Special purpose acquisition companies (SPACs): a popular alternative path to the public markets

19 May 2021

EY

Building a better working world

Disclaimer

- The views expressed by the presenters are not necessarily those of Ernst & Young LLP or other members of the global EY organization.
- These slides are for educational purposes only and are not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

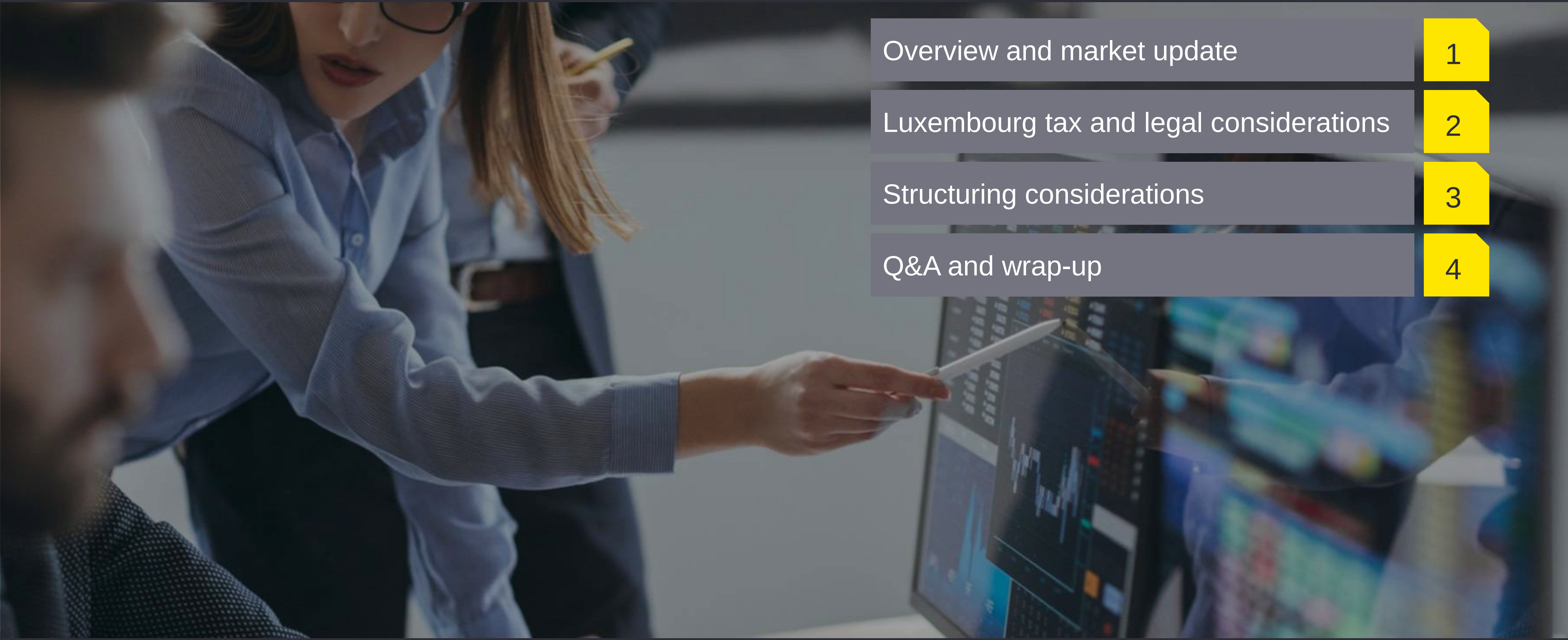
Today's panelists

Christopher Lallo
Partner, International Tax and Transaction Services,
Ernst & Young LLP

Carsten Berrar
Managing Partner, Frankfurt Sullivan & Cromwell LLP

Alexandre Pouchard
Partner, International Tax and Transaction Services,
Ernst & Young LLP

Discussion topics



1. Overview and market update
2. Luxembourg tax and legal considerations
3. Structuring considerations
4. Q&A and wrap-up

