# A brief history of the SPAC and the development of its characteristics

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## 1. Introduction

1.1. After a true whirlwind of initial public offerings (IPOs) of special purpose acquisition companies (SPACs) in the United States of America (US), the number of SPAC IPOs [1] on Euronext Amsterdam exploded in 2021. We have also seen a clear increase in SPAC IPOs elsewhere in Europe, but we feel that the Amsterdam stock exchange can rightfully call itself the SPAC capital of Europe.

1.2. In this article, we will first briefly discuss the most important characteristics of a SPAC, some of which will be explored in more detail in the remainder of this article. It then discusses the origins of the SPAC, its subsequent history, and the technical and legal innovations that have been implemented over time.

## 2. The features of a SPAC in a nutshell

2.1. In the IPO of a SPAC, investors entrust their capital to a listed company with no real business activity and history. Such an "empty shell", also known as a "blank check company" or "cash shell", then will search for a takeover candidate. The cash raised by the IPO is de facto a "blank check" to finance a takeover.

2.2. Since at the time of the IPO the business which is to be acquired by the SPAC is not yet known, the trust of investors is required. This trust must derive from the founders of the SPAC, also known as "sponsors" or "promoters". The reputation, experience and intended acquisition strategy of the sponsors will have to convince investors to put their capital into a SPAC. The sponsors will then have to meet expectations by establishing a business combination, which will be achieved via an acquisition, but often also via a (cross-border) merger.[2]

2.3. As part of their investment in the SPAC, investors receive a combination of shares and warrants (*i.e.* rights to shares). These shares and warrants are often bundled in "units". The units are generally tradable as such for the first few weeks until just after the end of the stabilisation period[3], but will thereafter "fall apart" into the shares and warrants of which they are composed, and which are then traded separately on the stock exchange. If the share price rises after the completion of a business combination, the warrants can be converted into shares.

2.4. In general, the sponsors receive no or a minor management fee. On the other hand, however, with a relatively small equity investment, consisting of a combination of shares and warrants, they can acquire a significant participation in the SPAC when they establish a business combination. In general, both in the US and Europe, the sponsors hold a stake of approximately 20% in the SPAC, also referred to as the "promote".[4]

1 Initial public offering (IPO).

2 For more information on the acquisition structure of the business combination C.R. Nagtegaal, W.J. Dam, "De-SPAC transacties", TOP 2022/118 (hereinafter: Nagtegaal & Dam).

3 Immediately after an IPO, the share price is sometimes erratic. The price can fall significantly due to profit-taking by (short-term) investors or rise significantly due to continued demand after the IPO. In order to maintain price stability and thereby increase confidence in the market, one of the underwriters, the stabilisation agent, generally executes stabilisation transactions. Price stabilisation may only take place for a maximum period of 30 days after the IPO and stabilisation transactions may not be executed at a price higher than the offer price.

4 This is evidenced by an analysis by the authors of all prospectuses with regard to the SPACs listed on Euronext Amsterdam. See also, *inter alia*, R. Greenspan, "Money for Nothing, Shares for Free: A Letter History of the SPAC", 23 April 2021, p. 12.

2.5. The proceeds from the IPO are deposited into a separate account, often an escrow account. This ensures that investors will (largely) get back their investment if no business combination is established and the SPAC is liquidated. If a business combination is realised, the balance of the escrow account shall accrue to the SPAC. Under certain conditions, shareholders in the context of a business combination can make use of their "redemption right". If the SPAC fails to establish a business combination within the stipulated period, the SPAC shall be liquidated. The funds in the escrow account will then be divided proportionately among the investors. The proposed business combination requires the approval of the general meeting of SPAC.[5]

## 3. A brief history lesson

### *Cradle in the United States*

3.1. SPACs originated in the US and derive from the blank check companies of the 1980s. These listed entities did not have a clear business plan, other than raising money for subsequent acquisition or merger, and were characterised by their speculative nature. These "empty shells" were seen by many as an obscure legal novelty, set up to defraud unsuspecting investors. They were, therefore, subject to additional rules imposed by the U.S. Securities and Exchange Commission (SEC), the US market regulation and investor protection authority.[6]

