THE PIPEs REPORT

NEWS, INFORMATION, AND ANALYSIS OF PRIVATE INVESTMENTS IN PUBLIC EQUITY

Vol. IV, No. 10 June 1, 2006

THE MONTHLY REPORT

FEATURE: Management-led private placements are becoming common alongside SPAC initial offerings as investors demand that blank check managers have more skin in the game, and more cash in escrow for acquisitions.

TRENDWATCH: *TPR* analyzes the post-deal performance of PIPE issuers from the first quarter of 2004 to assess the long-term costs of privately-placed equity capital.

PIPELINE: State actions on settlement failures raise preemption issues; Gradient appeals free speech ruling in Overstock case; Gryphon considering settlement in PIPE insider trading case; TA Associates acquires stock loan platform; Loeb eyes Zoltek; SEC rejects SOX relief for micro caps; Hana Biosciences does third deal; other deals of interest, and all the hirings and firings in the business; p 2.

DEALFLOW: During the period May 1 through May 31, deal activity comprising 184 corporate issuers included 152 closed transactions, 20 definitive agreements, 23 announced placements, and three cancellations; p. 10.

SCORECARD: Comprehensive industry rankings of the year-to-date PIPE activity; p. 16.

DEMANDS ON TRUST

Investors Drive SPAC Sponsors to Execute Private Placements Alongside IPOs

by Joe Gose

The evolution of the specified purpose acquisition company has entered the private placement period. All SPAC initial public offerings this year have included a concurrent private placement in which some or all of the SPAC's managers have acquired units or warrants. Moreover, sponsors proposing new blank check companies are increasingly building private transactions into the deal's structure, a review of recent registration statements shows.

What's behind the rash of SPAC private placements? Growing investor demand that blank check company managers increase their stake in SPACs and plow a higher percentage of gross offering proceeds into the trust funds that ultimately finance a SPAC's acquisition. Also in response to those demands, underwriters are helping to beef up the trusts by deferring some of their discounts and commissions until a combination occurs.

The net effect of the changes: Some 95% of a SPAC's IPO, private placement, and other proceeds are flowing into SPAC trust funds today, which is about eight percentage points higher than the typical percentage in 2004, says Floyd Wittlin, a partner in the New York office of the **Bingham McCutchen** law firm, who specializes in structuring SPACs.

Previously, SPAC sponsors ponied up \$25,000 or some other nominal amount early on in the blank check company's life – often months before an IPO. That's where the managers' investment generally ended: Although sponsors typically posted standing limit orders to buy warrants on the open market, they frequently failed to

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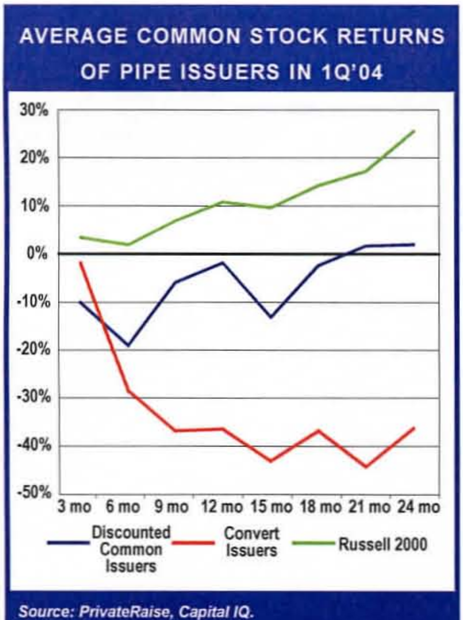

Source: PrivateRaise, Capital IQ.

TREND *Watch*

LIFELINE CAPITAL

PIPEs Can Save Companies, But at a Cost

by Dan Carlson

Historically, the PIPE market has been the least favored option for companies needing to raise capital. Over the last 5 years, however, the dynamics of the PIPE market have been changing. PIPE issuance continues to rise in number and size of deals, as does the number of interested investors in PIPE deals. Internally, the nature of the market is shifting from an arbitrage type investment to a more traditional, fundamental style of financing. There has been much discussion concerning the ramifications of this change on deal structuring: PIPE buyers have been pushing for more structured, senior investment instruments.

Is the shift towards fundamental investing having an effect on the returns of the issuer's stock? Looking at historic returns of PIPE issuers, there are trends that emerge from the data. These show some positive performance on fundamentally biased deals, however they also demonstrate

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make any substantial warrant acquisitions. While that initial small raise still occurs, sponsors are now committing roughly $1 million or more in additional capital through private deals when the company goes to market. Underwriters, meanwhile, are generally deferring around $1 million to $3 million in fees.

"This is what the buy side has demanded," says Steven Levine, president and CEO of **EarlyBirdCapital**, an investment bank involved in several SPAC offerings. "It reduces their downside and makes them more comfortable committing to the investment."

Generally, the securities purchased in SPAC private placements are locked up until after a business combination occurs, though the timing of when initial shareholders can begin trading the shares after that point varies from deal to deal. As in the past, however, blank check sponsors stand to lose the investment if they are forced to liquidate the trust fund.

Institutional investors who are buying SPAC shares are hardly shy about demanding that managers take a bigger stake, says Mitchell Littman, a partner with the New York law firm **Littman Krooks**. "The private placements are the result of the underwriters listening to investors, and as more SPACs get out in the market, investors are looking for distinguishing features," adds Littman, who specializes in SPACs. "As they see managers get more skin in the game, they feel more comfortable."