1 Overview and market update

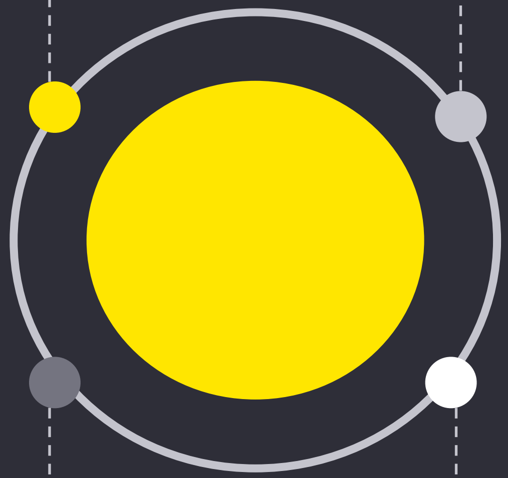
What is a SPAC?

Special purpose acquisition company (SPAC)

- **"Blank check"** shell corporation
- "Cash box" with **no operations**
- Designed to take private companies public
- Alternative to traditional IPO process

SPAC IPO

- Regular way IPO regulatory process
- Sell units consisting of **shares and warrants**
- IPO proceeds held in a trust
- Can specify **industry or geographic focus**



SPAC target

- Approximately **24 months** to complete an acquisition
- May not identify a target until post-IPO
- SPACs can be **competitive on valuation**
- Target is generally larger than the SPAC

De-SPAC transaction

- **Shareholder approval** process
- Share **redemption rights**
- Rapid "execution" period
- Results in a **publicly listed entity**

Key players and primary motivations

Player	Motivations
Sponsors	• Promote shares • Founders warrants
Hedge funds	• Upside from warrants • Downside protection (redemption rights)
Fundamental and retail investors	• Public company play without initial public offering (IPO) allocation issue
Private investment in public equity (PIPE) investors	• Full allocations • PIPE “discount” • Deep-dive diligence
Investment banks	• Gross spread • Advisory fees
Operating companies	• Attractive, strategic capital markets option

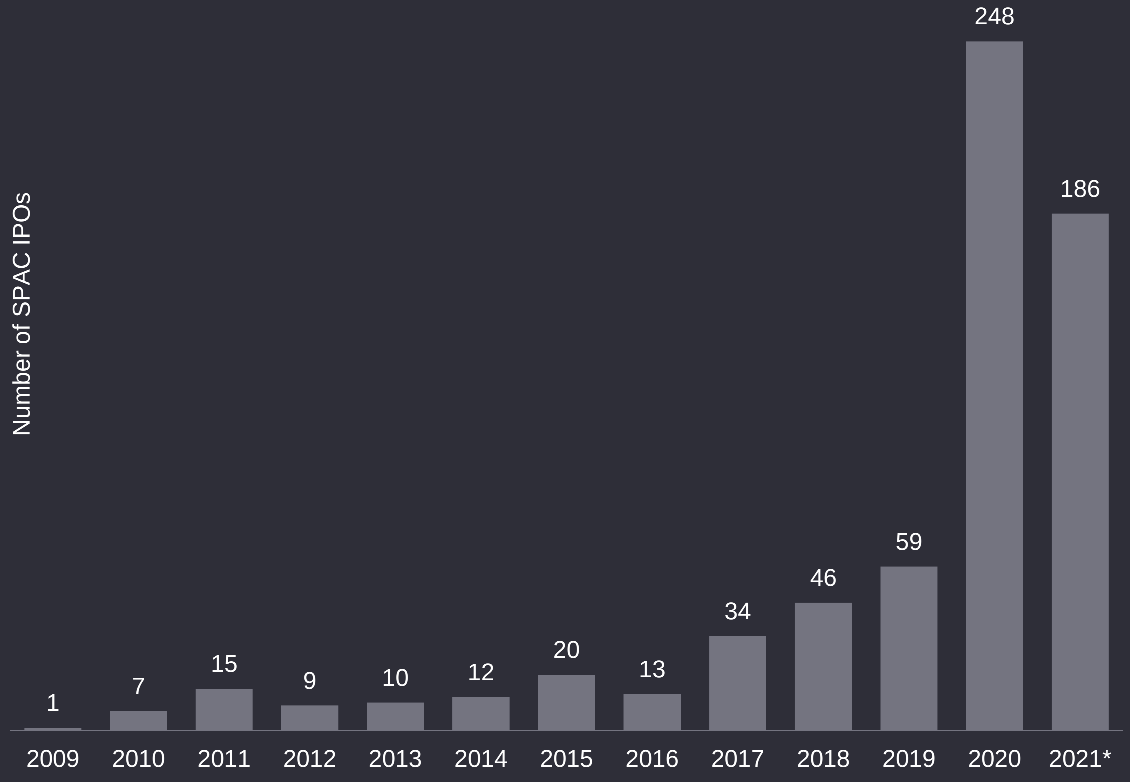
Why SPACs are a highly attractive strategic option for private companies

