

The SPAC+^{®TM}, SPAC++^{®TM} And SPAC+++^{®TM} Models: Sustainable-Growth, ESG/UN-SDG Finance And Problems Inherent In Existing SPACs.

Michael C. Nwogugu
Enugu 400007, Enugu State, Nigeria
Email: mcn2225@gmail.com
Phone: 234 909 606 8162
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Abstract.

This article discusses some of the problems inherent in US and European SPACs (special purpose acquisition companies) which motivated Mr. Michael C. Nwogugu's creation of proprietary SPAC structures and incentives (hereafter, "SPAC+^{®TM}", "SPAC++^{®TM}" and "SPAC+++^{®TM}"). The main findings are that: i) traditional US and European SPACs are very inefficient and costly, and can increase market volatility and Financial Instability; ii) SPACs are being mis-used by investors that seek short-term returns (via stock-redemptions at De-SPAC which have become more of an investment strategy with new ETFs launched, rather than a corporate governance mechanism) and companies that seek to list their shares on exchanges; iii) SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} SPACs can solve most of the problems caused by traditional SPACs; iv) many alternatives (to SPACs) that have been recommended by researchers and practitioners focus on how to list shares of single companies on financial exchanges (sponsored IPOs and direct-listings), whereas there is substantial worldwide need for "statutory" entities that can be used for ESG/UN-SDG Finance and efficient Industry Rollups of private/non-listed companies and SMEs (for whom IPOs and direct-listings are not suitable or are too costly, and for whom listing provides significant benefits); v) most researchers have excessively focused on SPACs' returns which don't tell the whole story, while omitting the legal/structural and Financial Stability risks of SPACs. The author estimates that for the average US or European SPAC, each of the SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models can save at least \$1.20 million in costs during the first three years.

Keywords: Nonlinearity; Systems Science; Mechanism Design; Games; SPACs; Sustainable Growth; ESG; Rule-419 (USA); Regulation A+ (USA).

1. Introduction.

A special purpose acquisition company (SPAC) is a blank check company that is created for the sole objective of executing a business combination (eg. merger, share exchange) or asset acquisition with or from a target-company that is un-identified as of the IPO date. As of October 2021, the year-to-date 2021 volume of new-SPAC issuance in the US had exceed the IPO volume in the US (in terms of both numbers and dollar-volumes of transactions). Many SPACs¹ that were created in the US and Europe are problematic (as of September 2021,

¹ See: Orlick (May 2021), Klausner, Ohlrogge & Ruan (2020), and Ignatyeva, Rauch & Wahrenburg (2013). See: Harroch, et. al. (November 2020) which stated in part ".....Litigation risk is present as recent cases have demonstrated. See for example, *Bogart vs. Israel Aerospace Indus., Ltd.* (standing of SPAC sponsor to bring a claim for breach of duty to act in good faith); *Rufford vs. Transtech Serv. Partners, Inc.* (challenge to fees being paid to SPAC sponsor); *Welch vs. Meaux* (alleged securities fraud in connection with SPAC business combination); and *Olivera vs. Quartet Merger Corp.* (SPAC shareholder suing SPAC for failure to honor his redemption right).....".

See: CB Insights (July 14, 2021). "What Is A SPAC?". <https://www.cbinsights.com/research/report/what-is-a-spac/>. This article stated in part: ".....But some have criticized the method as a "shortcut" to the traditional

IPO, bypassing many of the necessarily strict regulatory requirements. In particular, a slew of electric vehicle startups have gone public via SPAC over the past year to much hype — though none have produced a single vehicle for sale. Nearly anyone can start a SPAC, which is enticing a cross-section of big names including entrepreneur and VC Peter Thiel, former quarterback Colin Kaepernick, and baseball exec Billy Beane to get involved. Hedge fund manager Bill Ackman raised a \$4 Billion SPAC in July 2020 — the largest to date — while Social Capital CEO Chamath Palihapitiya has launched six SPACs since 2019, has filed for seven more, and has reportedly reserved 26 (twenty-six) public company tickers in total for SPAC public offerings - from IPOA to IPOZ. (The first four of these were used to acquire and debut space company Virgin Galactic, real estate startup OpenDoor, Medicare Advantage platform Clover Health, and digital personal finance company SoFi, respectively) Despite the flood of SPACs, their market performance to date has lagged, with median performance trailing the S&P 500 by 15 (fifteen) percentage points, per Reuters. institutional investors, like pensions, hedge funds, mutual funds, or investment advisors, have long invested in SPACs and other less traditional funding vehicles. In fact, the top 75 (seventy-five) investment managers reportedly held almost 70% (seventy percent) of all SPAC securities as of late 2020. hedge funds that redeemed their shares saw an average annualized return of 11.6%, according to a study conducted by Michael Klausner of Stanford Law School and Michael Ohlrogge of New York University School of Law. Furthermore, retail investors that buy and hold are likely to lose money — the median post-merger return clocks in at a negative 14.5% after three months. On the flipside, 97% of hedge funds sell or redeem their shares before a deal is completed, which may also affect SPAC prices later on. The warrants that are doled out to early investors also bring about the risk of share dilution. Despite the positives, there are also challenges and concerns regarding the structure of the SPAC method. From sponsor risk to low-quality companies to supply & demand concerns, SPACs are far from perfect. Retail investors that buy and hold on open markets frequently lose out, because they’re typically buying in at a premium. Those that hold onto their shares for a stake in the merged company are overwhelmingly losing money: SPACs recorded a median post-merger return of negative 65.3% in the 12 (twelve) months after a merger, according to Klausner and Ohlrogge. Overall, high redemption rates and share dilutions make investing in SPACs potentially risky for investors that aren’t as familiar with SPAC incentives and structures. The SPAC boom has also yet to pick up in popularity beyond the US, with 79% of SPAC acquisition targets being concentrated in the US.”

See: Bazerman, M. & Patel., P. (July/August 2021). “SPACs: What You Need to Know - A guide for the curious and the perplexed”. *Harvard Business Review*. <https://hbr.org/2021/07/spacs-what-you-need-to-know>. This article stated in part: “. Another potential cause for concern is that all sorts of celebrities and public figures—from the singer Ciara to the former U.S. speaker of the house Paul Ryan—are jumping on the bandwagon, The researchers found that among the SPACs in their study, the average rate of redemption per deal was 58%, with a median redemption rate of 73%. Not only that, in more than a third of the SPACs, over 90% of investors pulled out. But when we took a closer look at the study, we discovered that many of the SPACs had raised relatively small amounts of capital and offered higher-than-average warrants as an incentive to entice investors—both indications of lower-quality sponsor teams. Market conditions have changed over the past nine months, and sponsor teams have improved markedly. As a result, far fewer investors are now backing out. That’s what we found when we analyzed redemption history since the study ended. For the 70 SPACs that found a target from July 2020 through March 2021, the average redemption rate was just 24%, amounting to 20% of total capital invested. And over 80% of the SPACs experienced redemptions of less than 5%. The recent results are encouraging. For all deals closed from January 2019 through the first quarter of 2021, the average stock price for SPACs postmerger is up 31%—a figure that trails the S&P 500, which is up 36%, on average, over the same time period. But a more recent snapshot—January 2020 through the first quarter of 2021—shows that postmerger SPACs are outperforming the S&P 500 by a wide margin, up 47% versus 20%. And for SPACs with an announced deal but no merger as of March 2021, stocks are up 15% since IPO, on average, compared with 5% for the S&P 500 over the same time period. Our point is not that our analyses are correct and the earlier ones were wrong. Rather, we mean to highlight the volatility of the SPAC market and the need to pay attention to the timing and limitations of market analyses.”

See: “Meet The High-Flying Bankers Riding The SPAC wave - Garth Ritchie, Gary Cohn And Tidjane Thiam Are Among Banker Bigwigs Who Have Jumped Into The Trend For Blank Cheque Companies, Or SPACs”. January 22, 2021. <https://www.fn london.com/articles/meet-the-high-flying-bankers-riding-the-spac-wave-20210122>. This article stated in part: “. Senior financiers, who have stepped down from some of the most

China was in the process of public-hearings and development of regulations for SPACs). The SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models are based on concepts in Nonlinear-Systems/Nonlinearity and Theoretical Computer Science² (ie. Game Theory, Regret-Theory and Algorithmic Mechanism Design). The SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models can also be used as an Acquisition-SPV. “Acquisition-SPVs” are special-purpose-vehicles that are created solely to consummate Mergers/Acquisitions and Industry Rollups and they may or may not be listed on stock exchanges, and they typically are not subject to, and don’t comply with SPAC regulations.

2. Existing Literature.

The existing literature on SPACs focuses on the performance and trading patterns of SPAC during 2015-2021, perhaps because SPACs became hugely popular only in 2019-2021. Harroch, et. al. (November 2020), Klausner, Ohlrogge & Ruan (2021), Orlick (May 2021), Gahng, Ritter & Zhang (July 2021), Heyman (2007), Cochran (June 2021), Vulcanovic (2017) and Kiesel, Klingelhofer, Schiereck & Vismara (2021) and Ignatyeva, Rauch & Wahrenburg (2013) reviewed popular questions, trading-patterns and critiques about US and European SPACs, and provided relevant data about the recent stock-market performance of SPACs.

On SPACs as alternatives to IPOs, see Cumming, Hass & Schweizer (2014), Dimitrova (2017), Jenkinson & Sousa (2011), Lin, Lu, Michaely & Qin (2021), Bai, Ma & Zheng (2021), Blomkvist & Vulcanovic (2020) and Chaplinsky, Hanley & Moon (2017).

Nwogugu (2019a; 2020c; 2021a; 2021b; 2021c) studied ESG and SDG (sustainable development goals) issues. Nwogugu (2007; 2008c; 2008d; 2020b; 2019a) analyzed and developed theories about corporate governance problems inherent in REITs around the world.

On some of the problems inherent in “*Platform Capitalism & Socialism*”, see: Viljoen, Goldenfein & McGuigan (2021) and Nwogugu (2014; 2008a; 2008b; 2008c; 2008d; 2019a; 2020b).

Abebe & Goldner (2018), Athens (2010), Korula, Vahab & Nazerzadeh (2016), Viljoen, Goldenfein & McGuigan (2021), Nwogugu (2006; 2017a), Nisan & Ronen (2001), Niazadeh (2017) and Parkes & Wellman

high-profile roles in banking, have found a new reason to be lured out of retirement..... Garth Ritchie, former head of corporate and investment banking, Deutsche Bank..... Tidjane Thiam, former chief executive, Credit Suisse..... Makram Azar, former chairman of European banking at Barclays and Xavier Rolet, former chief executive, London Stock Exchange..... Gary Cohn, former president of Goldman Sachs Michael Klein, former Citigroup rainmaker..... Doug Braunstein, former chief financial officer, J.P. Morgan and head of M&A at the bank.....”.

See: “Bank Sponsored SPACs”. *SPAC Alpha*. October 14, 2021. <https://media-exp1.licdn.com/dms/document/C4D1FAQHCnrIOzR8y6A/feedshare-document-pdf-analyzed/0/1634567557710?e=1634666400&v=beta&t=P2kB7D2HoyKnNHZ4Etjmp7S5NOzleKVlkF6bQMX47KA>. This presentation noted that the following investment banks and asset management companies have sponsored their very own SPACs: Goldman Sachs, Cantor Fitzgerald, Chardan Capital, Lazard Freres, Jeffries & Co., Apollo Global Management, B. Riley FBR, Brookline Capital Markets, Guggenheim Partners, PJT Partners, Oppenheimer, Ladenburg Thalman, M. Klein & Company, Loop Capital, Houlihan Lokey, Moelis & Company, Macquarie, and Roth Capital Partners.

See: WGP Global (2021). *STOP: This Is Why You Need To Know The Key Differences Between UK and US SPACs*. <https://wgp.global/key-differences-between-uk-us-spacs/>.

See: Deloitte (July 14, 2021). *The SPACs boom: Europe picks up the pace*. <https://www2.deloitte.com/xe/en/insights/industry/financial-services/spacs-in-europe.html>. This article states in part: “.....One-third of European SPACs have been incorporated in the Netherlands, while another third have chosen Luxembourg as their nationality of incorporation. SPACs have refrained from listing in London as its system is more restrictive and does not allow investors to sell their participation in a SPAC if they do not like the proposed deal. A revision of rules is planned by the UK government as well as by other countries, including Spain, which are making efforts to adapt their regulations to ensure their participation in what may be an increasing trend in the European equity capital market space.....”.

