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GREEN LIGHT FOR SWISS SPACS: NEW RULES FOR THE LISTING OF SPACS ON SIX SWISS EXCHANGE ADOPTED

Special Purpose Acquisition Companies or Corporations (SPACs), which have become popular across various jurisdictions in recent years, will now be allowed to list in Switzerland. SIX Exchange Regulation has adopted a corresponding regulatory framework entering into force on 6 December 2021. The new regulation will provide an attractive framework for SPACs, while ensuring appropriate transparency and investor protection in line with international standards.

OVERVIEW

SPACs (Special Purpose Acquisition Companies or Corporations) have been in the spotlight and enjoyed increasing popularity in recent years. While regulators in other jurisdictions were first in regulating SPACs, Swiss regulators have now closed the gap by introducing a new regulatory framework, mainly consisting of amendments to the existing SIX Listing Rules (LR), a new Directive on the Listing of SPACs on SIX Swiss Exchange (RLSPAC) of 18 October 2021 as well as amendments to certain other SIX Directives. The rules now adopted are consistent with international standards. At the same time, they allow for some specific features, e.g. a convertible bond structure, that could be attractive for future SPACs. The new regulation will enter into force on 6 December 2021.

WHAT ARE SPACS AND DE-SPACS?

SPACs are publicly traded companies that have no operational business and are formed for the sole purpose of acquiring a private company with the funds raised through the initial public offering (IPO) of the SPAC. In other words, SPACs, also referred to as blank cheque companies, are listed „cash boxes" that are looking for M&A targets.

Once a SPAC is listed, its primary object is the identification of potential targets it can take public. This transaction is finally implemented either via a purchase or contribution of all target shares or by means of a merger (so-called „De-SPAC" transaction).

Once a target has been identified, transaction details are to be negotiated with the SPAC and binding agreements are concluded. The SPAC's shareholders subsequently vote on the transaction; public shareholders opposing the business combination are granted redemption rights. As a result, SPAC shareholders have a say on the transaction by way of a shareholders' vote as well as a possibility of exiting through redemption rights (apart from the option to sell their listed SPAC securities).

If the transaction is approved and other closing conditions are met, the transaction is executed. Going forward, the SPAC will serve as a listed holding company of the target (while in US-style De-SPACs, a newly formed holding company is typically newly listed).

If no target company can be identified (or negotiations with the target's management fail) within the lifespan of the SPAC, which is usually limited to two to three years, the SPAC will be liquidated and the funds of the SPAC's shareholders (which are held in escrow) are distributed to them.

Going public by means of a combination with an existing SPAC may constitute a beneficial alternative to a traditional IPO, among other things because the sponsors of the SPAC are in a better position to analyse the prospects of the target than an IPO investor is able to, based on the prospectus disclosure.

This briefing focuses on the new regulatory framework for the listing of SPACs on SIX Swiss Exchange and corresponding De-SPACs under the new SIX rules.

NEW REGULATION

To date, Switzerland has no rules specifically aiming at the regulation of SPACs. On the contrary, Swiss listing requirements have made it almost impossible for SPACs to become listed at SIX Swiss Exchange due to the need for exemptions, in particular due to the track record requirement according to which new issuers must have existed for at least three years. Moreover, the Swiss Financial Market Supervisory Authority (FINMA) was against granting case-by-case exemptions from listing requirements to SPACs without having a general framework in place. The newly adopted rules will pave the way for the listing of SPACs while ensuring adherence to key principles of financial market regulation such as transparency, investor protection and market integrity.

ELIGIBLE SPACs

According to the revised LR, SPACs are companies limited by shares under Swiss law whose exclusive purpose consists of the direct or indirect acquisition of a target (or, in the case of simultaneous acquisitions, of several acquisition targets) or the combination with one or more operating acquisition targets (De-SPAC). The maximum lifespan for SPACs is three years from the first trading day, provided that no De-SPAC has been completed by then. No extension to this deadline is possible.

MAIN LISTING REQUIREMENTS FOR SPACS

As one of the cornerstones of the new regulatory framework, SPACs will benefit from certain exemptions from listing requirements. First, the track record requirement, i.e. the fact that an issuer must have existed as a company for at least three years, is waived. Second and consequently, the same waiver applies to the annual financial statements of the issuer. Third, for the purpose of determining the equity capital of SPACs in accordance with Art. 15 LR, IPO shares or the convertible bonds are counted as equity irrespective of whether they are qualified as equity or debt for accounting purposes.