Benefits of the public markets	Greater price and timing certainty	Enhanced versatility
Access to growth capital	Terms set up front	Speed to market
Acquisition currency	No IPO market “windows”	Negotiated privately
Branding	SPAC “clock”	Cash-out flexibility
Shareholder liquidity	Competitive valuation	Everything is negotiable

EY

SPAC IPO activity: far surpassing record levels

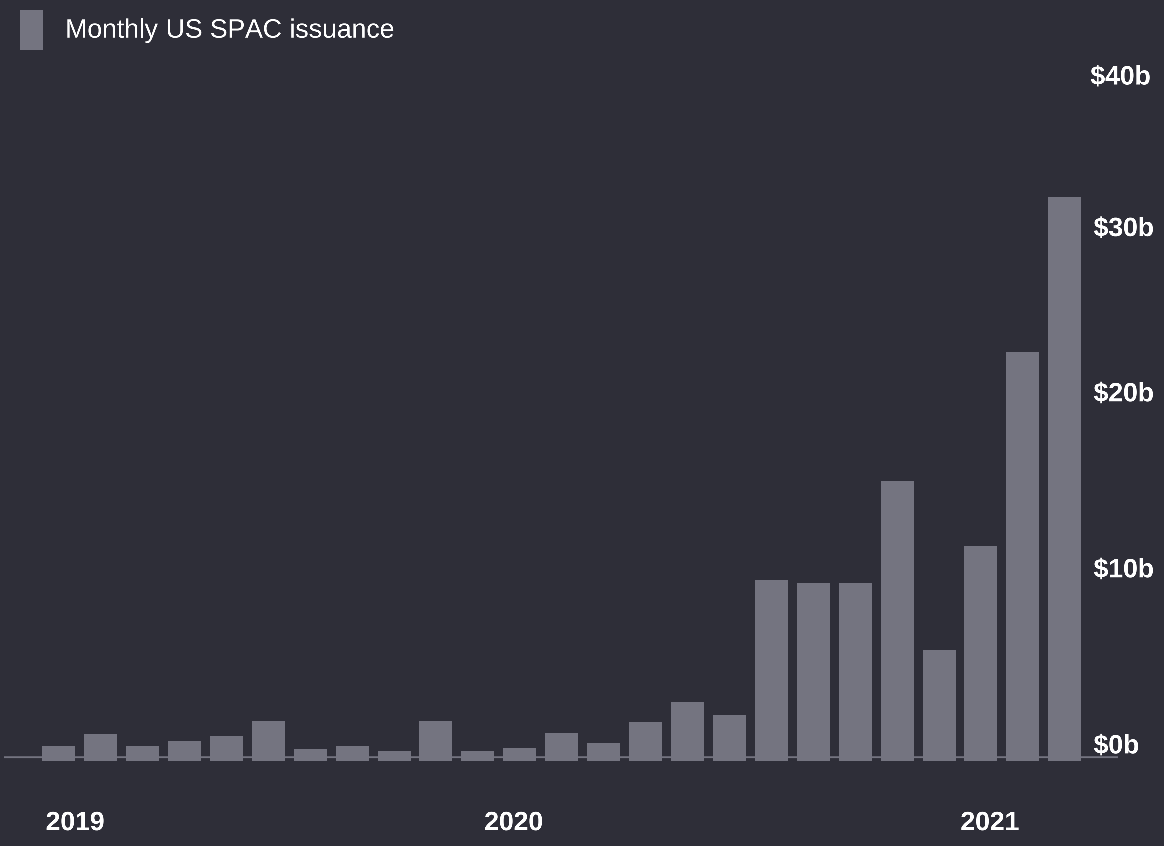
Annual SPAC IPO trend 2009 — YTD 2021



Monthly SPAC IPO trend 2019 — YTD 2021

SPAC Boom

The pace of new listings has been blistering but it can’t last



Source: Bloomberg

2

Luxembourg tax and legal considerations

Why Luxembourg positions itself as an attractive player on the rising SPAC market

- Europe’s leading center for investment funds with experience as a structuring jurisdiction for M&A/private equity/IPOs and its expertise in the listing of LuxCos on foreign stock exchanges.

- Flexibility of Luxembourg corporate law (allowing for a flexible share redemption framework, voting right adjustments, the ability to create different classes of shares, and the attribution of specific financial and decisional rights to sponsors and public investors).

