (EC) of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament of the Council¹ (the 'Prospectus Regulation').

Although the information requirements refer to the 'company', additional information relating to the holding company should also be provided to the extent necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and the rights attached to such securities.

I. Summary

II. Identity of directors, senior management, advisers and auditors

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

III. Essential information

The purpose is to summarize essential information about the company's financial condition, capitalization and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial information must also be restated.

- A. Selected financial information
- B. Capitalization and indebtedness
- C. Working capital statement
- D. Use of proceeds
- E. Risk factors relating to the issuer and the securities

IV. Information on the company

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future capacity increases or decreases.

- A. History and development of the company
- B. Business overview
- C. Organizational structure (before and after the reverse listing)
- D. Property, plants and equipment
- E. Legal and arbitration proceedings

V. Operating and financial review and prospects

The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating results

¹ Commission Regulation (EC) of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

- B. Liquidity and capital resources
- C. Research and development, patents and licenses, etc.
- D. Trends

VI. Directors, senior management and employees

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

- A. Directors and senior management
- B. Remuneration
- C. Board practices
- D. Number of employees
- E. Share ownership (before and after the reverse listing)

VII. Major shareholders and related-party transactions

The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding the transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major shareholders (before and after the reverse listing)
- B. Related-party transactions
- C. Interests of experts and advisers
- D. Conflicts of interest
- E. Any details of shareholders which in the last year have acquired an interest in the company and/or target against a price that is significantly different than the current price of the shares.

VIII. Financial information

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

- A. Consolidated historic financial statements and other financial information (as required pursuant to article 4a of the Prospectus Regulation, item 20.1 of Annex I of the Prospectus Regulation, or item 20.1 of Annex XXV if the issuer will qualify as an SME after the reverse listing).
- B. Interim financial information (as required pursuant item 20.6.1 of Annex I of the Prospectus Regulation).
- C. Significant changes
- D. To the extent that would be required pursuant to item 20.2 of Annex I and article 4a of the Prospectus Regulation, pro-forma financial information meeting the requirements set out in Annex II of the Prospectus Regulation.

IX. Essential information about the securities

- A. A description of the type and class of the securities being admitted to trading
- B. To the extent applicable, the currency of the securities issued
- C. The dividend payout policy
- D. A description of any rights attached to the securities, including any limitations of those rights, and the procedure for the exercise of those rights

- X. Interests of experts**
A. The purpose is to provide information regarding transactions the company has entered into with experts or advisors employed on a contingent basis
- XI. Details of the offer and admission to trading details**
The purpose is to provide information regarding the admission to trading of securities and related matters.
A. Admission to trading
B. Markets
C. Holders of securities who are selling
D. Dilution (for equity securities only)
E. Expenses of the listing
- XII. Additional information**
The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the document.
A. Share capital
B. Memorandum and articles of association
C. Material contracts
D. Exchange controls
E. Warning on tax consequences
F. Dividends and paying agents
G. Statement by experts
H. Documents on display
I. Subsidiary information
J. The information required for Specialist Issuers, as included in the ESMA update of the CESR recommendations dated 20 March 2013