See: Renaissance Capital (2020). “*SPAC Returns Fall Short of Traditional IPO Returns on Average*”. Renaissance Capital Blog Post Report.

² See: Viljoen, Goldenfein & McGuigan (2021), Abebe & Goldner (2018), Athens (2010), Chawla, Hartline & Nekipelov (2014), Harroch, et. al. (November 2020), Korula, Vahab & Nazerzadeh (2016), Niazadeh (2017), Nisan & Ronen (2001), and Parkes & Wellman (2015).

(2015) analyzed Theoretical Computer Science issues that pertain to Mechanism Design and Systems. Niazadeh (2017) and Nisan & Ronen (2001) studied Algorithms and Mechanism Design. Chawla, Hartline & Nekipelov (2014) analyzed Mechanism Design within the context of Data Science.

Nwogugu (2020a) reviewed various classes of criteria for the classification of financial instruments as debt, equity or hybrids; and also introduced new criteria for selecting the appropriate regulatory regimes for Auction Rate Securities, Structured Products, Mutual Funds, and Structured/Synthetic ETFs. Nwogugu (2008a;b) explained why asset securitization is illegal and is a significant *Financial Instability Risk*. Nwogugu (2014; 2019; 2020b) analyzed and developed theories about *Financial Instability Risks* and Systemic Risks inherent in REITs, “RECs” (non-REIT real estate Special-Purpose-Vehicles and companies) and “PICs” (property-intensive SPVs and companies). REITs and ABS Trusts are somewhat similar to US and European SPACs (they are both special purpose vehicles that use Trusts and raise capital for pre-specified acquisitions of assets).

The rest of this paper is organized as follows. **Section-3** explains *Regret-Minimization* and WTAL among SPAC market participants, Nonlinearity in SPAC dynamics, and why traditional US/European SPACs may be sources and propagators of Financial Instability Risk and or Systemic Risk. **Section-4** explains the case for regulatory reform (of SPAC laws around the world; and Rule-419 and similar statutes in the US) and use for SPACs for ESG/UN-SDG Finance and Industry Rollups of SMEs and non-listed companies. **Section-5** introduces the new proprietary SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models developed by the author (Michael C. Nwogugu), and the cost-savings that can be achieved by using such SPAC models. **Section-6** explains how academic and practitioner researchers have been wrongly analyzing SPACs by focusing on SPACs’ returns (this section also suggests other evaluation criteria). **Section-7** explains the issues and problems inherent in typical US and European SPACs (that haven’t been addressed or sufficiently addressed in the literature), and how the SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models can solve them.

3. Nonlinearity, Regret And WTAL: Financial Instability And Systemic Risk ?

It’s become evident that for traditional US and European SPACs, several parties (the SPAC-Sponsor, the two main groups of SPAC investors and the target-companies) behave in *Regret-Minimizing* ways (which confirms *Regret-Minimization* as a critical behavior mode in this context; and they are as follows:

- i) *The SPAC’s IPO shareholders that buy Units around the IPO date:* 1) they redeem their SPAC shares at De-SPAC but they hold onto the Warrants in the SPAC’s Units; 3) they vote at De-SPAC regardless of whether or not they redeem their shares at De-SPAC (and instead of abstaining) – and such voting can affect other companies in the same industry in addition to the target-company and the post-DeSPAC entity; 3) they invest in SPACs instead of PE funds, ETFs, mutual funds or hedge funds; 4) they don’t waive their rights to sue the SPAC or the SPAC-Sponsor; 5) they accept “standardization” of SPACs (which is problematic but can reduce their due-diligence and monitoring costs) and use of trusts (which is costly but can reduce fraud and their losses).
- ii) *The SPAC’s investors that are arbitrageurs:* 1) they buy SPAC shares at discounts to the NAV; 2) they redeem their SPAC shares at De-SPAC; 3) they vote at De-SPAC (regardless of whether or not they redeem their SPAC shares) – and such voting can affect other companies in the same industry in addition to the target-company and the post-DeSPAC entity; 4) they invest in SPACs instead of PE funds, ETFs, mutual funds or hedge funds; 5) they accept “standardization” of SPACs (which is problematic but can reduce their due-diligence and monitoring costs) and use of trusts (which is costly but can reduce fraud and their losses); 6) they don’t waive their rights to sue the SPAC or the SPAC-Sponsor.
- iii) *Target-companies:* 1) they impose vesting requirements on SPAC-Sponsor’s shares in order to reduce anticipated dilution; 2) they demand for, or cancel a portion of the SPAC-sponsor’s promote in order to reduce dilution; 3) they purchase D&O insurance policies to cover De-SPAC and tail-risk despite the fact that D&O insurance costs have risen by more than 400% during 2018-2021; 4) they typically take control of the post-DeSPAC entity; 5) they don’t waive their rights to sue the SPAC or the SPAC-Sponsor; 6) they are knowingly willing to accept equity dilution and post-DeSPAC stock price declines in order to complete De-SPACs instead of doing traditional IPOs; 7) they are willing to accept substantial litigation-risk, post-DeSPAC Lock-up Agreements and “standardization” of SPACs in order to complete De-SPACs and become listed, instead of doing traditional IPOs; 8) some of them accept under-pricing of their shares at De-SPAC in order to get listed.

iv) *The SPAC-Sponsors*: 1) they agree to imposed (by De-SPAC merger agreements) vesting requirements on the SPAC-Sponsor's shares in order to complete the De-SPAC merger; 2) they agree to the target-company's demand for, or cancellation of a portion of the SPAC-sponsor's promote in order to complete the De-SPAC merger; 3) they purchase D&O insurance policies to cover De-SPAC and tail-risk despite the fact that D&O insurance costs have risen by more than 400% during 2018-2021; 4) they agree to "standardization" of SPAC terms which is costly but can reduce their transaction costs; 5) they typically appoint all members of the SPAC's board-of-directors until the De-SPAC merger; 6) they sponsor SPACs despite the fact that there may not be any De-SPAC merger (in which case they will lose all their sponsor-capital and invested time/effort - they waive their rights to redemption of their SPAC shares at dissolution of the SPAC); 7) they are willing to accept substantial litigation-risk and equity dilution in order to complete De-SPACs; 8) some SPAC-Sponsors underprice the Target-Company at De-SPAC.

Also, the SPAC-Sponsors and some Target-Companies behave in ways that confirm *Willingness-To-Accept-Losses* (WTAL). On WTAL and *Regret-Minimization*, see Nwogugu (2006; 2017b).

Nwogugu (2014) explained why most types of REITs are non-bank SIFIs (systemically important financial institutions) and Financial Instability risks. Similarly and as of 2021, traditional US/European SPACs exhibited significant *Nonlinear Risk*, and were or could have become systemic risks. It's evident that for traditional US and European SPACs, changes in some causal factors (ie. SPACs' terms or the behaviors of the SPAC-investors and the SPAC-Sponsor) can cause disproportionately "much-larger" or "much-smaller" changes in the SPAC's stock price, market volatility and De-SPAC success/failure – and thus confirms *Nonlinearity* as a critical factor. Some nonlinear causal factors are as follows:

- i) The percentage of SPAC's IPO shareholders that redeem their SPAC shares at De-SPAC.
- ii) The number of shareholders that participated in the SPAC's IPO.
- iii) The number of SPAC shareholders that hold onto and exercise their Warrants after De-SPAC.
- iv) The number of SPAC shareholders that vote for or against De-SPAC.
- v) The number of SPAC shareholders that buy SPAC shares at discounts to the NAV and then redeem their SPAC shares at De-SPAC.
- vi) The number of SPAC dissolutions.
- vii) The percentage of the SPAC's Units for which the stock and the Warrant trade separately until sixty days before De-SPAC.
- viii) Because SPACs are at the intersection of at least ten critical large global markets (as explained herein), relatively small changes in any of these markets can have disproportionately larger and negative effects on SPACs, and vice-versa; and SPACs can transmit shocks and uncertainty from one of those markets to other markets. The global SPACs market is a large-scale *system-of-systems* and is at the intersection of the following large-scale systems (markets):
 - 1) Global stock markets (including stock indices).
 - 2) Global swaps/derivatives markets (including equity-swaps, Warrants, Rights, structured products, convertible securities and listed-options markets).
 - 3) Global ETF markets (including ETFs that focus on SPACs, convertibles, equities).
 - 4) Global fixed income markets.
 - 5) Global insurance and re-insurance markets.
 - 6) Global Private-Equity and M&A markets.
 - 7) The hedge funds sector.
 - 8) The global markets for regulations (M&A regulations; accounting regulations; securities law; etc.), and for both private and public enforcement of regulation/statutes.
 - 9) The global market for Compliance (as a physical phenomenon).
 - 10) The global technology markets and technology/biotech commercialization markets, and the TMT, (technology, media, telecom), sustainability and automobile sectors.
 - 11) The global currency markets (foreign investors invest in, and sponsor SPACs).
 - 12) The global Trusts and custody markets.

4. Sustainable Growth And Large-Scale Systems: The Case For Regulatory Reform And Worldwide Use Of SPACs For ESG/UN-SDG Finance And Industry Rollups Of SMEs And Non-Listed Companies.

Several researchers such as Klausner, Ohlrogge & Ruan (2021) have recommended alternatives to SPACs such as: i) “Sponsored” IPOs, and ii) “Sponsored” Direct Listings. However, those recommendations pertain only or mostly to alternatives to IPOs, Direct-Listings and SPAC for single companies, and thus are insufficient/inappropriate and don’t address the main issues which are that:

i) Around the world, there is an urgent need for efficient “statutory” listed entities (listed on an exchange) that can be used by entrepreneurs to execute Industry Rollups of five or more SMEs (small and medium enterprises) and private/non-listed companies. In many countries, SMEs account for 65%-90% of existing jobs³ and substantial percentages of new jobs, and most SMEs in the same or related industry often duplicate functions and administrative/operations processes. In most countries, many viable and potentially significant SMEs lack adequate access to capital, skilled management-teams and effective marketing (all of which can be provided by efficient SPAC-type entities), and thus cannot expand efficiently and their failure-rates are high. That in turn, affects job-creation, economic growth, quality-of-life, Sustainability, household-dynamics (including divorces, and physical-health and mental-health problems), savings/investment and the Global Pension/Retirement Crisis. Many SMEs don’t have adequate ICT systems and or don’t use ICT⁴ effectively (eg. ERP/collaboration systems, CRM systems, logistics and retailing software; accounting/finance software). Thus, Industry Rollups of SMEs can result in significant cost-savings, synergies, product-development and R&D efficiencies, learning/knowledge effects, logistics efficiencies, cross-selling, improved access to capital, greater and more-effective use of ICT, greater Financial Stability and solvency; etc..

ii) The significant Systemic-Risk and Financial Instability inherent in SMEs is manifested in:

- 1) The relatively high failure-rates and default-rates of SMEs across the world.
- 2) Lenders’ and insurers’ changes in their loan policies and insurance policies/costs respectively, for a specific industry upon the occurrence of default or major litigation by one SME or a few SMEs in the industry.
- 3) The Domino-Chains and financial/operational linkages among SMEs – eg. Trade-Credit; strategic-alliances; franchising systems; etc..
- 4) The non-financial linkages among SMEs and with larger companies – such as standardization, usage-of-trade, franchising systems; Business-Opportunity networks;

³ See: OECG (2021). *OECD SME and Entrepreneurship Outlook 2021*.

<https://www.oecd.org/industry/smes/SME-Outlook-2021-Country-profiles.pdf>

See: World Bank (2021). *Small And Medium Enterprises (SMEs) Finance: Improving SMEs’ Access To Finance And Finding Innovative Solutions To Unlock Sources Of Capital*.

<https://www.worldbank.org/en/topic/smefinance>. This article stated in part: “.....Small and Medium Enterprises (SMEs) play a major role in most economies, particularly in developing countries. SMEs account for the majority of businesses worldwide and are important contributors to job creation and global economic development. They represent about 90% of businesses and more than 50% of employment worldwide. Formal SMEs contribute up to 40% of national income (GDP) in emerging economies. These numbers are significantly higher when informal SMEs are included. According to our estimates, 600 million jobs will be needed by 2030 to absorb the growing global workforce, which makes SME development a high priority for many governments around the world. In emerging markets, most formal jobs are generated by SMEs, which create 7 out of 10 jobs. However, access to finance is a key constraint to SME growth, it is the second most cited obstacle facing SMEs to grow their businesses in emerging markets and developing countries.....SMEs are less likely to be able to obtain bank loans than large firms; instead, they rely on internal funds, or cash from friends and family, to launch and initially run their enterprises. The International Finance Corporation (IFC) estimates that 65 million firms, or 40% of formal micro, small and medium enterprises (MSMEs) in developing countries, have an unmet financing need of \$5.2 trillion every year, which is equivalent to 1.4 times the current level of the global MSME lending. East Asia And Pacific accounts for the largest share (46%) of the total global finance gap and is followed by Latin America and the Caribbean (23%) and Europe and Central Asia (15%).....About half of formal SMEs don’t have access to formal credit. The financing gap is even larger when micro and informal enterprises are taken into account.....”.