- The ”Commission de surveillance du secteur financier” (**CSSF**), Luxembourg’s competent authority for the approval of IPO prospectuses (public offer / admission to trading on a regulated market) has the reputation of being a proactive and pragmatic, yet investor-protective, regulator. An efficient review process can be assured. It is also possible to obtain early (informal) clearances on key issues for the IPO prospectus.

- Upon approval of the IPO prospectus, the CSSF can send out intraday passporting notifications for EU-wide public offers and/or admissions to trading on EU regulated markets. Dual listings (in Luxembourg and on another EU regulated market) are also possible.

- IPO prospectus to be approved by the CSSF can be drawn up in English, German or French. All communications and documentation with the Luxembourg regulator can be done in English.

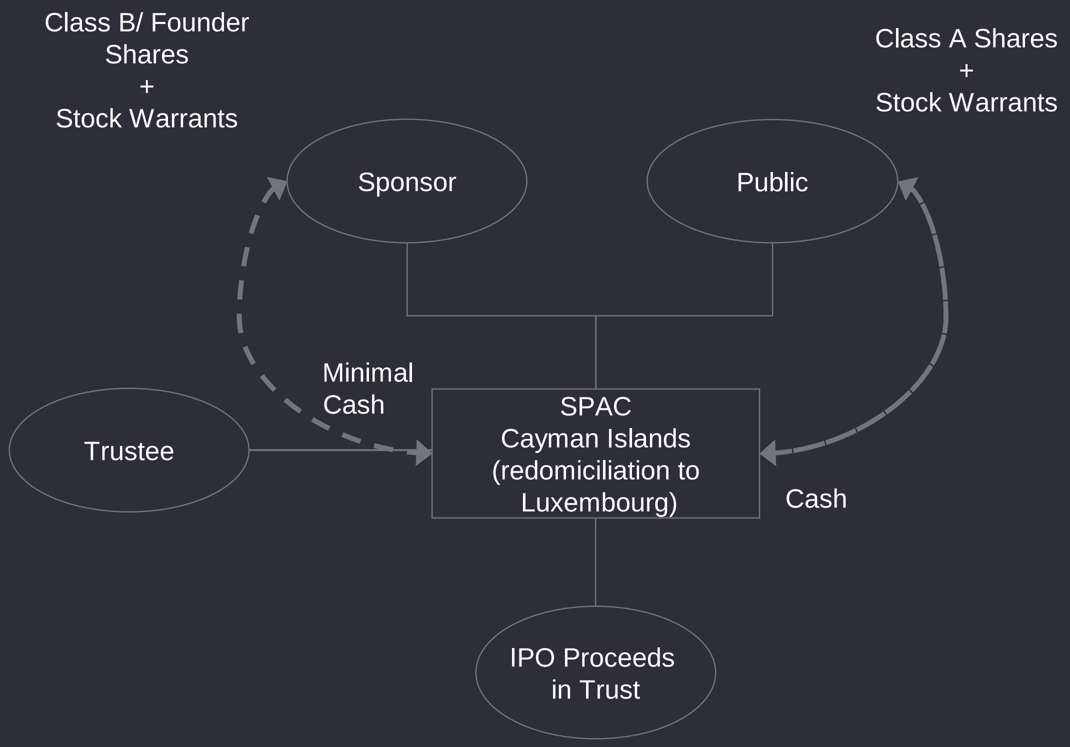
Why Luxembourg positions itself as an attractive player on the rising SPAC market

