Amex U-Turn Leaves Deals in Lurch

Mixed Signs, Regulation Slow Down Listings

In early summer, the launch of two initial public offerings appeared to be a turning point in the growth of the SPAC as an established investment vehicle. What was most unusual in the $72 million IPO for Courtside Acquisition Corp. (CRB) and the $120 million offering for Steven Berrard's Services Acquisition Corp. (SVI) was not necessarily the size of the SPACs, or even the well-known management teams. Instead, it was the location of the June 30 and July 1 listings – on the American Stock Exchange – that caught the eye of the industry.

Using the Amex to list the SPACs, rather than going the typical route of listing on the OTC Bulletin Board first and then graduating to the Nasdaq or a primary exchange once an operating company merger is completed, promised to offer the SPAC market a larger investor audience, while also adding more legitimacy to the nascent merger vehicles. At the time, it was widely expected that more SPAC offerings would go the Amex route, and there was talk on Wall Street that Amex officials were pushing hard to grab more of this innovative business. Indeed, with the announcement of the Services Acquisition listing, Amex Equities Group vice president John McGonegal noted that Amex looked "forward to being the exchange of choice for similar structures in the future."

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Four months after that proclamation, however, that optimism appears to be diminished. No other SPACs have been listed on the Amex, as companies are again focusing their efforts on the OTCBB listings. While speculation abounds that other U.S. exchanges, such as the all-electronic Archipelago Exchange, will try to step into the void left by Amex, no concrete deals have emerged from these parties either, essentially leaving the SPAC market back where it started.

Amex hasn't given an official statement that they've stopped accepting SPACs, and they aren't likely to announce that they've put the kibosh – either temporarily or permanently – on any other deals. But according to some industry officials, the writing is on the wall. "Amex has shut the door on SPACs," and there aren't likely to be any more deals unless significant changes occur, says Mitchell Littman, partner with the law firm Littman Krooks.

SEC Scrutiny Increases

Increased regulatory scrutiny of SPACs, particularly from the SEC, as well as individual state regulators, made the national exchange more conservative in accepting offerings. This scrutiny has also made time-sensitive management teams less willing to go to Amex in the future, according to experts.

At some level, several months ago the SEC "became confused about SPACs, and they [were unsure] what to make of them." says Ralph DeMartino, vice chair of the securities offerings and regulations practice group for Cozen O'Connor. Fifteen or 20 years ago, the SEC "tried to eradicate them, but [SPACs] have come roaring back."

This time around, the SEC may have been caught off guard with the quick rise of the SPAC model, and the sizes of the deals themselves, and has only begun to give closer examination of the deals once the offerings made their way to the national exchange, DeMartino notes. The roughly $1 billion in SPAC proceeds put in escrow the past 18 months is relatively miniscule, but with another possible $3 billion to $5 billion waiting in the pipeline, the SEC has woken up and is deciding what, if anything, needs to be done to protect investors.

The SEC's response to SPACs over the summer was to issue "comment letter after comment letter. That's how the SEC tries to filibuster you to death," DeMartino says.

The latest issue concerns Regulation M, as the agency is checking into how officers in SPACs purchase warrants of their company in the aftermarket, Littman says.

The SEC's pressure has clearly concerned Amex officials, but state pressure has also forced the exchange to re-evaluate its stance on SPACs, industry watchers believe. State commissioners are becoming increasingly concerned that individual investors could be taken advantage of by promoters, observers say.

Most SPACs have been traded on the OTCBB, and thereby have a limited number of states where the company is qualified to offer or sell its securities. Officials in these states, through the Blue Sky laws, traditionally regulate the companies. But with a national exchange such as Amex, restrictions on distribution and trading in the secondary market are eased, and states are traditionally preempted from regulating the trading of these securities, according to Steven Boehm, an attorney with Sutherland Asbill & Brennan.

However, there is talk in legal circles that several states are considering challenging the federal preemption when it comes to SPACs. These states have threatened to bring a case against some of these offerings, regardless of Amex's claims. Whether or not this talk is bluster on the states' part – in an effort to get the SEC to put more pressure on the companies themselves – these issues may have kept Amex from taking on any additional offerings, not to mention giving concern to the companies that entertained the idea of being listed on the national exchange.

"The last thing a SPAC needs, given its [18 month] lifecycle, is to be fighting regulators," DeMartino says. "Clients [were] saying, 'just tell me what states [are threatening action], and we'll stay away."

Another Change Due Soon?

After a summer of inactivity, there could be another about face from Amex in the near future, DeMartino says, based on recent conversations he has had with officials at the exchange.

Amex "is determined to start listing SPACs again, but they are planning to limit [offerings] to what they call 'quality deals,'" DeMartino says. Such deals would include the following characteristics:

- At least $65 million in gross IPO proceeds, putting the smallest deals in the $70 million to $80 million range;
- Higher-quality underwriters, likely including bigger name underwriters who haven't yet done a SPAC deal;
- Higher-quality SPAC management teams; and
- A more specific industry specified by the management teams as a likely acquisition target.

No timetable has been given for when the next Amex SPAC deal may be announced, but the possible change is likely due to better communication between state regulators, the SEC, and investment bankers. "This is very good, it's a major development," for SPACs, DeMartino says.