3.2. The legal form and characteristics of the SPAC as we know it today developed from the 1990s onwards, following the enactment of the Penny Stock Reform Act at the federal level, as well as legislation at the level of several US states, which led to strict rules for blank check companies resulting in the number of blank check IPOs to decrease significantly.[7]

3.3. In 1992, a group of lawyers and bankers (*i.e.* underwriters) met in the US with the aim of developing a blank check company that would offer sufficient protection to investors to be approved by the SEC.[8] Although the contours of the SPAC as we now know were sketched, the SPAC disappeared in the mid-90s. Not for reasons of investors' protection or other problems in the structure, but because of the market conditions at the time. In those years, small companies could easily find the way to the stock exchange independently.[9]

3.4. As from 2003, there has been an increase in the number of SPAC IPOs in the US. This increase is more or less in line with the decrease in the number of IPOs in general in the US. According to some, the cause of the decrease in the number of IPOs can be found in the increased regulation. US securities legislation, such as The Securities Act of 1933 and The Securities Exchange Act of 1934, was implemented to protect naive investors. Reforms of this legislation, introduced for the same purpose, were an inspiration for the creation of the SPAC.[10] It also helped that it became possible in 2008 to list SPACs on the renowned New York Stock Exchange and Nasdaq.[11]

3.5. Nevertheless, it took until the end of the 2010s for SPAC IPOs to flourish. Since the beginning of this century, the SEC tightened the rules and procedures for SPACs and investor protection has increased substantially, which led to the widespread acceptance of SPACs, including by top-tier underwriters.[12] A mature SPAC market subsequently emerged in the US. The SEC also recently announced new rules for SPACs. For example, the SEC has proposed stricter rules for forward looking statements published in the context of a proposed business combination. The SEC's aim in doing so is to put the target in a similar position in terms of disclosures in the context of a business combination as it would be in a conventional IPO. In an ordinary IPO, it is unusual for the strict rules to include such forecasts.

### *The Amsterdam Stock Exchange as the SPAC capital of Europe*

3.6. SPACs reached Europe around 2007. In that year, Pan-European Hotel Acquisition Company (PEHAC) had its IPO on Euronext Amsterdam, followed by Liberty International Acquisition Company in February 2008. This was shortly followed in July 2008 by Germany1 Acquisition Limited, also listed on the Amsterdam stock exchange. The capital in these first two SPACs was mainly issued to American investors. The question therefore arose whether there was interest in this US phenomenon in Europe. Around 90% of the capital of a third Amsterdam SPAC in 2008 (Germany1) was reportedly placed with European investors. This SPAC IPO is therefore seen as an important milestone in the acceptance of the SPAC by Europe.[13]

3.7. However, it was another 10 years before the next SPAC, Dutch Star Companies ONE N.V. (DSC I), went public. The lean IPO years as a result of the credit crisis will surely have played a role in this. Another aspect that did not help the popularity of SPACs in Europe was the fact that activist shareholders had entered PEHAC massively with the aim of liquidating it, having first bought the shares at

5 Incidentally, the shareholders of the target group will often also need to approve the business combination.

6 R. Greenspan, "Money for Nothing, Shares for Free: A Letter History of the SPAC", 23 April 2021, p. 2.*(https://ss rn.com/abstract=3832710)* (hereinafter: Greenspan).

7 D.K. Heyman, "From Blank Check to SPAC: The Regulator's Response to the Market, and the Market's response to the Regulation", *Entrepreneurial Business Law Journal* (2) 2007, no. 1, p. 532 (hereinafter: Heyman).

8 Heyman, p. 532.

9 P.R. La Monica, "This IPO market is nothing like late 1990s craziness", *CNN Business,* 1 April 2019.

10 Greenspan, p. 4.

11 P. Zijp, J.P. Franx & L.B. Nieuwveld, "Negotiated transactions, development in the SPAC market: Europe", *Bloomberg European Law Journal* (2) 2008, no. 11, p. 46.