- **Timing:** From the kick-off with the CSSF to the completion the timing is ~8 weeks.
- **Regulatory:** A SPAC is not considered an alternative investment fund (AIF), hence it does not need to appoint an AIFM and go through all the AIFM law requirements.
- **Luxembourg can replicate on a 1:1 basis the features of a US SPAC, among others:**
  - LuxCo can issue the same US type of exercisable warrants;
  - The authorized capital is unlimited. This is key in the DE-SPAC process to get additional capital at a later stage;
  - One tier board type is allowed (similar to the US); A two-tier board can be accommodated, too
  - Shares can be convertible into other shares.
- **Marketing/labeling:** Luxembourg offers the Société Européenne (SE), which has an international flavor in terms of product to enter a European market. SA is a good alternatives to the SE.
- **Triangular merger:** In principle, the triangular merger is not feasible under Luxembourg law; however, It is still possible to reach the same result (see also slide 18).
- **Accounting:** Possibility to prepare consolidated financial statements under US GAAP upon request and compliance with the conditions set by the Luxembourg Minister of Justice (to be formally renewed on annual basis).
- **Cross-border merger in DE-SPAC context:** The rules in Luxembourg are very simple; for instance, there is no possibility to question the valuation used for the merger by other stakeholders.
- **Comparison to other jurisdictions:** Germany, France and the Netherlands

3

Structuring considerations

Formation and general Luxembourg tax and legal considerations



General

- In connection with the formation of a SPAC, a Sponsor contributes a sufficient amount of cash to the SPAC to fund formation and underwriting costs. In exchange, the Sponsor typically receives Class B Founder shares and warrants.
  - The Class B Founder shares and warrants are convertible into Class A shares of the SPAC in connection with the closing of a business combination (De-SPAC) transaction. The warrants typically have no economic rights in advance of the De-SPAC transaction.
- In connection with the IPO of SPAC shares, the public subscribes for Class A shares and warrants and IPO proceeds are deposited in the "trust account" established for the SPAC.