Until that happens, though, the effect of relying exclusively on the OTCBB to list new companies is being felt in several ways, industry watchers say.

For prospective underwriters of IPOs, the lack of a more prominent exchange is likely to slow growth, particularly for management teams that would be interested in raising $200 million to $500 million. Underwriters like Bear Stearns,

Will London Exchange Attract More SPACs?

A small number of SPACs aren't waiting for U.S. exchanges and regulators to clarify their stance on blank check firms. They've decided that yet another exchange – one based outside the U.S. – is the best option for its company. International Metal Enterprises filed plans for a $180 million offering with the SEC in February, to be underwritten by Sunrise Securities Corp. New York-based IME, which plans to merge with an operating business in the metals or mining industries, later upped the size of the deal to $201 million, with plans for an OTCBB listing. However, in early July it withdrew its registration statement with the SEC, noting that it had decided to pursue admission for trading on a non-U.S. public market. In early October, International Metal finalized its overseas IPO – still listed at $201 million – and began trading on the London Stock Exchange's Alternative Investment Market (AIM), a market for smaller growing companies.

Since the International Metal deal, another SPAC with backing from Sunrise Securities has chosen to go the AIM route. In October, IRF European Finance Investment Ltd. announced it is seeking to float 10.5 million common shares on the AIM, at a price of $6 per share. IRF says it intends to invest in the financial services industry in Europe, with a primary focus on credit institutions and insurance companies in Greece, Bulgaria, Romania, and Turkey. Of note, IRF's management team is led by Greek shipping magnate Angeliki Frangou, chairman and CEO of Navios Maritime Holdings (NMHIF.OB) Navios Maritime is the successor company of one of the first SPACs listed in the U.S., International Shipping Enterprises, which raised $171 million in its December 2004 IPO. The International Shipping SPAC raised some eyebrows at the SEC when it announced plans to merge with Navios Maritime just two months after its IPO was finalized. Extra SEC scrutiny of the International Shipping-Navios transaction held up approval of the deal.

According to officials with Collins Stewart, a U.K.-focused stock brokerage that is assisting in the IRF deal, the company is working with Sunrise Securities to bring a number of other SPACs to the AIM in the next few months. –MM

Smith Barney, or Goldman Sachs – whose presence in a deal would lend a major amount of legitimacy to the SPAC sector – don't do Bulletin Board IPOs, or small IPOs, for that matter. The biggest underwriters to sign on to SPAC deals have been Oppenheimer & Co., which co-managed the $120 million offering of Stone Arcade Acquisition Corp. (SCDE.OB), and Ferris Baker Watts, which is involved in separate deals for Cold Spring Capital, Harbor Acquisition Corp, and JK Acquisition Corp, which would raise a total of $240 million. The troubles facing Amex aren't likely to encourage larger investment houses to take a stab at such a deal, at least until the SEC brings more clarity to the issue, industry watchers believe. And with Amex's possible requirements that higher-quality underwriters be involved in any new SPAC IPOs on their exchange, smaller underwriters could be frozen out of the bigger deals.

The lack of a more prominent exchange is likely to slow the growth of the blank check vehicles.

With Amex shying away from more deals, at least for the time being, speculation is that other exchanges, such as ArcaEx, could take on some of the future IPOs. To date, though, the all-electronic exchange has been mum on accepting SPAC deals. "We have no plans [to list SPACs] at this time," says ArcaEx spokesperson Margaret Nagle.

Changes would need to take place in order for this to occur, lawyers say. The view now is that ArcaEx's listing criteria does not allow for SPACs, especially with regard to the IPO's minimum and maximum size, and the vague focus of some of the SPACs' target industries. It was expected that ArcaEx might amend its listing criteria, such as the legal requirements for the details of the SPAC's escrow arrangements, but to date that has not happened. Still, that doesn't mean ArcaEx has abandoned the idea.

While not expected to be a harbinger of other deals, one SPAC recently decided that yet another exchange – one based outside the U.S. – would be the best listing option. International Metal Enterprises filed plans for a $180 million offering in February, to be underwritten by Sunrise Securities. The company, which plans to merge with an operating business in the metals or mining industries, later upped the size of the deal to $201 million, with plans for an OTCBB listing.

However, in early July it withdrew its registration statement with the SEC, frustrated that the agency had held up approving additional SPAC registration statements for several weeks while it scrutinized an announced acquisition by International Shipping Enterprises. In its withdrawal filing it noted that it had decided to pursue admission for trading on a non-U.S. public market. In early October, International Metal finalized its overseas IPO – still targeted at $201 million – and began trading on the London Stock Exchange's Alternative Investment Market, a market geared for smaller growing companies.

Despite the hurdles for SPACs, the question of which market to list on isn't necessarily a deal killer, lawyers note. It is expected that once other SPACs complete their acquisitions and show a period of stability, some will eventually move from the OTCBB to the primary exchanges, including Amex. "At the end of the day, the Bulletin Board is just a stepping stone" for many of these companies, giving them time to prove their viability as a traded company before moving to larger markets, says Littman. –MM

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