12 See also J. Woodbridge, "The evolution of SPACs, Hedgeweek", 8 December 2020 (*https://www.hedgeweek.com/2020/12/08/293262/evolution-spacs)*.

13 P. Zijp & J.P. Franx, "Finding a special purpose", *The European Lawyer,* November 2008, p. 33.

a substantial discount to the liquidation value.[14] Shareholders were left with 8.02 euro per share after liquidation; 77 cents more than the value at the IPO. This increase in value can be explained by positive interest received on the balance in PEHAC's escrow account. The risk described of steering towards liquidation has now been mitigated by not only granting the redemption right to shareholders who voted against the proposed business combination, more on this below.

3.8. After its IPO in early 2018, DSC I found the envisaged business combination partner in CM.com at the end of 2019. In February 2020, the business combination became a reality and CM.com was listed on Euronext Amsterdam.

3.9. At the end of 2020, the initiators of DSC I launched a second SPAC; Dutch Star Companies TWO B.V. (DSC II). Shortly afterwards, a true whirlwind of SPAC IPOs in Europe followed. Mainly on Euronext Amsterdam, but also elsewhere in Europe, such as on the Frankfurt Stock Exchange and Euronext Paris. Since 2018, 19 SPACs have been listed on the Amsterdam stock exchange to date, 15 of which in the peak year 2021. In the same year, there were a total of 32 SPAC IPOs in Europe.

3.10. Although two more SPAC IPOs took place on Euronext Amsterdam earlier this year, they seem to have passed their peak. Rising interest rates and the war in Ukraine will probably play a role in this. The fact that many Amsterdam SPACs have low liquidity, at least until the business combination, does not help either. One problem we regularly hear is that, due to this low liquidity, the shares of institutional investors in European listed SPACs are not accepted as collateral for so-called margin accounts.[15] In addition, last year more and more investors made use of their redemption right, as a result of which a lot of cash was withdrawn from the SPAC. This phenomenon is not insurmountable in itself. After all, as a listed entity, the SPAC has a short line to the capital market. When the capital of the SPAC is insufficient to finance the business combination, capital is often raised from new investors. This process is called the PIPE (private investment in public equity), which we will elaborate upon later. However, the PIPE market too declined in the course of 2021. In short, after the SPAC hype of 2020/2021, the appetite for SPACs has clearly decreased.

3.11. Since 2018, five Amsterdam-listed SPACs have entered into business combinations so far. First, DSC I entered into a transaction with CM.com in early 2020, which had previously independently attempted an IPO. This year, the business combination between (i) European FinTech IPO Company 1 B.V (EFIC 1) and Azerion Holding B.V, resulting in Azerion Group N.V., (ii) DSC II and Cabka Group GmbH, resulting in CABKA N.V., (iii) Odyssey Acquisition S.A. and BenevolentAI Limited, resulting in BenevolentAI, and (iv) Pegasus Entrepreneurial Acquisition Company Europe B.V. and FL Topco B.V., resulting in FL Entertainment N.V.

## 4. Technical and legal features and innovations thereof

***Approval of the business combination by the shareholders***

4.1. From 2005 to 2009, most US SPACs included provisions in the prospectus that no longer allowed a business combination to be entered into without the approval of the general meeting.[16] The SPACs from this generation generally required that the business combination was approved by a qualified majority of at least 80% of the capital held by investors. This gave a 20% minority obviously considerable leverage. For a long time, hedge funds figured out ways to use so-called greenmail tactics against sponsors who were eager to realise their "promote".[17] In short, greenmail is exerting pressure on the sponsors for the purpose of inducing them to buy back the shares of the relevant investor at a (substantial) premium. Today, US SPACs generally requires that a resolution of the general meeting to enter into a business combination is adopted by a simple majority, whether or not with a 50% quorum requirement.

4.2. In the Netherlands the business combination must be approved by the general meeting. This generally requires a simple majority of the votes cast. Under the articles of association, DSC I and DSC II had an exception of a 70% majority requirement.

