Hunton & Williams
Corporate & Securities Law Update
May 2008

NYSE to Allow Listing of Special Purpose Acquisition Companies

On May 6, 2008, the Securities and Exchange Commission approved the New York Stock Exchange's proposed rules change to permit the listing of special purpose acquisition companies ("SPACs"). The NYSE's proposed rules were announced shortly after the NASDAQ's decision to permit the listing of SPACs and recognize their growing acceptance and popularity in the marketplace. Access to these exchanges should encourage more SPAC formations and allow SPACs to raise larger amounts of capital to fund acquisitions.

Also known as "blank check" companies, SPACs are empty shell companies formed for the purpose of acquiring other businesses. A SPAC raises funds for its acquisitions through an initial public offering, but it does not disclose the identity of its acquisition targets in its prospectus. The IPO funds are then deposited into a trust account until they are needed to fund a merger or other "business combination." At that point, the SPAC's public shareholders must approve the proposed business combination. Shareholders who dissent to the business combination have the right to convert their securities into cash payable from the trust account. SPACs have become increasingly popular in the past few years, representing a significant portion of recent IPOs and having collectively raised more than $15 billion in capital.

The proposed rule change to the NYSE's *Listed Company Manual* imposes certain requirements with respect to the aggregate market value of the SPAC and the IPO price and trading price of its securities. The proposed rules also provide that:

- 90 percent of the IPO proceeds must be held in a trust account to be used for acquisitions and to fund conversion rights of dissenting shareholders;
- "business combinations" must be approved by a majority of the votes cast by the public shareholders;
- the SPAC must be liquidated if it does not consummate a business combination within three years of its IPO, or a shorter time period chosen by the SPAC;
- the SPAC's founding shareholders must waive their rights to participate in any liquidation of any of their shares owned prior to the IPO or a private placement purchase occurring in conjunction with the IPO; and
- SPACs must adhere to the NYSE's corporate governance requirements applicable to all listed companies.

Additionally, the NYSE's proposed rules include provisions applicable to "back door listings," also known as reverse mergers.

The NYSE will have considerable discretion to review and evaluate SPAC listing applications on a case-by-case basis. This review will likely include scrutiny of the SPAC's management, including its track record, compensation arrangements and equity ownership.

The listing of SPACs on the NYSE and the NASDAQ reflects their growing acceptance in financial and regulatory communities. These listings should stimulate larger SPAC public offerings and more mergers and acquisitions activity. In particular, SPACs typically focus on middle-market acquisitions and may present unique exit opportunities for private equity sponsors. SPAC formations, offerings and transactions pose numerous challenges, however, including the need for regulatory compliance, the prospect of obtaining approval from both SPAC and target-company shareholders, and the implementation of proper corporate governance procedures with respect to management. Thus, while SPACs bring a host of new prospects to the marketplace, they will also raise new issues that will require careful consideration and planning.

Hunton & Williams Offices

Atlanta
Bank of America Plaza
Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308-2216
(404) 888-4000

Austin
111 Congress Avenue
Suite 1800
Austin, Texas 78701-4068
(512) 542-5000

Bangkok
34th Floor, Q.House Lumpini Building
1 South Sathorn Road
Thungmahamek, Sathorn
Bangkok 10120
Thailand
+66 2 645 88 00

Beijing
517-520 South Office Tower
Beijing Kerry Centre
No. 1 Guanghua Road
Chaoyang District
Beijing 100020
PRC
+86 10 5863 7500

Brussels
Park Atrium
Rue des Colonies 11
1000 Brussels, Belgium
+32 (0)2 643 58 00

Charlotte
Bank of America Plaza
Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280
(704) 378-4700

Dallas
1445 Ross Avenue
Suite 3700
Dallas, Texas 75202-2799
(214) 979-3000

Houston
Bank of America Center
Suite 4200
700 Louisiana Street
Houston, Texas 77002
(713) 229-5700

London
30 St Mary Axe
London EC3A 8EP
United Kingdom
+44 (0)20 7220 5700

Los Angeles
550 South Hope Street
Suite 2000
Los Angeles, CA 90071-2627
(213) 532-2000

McLean
1751 Pinnacle Drive
Suite 1700
McLean, Virginia 22102
(703) 714-7400

Miami
1111 Brickell Avenue
Suite 2500
Miami, Florida 33131
(305) 810-2500

New York
200 Park Avenue
New York, New York 10166-0091
(212) 309-1000

Norfolk
500 East Main Street
Suite 1000
Norfolk, Virginia 23510-3889
(757) 640-5300

Raleigh
One Bank of America Plaza Suite 1400
421 Fayetteville Street
Raleigh, North Carolina 27601
(919) 899-3000

Richmond
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8200

Singapore
Samsung Hub
#29-04, 3 Church Street
Singapore 049483
+65 6876 6700

Washington
1900 K Street, NW
Washington, DC 20006-1109
(202) 955-1500

If you have any questions about this update, please call your Hunton & Williams contact or Gary E. Thompson, head of the firm's Corporate & Securities Law Team, at (804) 788-8787.