⁴ See: OECD (2021). “*ICT Access and Use by Businesses*”. OECD Telecommunications and Internet Statistics (database), <https://dx.doi.org/10.1787/9d2cb97b-en>.

See: OECD (2021). “*The Digital Transformation of SMEs*”. OECD Studies on SMEs and Entrepreneurship, OECD Publishing, Paris, <https://dx.doi.org/10.1787/bdb9256a-en>

significant similarities in staff-training; hiring from competitors; use of the same retail/logistics platforms (such as Alibaba, Apple iOS, Facebook, eBay, Amazon; etc.); use of the same online advertising platforms (eg. Google; Amazon; etc.); reliance on similar off-grid petrol/diesel power-generators (in Emerging Markets); etc..

5) Corporate Governance contagion.

However, rolling-up groups of SMEs into one listed statutory-entity can create more financially-stable, financeable and transparent entities, which in turn, addresses some of the foregoing economic, psychological and social problems.

iii) In the USA, Rule-419⁵ (of the Securities Act of 1933; and for blank-check companies) and Regulation-A+ (for “Uplistings” of new companies) attempt to address the aforementioned need for statutory Rollup entities, but has some weaknesses. Under Rule 419, a blank-check company has the following characteristics: (1) a development stage company (no or minimal operations, or no or minimal assets), 2) offers or is offering penny stock, as defined by Rule 3a51-1 (a company whose net tangible assets are less than \$5 million, or has been in operations for less than three years, or whose stock has a bid price of less than \$5 per share); (iii) has no specific business plan or purpose or its stated business plan is to merger with or acquire an unidentified company or companies. Rule-419 main protections include are as follows:

- 1) The provision of information to investors regarding the SPAC’s proposed acquisitions.
- 2) The return of deposited funds (in the SPAC’s Trust) to investors if the SPAC doesn’t complete a qualifying acquisition within 18 months after the effective date of the initial registration statement (the “Terminal Redemption”).
- 3) The deposit of proceeds and securities raised from the IPO into a Trust.
- 4) Investor’s right to obtain a refund of deposited funds upon receipt of information about the SPAC’s proposed acquisition (the “Initial Redemption”).
- 5) Acquisitions that could result in the SPAC’s Trust paying out cash should meet specific market-value threshold (of the business or net assets) within the context of the SPAC’s maximum IPO proceeds.

As of September 2021, most US SPACs had made themselves formally exempt from Rule-419 (based on the “Penny-stock Exemption”), but had adopted the main requirements of Rule-419. Thus, given the problems discussed herein, Rule-419 (and similar statutes) should be substantially revised.

iv) Some US financial exchanges have additional burdensome rules (such as the “80% Rule” for SPACs) that make SPACs less effective for Industry Rollups. The 80%-Rule states that in its Initial Acquisition (De-SPAC), each SPAC must acquire one or more companies whose combined market-values are equal to at least 80% of the SPAC’s Trust’s assets on the De-SPAC date. Separately and during 2021, NASDAQ submitted (to the US SEC) a useful proposal for SPAC Spinoffs⁶.

⁵ See: Feldman, D. (Oct. 2011). *Time to Modernize Rule 419: Developing a case for modernizing Rule 419 under the Securities Act of 1933*. <https://www.lexisnexis.com/legalnewsroom/corporate/b/blog/posts/time-to-modernize-rule-419>.

⁶ See: “SPAC Nasdaq Listing Standards”. By Laura Anthony. August 2021. <https://securities-law-blog.com/2021/08/10/spac-nasdaq-listing-standards/>. This article stated in part: “.....Nasdaq has issued a proposed rule change that would permit a SPAC to contribute a portion of the amount held in its deposit account to a deposit account of a new SPAC and spin off the new SPAC to its shareholders, thereby enabling multiple business combinations to benefit the same shareholder base. The filing, pending SEC approval, will provide shareholders the right to redeem all of their holdings prior to the first transaction, similar to existing SPACs.....The requirements include, among other things, that at least 90% of the gross proceeds from the initial public offering be deposited in an escrow account, and that the SPAC complete within 36 months, or a shorter period identified by the SPAC, one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account at the time of the agreement to enter into the initial combination. Nasdaq has noticed cases where SPAC sponsors create multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target’s needs. This practice creates the potential for conflicts between the multiple SPACs (each of which has different shareholders) and still fails to optimize the amount of capital that would benefit the SPAC’s public shareholders and a business combination target. The system is also inefficient in as much as the multiple SPACs are each filing separate registration statements and SEC reports, have separate boards of directors, multiple audits and

- v) In the US, the complex tax and accounting issue triggered by SPACs and their acquisitions haven't been fully addressed by regulators, SPAC-sponsors, target-companies, investors and underwriting investment banks.
- vi) The structure and duration of the SPAC and its life-cycle processes has significant Multiplier Effects (sometimes across industries): 1) IPO pricing; 2) competitors' strategic responses to M&A; 3) firms' cost-of-capital and access to capital.
- vii) In most countries, the cost of debt and equity (and the cost of financial distress) for private companies is generally higher than for listed companies, and equity-valuations of private companies are much lower (usually 20%-40% lower) than those of listed companies and that can have *Multiplier Effects*.
- viii) In most countries, less than five percent of otherwise eligible companies are listed on stock exchanges, and that hampers corporate growth and sustainable growth. The resulting lack of transparency, ethics and adequate Corporate Governance also reduces investment in companies, FDI and Foreign Investment.
- ix) The *Capital-Displacement Effect* – in their De-SPAC mergers, most US and European SPACs simultaneously invest substantial cash (typically \$50-\$700 million) in, and acquire companies that are valued between \$200 million and \$15 billion, and use the SPAC process as a substitute for an IPO or a Direct-Listing (both of which have been empirically shown to be less expensive than SPACs). Thus, such funding can be deemed to be at the expense of SMEs and ESG/UN-SDG projects and ironically, the funding goes to companies that can easily raise such amounts from a different group of investors (traditional IPO and PIPE investors) without the SPAC process. That supports the argument that modified types of SPACs (as an asset-class that is different from IPOs, PIPEs, ETFs, hedge funds and private-equity) should focus on ESG/SDG Finance and on Industry Rollups of SMEs and non-listed companies.
- x) In addition, the reality is that SPAC investors are not traditional IPO investors and that is confirmed by the following:
- 1) The high (50%-80%) redemption-rates of SPAC investors at De-SPAC.
 - 2) SPAC IPO-shareholders and investors accept the traditional SPAC-Sponsor “promote”, whereas many (or even most) target-companies either cancel portions of such promote or impose vesting requirements on all or portions of such promote.
 - 3) SPAC investors don't allocate such capital to IPOs of mutual funds, ETFs and ordinary companies.
 - 4) while only about 45% of US IPO investors flip their shares within ninety days after the traditional IPO, most SPAC IPO shareholders hold onto their SPAC-shares until De-SPAC.
 - 5) the finance literature concludes that IPO underpricing is rampant and intentional, and is at least an average of 25% of the IPO stock-price in the US – but despite such larger IPO returns during less than half of the 4.5-month minimum-time for a De-SPAC, SPAC-investors still prefer to invest in SPACs.

Around the world, there is an urgent need for efficient “statutory” listed entities (listed on an exchange) that can be used by entrepreneurs and companies for ESG/UN-SDG Finance (UN-SDG means the United Nation's “Sustainable Development Goals”)⁷. In many countries, awareness of ESG/UN-SDG in increasing

multiple listing fees.....The proposed new rule would allow a SPAC to raise the maximum amount of capital it thinks it needs, then spin off any balance after a first acquisition into a new SPAC for future acquisitions. The spin-off SPAC would need to file a separate registration statement and continue with its own listing. The public shareholders would have a right to redeem as part of any business combination whether in the original SPAC or a new spin-off. All other features would work the same as existing SPACs. The spun-off SPAC would need to meet the initial listing requirements and would be subject to the same escrow rules as any SPAC including the 36-month period in which to complete a business combination. Moreover, each initial acquisition, whether in the original or spin-off SPAC would need to meet the 80% requirement.....”.

⁷ See: Government Of South Africa (National Treasury Department) (2021). *Financing A Sustainable Economy*. http://www.treasury.gov.za/comm_media/press/2021/2021101501%20Financing%20a%20Sustainable%20Economy.pdf.

rapidly as evidence of greater environmental damage and Climate-Change are being discovered and publicized. Some of the issues⁸ are that:

1) As of 2010-2021, investors that were interested in ESG and UN-SDG had only limited ways to invest in companies that support or are implementing ESG/UN-SDG programs – such as direct purchase of shares/bonds, ETFs, PE funds, Mutual Funds and hedge funds, and divestment from erring/non-compliant companies. Such investments are often applied to “whole” companies and are not targeted at, or used in specific ESG/UN-SDG projects in, or specific subsidiaries, divisions or operations of investee-companies (the “**ESG Capital-Allocation Problem**”). Similarly, the ESG-driven divestments affect “whole” erring companies and not subsidiaries/divisions of erring companies such that traditional divestment is sometimes “overkill” (the “**ESG Divestment Problem**”).

2) As of 2010-2021, most ESG oriented investments relied heavily on PE-managers’, ETF-manager’s, Mutual-Fund managers’ and hedge fund managers’ whims, ethics, timing, access to information, and compliance with their investment mandate, and these investment managers are often legally and operationally distant/removed from the day-to-day operations of investee-companies; and some hire third-party external-advisers that are subject to bribery/lobbying/side-payments (collectively, the “**Professional-Investor Discretion Problem**”).

3) As of 2010-2021, most of such ESG/SDG investment decisions were based on ESG/SDG rankings, ratings, Indices and scores which in turn, depended on *Carbon Trading Systems*, “*Environmental Audits*”, and corporate executives’/managers’ fluctuating whims, ethics, disclosure-compliance and internal corporate politics, all of which affect the allocative-efficiency of ESG/SDG investments (the “**Corporate-Manager Discretion Problem**”).

4) As of 2010-2021, the entire “Green Bond” and “Sustainability Bond” schemes were allocatively inefficient and could be manipulated by bond-issuers through real and accounting disclosures, and earnings management. Separately, some issuers could easily choose not to comply with the Green/Sustainability bond-indentures and to pay the resultant higher interest rate (the “Default-Rate”) so long as they are earning a return-on-invested-capital that exceeds such higher Default-Rate”, all of which reduces issuers’ *Willingness-To-Comply* and also deprives other more-deserving companies of such capital (collectively the foregoing is the “**Green/Sustainability Bond Shirking Discretion Problem**”). So long as such issuers don’t face sufficient non-performance penalties, they will retain the “*Shirking Option*” and reduce capital available for true Sustainability projects. Most Green/Sustainability Bonds are linked to

⁸ See: Boffo, R., & Patalano, R. (2020). “*ESG Investing: Practices, Progress And Challenges*”. OECD, Paris, France. www.oecd.org/finance/ESG-Investing-Practices-Progress-and-Challenges.pdf.

See: IOSCO (2020). “*Sustainable Finance and the Role of Securities Regulators and IOSCO*”.

See: OECD and MSCI (2018). “*Institutional Investing for SDGs: A Joint Discussion Paper from MSCI and the OECD*”.

See: Morgan Stanley (2018). “*Sustainable Investment Asset Owner Survey*”.

See: “How Does European Sustainable Funds' Performance Measure Up?”. *Morningstar*, 2020.

www.morningstar.com/content/dam/marketing/emea/shared/guides/ESG_Fund_Performance_2020.pdf

See: World Economic Forum (2019). “*Seeking Return on ESG*”.

See: The World Federation of Exchanges (2020). “*Sixth annual sustainability survey*”.

See: BNP (2019). “*The ESG Global Survey 2019*”.

See: Cerulli, __., & UN PRI (2019). “*Survey: Responsible Investment in Hedge Funds - The Growing Importance of Impact and Legacy*.”