4.3. Incidentally, pursuant to Art. 2:330 of the Dutch Civil Code for business combinations effected by means of a merger, a resolution of the general meeting adopted by a majority of at least two thirds, if less than half of the issued capital is represented at the meeting, is required. In order to prevent the transaction structure of the business combination from affecting the required majority, a number of SPACs have introduced a special share, which is held by the sponsor. This is a share without dividend rights, which is not voted on in the context of the business combination and has a very high nominal value. This share ensures that more than half of the issued capital is represented at the general meeting at all times and a resolution on the business combination can always be adopted by a simple majority of the votes cast, even in the event of a merger.[18]

4.4. In both the US and the Netherlands, the sponsors at the general meeting can vote on the business combination. However, it differs per SPAC whether the sponsors have undertaken to vote in favour, have committed themselves to refraining from voting or are free to cast their vote, whereby, as initiators, they will, in principle, always vote in favour.

***Redemption rights and negative interest coverage***

14 See "Hedgefondsen nekken PEHAC", 17 March 2009 *(https://www.veb.net/artikel/01584/hedgefondsen-nekken-pehac).*

15 A margin account is a securities account where the broker provides a loan to the investor to fund shares or other financial products.

16 J. Magnas, "A New SPAC Structure May Lead to Renewed Interest in SPAC Offerings", *Bloomberg Law Reports - Mergers & Acquisitions* (8) 2011.

17 Greenspan, p. 18.

18 See, for example, the prospectus of Energy Transition Partners B.V., dated 15 July 2021, p. 111.

4.5. In general, the redemption right only accrues to the new investors and not to the sponsors and the management of the SPAC. The right pertains to the (ordinary) shares. If shareholders exercise their redemption right, the SPAC will have to buy back the relevant shares. The amount that the SPAC pays per share is equal to the IPO price. In the past, this was increased by the pro rata amount of positive interest received on the aforementioned balance and reduced by (part of) the costs that the SPAC had incurred until the time of the proposed business combination. This often yielded a nice return to shareholders who exercised their redemption right, as described above in the context of the liquidation of PEHAC.

4.6. However, with the current negative interest rate, shareholders with such an arrangement get back less than they invest. At first, investors accepted that this negative interest rate was for their own account and risk. After the negative interest rate was still at the expense and risk of the investors at DSC II, but also at the subsequent IPOs of ESG Core Investments B.V. in February 2021, EFIC 1 in March 2021 and Pegasus Entrepreneurial Acquisition Company Europe B.V. in April 2021, a change was made. Under pressure from investors in an (over)heated SPAC market, sponsors undertook to take the negative interest on the balance in the escrow account for their account and risk, so that shareholders who would exercise their redemption right would, in principle, get back their entire investment. As such, in times in which banks charge negative interest rates, the SPAC can be a relatively safe and financially favourable port for investors to park money, all the more so as IPO investors also have the warrant.

4.7. In the past, the redemption right only accrued to shareholders who had voted against the proposed business combination.[19] In short, if you did not like the business combination, you could get your deposit back. However, with a few exceptions, the current generation of SPACs listed on Euronext Amsterdam also offer shareholders who voted in favour of the business combination, or abstained, the opportunity to exercise their redemption right around the time of the formation of the business combination.[20] The redemption right in these SPACs is disconnected from the way a shareholder votes on the business combination. This broadening of the redemption right stems from the US[21], where, although the stock exchange rules require the SPAC to grant a redemption right only to shareholders who vote against a business combination, in practice the current generation of SPACs grants the redemption right to all public shareholders, regardless of how the business combination is voted on.[22]

4.8. The possible frustration of a business combination by activist shareholders is an important reason for broadening the redemption right. In the previous situation, a business combination could be frustrated by shareholders who had subscribed below the issue price and then voted against the business combination in order to realise a "quick" profit with their redemption right. This "game" of activists reduces the chances of approval of the business combination.[23] By broadening the redemption right, the vote on the business combination is no longer relevant to the possibility of being able to exercise the redemption right and the risk of arbitrating activists is mitigated.[24]

