The Zero Hour

More Liquidations Possible as Early Batch of SPACs Near Deadlines

China Mineral Acquisition Corp.'s (CMAQ.OB) announcement last month that it would liquidate marks a pivotal point for the fledgling specified purpose acquisition market. A SPAC liquidation was likely to happen at some point, and China Mineral's dissolution is putting the SPAC structure to the ultimate test, giving alternative investment experts a clear picture of the concept's integrity. But it also highlights a critical time for a growing number of SPACs with looming target announcement and deal-completion deadlines.

Six SPACs must locate and announce a target company by April, including four that have only until the end of February. Meanwhile, 12 SPACs that have announced acquisition targets must complete their deals by next April, including five which must get shareholder approval and execute a merger by the end of this year.

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Mercator Partners Acquisition Corp. (MPAQ.OB), however, just beat the deadline when it announced on Oct. 16 that it had completed its acquisition of Global Internetworking and European Telecommunications & Technology. Mercator raised $59.5 million in April 2005 and announced the targets in late May this year.

SPAC experts are waiting to see if more blank check companies will match Mercator's buzzer-beater. "The next few months are critical," says Floyd Wittlin, a partner with the Bingham McCutchen law firm in New York. "There will be more announcements coming and hopefully those will get approved, but I don't have a crystal ball as to what the votes are going to be."

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Mitchell Littman, a partner with law firm Littman Krooks in New York who specializes in SPAC offerings, contends it's much too early to predict how a rash of liquidations may affect the future of SPACs. On one level, break ups would simply demonstrate to the market whether the structure will work as promised: Blank checks agree to keep funds in trust and return the funds to investors with a small gain if they fail to reach a definitive agreement with a target, usually within 18 months, and complete the combination within 24 months, of the SPAC's IPO. Yet on another level, a spate of liquidations may speak even more to the current environment in which SPACs are operating, he adds.

"With all the private equity transactions going on in the last year or two, good private companies are very expensive," he says. "So whether liquidations would mean the time period [to announce and complete a merger] was too short or the management team wasn't good, it would be hard to tell. But if I was a director and I thought a valuation was too high, I'd rather be in the position to say to investors, 'I'm going to give you back your money rather than take a crapshoot with something which I don't think is really worth it.'"

Indeed, as SPACs have grown larger and pushed into a middle-tier M&A market dominated by flush private equity funds, some blank check promoters have begun touting a "junior SPAC" concept, in which a blank check company would raise around $5 million or $6 million. But the structure would not escrow the funds, require shareholder approval or focus on a particular industry, says David Feldman, an attorney with Feldman Weinstein & Smith who specializes in reverse mergers and alternative IPOs. Plus, he says, the time limit could be as long as three years to complete a deal.

The junior SPAC would target a market of smaller companies that larger SPACs aren't serving, Feldman adds. And creating a smaller blank check firm rather than a Form 10-SB shell would give investors a way to mark-to-market their investments. Thus far, however, all those interested in the junior SPAC concept want somebody else to pursue it first, he says.

A continuing SPAC evolution certainly wouldn't surprise SPAC experts—on average, SPACs are raising nearly five times more today than when they first appeared in the mid-1990s, for example, and managers are taking bigger stakes in the companies than ever before through private placements. "SPACs are responding to the market," Littman says. "Think about what they looked like two years ago and what they look like now."

But how much evolution can take place? In some cases, experts say, investors are likely to resist change. Case in point: Wittlin doubts whether conventional SPAC investors would want to tie up their money longer in re-structured SPACs to

alleviate potential liquidations. "I don't see any appetite for extending the time period," he says. "I think investors would view that unfavorably."

In fact, even though China Mineral had announced a target acquisition, it was forced to liquidate after the SPAC failed to secure a deadline extension from its shareholders. The SPAC raised $21.3 million in August 2004 to search for and acquire a China-based minerals company. In May this year, it reached a definitive agreement with Ivanhoe Energy to buy its Sunwing Energy oil and gas subsidiary in China. In August, Ivanhoe hired investment banker Jefferies & Co. to advise it on the deal, and China Mineral asked its shareholders to extend the deadline to March 2007 from Aug. 30 this year. But China Mineral failed to get approval. The SPAC has since filed a proxy with the SEC for liquidation, which is under review.

Yet other SPACs have had better luck. In March, for example, shareholders of Great Wall Acquisition Corp. (GWAQ.OB) approved extending the deadline to combine with ChinaCast Communications Holdings Ltd. to Dec. 31 from March 23 this year. The blank check company raised some $24 million in March 2004 and announced its definitive agreement with ChinaCast in September 2005.

Most recently, Services Acquisition Corp. International (SVI) and its target, Jamba Juice, twice agreed to extend the deadline to complete their $265 million merger—to Sept. 15 from Aug. 15 initially, and then later to Nov. 17. Investors who have agreed to finance $198 million of the deal in a private placement also approved the extension.

SPAC managers also appear to be adapting to the competitive acquisition climate: At least two SPACs have bypassed the conventional private company market and have discovered merger candidates who already were preparing IPOs. In September, blank check firm Acquicor Technology (AQR), which raised $172 million in March, announced it would buy Jazz Semiconductor in a deal valued at $260 million. Jazz Semiconductor, founded in 2002 by the Carlyle Group and Conexant Systems, withdrew its registration for a $105 million initial public offering when it agreed to the merger with Acquicor. (Jazz Semiconductor had taken a previous stab at an IPO in 2004 but withdrew in 2005 because of market conditions.)

In early October, Ithaka Acquisition Corp. (ITHK.OB), a SPAC that raised $53.1 million in August 2005, reached a definitive agreement to buy Alsius Corp., a developer of devices that control patient temperatures in hospitals, in a common share deal valued at $42.6 million. Subsequently, Alsius withdrew its $40.3 million public offering.

SPACs focused on companies in China are also having to adjust to a shifting regulatory environment in that country, which could potentially force several blank check companies into liquidation. In September, China enacted the Regulations on Acquisitions of Domestic Enterprises by Foreign Investors to govern mergers and acquisitions between foreign and Chinese companies. While the rules attempt to streamline and add coherence to a heretofore hodgepodge of regulations, it also requires the Ministry of Commerce's approval for several types of transactions, including those involving sensitive industries such as national security companies or well-known brands." —JG

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