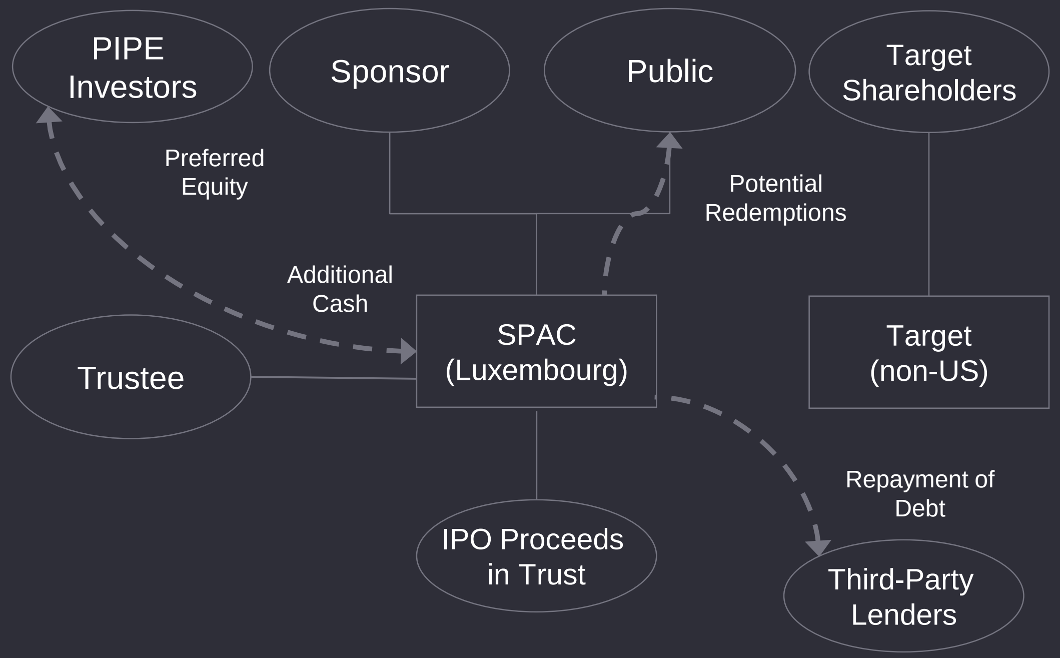
Choice of jurisdiction: US vs. non-US

- Country of incorporation/residency is typically chosen based on the anticipated domicile of the Target of the De-SPAC.
- If Target could be non-US or its jurisdiction is unknown, incorporating the SPAC in an offshore jurisdiction generally provides greater flexibility.
  - Consider residency/exit charges, such as location of central management and control.
- US SPACs are typically organized in Delaware.
- Non-US SPACs are often domiciled in the Cayman Islands.

Luxembourg tax and legal considerations

- Feasibility of Migration from Cayman (typical set-up jurisdiction) to Luxembourg
- Wide participation exemption regime on dividends and capital gains under certain conditions.
- Availability of rollover for Lux SPAC's shareholders upon merger
- Flexible ("controlled foreign company CFC") rules
- WHT considerations on dividend distributions

"De-SPAC process" and PIPE considerations



De-SPAC process

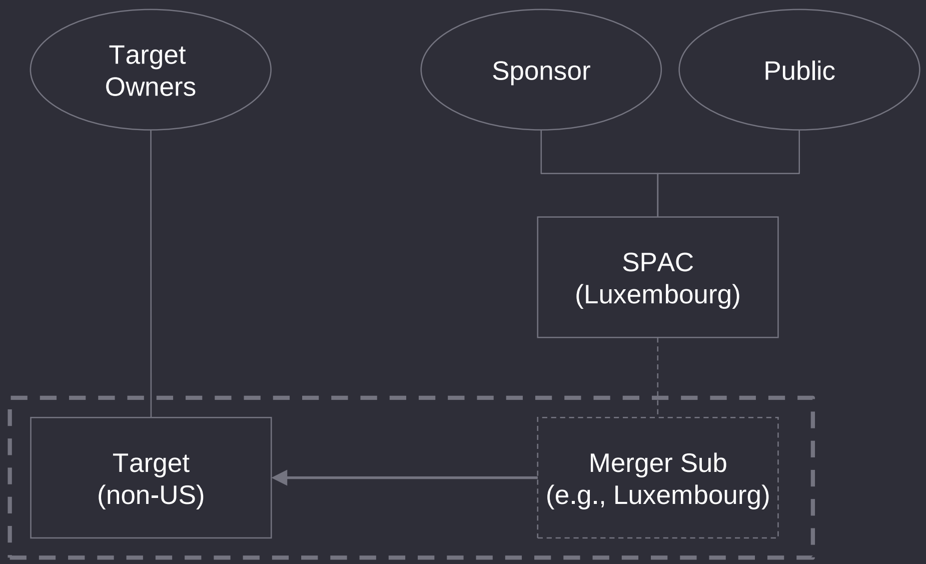
- Post-IPO, the SPAC generally has 12–24 months to identify a potential Target and execute a De-SPAC transaction.
- The period of time after the Target has been identified and agrees to merge with the SPAC, but before the closing, is referred to as the "De-SPAC process."
  - During this stage, the SPAC has to obtain shareholder approval, followed by a review and comment period by the ESMA.
  - The SPAC shareholders have the option to cause the SPAC to redeem their SPAC shares for a specified value (typically the original share price), paid with funds from the trust account.
  - Redemption offer generally does not apply to the warrants issued to the Sponsor.