See: Invesco (2020). “*Why the ‘S’ in ESG matters*”. Invesco Global ESG Team.

See: Franklin Templeton (2020). “*Build Back Better’: COVID-19 Brings the “S” From ESG Into Focus*”.

See: “*The problem with ESG scoring*”. By Sheryl Estrada. July 21, 2021. <https://fortune.com/2021/07/21/the-problem-with-esg-scoring/>.

See: Accenture (May 11, 2021). *Opportunities and challenges for integrating ESG risk into existing frameworks*. <https://financialservicesblog.accenture.com/opportunities-and-challenges-for-integrating-esg-risk-into-existing-frameworks>.

See: Taparia (July 2021).

the issuer's activity wherein the issuer pays a higher interest rate if it doesn't comply with "Green" or Sustainability bond-indentures.

5) Bigger & Millington (2019), Jones, Baker, et. al. (2020), Christophers (2018a) and Elliott & Zhang (2019) critiqued Green Bonds and Sustainability Bonds. Cooper (2018) noted that Green Bonds cost more to issue and are harder to trade than conventional bonds.

Green/Sustainability Bonds are more exposed to political economy risks, currency risks and monetary policy factors than equity products. "*Green-washing*" and *Green-Premiums* (for Green Bonds) remain significant and rapidly growing problems around the world - see Jones, Baker, et. al. (2020). In some types of Green Bonds ("Use of Proceeds Bonds"; and "Project Bonds"), the recourse is to the issuer's entire balance sheet; while in other types of Green Bonds ("Use of Proceeds Revenue Bonds"; and "Securitized Bonds"), recourse is to either the specific project assets or the project-revenues. The issue is whether the underlying agreements for such bonds and asset-segregation can be challenged. The foregoing is collectively referred to as the "***Sustainability Bond Efficiency Problem***".

6) The ESG/SDG rankings/scores/ratings/Indices have been empirically shown to be inaccurate and often misleading but are used by many ESG funds for capital allocation (the "***ESG Ratings-Inaccuracy Problem***"). Nwogugu (2019b) and Taparia (July 2021)⁹ critiqued ESG/Sustainability Indices.

7) The ESG/SDG rankings/scores/ratings/Indices are also allocatively-inefficient because they concentrate (disproportionately increase) ESG/SDG investments in top-ranked companies and large companies, whereas Middle-ranked companies, low-ranked companies, SMEs, subsidiaries of large companies and companies in high-pollution industries (energy, transportation, buildings and water infrastructure) don't have funds to, and or cannot raise the funds to implement such measures even though they have the greatest need, *Use-Value* and *Outcome-Value* for such ESG capital (collectively, the "***ESG Ratings-Allocation Problem***"). *Outcome-Value* refers to the fact that for each ESG/SDG dollar invested, low-ranked and high-pollution companies are more likely to generate greater incremental final ESG/SDG positive-impact (high-ranked companies are already much more compliant, and so the incremental dollar investment typically achieves less incremental positive-impact). Similarly, *Use-Value* refers to the fact that for each ESG/SDG dollar invested, low-ranked and high-pollution companies generate more value-in-use (eg. conversion of a fleet of gas-powered cars/buses to electric-power) and thus greater ESG/SDG impact than high-ranked companies (again, high-ranked companies are already much more compliant, and so the incremental dollar investment typically achieves less incremental positive-impact).

8) It's been empirically and theoretically shown that companies around the world routinely manipulate their regional/national *Carbon Trading Systems* and their "*Environmental Audits*" (and despite the great potential harm, some countries/jurisdictions permit self-auditing)

⁹ See: Taparia (July 14, 2021) which stated in part: ".....At the core of the problem is how ESG ratings, offered by ratings firms such as MSCI and Sustainalytics, are computed. Contrary to what many investors think, most ratings don't have anything to do with actual corporate responsibility as it relates to ESG factors. Instead, what they measure is the degree to which a company's economic value is at risk due to ESG factors. For example, a company could be a significant source of emissions but still get a decent ESG score, if the ratings firm sees the pollutive behavior as being managed well or as non-threatening to the company's financial value. This could explain why Exxon and BP, which pose existential threats to the planet, get an average ("BBB") aggregate score from MSCI, one of the leading rating companies. It could also be why Phillip Morris made it onto the DJSI..... The second problem involves how ratings firms assign weights to each ESG factor. To compute a company's ESG score, ratings firms score every company on a variety of ESG factors and assign weights to each of these factors, aggregating the results into a composite ESG score. These scores form the basis for how ESG indexes and ESG funds construct their portfolios. This may seem like a legitimate approach, but it's not. It is subject to human judgment and inconsistent access to ESG information, making for tremendous variability across raters. But more detrimentally, it permits companies to achieve high composite scores even if they cause significant harm to one or more stakeholders but do well on all other parameters.....".

(collectively, the “*Metrics Manipulation & Compliance Problem*”). See Nwogugu (2021a;b;c) which discussed the *Environmental Compliance-And-Enforcement* problem.

9) Even when such ESG/UN-SDG investors invest in such companies, there is sometimes internal resistance from both executives and shareholders of investee-companies.

10) Sometimes companies are restricted from implementing ESG/SDG programs due to political factors.

11) As of 2021, four industries (energy, transport, building and water infrastructure) accounted for about sixty percent of GHG emissions. Existing ESG/SDG investing methods don’t channel sufficient capital into reducing GHG emissions from these sectors.

12) Many countries don’t have special statutes for ESG/UN-SDG Finance entities. In the US, Rule-419 and similar statutes don’t specifically provide for “statutory” ESG/UN-SDG Finance entities. Ideally, such “statutory” ESG/UN-SDG Finance entity should:

- a) Isolate both the Sponsor and the subject-companies (recipients of ESG/UN-SDG measures) from specific project risk including political risk and currency risk (ESG-SDG Finance can be done as Project Finance).
- b) Allow a wider variety of ESG/UN-SDG “Sponsors” that have verifiable skills to implement changes to all or parts of a company/entity.
- c) Allow a wider variety of both traditional and non-traditional third-party ESG/SDG investors to invest in such ESG/SDG projects.
- d) Grant the Sponsor sufficient corporate control at all times, in order to effect ESG/SDG changes.
- e) Provide opportunities for shareholders of the subject-company (recipient of ESG/UN-SDG measures) to indirectly reject or accept such efforts within the target-company, and outside the ESG/UN-SDG Finance entity.
- f) Be able to enter into joint-ventures with target/investee companies solely for implementation of ESG/UN-SDG measures.
- g) Provide Sponsors with sufficient incentives to achieve the ESG/SDG objectives and to generate profits for both themselves and the Target-Company.
- h) Generate no or low volumes of disputes, uncertainty and litigation.

Sponsored IPOs and Sponsored Direct-Listings are not entirely new, and similar transactions have been done by Private Equity firms and Venture Capital funds in the US, Europe and Asia that sought exits from their portfolio-companies. The post-IPO performances of such companies are mixed, and are not better than traditional IPOs (when analyzed from various perspectives). The Sponsored IPOs and Sponsored Direct-Listings that were improperly recommended by Klausner, Ohlrogge & Ruan (2021) and others:

- 1) introduces more problematic book-building for investment banks (ie. disagreements about IPO prices).
- 2) introduces Reputational Risk into the IPO process, which can result in IPO under-pricing, earnings management (by issuer-companies) and unjustified segmentation of IPO prices.
- 3) greatly reduces the universe of “feasible Sponsors” that can execute the Sponsored IPO or Sponsored direct-listings because only large and well-capitalized companies or hedge funds or private equity firms have the capital and connections to “sponsor” and pay expenses under such riskier circumstances (unlike smaller groups of skilled professionals and small PE firms that were SPAC-Sponsors during 2015-2021).
- 4) provides more opportunities (compared to SPACs and traditional IPOs) for side-payments and bribery because the Sponsor needs to do more work to convince more “audiences” about the feasibility of the Sponsored IPO or Sponsored Direct-Listing. On the contrary and in regular SPACs, the SPAC entity is already listed on an exchange before the De-SPAC acquisition negotiations begin – and that difference in “Certainty-of-Occurrence” will almost surely increase market-volatility and will be reflected in transaction terms.
- 5) increase or can increase market-volatility and uncertainty because: a) it involves much more public announcements and Public Relations efforts than traditional IPOs and SPACs; and b) it affects or can affect the stock prices of unrelated listed companies in the same or related sectors.

Thus SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} SPACs can fill these significant gaps, execute ESG/UN-SDG projects, and help SMEs and private companies to get listed on exchanges, to improve their transparency and Internal-Controls, to achieve operating synergies and to raise capital (and on much more favorable terms).

5. SPAC+^{®TM}, SPAC++^{®TM} And SPAC+++^{®TM}: Differentiation From Other SPACs/SPVs.

This section explains the “SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models.

5.1. The SPAC+^{®TM} Model-1.

The SPAC+^{®TM} Models 1 & 2 SPACs are different from other SPACs and Acquisition-SPVs in the following ways:

- **SPAC Structure:**

i) The SPAC will have two classes of Common Stock which are Class-A (regular economic and voting shares) and Class-B (non-economic voting-only shares that control fifty percent of the SPAC’s total voting-rights). All class-B shares shall be issued to the SPAC-Sponsor (the SPAC-Sponsor will have at least a non-diluted fifty percent of the SPAC’s total voting-rights). Class-B Shares don’t have any liquidation claims, and are subordinated to Class-A shares. In liquidation/wind-up of the SPAC, the SPAC-Sponsor will waive its redemption rights for all of its Class-A Shares and its Warrants. The SPAC-Sponsor’s Class-A shares are automatically deemed to vote in favor of any acquisition proposed by the SPAC.

ii) In Model-1, instead of the traditional SPAC-Sponsor’s promote (15%-20% of the SPAC’s equity), the SPAC -Sponsor’s promote will consist of the following:

- 1) 8%-14% (eight percent to fourteen percent) of the SPAC’s Units, plus all of the SPAC’s Class-B stock;
- 2) a share (2.5%-5%) of the pro-rata quarterly revenues of any acquired company, and
- 3) at-the-money 7-year Stock Net-warrants for the purchase of 8%-15% (eight-percent to fifteen percent) of the equivalent of the equity of each acquired company (with a tax-basis of \$0.01 and demand/piggyback registration-rights, and issued by the SPAC and for purchase of the SPAC’s Class-A shares).
- 4) *Demand and piggyback registration rights* for the shares obtained through exercise of the Warrants.

ii) In Model-2, instead of the traditional SPAC-Sponsor’s promote (15%-20% of the SPAC’s equity), the SPAC -Sponsor’s promote will consist of the following:

- 1) 8%-14% (eight percent to fourteen percent) of the SPAC’s Units, plus all of the SPAC’s Class-B stock;
- 2) a share (2.5%-5%) of the pro-rata quarterly revenues of any acquired company, and
- 3) at-the-money 7-year Stock Net-warrants for the purchase of 8%-15% (eight-percent to fifteen percent) of the equivalent of the equity of each acquired company (with a tax-basis of \$0.01 and demand/piggyback registration-rights, and issued by the SPAC and for purchase of the SPAC’s Class-A shares).
- 4) *Demand and piggyback registration rights* for the shares obtained through exercise of the Warrants.
- 5) A *Waiver-Pledge Payment* – wherein the SPAC-Sponsor agrees to mandatorily waive its right to redemption of its SPAC Class-A shares upon dissolution of the SPAC, and in exchange, at dissolution of the SPAC, the SPAC Trust will pay a one-time fee of 0.50%-2% of the Trust’s assets (as of the dissolution date) to the SPAC Sponsor.

iii) The SPAC will have only eighteen months to complete the first acquisition, and if that isn’t achieved then only the SPAC’s Class-A shareholders will vote to either: 1) continue the SPAC for an additional eighteen months, or 2) have the SPAC return investors’ capital (in the custodian Trust) to them immediately.

iv) In Model-1, instead of the traditional \$10 per-share/per-unit price, the SPAC will offer “Units” which will be priced at \$X.Y per Unit, and:

1) Each Unit will consist of one share of the SPAC's Class-A Common Stock plus a fraction (10%-80%) of one three-year at-the-money Stock-Warrant (exercise price of \$X.Y, and a tax-basis of \$0.01) for the purchase of one Share of the SPAC's Class-A common stock; plus *Demand and Piggyback registration rights* for the shares obtained through exercise of the Warrants. The Warrants will have the following terms:

- a) Only whole Warrants can be exercised.
- b) Only the Warrants issued to the SPAC-Sponsor shall be Net-Warrants.
- c) \$X is usually an amount in the \$10-\$50 range. \$0.Y is usually an amount in the \$0.05-\$0.90 range.
- d) The 3-year Stock Warrant will have an initial at-the-money Exercise-Price, which will be "*ratcheted-up*" only if the SPAC's stock-price trades above pre-specified benchmark prices for a pre-specified number of days (usually 20-30 trading days), and or if there is a De-SPAC under specific conditions, and or if the redemption-rate exceeds a pre-specified benchmark or benchmarks, and or if other conditions occur during the first three years after the SPAC's IPO. For example if the at-the-money exercise price is \$X.Y, it will be increased to (\$X.Y*115%), (\$X.Y*125%) and (\$X.Y*135%), if the SPAC's stock price remains above (\$X.Y*125%), (\$X.Y*135%) and (\$X.Y*145%), for 20 (twenty) contiguous trading days during months 1-7, months 8-15 and months 16-24 (after the IPO date) respectively.