The private placement element is the latest twist to the still-evolving SPAC structure. Not only is the growing number of blank check companies increasing competition for institutional capital, but they're also inviting more regulatory scrutiny. The Securities and Exchange Commission, for example, recently required SPACs sponsored by private equity and venture capital firms to acknowledge that the blank check companies could target a firm already affiliated with the sponsors. Those disclosures already are showing up more frequently in offering proposals.

Additionally, SPAC sponsors are increasingly launching IPOs on the London Stock Exchange's Alternative Investment Market, and U.S. hedge funds, private equity firms, and other investors are buying shares in those blank check companies in private transactions, according to bankers underwriting such SPACs.

Sponsor-driven private placements have already become a standard feature in U.S. SPACs. So far this year, managers with at least 13 blank check companies have executed private deals to raise $25.5 million in conjunction with their IPOs. According to S-1 filings, sponsors of eight proposed SPACs have built private placements into the offering's terms as of late May.

And it indeed appears SPAC sponsors have little choice but to build the private agreements into the deals if they want to make it to market: In it's May 17 amended S-1 filing, for example, **Industrial Services Acquisition Corp.** outlined a plan in which officers and directors would privately buy 600,000 warrants for $1.35 each to raise an additional $810,000. The proposed blank check company's two prior registration statements – originally filed in August 2005 and then amended in October – did not include the private placement element. "The market's becoming more competitive," Wittlin says, "and investors want to see more in the trust."

Global Logistics Acquisition Corp. raised the largest sum so far this year through a private placement with its initial stockholders when it sold some 2.3 million warrants at $1.10 each to raise $2.5 million. The initial stockholders can redeem one warrant for one Global Logistics share for $6 each, and according to SEC filings, the warrants are subject to sale and transfer restrictions until the company completes a business combination.

The private deal and IPO, which occurred in mid-February, generated gross proceeds of $80 million, and Global Logistics placed $76.8 million in trust – 96% of the total offering. In addition to management's $2.5 million contribution, the SPAC's underwriters – **BB&T Capital Markets**, **Brean Murray & Co.**, **Carret & Co.**, and **EarlyBirdCapital** – agreed to defer 3%, or $2.4 million, of their 7% underwriting and discount commissions into the trust account. Global Logistics is targeting the transportation and logistics industry, and recently the warrants were trading around $1.18 each. The units, which comprised one share and one warrant, originally sold for $8 each and recently were trading around $8.70.

The managers of **Acquicor Technology**, meanwhile, purchased 333,334 units for $6 each to raise an additional $2 million in a private transaction when it completed its IPO in mid-March. The placement and IPO generated gross proceeds of $172.5 million, and Acquicor placed $164.3 million into trust – about 95% of the gross.

The SPAC's managers used some $280,400 raised in the private transaction to repay a loan from Acquicor Management, a holder of more than 10% of Acquicor's outstanding common shares. **ThinkEquity Partners**, **Wedbush Morgan Securities** and other underwriters agreed to defer some $3.45 million in fees. Acquicor is targeting technology, multimedia, and networking companies, and its units were recently trading around $6.85 each.

On the other end of the scale, **Echo Healthcare Acquisition Corp.** executed the smallest private placement thus far this year, raising an additional $550,000 when its principal shareholders acquired some 458,000 warrants for $1.20 each in conjunction with its late March IPO. The company's units, which were sold at $8 each, include one share and a warrant to purchase an additional share for $6. The company raised gross proceeds of $58 million and has placed about 95% of that total, or $54.9 million, into the trust fund. The SPAC is targeting domestic and international healthcare companies and its units were recently trading around $8.33 each.

By comparison, **Harbor Acquisition Corp.**'s units comprise a common share and two warrants to purchase one common share each and sold for $6 each in the company's May IPO. The initial shareholders privately acquired 2 million warrants for 65 cents each to raise an additional $1.3 million. All told, Harbor Acquisition raised gross proceeds of $84 million, and the blank check company has placed about $79.4 million into trust, which represents about 95% of the gross proceeds That amount includes an IPO-related "non-accountable expense allowance" of more than $1.6 million that Harbor Acquisition's underwriters agreed to deposit into the trust. Harbor Acquisition is targeting consumer and industrial product companies, and recently its warrants were trading for around 36 cents each.

In a variation on the private placement theme, **Grubb & Ellis Realty Advisors** raised $10 million in capital when it sold nearly 1.7 million units at $6 each to **Kojaian Ventures** as part of its offering in early March. Kojaian Ventures is affiliated with Michael Kojaian, who is chairman of the board for Realty Advisors as well as **Grubb & Ellis Co.**, a publicly-traded real estate services organization that sponsored Realty Advisors along with other Grubb & Ellis executives. Though the sale to Kojaian Ventures was not explicitly referred to as a private placement, the underwriters didn't receive discounts or commissions on the units. Moreover, while Kojaian agreed to lock up the units until the completion of a business combination, Kojaian Ventures has the same rights as other public unit holders.

Realty Advisors, which is the first SPAC to target real estate assets, raised gross proceeds of some $144 million and has placed $137.5 million in trust, or 95% of the total proceeds. That amount also includes a roughly $2.7 million deferred underwriting discount.