PIPEs

- A SPAC IPO will set out to raise a predetermined amount of capital needed to acquire and/or operate a private company. However, if the SPAC later determines that it needs a larger amount of capital, they typically will obtain additional capital through "private investment in public equity" (i.e., a PIPE"). PIPEs typically invest through preferred equity in the SPAC.
- A PIPE acts as a backstop if a large number of SPAC shareholders elect to be redeemed.

Luxembourg SPAC – non-US Target

Reverse triangular merger



Objective

- SPAC's current domicile is the appropriate holding company jurisdiction for the De-SPAC structure.

Illustrative transaction structure

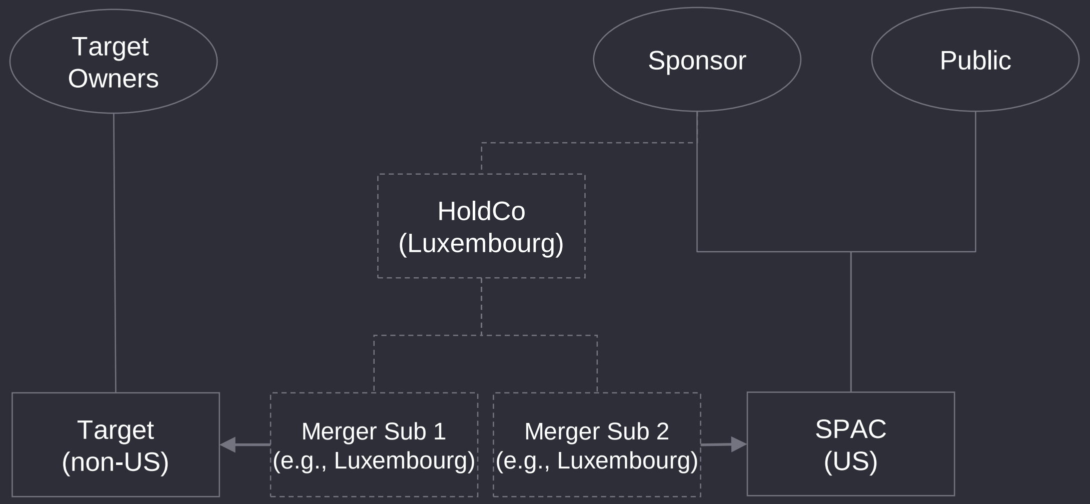
- SPAC is incorporated in Luxembourg.
- Merger Sub merges with and into Target, with Target surviving. Target issues shares to the Lux SPAC;
- SPAC issues shares to the Target owners.

Intended Luxembourg tax treatment

- Upon merger, SPAC can benefit from a rollover of potential gain realized to the new shares received in the Target upon merger.
- SPAC benefits from the participation exemption regime on dividends and capital gains under certain conditions.
- Withholding tax exemption on dividends distributed by SPAC to institutional investors under certain conditions. The standard 15% Luxembourg WHT rate can be also reduced under a double-tax treaty (depending on the investor type and its country of residency).

US SPAC with De-SPAC to Luxembourg – non-US Target

"Double Dummy"



Objective

- SPAC's current domicile is not the appropriate holding company jurisdiction for the De-SPAC structure.