2) The Warrant/Units Agreement will contain a "*Merger-Date Adjustment Clause*" that grants the Target-Company shareholders a greater percentage of the equity of the combined post-De-SPAC entity, based on the number/percentage of redemptions at De-SPAC (ie. within one day after the De-SPAC Date or the Redemption Date).

3) By agreement and for each SPAC "Unit" sold, the \$X.Y will be paid into a custodian Trust (pending acquisitions), from which \$0.Y/Unit will be applied towards the SPAC-Sponsor's pre-agreed pre-IPO startup costs (administrative costs, advisor fees, legal/accounting, filing fees, travel/lodging expenses, insurance, reimbursements; etc.).

4) The SPAC's Units' stock and Warrants will start trading separately on the earlier to occur of the De-SPAC acquisition date or 390 days after the SPAC's IPO, or the date that the holder exercises the Warrant.

5) The SPAC's custodian Trust (that will hold investors' cash) will pay a monthly fixed administrative fee (eg. \$10,000-\$25,000) to the SPAC-Sponsor, beginning on the IPO date and until the SPAC ceases to exist (for office space, utilities, secretarial support and administrative services).

6) There can be shareholder voting for/against De-SPAC. Any SPAC-shareholder that votes against any Initial Acquisition (proposed by the SPAC) has the option to either remain a shareholder or must simultaneously redeem both his/her SPAC shares and Warrants (in cash or with the SPAC's Notes/bonds at his/her option); and any SPAC-shareholder that votes in favor of any Acquisition cannot redeem his/her SPAC shares and Warrants (until the next redemption-voting). All of the SPAC's acquisitions that occur after the De-SPAC won't have redemption-rights for the SPAC's shareholders and Warrant-holders. At De-SPAC, the SPAC-shareholder elects to either: redeem the shares and Warrants for cash or other consideration (such as the SPAC's debt instruments) or retain the stock and Warrants. At dissolution/liquidation Date (if there isn't a De-SPAC), the SPAC-Shareholder mandatorily redeems the shares but can exercise the Warrant.

7) In lieu of shareholder voting for/against De-SPAC, the SPAC's IPO shareholders as a group can be allocated at least 30%-40% of the SPAC's board seats (and approval of a merger/acquisition will require a super-majority of board-member votes), so that if such shareholders don't like a proposed acquisition, they can vote within the board to reject the acquisition. The costs and uncertainty of having so many different SPAC shareholders analyze the De-SPAC merger (and other mergers/acquisitions) is

unjustifiable, and merely increases actual and potential market-volatility since such analysis often includes relative-value analysis.

- v) *Reducing Conflicts-Of-Interest* – 1) The SPAC’s Independent directors won’t be compensated with shares (they get either zero compensation or some cash compensation); 2) each De-SPAC merger proposal will be approved by a Special Committee that consists of Independent Directors of the SPAC and third-party independent professionals; 3) the SPAC will obtain a Fairness Opinion for each DeSPAC merger/acquisition proposal; 4) the SPAC will document all Due-Diligence processes used in evaluating De-SPAC targets.
 - vi) None of the Warrants issued as part of SPAC+^{®TM} can be classified as liabilities under US GAAP or IASB’s IFRS, and if there is any future change in accounting regulations that compels such classification, such Warrants shall be automatically restructured by the SPAC (or De-SPAC entity) to eliminate the specific features that make them liabilities.
 - vii) The SPAC will acquire only companies that individually generate revenues (usually the equivalent of at least US\$1 million of annual gross revenues). That will avoid the current negative trend wherein SPACs have been acquiring development stage companies that don’t generate any revenues, are over-valued and in some instances, perpetrate or have perpetrated earnings management.
 - viii) The fair market value of any target-company in the “Initial Acquisition” shall be at least five percent (5%) of the SPAC’s Trust assets as of the acquisition-date.
- **Implementation of ESG/UN-SDG measures and efficient Employee-Incentives for each acquired company (Growth).** The SPACs’ approach to Sustainability and ESG is multifaceted and includes but isn’t limited to the following:
 - i) Purchasing or developing (in-house) energy-efficiency software and software overlays (for achieving energy-use reduction and waste management) that can be applied in acquired companies.
 - ii) Making sure that the SPAC-Sponsor has sufficient post-acquisition voting-control to implement ESG, UN-SDG and sustainability measures at companies acquired by the SPAC.
 - iii) Building sustainability, UN-SDGs and ESG into the “Policies & Procedures”, management reporting systems, Internal-Controls, ERP systems and Information Systems of acquired companies.
 - iv) Implementing ESG-driven, UN-SDG and Sustainability-driven Employee-Incentives to compel employees (of acquired companies) to work towards such goals.
 - v) Improving employee pension/retirement systems to insulate them from crisis, inflation, currency-risks and market-downturns.
 - vi) Increasing environmental-regulations compliance by, and reducing the environmental liabilities of acquired companies.
 - **Two target segments:** 1) target-companies for which the primary objective is value-add/growth or restructuring; and 2) target-companies for which the primary objective is exit/liquidity.
 - **Cost savings and effective pricing (Growth)** – the SPACs’ objectives include post-acquisition rationalization of operations, cost-savings, and more efficient pricing.
 - **Corporate Control (Growth)** – the SPAC Sponsor will get fifty percent of the SPAC’s total voting rights (the SPAC will have two classes of Common Stock). That enables the SPAC Sponsor to execute additional acquisitions to expand the SPAC. That is in contrast to many SPACs who intend to be, or are just vehicles for only one acquisition (effectively, a single-company IPO or a reverse-merger listing).
 - **Emphasis on low-cash acquisitions and under-valued companies (Value)** – such as cash-plus-Earnouts, cash-and-stock, stock-for-stock and cash-and-debt.

5.2. The SPAC++^{®TM} Model-1.

The SPAC++^{®TM} Models 1 & 2 SPACs are different from other SPACs and Acquisition-SPVs in the following ways:

- **SPAC Structure:**
 - i) The SPAC will have two classes of Common Stock which are Class-A (regular economic and voting shares) and Class-B (non-economic voting-only shares that control fifty percent of the SPAC’s total voting-rights). All class-B shares shall be issued to the SPAC-Sponsor (the SPAC-Sponsor will have at least a non-diluted fifty percent of the SPAC’s total voting-rights).

Class-B Shares don't have any liquidation claims, and are subordinated to Class-A shares. In liquidation/wind-up of the SPAC, the SPAC-Sponsor will waive its redemption rights for all of its Class-A Shares and its Warrants (the SPAC-Sponsor loses the stock and Warrant components of the sponsor promote upon dissolution of the SPAC). The SPAC-Sponsor's Class-A shares are automatically deemed to vote in favor of any acquisition proposed by the SPAC.

ii) In Model-1, instead of the traditional SPAC-Sponsor's promote (15%-20% of the SPAC's equity), the SPAC -Sponsor's promote will consist of:

- 1) 8%-14% (eight percent to fourteen percent) of the SPAC's Units, plus all of the SPAC's Class-B stock;
- 2) a share (2.5%-5%) of the pro-rata quarterly revenues of any acquired company, and
- 3) at-the-money 7-year Stock Net-warrants for the purchase of 8%-15% (eight-percent to fifteen percent) of the equivalent of the equity of each acquired company (with a tax-basis of \$0.01 and demand/piggyback registration-rights, and issued by the SPAC and for purchase of the SPAC's Class-A shares). "At-the-money" refers to the SPAC's then-current average stock price for the 20-30 trading days before the date of each Acquisition Agreement.
- 4) *Demand and piggyback registration rights* for the shares obtained through exercise of the Warrants.

iii) In Model-2, instead of the traditional SPAC-Sponsor's promote (15%-20% of the SPAC's equity), the SPAC -Sponsor's promote will consist of:

- 1) 8%-14% (eight percent to fourteen percent) of the SPAC's Units, plus all of the SPAC's Class-B stock;
- 2) a share (2.5%-5%) of the pro-rata quarterly revenues of any acquired company, and
- 3) at-the-money 7-year Stock Net-warrants for the purchase of 8%-15% (eight-percent to fifteen percent) of the equivalent of the equity of each acquired company (with a tax-basis of \$0.01 and demand/piggyback registration-rights, and issued by the SPAC and for purchase of the SPAC's Class-A shares). "At-the-money" refers to the SPAC's then-current average stock price for the 20-30 trading days before the date of each Acquisition Agreement.
- 4) *Demand and piggyback registration rights* for the shares obtained through exercise of the Warrants.
- 5) A *Waiver-Pledge Payment* – wherein the SPAC-Sponsor agrees to mandatorily waive its right to redemption of its SPAC Class-A shares upon dissolution of the SPAC, and in exchange, at dissolution of the SPAC, the SPAC Trust will pay a one-time fee of 5%-20% of the Trust's assets (as of the dissolution date) to the SPAC Sponsor.

iv) The SPAC will have only eighteen months to complete the first acquisition, and if that isn't achieved then only the SPAC's Class-A shareholders will vote to either: 1) continue the SPAC for an additional eighteen months, or 2) have the SPAC return investors' capital (in the custodian Trust) to them immediately.

v) Instead of the traditional \$10 per-share/per-unit price, the SPAC will offer "Units" which will be priced at \$X.Y per Unit, and:

- 1) each Unit will consist of:
 - a) 5%-30% of one share of the SPAC's Class-A Common Stock (the stock component of the Unit shall account for no more than 10%-30% of the total value of the Unit – hereafter, the "*Unit Stock Value*"); plus
 - b) One at-the-money Stock-Warrant (exercise price of \$X.Y) for the purchase of 100%-300% of one Share of the SPAC's Class-A common stock (to purchase of 1-3 shares) at an exercise-price equal to a "Base-Price" per share. Only the Warrants issued to the SPAC-Sponsor shall be Net-Warrants. The Warrants will have the following terms:
 - i) *Term*: The term of the Warrant shall commence on the issuance day and shall expire on the earlier to occur of the exercise-date or the Fifth Anniversary of the IPO date or the dissolution-date of the SPAC.

ii) *Exercise Price*: The Warrant will have an initial at-the-money Exercise-Price (the “Base Price”), which will be increased by a 5%-10% exercise-premium at De-SPAC (the “De-SPAC Exercise Price”), and which will again be “*ratcheted-up*” only if the SPAC’s stock-price trades above pre-specified benchmark prices for a pre-specified number of days (usually 20-30 trading days) during the first five years after the SPAC’s IPO and or if there is a De-SPAC under specific conditions, and or if the redemption-rate exceeds a pre-specified benchmark, and or if other conditions occur during the first three years after the SPAC’s IPO. For example if the at-the-money exercise price is \$X.Y, it will be increased to (\$X.Y*115%), (\$X.Y*125%) and (\$X.Y*135%), if the SPAC’s stock price remains above (\$X.Y*125%), (\$X.Y*135%) and (\$X.Y*145%), for 20 (twenty) contiguous trading days during months 1-7, months 8-15 and months 16-24 (after the IPO date) respectively.

iii) Both demand and piggyback registration rights for the registration of any SPAC Class-A shares purchased with the Warrants in the Units.

c) The Warrant/Units Agreement will include a “*Merger-Date Adjustment Clause*” that grants the Target-Company shareholders a greater percentage of the equity of the combined post-De-SPAC entity, based on the number/percentage of redemptions at De-SPAC (ie. within one day after the De-SPAC Date or the Redemption Date).

d) The SPAC’s Units’ stock and Warrants will start trading separately on the earlier to occur of the De-SPAC acquisition date or 390 days after the SPAC’s IPO, or the date that the holder exercises the Warrant.

