

THE REVERSE MERGER REPORT

News, Information, and Analysis of Alternative Public Offerings

Bevilacqua. "The SEC's rules have legitimized the reverse merger market."

SPACs

The market for SPACs emerged as one of the most robust arenas of new issue activity in 2005. Twenty-eight SPAC transactions were completed during the year with a queue of another 41 SPACs hoping to raise about \$2.7 billion. Of all completed deals since 2003, only four have had acquisitions approved, with another seven waiting for approval.

Not wanting to miss out on one of the few windows of new issue activity, a wide variety of personalities have thrown their hat into the SPAC game. From Apple Computer executives to Richard Clarke, a former Clinton and Bush administration official, a number of high-profile names are working to attract investor dollars. Meanwhile, bulge-bracket firms Citigroup and Deutsche Bank have jumped into doing SPACs, further adding credibility to the structure.

The tremendous surge in activity in 2005 did not come without some regulatory wrangling. In the early part of the year, the SEC slowed the review

process of SPACs after one SPAC - International Shipping Enterprises - announced less than two months after coming public its intention to merge with Navios Maritime Holdings. This drew the SEC's attention.

Officials were concerned that International Shipping execs had been in contact with their target before going public. The SEC went back to all SPACs in filing and requested that they affirm that they had no contact with potential targets. As a result, many SPACs added a standard paragraph that specifically states that the issuer and its agents have not had any specific business combination under consideration nor have they been in contact with any prospective acquisition partner.

Another glitch that SPACs faced midyear was the shutdown of listings on the American Stock Exchange. While SPACs have historically only had access to the OTC Bulletin Board, a number of SPACs sought to list on the AMEX to further legitimize the structure and broaden the pool of interest. A few were able to list successfully on the AMEX before the door closed. After several months with little word from AMEX, the exchange began to warm again to the structure. Several SPACs began 2006 in the queue for listing.

"Listings on AMEX were on, then off, then back on again. There was nothing formal," said Mitchell Littman, a found-

ing partner at Littman Krooks. He noted that there are some informal parameters for seeking an AMEX listing, including deal size (more than \$60 million) and the underwriter's regulatory history. "Deals are evaluated on a case by case basis," he said.

Another speed bump that SPACs faced last year surfaced when the SEC turned its attention to the management warrant purchase agreements that had become standard in SPAC offerings. The sweetener had been added to SPACs to demonstrate management commitment to a transaction. Last summer, the SEC began to question whether the warrant agreements are in violation of Regulation M, which covers the manipulation of a trading market during an offering.

Bankers immediately reworked filed transactions with the feature and many took it out of deals being structured. A no-action request was filed with the SEC by Kenneth Koch with

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo on behalf of Key Hospitality Acquisition Corp. (KHPA.OB). The letter notes that the warrant purchase agreement should not be seen in violation of Regulation M because the warrant

purchase terms are fully and publicly disclosed, the warrant purchases will be made pursuant to pre-established agreements and none of the warrants will be sold or transferred until the completion of a business combination.

The Division of Market Regulation responded in October that it would not recommend enforcement action if no warrant bids or purchases occur until 60 calendar days after the end of the restricted period for the unit distribution. In addition, the Division said the company must provide, upon request, a daily time-sequenced schedule of all warrant purchases made on a transaction-by-transaction basis. Also, if requested, the company must be available in person or by telephone if the Division had questions regarding the warrant purchases.

"The SEC set forth clear-cut parameters regarding the use of warrant purchase agreements," said Littman. "It was the right result."

SAFE Flip-Flops

One of the hottest areas of reverse merger and SPAC activity has been deals focused on the Chinese market. The economic promise of the Chinese market fueled a number of reverse mergers with Chinese private companies, as well as the formation of several Chinese-focused SPACs.

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