PUBLICATION

SPACs - Exchange Listing Options Increase

July 23, 2008

Special purpose acquisition companies (SPACs) have gained legitimacy in recent years as the frequency of initial public offerings has waned. All major investment banks have underwritten SPACs, and despite a slowdown in the second quarter of 2008, the financing vehicles are likely to remain part of capital markets for years to come. Although SPACs have been eligible to list on AMEX for over two years, the NYSE and NASDAQ have now proposed and/or adopted standards that will allow listing of securities of a company that has but one asset, cash, and no underlying business.

A SPAC is a non-operating company that raises capital for a future, unspecified acquisition. Once the SPAC targets an operating company, usually private, to acquire, it must obtain the affirmative vote of the SPAC's stockholders to complete the acquisition. SPACs often voluntarily abide by derivations of the investor-protection rules of SEC Rule 419, pertaining to blank-check companies, including escrow of at least 90% of a SPAC's offering proceeds until the earlier of the approval of an acquisition or 18-24 months after the date of the initial registration statement on Form S-1. Further, prior to the AMEX standards, SPACs faced the significant obstacle of being ineligible to list on stock exchanges. In turn, they were not "covered securities" and were subject to state blue-sky registration.

The NYSE's listing standards were approved by the SEC on May 6, 2008 and are now a part of the Listed Company Manual. Under the NYSE's listing rules, the SPAC must escrow into trust at least 90% of the IPO proceeds until the SPAC consummates a business combination with a fair market value of at least 80% of the net assets of the trust. Furthermore, the shareholders must be granted the right to approve a business combination by majority vote, and those who vote against the transaction must be given the right to convert their shares into cash equal to the amount of their proportional share of the escrowed funds. The NYSE's rules give SPACs three years to complete acquisition of an operating business. Under the listing standards, SPACs must have an IPO price of at least $4.00 per share and have a post-IPO aggregate market value of at least $250 million, and a market value of publicly held shares of at least $200 million.

On April 18, 2008, NASDAQ submitted its proposed SPAC listing standards to the SEC. Though not yet approved by the SEC, the standards would allow SPACs with a market value of $75 million to list on the Global Market (or $50 million in the case of the Capital Market), far less than the NYSE's standard. Like the NYSE standards, proceeds of the IPO would be mandatorily escrowed, an acquisition must occur within three years of the IPO, and the stockholders of the SPAC would be given the right to approve the transaction.