2) by agreement and for each SPAC “Unit” sold, the \$X.Y will be paid into a custodian Trust (pending acquisitions), from which \$0.Y/Unit will be applied towards paying the SPAC-Sponsor’s pre-agreed pre-IPO startup costs (administrative costs, advisor fees, legal/accounting, filing fees, travel/lodging expenses, insurance, reimbursements; etc.).

4) The SPAC’s custodian Trust (that will hold investors’ cash) will pay a monthly fixed administrative fee (eg. \$10,000-\$25,000) to the SPAC-Sponsor, beginning on the IPO date and until the SPAC ceases to exist (for office space, utilities, secretarial support and administrative services).

5) \$X is usually an amount in the \$5-\$50 range. \$0.Y is usually an amount in the \$0.05-\$0.60 range.

6) There WON’T BE any special shareholder voting for De-SPAC. The SPAC-Sponsor and the SPAC’s Board of directors makes all decisions for the SPAC’s operations. However, the SPAC IPO shareholders as a group can be allocated at least 30%-40% of the SPAC’s board seats (and approval of a merger/acquisition will require a super-majority of board-member votes), so that if they don’t like a proposed acquisition, they can vote within the board to reject the acquisition. The costs and uncertainty of having so many different SPAC-shareholders analyze the same De-SPAC merger (and other mergers/acquisitions) is unjustifiable, and merely increases actual and potential market-volatility since such analysis partly relies on relative-value analysis.

7) There WON’T BE any redemption-rights for the SPAC’s shares, except at dissolution/liquidation Date, when the SPAC-Shareholder mandatorily redeems the Class-A shares and the Warrant expires. The Redemption-Price for each fractional share in a Unit shall be between: 1) the Unit Stock Price plus any accrued interest on that amount; and 2) the pro-rata share of the Trust’s assets (including accrued interest) on the dissolution-date.

v) None of the Warrants issued as part of SPAC++[®]™ can be classified as liabilities under US GAAP or IASB’s IFRS, and if there is any future change in accounting regulations that compels such classification, such Warrants shall be automatically restructured by the SPAC (or De-SPAC entity) to eliminate the specific features that make them liabilities.

- vi) *Reducing Conflicts-Of-Interest* – 1) The SPAC’s Independent Board-members won’t be compensated with shares (they get either zero compensation or some fixed cash compensation); 2) each De-SPAC merger proposal will be approved by a Special Committee that consists of Independent Directors of the SPAC and third-party independent professionals; 3) the SPAC will obtain an independent Fairness Opinion for each DeSPAC merger/acquisition proposal; 4) the SPAC will document all Due-Diligence processes used in evaluating De-SPAC targets.
 - vii) The SPAC will acquire only companies that individually generate revenues (usually the equivalent of at least US\$1-US\$2 million of annual gross revenues). That will avoid the current negative trend wherein SPACs have been acquiring development stage companies that don’t generate any revenues, are over-valued and in some instances, perpetrate or have perpetrated earnings management.
 - viii) The fair market value of any target-company in the “Initial Acquisition” shall be at least five percent (5%) of the SPAC’s Trust assets as of the acquisition-date.
- **Implementation of ESG/UN-SDG measures and efficient Employee-Incentives for each acquired company (Growth).** The SPACs’ approach to Sustainability and ESG is multifaceted and includes but isn’t limited to the following:
 - i) Purchasing or developing (in-house) energy-efficiency software and software overlays (for achieving energy-use reduction and waste management) that can be applied in acquired companies.
 - ii) Making sure that the SPAC-Sponsor has sufficient post-acquisition voting-control to implement ESG, UN-SDG and sustainability measures at companies acquired by the SPAC.
 - iii) Building sustainability, UN-SDGs and ESG into the “Policies & Procedures”, management reporting systems, Internal-Controls, ERP systems and Information Systems of acquired companies.
 - iv) Implementing ESG-driven, UN-SDG and Sustainability-driven Employee-Incentives to compel employees (of acquired companies) to work towards such goals.
 - v) Improving employee pension/retirement systems to insulate them from crisis, inflation, currency-risks and market-downturns.
 - vi) Increasing environmental-regulations compliance by, and reducing the environmental liabilities of acquired companies.
 - **Two target segments:** 1) target-companies for which the primary objective is value-add/growth or restructuring; and 2) target-companies for which the primary objective is exit/liquidity.
 - **Cost savings and effective pricing (Growth)** – the SPACs’ objectives include post-acquisition rationalization of operations, cost-savings, and more efficient pricing.
 - **Corporate Control (Growth)** – the SPAC Sponsor will get fifty percent of the SPAC’s total voting rights (the SPAC will have two classes of Common Stock). That enables the SPAC Sponsor to execute additional acquisitions to expand the SPAC. That is in contrast to many SPACs who intend to be, or are just vehicles for only one acquisition (effectively, a single-company IPO or a reverse-merger listing).
 - **Emphasis on low-cash acquisitions and under-valued companies (Value)** – such as cash-plus-Earnouts, cash-and-stock, stock-for-stock and cash-and-debt.

5.3. The SPAC+++^{®TM}.

The SPAC+++^{®TM} Models 1 & 2 SPACs are different from other SPACs and Acquisition-SPVs in the following ways:

- **SPAC Structure:**
 - i) The SPAC will have two classes of Common Stock which are Class-A (regular economic and voting shares) and Class-B (non-economic voting-only shares that control fifty percent of the SPAC’s total voting-rights). All class-B shares shall be issued to the SPAC-Sponsor (the SPAC-Sponsor will have at least a non-diluted fifty percent of the SPAC’s total voting-rights). Class-B Shares don’t have any liquidation claims, and are subordinated to Class-A shares. In liquidation/wind-up of the SPAC, the SPAC-Sponsor will waive its redemption rights for all of its Class-A Shares and its Warrants (the SPAC-Sponsor loses the stock and Warrant components of the sponsor promote upon dissolution of the SPAC). The SPAC-Sponsor’s Class-A shares are automatically deemed to vote in favor of any acquisition proposed by the SPAC.

- ii)** In Model-1, instead of the traditional SPAC-Sponsor’s promote (15%-20% of the SPAC’s equity), the SPAC -Sponsor’s promote will consist of the following:
- 1) 8%-14% (eight percent to fourteen percent) of the SPAC’s Units, plus all of the SPAC’s Class-B stock;
 - 2) a share (1.5%-5%) of the pro-rata quarterly revenues of any acquired company, and
 - 3) at-the-money 7-year Stock Net-warrants for the purchase of 8%-15% (eight-percent to fifteen percent) of the equivalent of the equity of each acquired company (with a tax-basis of \$0.01 and demand/piggyback registration-rights, and issued by the SPAC and for purchase of the SPAC’s Class-A shares). “At-the-money” refers to the SPAC’s then-current average stock price for the 20-30 trading days before the date of each Acquisition Agreement.
 - 4) *Demand and piggyback registration rights* for the shares obtained through exercise of the Warrants.
- iii)** In Model-2, instead of the traditional SPAC-Sponsor’s promote (15%-20% of the SPAC’s equity), the SPAC -Sponsor’s promote will consist of the following:
- 1) 8%-14% (eight percent to fourteen percent) of the SPAC’s Units, plus all of the SPAC’s Class-B stock;
 - 2) a share (1.5%-5%) of the pro-rata quarterly revenues of any acquired company, and
 - 3) at-the-money 7-year Stock Net-warrants for the purchase of 8%-15% (eight-percent to fifteen percent) of the equivalent of the equity of each acquired company (with a tax-basis of \$0.01 and demand/piggyback registration-rights, and issued by the SPAC and for purchase of the SPAC’s Class-A shares). “At-the-money” refers to the SPAC’s then-current average stock price for the 20-30 trading days before the date of each Acquisition Agreement.
 - 4) *Demand and piggyback registration rights* for the shares obtained through exercise of the Warrants.
 - 5) A *Waiver-Pledge Payment* – wherein the SPAC-Sponsor agrees to mandatorily waive its right to redemption of its SPAC Class-A shares upon dissolution of the SPAC, and in exchange, at dissolution of the SPAC, the SPAC Trust will pay a one-time fee of 0.50%-2% of the Trust’s assets (as of the dissolution date) to the SPAC Sponsor.
- iv)** The SPAC will have only eighteen months to complete the first acquisition, and if that isn’t achieved then only the SPAC’s Class-A shareholders will vote to either: 1) continue the SPAC for an additional eighteen months, or 2) have the SPAC return investors’ capital (in the custodian Trust) to them immediately.
- v)** Instead of the traditional \$10 per-share/per-unit price, the SPAC will offer “Units” which will be priced at \$X.Y per Unit, and:
- 1) each Unit will consist of:
 - a) one share of the SPAC’s Series-A Voting Convertible Redeemable Cumulative Preferred Stock (“CVPS”) which shall have:
 - i) *Dividend Rate*: a quarterly dividend rate equal to between 0% and a fraction (sixty percent) of the “effective-interest” earned by the SPAC Trust’s assets.
 - ii) *Conversion-Right*: The Conversion-Price is set at-the-money (Base-Price) as of the IPO date but with subsequent Ratchet-up provisions; and the CVPS shall be convertible in whole or part into the SPAC’s Class-A shares until the earliest to occur of the following: 1) the conversion of the entire CVPS share; or 2) the fifth Anniversary of the SPAC’s IPO date, or 3) the dissolution-date of the SPAC.
 - iii) *Votes*: Each CVPS share shall have the same votes as one Class-A share of the SPAC’s common stock.
 - iv) *Term*: The term of the CVPS expires on the dissolution-date of the SPAC, if any.
 - v) *Redemption*: The SPAC will have the right to redeem each CVPS at Redemption Prices that have a Redemption Premium of at least 10%

beginning from the First Anniversary of the SPAC's De-SPAC date. All of the CVPS except those owned by the SPAC-Sponsor will be mandatorily redeemed at dissolution of the SPAC.

vi) *Conversion-Price*: The Conversion-Price will be initially set at the Base-Price, and will be increased by a 5%-10% premium at De-SPAC (the De-SPAC Conversion-Price) and will be "ratcheted-up" (increased) only if the SPAC's stock-price trades above pre-specified benchmark prices for a pre-specified number of days (usually 20-30 trading days) during the first five years after the SPAC's IPO, and or if there is a De-SPAC under specific conditions, and or if the redemption-rate exceeds a pre-specified benchmark, and or if other conditions occur during the first three years after the SPAC's IPO. For example if the at-the-money Conversion-Price is \$X.Y, it will be increased to (\$X.Y*115%), (\$X.Y*125%) and (\$X.Y*135%), if the SPAC's stock price remains above (\$X.Y*125%), (\$X.Y*135%) and (\$X.Y*145%), for 20 (twenty) contiguous trading days during months 1-7, months 8-15 and months 16-24 (after the IPO date) respectively.

vi) Both demand and piggyback registration rights for registration of any SPAC Class-A shares purchased by conversion of the CVPS.

vii) *Merger-Date Adjustment*: The CVPS Agreement will include a "Merger-Date Adjustment Clause" that grants the Target-Company shareholders a greater percentage of the equity of the combined post-De-SPAC entity, based on the number/percentage of redemptions at De-SPAC (ie. within one day after the De-SPAC Date or the Redemption Date).

2) by agreement and for each SPAC "Unit" sold, the \$X.Y will be paid into a custodian Trust (pending acquisitions), from which \$0.Y/Unit will be applied towards the SPAC-Sponsor's pre-agreed pre-IPO startup costs (administrative costs, advisor fees, legal/accounting, filing fees, travel/lodging expenses, insurance, reimbursements; etc.).

3) The SPAC's Units' stock and Warrants will start trading separately around 45-90 days after its IPO.

4) The SPAC's custodian Trust (that will hold investors' cash) will pay a monthly fixed administrative fee (eg. \$10,000-\$25,000) to the SPAC-Sponsor, beginning on the IPO date and until the SPAC ceases to exist (for office space, utilities, secretarial support and administrative services).

5) \$X is usually an amount in the \$5-\$50 range. \$0.Y is usually an amount in the \$0.05-\$0.60 range.

6) There WON'T BE any special shareholder voting for De-SPAC. The SPAC-Sponsor and the SPAC's Board of directors makes all decisions for the SPAC's operations. However, the SPAC IPO shareholders as a group can be allocated at least 35%-40% of the SPAC's board seats (and approval of a merger/acquisition will require a super-majority of board-member votes), so that if they don't like a proposed acquisition, they can vote within the board to reject the acquisition (ie. the largest SPAC shareholders as of the IPO date shall be allocated board seats). The costs and uncertainty of having so many different SPAC shareholders analyze the De-SPAC merger (and other mergers/acquisitions) is unjustifiable, and merely increases actual and potential market-volatility since such analysis partly relies on relative-value analysis.