***Bulldog provision***

4.9. Despite the fact that around the first decade of this century a large number of SPACs in the US were successful, the structure of these SPACs was still plagued by some inefficiencies that gave hedge funds and other activist investors considerable leverage. The reduction of the approval threshold from 80% to 50% described above and the widening of the redemption right were some of the novelties to improve the functioning of the SPAC. Another gimmick in this context was the introduction of the so-called "bulldog provision". Under such a provision, investors, acting alone or jointly, may only exercise the redemption right up to a certain percentage (*e.g.*, 15%). This was done in an attempt to obstruct greenmailing.[25] Today, the market is substantially larger and the risk of a single investor being able to do this is lower. The bulldog provision made its entry into the Dutch market with the IPO of Germany1 Acquisition Limited and has since been part of almost every SPAC. After all, there is also no real reason to omit such provision.

4.10. Incidentally, under the limited redemption right which can only be invoked if the investor votes against the business combination, as one saw it regularly in the US more than 10 years ago, the bulldog provision was automatically attached to the voting right. In short, if as a result of the bulldog provision you were not allowed to exercise your redemption right, you could not vote against the business combination either. This naturally increased the importance of the provision.

***From N.V. to B.V.***

4.11. With the entry into force of the Act on Simplification and Flexibilisation of private company law (*Wet vereenvoudiging en flexibilisering bv-recht*) in 2012, a share transfer restriction clause was no longer required for the transfer of shares in the articles of association of a private limited liability company (*i.e.* a B.V.). In addition, it was possible to transfer the shares without a notarial deed. These

19 See, *inter alia*, Offering Circular of Pan-European Hotel Acquisition Company N.V. dated 12 June 2007; and Offering Circular of German Acquisition Limited dated 2 July 2008, both with regard to their IPO to Euronext Amsterdam.

20 See, *inter alia*, the prospectus of European FinTech IPO Company 1 B.V. dated 22 March 2021; and the prospectus of Pegasus Entrepreneurial Acquisition Company Europe B.V. dated 10 December 2021.

21 Greenspan, p. 22.

22 R. Layne & B. Lenahan, "Special Purpose Acquisition Companies: An Introduction", *Harvard Law School Forum on Corporate Governance,* 27 June 2022, under the section *"Redemption Offer", (https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction/) (hereinafter:* Layne & Lenahan).

23 See also Section 3.7.

24 See also H.M. Van Kessel & D.J.R. Lemstra, "De SPAC (special purpose acquisition company)", *Ondernemingsrecht* 2020/143.

25 See section 4.1. for an explanation of the term "greenmail".

developments ensured that B.V.s could obtain a stock exchange listing and that the shares could be traded in book-entry. Although DSC I still spoke of a public limited liability company (*i.e.* a N.V.), DSC II first opted for the B.V. at a SPAC. Subsequently, almost all Dutch SPACs were incorporated into a private limited liability company structure.

4.12. This has a number of advantages compared to the archetype of the listed company; the listed company, for example, is not subject to the regulation of the mandatory offer[26] at the (listed) B.V., which means that the party that (alone or jointly with others) acquires predominant control (*i.e.*, a 30% stake) in a stock exchange B.V. is not obliged to make a public offer for all remaining shares. This allows an investor, whether as part of the business combination or PIPE, to acquire a large interest in a listed company without having to make a mandatory offer for all the remaining shares. However, it is questionable whether this was the intention of the (European) legislature.[27] In addition, the B.V. has more flexible rules than the N.V. with regard to, among other things, the purchase of own shares, financial assistance and the possibility of creating different types of shares. In addition, a large number of reporting rules regarding control and capital interest in issuing institutions do not apply to the (listed) B.V.

***Sponsor promote schedule***

4.13. At the time of the SPAC IPO, or some time before that, the sponsors acquire a substantial capital interest in the SPAC of approximately 20%, calculated on the total share capital post-IPO. They acquire this stake for a small investment that is substantially lower than the 10 euro that ordinary investors have to pay for the units.