Illustrative transaction structure

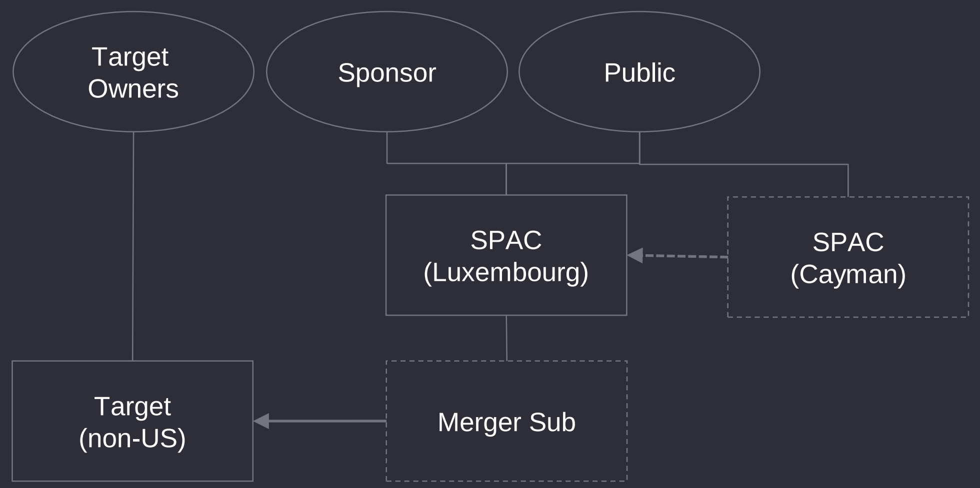
- Formation of HoldCo and the two merger companies in Luxembourg. SPAC is located in the US.
- Merger Sub 1 mergers into Target, Merger Sub 2 mergers into SPAC with Target and SPAC surviving.
- Target mergers into SPAC with SPAC surviving. SPAC issues shares to HoldCo;
- HoldCo issues shares to the Target owners.

Intended Luxembourg tax treatment

- Upon mergers, HoldCo can benefit from a rollover of potential gain realized to the new shares received in the Target in exchange for the merger.
- HoldCo benefits from the participation exemption regime on dividends and capital gains under certain conditions.
- No NWT on shares held by HoldCo in SPAC.
- Withholding tax exemption on dividends distributed by HoldCo to institutional investors under certain conditions. The standard 15% Luxembourg WHT rate can be also reduced under a double-tax treaty (depending on the investor type and its country of residency).

Non US SPAC with De-SPAC to Luxembourg – non-US Target

SPAC migration and reverse triangular merger



Objective

- Luxembourg is viewed as an appropriate holding company jurisdiction for the structure.

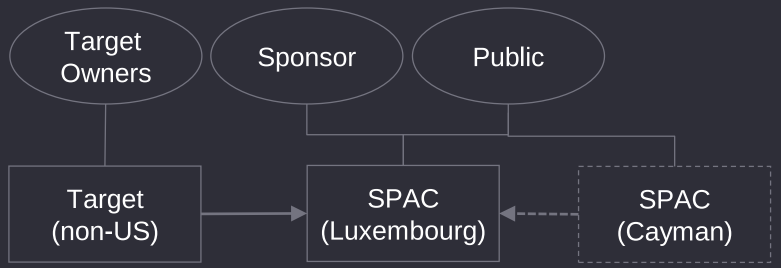
Illustrative transaction structure

- SPAC redomiciles from Cayman Islands to a jurisdiction compatible with the jurisdiction of the Target (i.e., Luxembourg).
- Merger Sub merges with and into Target, with Target surviving.

Intended Luxembourg tax and legal treatment

- Please refer to slide 15 for the tax implications related to the reverse triangular merger.

SPAC merger with the target



Objective

- Luxembourg is viewed as an appropriate holding company jurisdiction and SPAC is viewed as the appropriate acquirer.

Illustrative transaction structure

- SPAC redomiciles from Cayman Islands to a jurisdiction compatible with the jurisdiction of the Target (i.e., Luxembourg).
- Target merges with and into SPAC, and as part of the merger, Target ceases to exist.

Intended Luxembourg tax treatment

- Migration from Cayman (typical set-up jurisdiction) to Luxembourg is feasible from a corporate and legal perspective i.e., legal continuity is preserved.
- Wide participation exemption regime on dividends and capital gains under certain conditions.
- Upon merger, Lux SPAC's shareholders can benefit from a rollover of potential gain realized to the new shares received in exchange for the merger (if Lux SPAC absorbed entity).
- Flexible CFC rules (i.e., no income pick-up in Luxembourg if Lux SPAC is pure holding).
- Withholding tax exemption on dividends distributed by SPAC to institutional investors under certain conditions. The standard 15% Luxembourg WHT rate can be also reduced under a double-tax treaty (depending on the investor type and its country of residency).

4

Q&A and wrap-up

EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

2105-3772674
ED None

ey.com