7) There WON'T BE any redemption-rights for the SPAC's shares, except at dissolution/liquidation Date, when the SPAC-Shareholder mandatorily redeems the CVPS shares. The Redemption-Price for each fractional share in a Unit cannot exceed 30% of the IPO value of the Unit.

vi) None of the Warrants issued as part of SPAC++[®]™ can be classified as liabilities under US GAAP or IASB's IFRS, and if there is any future change in accounting regulations that

compels such classification, such Warrants shall be automatically restructured by the SPAC (or De-SPAC entity) to eliminate the specific features that make them liabilities.

vii) Reducing Conflicts-Of-Interest – 1) The SPAC’s Independent directors won’t be compensated with shares (they get either zero compensation or some cash compensation); 2) each De-SPAC merger proposal will be approved by a Special Committee that consists of Independent Directors of the SPAC and third-party independent professionals; 3) the SPAC will obtain a Fairness Opinion for each DeSPAC merger/acquisition proposal; 4) the SPAC will document all Due-Diligence processes used in evaluating De-SPAC targets.

viii) The SPAC will acquire only companies that individually generate revenues (usually the equivalent of at least US\$1 million of annual gross revenues). That will avoid the current negative trend wherein SPACs have been acquiring development stage companies that don’t generate any revenues, are over-valued and in some instances, perpetrate or have perpetrated earnings management.

ix) The fair market value of any target-company in the “Initial Acquisition” shall be at least five percent (5%) of the SPAC’s Trust assets as of the acquisition-date.

- **Implementation of ESG/UN-SDG measures and efficient Employee-Incentives for each acquired company (Growth).** The SPACs’ approach to Sustainability and ESG is multifaceted and includes but isn’t limited to the following:
 - i) Purchasing or developing (in-house) energy-efficiency software and software overlays (for achieving energy-use reduction and waste management) that can be applied in acquired companies.
 - ii) Making sure that the SPAC-Sponsor has sufficient post-acquisition voting-control to implement ESG, UN-SDG and sustainability measures at companies acquired by the SPAC.
 - iii) Building sustainability, UN-SDGs and ESG into the “Policies & Procedures”, management reporting systems, Internal-Controls, ERP systems and Information Systems of acquired companies.
 - iv) Implementing ESG-driven, UN-SDG and Sustainability-driven Employee-Incentives to compel employees (of acquired companies) to work towards such goals.
 - v) Improving employee pension/retirement systems to insulate them from crisis, inflation, currency-risks and market-downturns.
 - vi) Increasing environmental-regulations compliance by, and reducing the environmental liabilities of acquired companies.
- **Two target segments:** 1) target-companies for which the primary objective is value-add/growth or restructuring; and 2) target-companies for which the primary objective is exit/liquidity.
- **Cost savings and effective pricing (Growth)** – the SPACs’ objectives include post-acquisition rationalization of operations, cost-savings, and more efficient pricing.
- **Corporate Control (Growth)** – the SPAC Sponsor will get fifty percent of the SPAC’s total voting rights (the SPAC will have two classes of Common Stock). That enables the SPAC Sponsor to execute additional acquisitions to expand the SPAC. That is in contrast to many SPACs who intend to be, or are just vehicles for only one acquisition (effectively, a single-company IPO or a reverse-merger listing).
- **Emphasis on low-cash acquisitions and under-valued companies (Value)** – such as cash-plus-Earnouts, cash-and-stock, stock-for-stock and cash-and-debt.

5.4. The Factors.

The following are the various specific advantages (“Factors”) of the **SPAC+[®]** models that resolve most of the problems analyzed herein:

i) **Factor-1:** By having SPAC IPO-shareholders provide all or a portion of the SPAC-Sponsor’s risk-capital, there is less pressure on the SPAC-Sponsor to do inappropriate acquisitions. That is, a small portion of the SPAC IPO price is used to pay the SPAC-Sponsor’s expenses which reduces the need to raise sponsor/risk capital separately and thus better aligns the interests of the SPAC-Sponsor, SPAC shareholders and the target company, and reduces dilution of target-company shareholders, and distortions caused by redemptions and arbitrage/trading. The extra amount paid by the Shareholders is compensated for by the undervalued Warrants in the SPAC’s Units.

ii) **Factor-2:** creation of Class-B shares that grant the SPAC-Sponsor fifty-percent of total SPAC votes – which reduces or eliminates problems associated with redemption (the SPAC-Sponsor can use its voting power to approve an acquisition and knowledge of that fact can discourage dissenting SPAC-shareholders), corporate-control and implementation of ESG and expansion/growth measures.

iii) **Factor-3:** the structure of the SPAC-Sponsor’s promote: 1) better aligns the interests of shareholders and the SPAC-Sponsor; 2) can reduce Speculation and arbitrage, and gives the SPAC-Sponsor low or no incentives to issue and make pre-acquisition decisions and announcements that increase volatility and or harmful Speculation and Arbitrage. The structure of the SPAC-Sponsor’s promote provides the SPAC-Sponsor with greater-than-normal incentives to conduct thorough pre-acquisition due diligence and to select appropriate target-companies. In the SPAC+^{®TM} and SPAC++^{®TM} Sponsor-promote structure, the SPAC-Sponsor gets only 8%-13% of the SPAC’s Units (instead of the traditional 15%-20%), and the rest of the promote consists of a percentage-of-revenues and performance-based contingent Net-warrants that are issued by the SPAC only upon the SPAC’s acquisition of a company - all of which can substantially reduce dilution of target-company shareholders, and distortions caused by redemptions and arbitrage/trading.

iv) **Factor-4:** In SPAC+^{®TM} and SPAC++^{®TM} models, changing the definition of, and allocation of rights between Class-A and Class-B shares and creation of new types of Class-A and Class-B shares wherein most (>98%) of the SPAC-Sponsor’s economic voting shares are the same type of shares owned by SPAC-investors. That better aligns the interests of shareholders and the SPAC-Sponsor. Similarly, in SPAC+++^{®TM} models, the SPAC-Sponsor’s and the SPAC IPO shareholders’ holdings consist of mostly one type of voting shares (the CVPS).

v) **Factor-5:** In SPAC+^{®TM} models, any SPAC-shareholder that votes against any Initial Acquisition (proposed by the SPAC) has the option to either remain a shareholder or must simultaneously redeem both his/her SPAC shares and Warrants (in cash or with the SPAC’s Notes/bonds at his/her option); and any SPAC-shareholder that votes in favor of any Acquisition cannot redeem his/her SPAC shares and Warrants (until the next redemption-voting) (thus all of a SPAC shareholder’s voting decisions apply to both their shares and Warrants, which reduces speculation and Arbitrage). In SPAC++^{®TM} models, there is no shareholder voting for the De-SPAC acquisition, and shareholders don’t have any redemption rights until dissolution/liquidation of the SPAC. In SPAC+++^{®TM} models, there is shareholder voting for the De-SPAC acquisition, but shareholders don’t have any redemption rights until dissolution/liquidation of the SPAC.

vi) **Factor-6:** In SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models:

- 1) the Stock Warrant in each SPAC “Unit” will separate from the stock and the CVPS in each Unit will be exercisable only upon occurrence of specific events (to reduce harmful Speculation, Arbitrage, mis-use of the redemption-rights).
- 2) the Warrant’s exercise-price will be “ratcheted-up” in order to reduce harmful Speculation, Arbitrage, mis-use of the redemption-rights; and dilution of target-companys’ shareholders (which sometimes causes failed De-SPACs or causes target-companies to impose vesting requirements on the SPAC-Sponsor).
- 3) the SPAC’s IPO is less tied to, and isn’t contingent on the De-SPAC merger/acquisition, and in turn, the DE-SPAC merger/acquisition is less contingent on the outcome of the IPO.

The Warrants in the SPAC’s Units will initially have an exercise-price that is at-the-money (equal to the IPO price on the IPO date), but the exercise-price will be ratcheted upwards if the SPAC’s stock-price remains above a pre-specified amount for a pre-specific number of days (eg. 15-20 trading days), and the ratchet-provision will continue until at least the third Anniversary of the IPO date. In SPAC+++^{®TM} models, the Conversion-Price in the CVPS will be “*ratcheted-up*” in order to reduce harmful Speculation, Arbitrage, mis-use of the redemption-rights; etc..

vii) **Factor-7:** the structure of the SPAC-Sponsor’s promote can reduce Speculation, and gives the SPAC-Sponsor low or no incentives to issue and make pre-acquisition decisions and announcements that increase volatility and or harmful Speculation and Arbitrage.

viii) **Factor-8:** the SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} approaches to Sustainability and ESG is organic, multi-faceted and continues after De-SPAC and is explained in this paper.

ix) **Factor-9:** SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models don’t offer or use any incentives or securities that are similar to the *Tontine Warrant* structure or the *PS-Warrants*.

- x) **Factor-10:** SPAC+^{®TM} and SPAC++^{®TM} models, the Warrants in the “Units” that are issued to the SPAC’s IPO investors: 1) will trade together with the associated stock until the occurrence of specific events (which reduces the volatility-value, speculation-value and time-value of such Warrants); 2) will be redeemed together with the associated stock in any redemption, if redemption is permitted; 3) won’t be “Net-Warrants” (ie. the holder has to pay an exercise price with cash or the SPAC’s fractional shares); 4) will have an Upwards-Ratcheting clause that adjusts the Warrants’ Exercise-Price upwards based on the SPAC’s post-IPO and post-merger stock prices. In the SPAC+^{®TM} and SPAC++^{®TM} models, the SPAC’s Units’ stock and Warrants will start trading separately on the earlier to occur of: 1) the De-SPAC acquisition date, or 2) 390 days after the SPAC’s IPO, or 3) the date that the holder exercises the Warrant. These elements can greatly reduce harmful arbitrage/speculation and un-justified redemptions (that are not based on the merits of the proposed De-SPAC acquisitions) by SPAC IPO shareholders and others, and the dilution of the target-company’s shareholders’ holdings.
- xi) **Factor-11:** SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} SPACs will acquire only companies that generate revenues (typically, at least US\$1 million of annual gross revenues) and have earning-power, and will not use forecasted financial statements to market their IPO or De-SPAC Mergers/Acquisitions.
- xii) **Factor-12:** SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models, the SPAC-Sponsor automatically waives its redemption-rights for shares, Warrants and CVPS if the SPAC is dissolved/liquidated.
- xiii) **Factor-13:** In the SPAC+^{®TM} and SPAC++^{®TM} models, the prices of the Warrants used mostly depend on the value of the equity of the issuer (the SPAC); and none of the Warrants issued can be classified as liabilities under US GAAP or IASB’s IFRS or US SEC accounting regulations, and if there is any future change in accounting regulations that compels such classification, such Warrants shall be automatically restructured by the SPAC to eliminate the specific features that make them liabilities.
- xiv) **Factor-14:** In the SPAC++^{®TM} models, if the SPAC IPO shareholders don’t like a proposed acquisition/merger, they won’t exercise their Warrants. In the SPAC+++^{®TM} models, if the SPAC IPO shareholders don’t like a proposed acquisition/merger, they won’t convert their CVPS into SPAC shares and can vote against the merger (but without redemption of their CVPS). In the SPAC+^{®TM} models, if the SPAC IPO shareholders don’t like a proposed acquisition/merger, they can vote to reject the merger/acquisition but they must simultaneously/mandatorily redeem both their SPAC shares and associated Warrants.
- xv) **Factor-15:** In the SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models, there is sufficient variation of terms in order to reduce standardization.
- xvi) **Factor-16:** In the SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models, the SPAC IPO shareholders as a group can be allocated at least 40%-50% of the SPAC’s board seats (and approval of a merger/acquisition will require a super-majority of board-member votes), so that if they don’t like a proposed acquisition, they can vote only within the board-of-directors to reject the acquisition. The costs and uncertainty of having so many different SPAC shareholders analyze the De-SPAC merger (and other mergers/acquisitions) is unjustifiable, and merely increases actual and potential market-volatility since such analysis partly relies on relative-value analysis.
- xvii) **Factor-17:** Reducing Conflicts-Of-Interest – 1) The SPAC’s Independent directors won’t be compensated with shares (they get either zero compensation or some cash compensation); 2) each De-SPAC merger proposal will be approved by a Special Committee of Independent Directors of the SPAC; 3) the SPAC will obtain Fairness Opinion for each DeSPAC merger/acquisition proposal; 4) the SPAC will document all Due-Diligence processes used in evaluating De-SPAC targets.
- xviii) **Factor-18:** In the SPAC+^{®TM} models, the SPAC IPO shareholders have strong incentives not to redeem their shares at De-SPAC because: 1) they will be represented on the SPAC’s board, 2) the DeSPAC merger will be approved by a committee of independent board-members and outsiders; 3) the stock and Warrant in the Units will not trade separately until exercise or one day after the De-SPAC Date and if the SPAC shareholder votes to redeem, he/she must simultaneously redeem both the stock and the whole/fractional Warrant in any Unit, and so even if stock/Unit is trading at a discount to NAV before DeSPAC, the arbitrageur will lose the Warrant (and its time-value, volatility-value and Expectations-Value) if he/she sells or redeems the Unit before or on the De-SPAC date. In the SPAC SPAC++^{®TM} models, the SPAC IPO shareholders have strong incentives not to redeem their shares at De-SPAC because: 1) they will be represented on the SPAC’s board, 2) the DeSPAC merger will be approved by a committee of independent board-members and outsiders; 3) the stock and Warrant in the