4.14. The shares that the sponsors acquire are not ordinary shares, but so-called "sponsor shares" or "founder shares". The redemption right discussed earlier does not apply to these shares. In addition, the sponsors only share in the balance remaining after the holders of ordinary shares have received their investment, plus the pro rata amount of positive interest received on the balance in the escrow account or reduced by the pro rata amount of negative interest paid. Usually, each sponsor share gives the holder the right to cast a vote at the general meeting. This principle is sometimes deviated from in the articles of association or contractually, for example by depriving sponsors of the right to vote on the proposed business combination. The sponsor shares are not freely transferable and are not listed on the stock exchange. However, under certain conditions described in the prospectus, the sponsor converts shares into ordinary shares.

4.15. At the beginning of the SPAC whirlwind, it was customary for the sponsor to convert 100% of its shares in the context of the business combination into ordinary shares that were admitted to the stock exchange.[28] As 2021 progressed, we saw that under pressure from investors, the sponsors increasingly agreed to what is known as a sponsor promote schedule, in which only a limited number of sponsor shares (for example 1/3 or even only 1/4) converted into ordinary shares at the time of the business combination and convert the other sponsor shares into tranches after the business combination at the time that the share price has taken certain hurdles (*e.g.*, if the share price has reached 12, 14 and 20 euros).[29] The idea behind such sponsor promote schedules is to create alignment of interest between the investors and the sponsors.

4.16. In addition to the sponsor shares, the sponsors also acquire "sponsor warrants" or "founder warrants". In principle, these sponsor warrants are not transferable. The terms and conditions of these warrants are generally identical to those of the public warrants and entitle the holder to acquire an ordinary share at a pre-determined price of generally 11.50 euros.

4.17. The sponsor shares are often subject to a lock-up up to one year after the business combination, as a result of which the shares cannot be sold or transferred. This lock-up is regularly shortened if the stock exchange approvals achieve a certain hurdle after the business combination (*e.g.*, if the share price has reached 12 euros).

4.18. It is clear, however, that sponsors have a strong financial interest in the success of the business combination. In addition, a "promoting interest" of 20% can grow rapidly in relative terms as a result of redemption rights exercised. To give an example; if 50% of all ordinary shares are repurchased on the basis of the redemption right, a promote interest of 20% will grow to a 30% stake at the time of the business combination.[30] In the current market, we see that this can regularly be a reason for sponsors to accept a retrenchment of their rights in the context of the negotiations about the business combination and any PIPE.[31] For example, the sponsors may give up or transfer some of their shares or warrants to one of the other parties involved in the business combination or PIPE.

***The business combination deadline***

4.19. The sponsors do not have a long period of time to create a business combination. The deadline for entering into a business combination is, subject to exceptions, shortened from a standard 24 months, with a possible extension of six months with the

26 Article 5:70 Dutch Financial Supervision Act (*Wft*) et seq. In legal doctrine, there is a discussion about the question of the regulation of the mandatory offer should also pertain to a public limited company. In this context, a risk factor is devoted to this in the prospectus.

27 See also A.A. Bootsma, J.B.S. Hijink & L. in 't Veld, "De eerste beurs-BV", *Ondernemingsrecht* 2016/111.

28 This is evidenced by an analysis by the authors of all prospectuses with regard to the SPACs listed on Euronext Amsterdam.

29 See, for example, the prospectus of European Healthcare Acquisition & Growth Company B.V., dated 16 November 2021.

30 M.D. Klausner, M. Ohlrogge & E. Ruan, "A Sober Look at SPACs", 20 December 2021, *Yale Journal on Regulation* (39) 2022, afl. 1, *(https://ssrn.com/abstract=3720919)* (hereinafter: Klausner, Ohlrogge & Ruan).

31 See also Nagtegaal & Dam.

approval of the general meeting, to a period of 18 months or even shorter[32], with a possible extension of six months or twice three months.