Art. 4 RLSPAC contains a catalogue of additional, specific information that needs to be disclosed in view of the IPO of the SPAC. The disclosure can be made either in a prospectus according to the Federal Act on Financial Services (FinSA) or in an additional information document and includes the following:

- quantitative examples / scenarios of the potential dilution of public shareholders' investments (including, inter alia, the disclosure of the post-De-SPAC stake of sponsors, management and public shareholders, of additional compensation elements in favour of sponsors and management, of conditions of additional increases as well as of maximum dilution and tax effects);
- potential conflicts of interest of the founding shareholders or sponsors and of the board of directors

and management, and appropriate measures to avoid or mitigate them;
- information on the market targeted as well as the process of the De-SPAC;
- detailed information on the founders/sponsors, members of the board of directors and management, including their track record;
- description of the role of the lead banks and potential conflicts of interest;
- description of the lock-up agreements of the founders/ sponsors, members of the board of directors and management of the SPAC, and other parties; and
- description of the preferred treatment of the IPO shares compared to all other share classes with regard to the liquidation of the SPAC.

According to Art. 3 RLSPAC, money raised in an IPO has to be deposited in a trust account with a banking institution and may only be used for the purposes described in the prospectus (e.g. for the acquisition of one or more acquisition targets or the redemption of the shares issued in the IPO in connection with the liquidation of the SPAC).

LISTED SPAC SECURITIES - ISSUANCE OF CONVERTIBLE BONDS

In order to raise the necessary money to fund the deal, the SPAC can issue and list either ordinary shares or convertible bonds.

The convertible bonds structure is a special Swiss feature. It has certain benefits as it facilitates the redemption rights and allows to issue the convertible bonds exempted from stamp duties in a first step, with a 1% stamp duty only to be paid to the extent the De-SPAC is successful and redemption rights are not exercised.

If the SPAC offers investors convertible bonds instead of shares in the IPO, the shares need to be listed simultaneously with the convertible bonds. While the shares need to be created prior to the listing, trading of the shares on the SIX Swiss Exchange will be suspended until the De-SPAC is completed. The shares need to be deposited with a bank subject to the Banking Act.

Art. 2 RLSPAC contains a catalogue of the minimum content of the terms and conditions of the convertible bonds, which intend to ensure an appropriate governance framework for the bondholders in order to achieve largely similar protection as if shares had been issued. The requirements are as follows:

- One unit of the convertible bonds entitles the holder to convert it into one share of the SPAC;
- The convertible bonds must be redeemable by no later than three years following the first day of trading in case no De-SPAC has been completed;
- A De-SPAC requires approval of the bondholders: The terms of the bonds have to set out how a meeting of convertible bondholders is to be convened and how the meeting has to vote on the De-SPAC;
- The bonds are mandatorily converted upon execution of the De-SPAC, unless a holder of the convertible bonds has requested repayment within 30 days after approval of the De-SPAC; and
- Repayment of the convertible bonds, unless converted, has to be made at least at the nominal amount.

SPACs often issue warrants alongside shares (or convertible bonds). Warrants are not specifically regulated by the new regulation but may generally be issued also by Swiss SPACs.

DE-SPAC TRANSACTION

Swiss De-SPAC transactions, i.e. the acquisition of a target company, are expected to follow the European role model. As a result, and contrary to US-style De-SPACs, SPACs may simply acquire a target by a private share purchase transaction and the SPAC will continue to be listed as a new holding company of the target. A statutory merger or similar transaction is not required. There is no exclusion on a SPAC merging with a target but normally the SPAC will be the surviving entity and will continue to be listed (in contrast to US-style De-SPACs).

Once a (potential) target company is identified, IPO shareholders (i.e. holders of shares issued during the IPO, or holders of convertible bonds for that matter) need to vote on the transaction at a special general meeting.

If neither a public offer of shares is made nor at least 20% of shares are newly listed, generally no prospectus according

to FinSA is required for a De-SPAC transaction. Given this and in order to ensure that appropriate information is available to the shareholders, the RLSPAC provides that the SPAC has to prepare and publish a De-SPAC specific information document that is quite similar to, but not the same as, a FinSA prospectus.

Further, an independent review of the appropriateness of the offer, also in relation to the target's valuation, must be made by a recognised accounting firm and its report must be included in the information document.