***PIPE investment***

4.20. It is customary for a business combination, also referred to as the SPAC transaction, to be accompanied by a PIPE transaction in which institutional investors, simultaneously with the signing of the de-SPAC documentation, oblige themselves to provide additional capital. If such PIPE is already committed to the IPO, it is laid down in a so-called forward purchase agreement.[33] The "PIPE process" is started after a potential takeover candidate has been identified, but before the de-SPAC transaction has been announced, and the PIPE is generally a condition for performing the business combination, whether or not together with a minimum cash condition.[34] A PIPE can be used to finance an acquisition for which more must be paid than the SPAC has available in financial resources. As described above, there is also a good chance that many shareholders will exercise their redemption right in the context of the business combination. The PIPE gives investors additional certainty and confidence that there will be sufficient cash if the business combination is entered into.

4.21. Where the initial investors joined on the basis of the SPAC conditions and the reputation, experience and acquisition strategy of the sponsors, the PIPE investor will be guided mainly by the business and the potential of the proposed acquisition candidate, as well as the terms and conditions of the business combination itself. If made at a price per share that is more or less equal to the amount that the SPAC would pay to shareholders who exercise their redemption right (often around 10 euros), a PIPE investment gives such a third-party validation of the business combination.

4.22. Meanwhile, both the US and European PIPE markets for SPACs have been struggling for some time, partly because a substantial amount of capital has already been committed to recently announced or entered into business combinations. The institutional PIPE investors, consisting mainly of pension funds, hedge funds, investment funds and asset managers, look more closely at the fundamental aspects of the business of the intended acquisition candidate and the necessary financial resources for the business combination.[35]

***Treasury shares***

4.23. It is logical that a prospectus must be published at the time of issue of the shares related to the PIPE and the conclusion of the business combination if shares are also issued in this context. Firstly, this is necessary if the shares issued under the PIPE or issued to the owners of the target company as compensation in the context of the business combination represent more than 20% of the SPAC's share capital.[36] In addition, this may be necessary if, in the context of the business combination, a new holding company is inserted into the structure in which the shareholders of the SPAC will participate together with the shareholders of the target company (for which no prospectus exemption is available). From a technical point of view, such a prospectus is necessary to allow the shares to be traded on Euronext Amsterdam.

4.24. However, it is possible to avoid the need for such a prospectus within the context of the PIPE and the business combination by having sufficient shares issued by the SPAC at the time of the SPAC IPO and then have them held by the SPAC itself. These are also referred to as "treasury shares". These treasury shares are included in the IPO prospectus and have therefore already been admitted to the listing on Euronext Amsterdam. The SPAC can transfer the treasury shares to the PIPE investor or shareholders of the target company.

## 5. In conclusion

5.1. Despite the fact that the SPAC hype, as we saw it last year, is past its prime, SPACs seem to be here to stay. It is an attractive and relatively quick way for companies that, due to their small size or for other reasons, it would have been difficult or impossible to achieve directly through an IPO, to obtain a stock exchange listing, while the existing shareholders with a bit of luck could also liquidate part of their capital in the target company. However, SPACs will have to innovate in the legal and technical fields, in order to win the hearts of investors again. A development can already be seen in the financial incentives given to sponsors. The financing problems discussed above should also be solvable with an (innovative) financial product. This might also help with "filling" the PIPE. More certainty regarding the success of the PIPE then mitigates the redemption risk. We look forward to the next generation of SPACs, having solved some of the problems we are currently facing. In that respect, the SPAC has demonstrated it has sufficient adaptability.

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32 See the prospectus of EPIC Acquisition Corp, dated 3 December 2021, which includes a business combination deadline of 16.5 months with twice a possible three-month extension.

33 See Leyne & Lenahan, under the section "Forward Purchase"; and the prospectus of Pegasus Acquisition Company Europe B.V., dated 29 April 2021, p. iii.

34 A requirement that the SPAC has a minimum amount of cash agreed between the parties when entering into the business combination. This may originate from the SPAC's escrow account, revenues from a PIPE transaction, revenues from the forward purchase agreement or a combination thereof.

35 Houlihan Lokey, 2020/2021 SPAC PIPE Study, April 2022 *(http://cdn.hl.com/pdf/2022/2020-2021-spac-pipe-study-.pdf).*

36 Article 1(5)(a) of Regulation (EU) 2017/1129 (the Prospectus Regulation).