In addition, the information document shall, inter alia, contain the following information:

- a description of the target and its business (incl. material risks, description of the current main areas of activity, indicating the main products sold and services provided; indicative information on the business forecast);
- financial information relevant to the decision on the De-SPAC with respect to the acquisition target, i.e. the two most recent annual reports containing the audited financial statements for the last three fiscal years and a description of the material financial effects of the proposed De-SPAC. It is important to note that no accounts according to recognised reporting standard have to be drawn up for this purpose. In cases where the annual reports of the target do not follow a recognised accounting standard, however, a description of material differences to the accounting standard of the SPAC in relation to the last business year of the target must be added;
- information on corporate governance (e.g. information on members of the board of directors and the executive committee; composition of the board of directors' committees, their tasks and competencies; principles and elements of compensation and share programmes); and
- a confirmation that the SPAC has not received any non-public information without disclosure that could materially influence the investors' decision.

Any information or facts discovered after the publication of the information document (but before the vote on the De-SPAC) would need to be published in a respective addendum.

LOCK-UP AND DISCLOSURE REQUIREMENTS FOR SPONSORS, BOARD AND MANAGEMENT

In order to deal with potential information asymmetries, the LR requires that the founders/sponsors, members of the board of directors and the management of the SPAC enter into a lock-up agreement providing for a lock-up period of at least six months after completion of the De-SPAC.

Further, the disclosure of management transactions is extended for listed SPACs to the effect that the disclosure requirements also apply to founders/sponsors of the SPAC until one month after expiry of the lock-up.

POST DE-SPAC REPORTING OBLIGATIONS

Swiss listed issuers are generally only obliged to report bi-annually and not quarterly. However, if the target company does not have financial statements covering three fiscal years before the De-SPAC in accordance with a recognised accounting standard that are disclosed in the information document (see above), the SPAC is required to establish quarterly financial statements instead. This duty starts with the first full quarter after completion of the De-SPAC and lasts for two full fiscal years. These quarterly financial statements have to be published within two months after the close of the respective quarter. There is no audit or review requirement for such quarterly financial statements.

LIQUIDATION OF SPAC

In case no target company can be identified within the lifespan of the SPAC or if the investors' general meeting votes against the De-SPAC, the SPAC needs to be dissolved. In the liquidation of the SPAC, IPO shares have to be treated with seniority over all other share classes up to the amount paid at the time of the IPO.

WAY FORWARD

Switzerland has closed the gap with other jurisdictions in terms of SPAC regulation and now offers an advantageous framework for the listing of SPACs that ensures adequate investor protection. We anticipate seeing the first listings of Swiss SPACs soon, and De-SPAC transactions by Swiss SPACs in the medium term. Given that De-SPAC transactions of Swiss SPACs will follow the European role-model, they will offer significant advantages over US-style De-SPACs for Swiss and foreign targets. As a result, De-SPACs by Swiss SPACs may become an attractive alternative to an IPO or a private M&A exit transaction both for Swiss and foreign companies. For Swiss companies in particular, Swiss SPACs will offer the opportunity to become listed on an attractive domestic listing venue, providing for an optimal regulatory fit without cross-border complexity.

AUTHORS

Dr. Urs Kägi
Partner
T: +41 58 261 56 13
E: urs.kaegi@baerkarrer.ch

Urs Kägi is co-head of the Capital Markets as well as of the Corporate & Commercial practices of Bär & Karrer. He advises listed and non-listed companies, investors and financial institutions on a broad range of corporate, capital markets, M&A, corporate governance and regulatory matters.

Lukas Roesler
Partner
T: +41 58 261 56 20
E: lukas.roesler@baerkarrer.ch

Lukas Roesler is a banking and finance practitioner and co-heads the capital markets practice area. He specialises in advising lenders and borrowers on all aspects of financing and capital markets transactions and related products. He further advises in restructuring and insolvency matters.

Stefanie Walch
Associate
T: +41 58 261 52 52
E: sefanie.walch@baerkarrer.ch

Stefanie Walch's practice focuses on capital markets law, M&A transactions as well as general contract, corporate and commercial law.

Dr. Linus Zweifel
Associate
T: +41 58 261 53 83
E: linus.zweifel@baerkarrer.ch

Linus Zweifel advises both listed and non-listed clients on M&A transactions as well as on other contract, corporate and capital markets law matters.