Units will not trade separately until exercise or one day after the De-SPAC Date and so even if the Unit (or the implied-value of the stock) is trading at a discount to NAV before DeSPAC, the arbitrageur will lose the Warrant (and its time-value, volatility-value and Expectations-Value) if he/she sells the Unit before the De-SPAC date; 4) the SPAC's IPO shareholders cannot vote to redeem their shares at DeSPAC, but if they don't like the proposed merge/acquisition, they don't have to exercise their Warrants. In the SPAC+++[®] models, the SPAC IPO shareholders have strong incentives not to redeem their shares at De-SPAC because: 1) they will be represented on the SPAC's board, 2) the DeSPAC merger will be approved by a committee of independent board-members and outsiders; 3) the SPAC's IPO shareholders own only CVPS (and not the SPAC's shares of common stock) and they cannot vote to redeem their CVPS at DeSPAC, but if they don't like the proposed merge/acquisition, they don't have to convert their CVPS onto SPAC shares, and they can ask their representatives in the SPAC's board to request for redemption of all or part (1%-100%) of their CVPS shares; 4) it's unlikely that the SPAC's CVPS will trade at discounts to NAV before De-SPAC because the CVPS contains an implicit Warrant, and the CVPS may have accrued dividends, the CVPS will have Liquidation-Preference over shares of the SPAC's common stock that are issued to target-company shareholders

These "Factors" will be mentioned in instances below where they resolve specific problems.

5.5. Cost-Savings And benefits That Can Be Gained From Using The SPAC+[®], SPAC++[®] And SPAC+++[®] Models.

The author estimates that: i) for the average US or European SPAC, each of the **SPAC+[®]**, **SPAC++[®]** and **SPAC+++[®]** models can save at least \$1.20 million in costs during the SPAC's first three years; and ii) for the average US or European SPAC-Sponsor, each of the **SPAC+[®]**, **SPAC++[®]** and **SPAC+++[®]** models can save at least \$1 million in costs per SPAC during the SPAC's first three years. The cost-savings arise from several sources including but not limited to the following:

i) Reduced costs of Directors & Officers (D&O)¹⁰ insurance policy, M&A insurance policies and Business-Interruption (non-property) insurance policies for the SPAC-Sponsor and the SPAC. In the US, and as of September 2021, only the D&O insurance premium costs were \$1.20-\$3.20 million (for a SPAC whose IPO size is in the \$150-\$300 million range) per SPAC and per SPAC-Sponsor per policy-year (an increase of more than 400% from 2018 to 2021). As of August/September 2021, some US insurers were quoting (and publicly announcing) SPAC D&O policy-premium prices of \$100,000-\$200,000 for every \$1 million of coverage (the typical US SPAC needs \$10-\$30 million of D&O policy coverage). The two-year D&O premium is usually payable all at once before the SPAC's IPO. In addition, most insurance companies typically consider the wrong causal factors in their underwriting analysis – most don't consider the SPAC-structure, the incentives of various parties (SPAC-Sponsor, SPAC shareholders, investment banks, lawyers and the target-companies) and the actual causation-agents of legal-liability, inadequate/improper disclosures, fraud and bribery. Rather, the insurance underwriters focus on the work experience of the SPAC-sponsors, the size of the SPAC, the SPAC's

¹⁰ See: "United States: How Much Is That D&O Premium? Eye-Popping D&O Price Increases Confound SPAC Sponsors". 22 October 2020. by Yelena Dunaevsky. <https://www.mondaq.com/unitedstates/insurance-laws-and-products/996622/how-much-is-that-do-premium-eye-popping-do-price-increases-confound-spac-sponsors>. This article stated in part: ".....All of these factors do not only mean that it now takes insurers a lot longer to provide quotes, but also that it has driven SPAC D&O pricing to levels that are 100% to 200% higher than they were just a few weeks ago. As a result, the cost of a \$20 million D&O policy has jumped from mid-\$400,000s to between \$900,000 and \$1,100,000 just in the last month. Not surprisingly, this situation is creating serious tension in the market, with SPAC sponsors buckling under the pressure of hundreds of thousands of dollars in unplanned additional expenditures. Very little of this, however, seems to be reflected or adequately disclosed in the estimated costs listed in the SPAC S-1 registration statements. Barring a few larger SPACs that filed in the last week or so, the costs of D&O coverage in a typical S-1 are estimated at around \$100,000 to \$200,000. These numbers may have been actionable several years ago but are wishful thinking in today's D&O market. They are also presented on an annualized basis, which obscures the fact that they need to be doubled for a typical two-year D&O policy whose entire premium is payable at the time of the IPO, a fact that does not make it into the disclosure.....".

- domicile and its intended geographic coverage, etc. (see the advertised underwriting criteria of D&O policy insurers).
- ii) Reduction or elimination of both the SPAC's and the SPAC-Sponsor's costs of shareholder voting for De-SPAC mergers and or redemption of shares.
- iii) Reduction or elimination of post-DeSPAC vesting requirements for the SPAC-Sponsor's promote.
- iv) Reduced or eliminated costs of litigation by the SPAC and the SPAC-Sponsor.
- vii) Reduced or eliminated costs of detaching the SPAC's Warrants from the stock in the Units before De-SPAC.
- v) Reduction or elimination of investment losses incurred by the SPAC-Sponsor and the SPAC's shareholders because of speculation, arbitrage and redemption of stock (at De-SPAC) by third-parties.
- vi) Tax savings.
- vii) Reduced advisor fees (tax, legal and accounting advisors).

6. Most Researchers Wrongly Focus On SPACs' Returns (Which Don't Provide Sufficient Insights) And Omit Analysis Of The Legal/Structural And Financial Instability Risks Inherent In SPACs.

Unfortunately, most academic and practitioner researchers have focused on SPACs' returns as the foundation of their analysis of SPACs, but don't analyze the legal/structural deficiencies of SPACs. That approach is wrong because of the following:

- i) As noted in Nwogugu (2017a), there are biases in returns which are not addressed by existing return-calculation methods.
- ii) This document discusses some of the Financial Instability risks and Systemic Risks inherent in SPACs.
- iii) While US and European SPACs are largely standardized, there are "*Minor Differences*" among SPACs that have nonlinear (proportionately much-larger or much-smaller) effects on SPACs returns (for both stocks and Warrants), such that comparability of SPACs is reduced.
- iv) There are also "*Major Differences*" among SPACs that have or can have nonlinear (proportionately much larger or much-smaller) effects on SPACs returns (for both stocks and Warrants), such that comparability of SPACs is reduced. These differences include: 1) SPACs that use "Net-Warrants and those that don't; 2) SPACs that redeem their shares in cash or notes (debt), and those that redeem only in cash. See Winston & Strawn (Oct. 2021) (listed in the footnotes herein) which explains some of the differences.
- v) The significant legal (and thus structural) deficiencies inherent in SPACs (which are discussed herein) are only just beginning to be discovered, debated and litigated. As of September 2021, all calculations of SPACs' returns didn't consider these deficiencies.
- vi) As of September 2021, the researchers' calculations of SPACs' returns (which are based on SPACs' stock-prices) didn't include the relevant costs incurred by the SPAC-Sponsor, SPAC IPO shareholders and target-company's shareholders, all of which reduce "*Effective SPAC returns*". Such costs include but are not limited to litigation costs, monitoring/administrative costs, due-diligence costs, advisors' (accounting/tax, legal and financial advisors) fees, stock processing costs (for separation of Units; for redemption; and for voting), insurance costs and negotiation costs.
- vii) Different academic and practitioner researchers have calculated very different returns for various phases of the SPAC lifecycle and for overall SPAC performance (for the SPACs' Stocks and Warrants). For example, compare the different SPAC returns (for SPACs' stocks and Warrants) derived in each of the following articles: Harroch, et. al. (November 2020), CB Insights (July 14, 2021), Bazerman & Patel (July/August 2021), Klausner, Ohlrogge & Ruan (2021), Howe & O'Brien (2012), Gahng, Ritter & Zhang (July 2021), and Bai, Ma & Zheng (2021).

Some of the more relevant ways to evaluate SPACs are to consider the following: i) legal deficiencies of SPACs; ii) litigation risk; iii) structural problems inherent in SPAC (SPACs' terms, life-cycle processes and organizational structures); iv) economic factors – such as all-in transaction costs, Opportunity-costs (of investing in SPACs), Deadweight Losses (in demand/supply of stock-prices, enforcement, capital and insurance); v) Regret-Minimization and WTAL; vi) Financial Instability Risk and Systemic Risk effects of SPACs.

7. The "SPAC Problems".

typically loses voting-control after the SPAC's Initial Acquisition, and the SPAC-Sponsor gets its 15%-20% promote regardless of the performance of the acquired company and whether its suitable for combination with "add-on" companies).

6) As of 2021 and in the typical SPAC, there are very few measures to prevent SPAC-Sponsors from making acquisitions that are not in shareholders' interests, and the shareholder-approval requirement (for each proposed acquisition by a listed SPAC) has significant "Information Content" and simply announces that deficiency but doesn't provide needed investor-protection because: a) where the SPAC-Sponsor promote is 15%-20%, typically the SPAC-sponsor only needs to get the votes of only 36%-47% of SPAC-shareholders, and b) institutional investors account for more than 85% of SPAC investors (which makes it much easier for SPAC-Sponsors to convince block-holders and to get investor votes), c) some SPAC investors may not be sufficiently skilled in evaluating M&A transactions and post-acquisition integration and expansion efforts.

7) The US SEC's April 2021 accounting interpretation that treats SPACs' Warrants as liabilities causes a divergence of interests of SPAC-Sponsors and SPAC-shareholders. The Warrants benefit the SPAC-Sponsor (in the capital-raising process, and warrants allocated to the SPAC-Sponsor), but reduces the SPAC's and the SPAC-shareholder's equity-value.

8) The Shareholder-approval requirement creates significant incentives for bribery (of block-holders), side-payments (to advisors of institutional investors), unnecessary proxy-contests, etc..

9) In most US SPACs, a shareholder can vote to approve the SPAC's Initial Acquisition and also simultaneously vote to redeem his/her shares. That creates a significant divergence of interests of the SPAC-Sponsor and the SPAC Shareholders.

10) Under US SEC rules, use of financial projections aren't allowed in IPOs; but they are wrongly used in SPACs' DeSPAC proxy-statements and that: 1) reduces the focus on actual revenues and earning power of target-companies, while emphasizing hype and future/forecasted revenues and operating performance; 2) provides incentives for the SPAC-Sponsor to perpetrate earnings management and fraudulent disclosures, and to execute wrong/inappropriate mergers/acquisitions in order to realize its SPAC promote; 3) is illegal and isn't covered by the "Merger Safe-Harbor".

11) Many SPACs' shares trade at a discount to their NAVs, and thus many arbitrageurs/speculators: i) buy the Units (with or without margin) around the IPO-date, hold the Warrants and then redeem the shares at the NAV at DeSPAC, or ii) buy the SPAC shares (with or without margin) at prices below the NAV and then redeem the shares at NAV at DeSPAC. Some ETFs have been created in the US solely to focus on these strategies, which essentially treat the SPAC as a Disguised-Loan. Thus, some of the redemptions are not related to the merits of the proposed De-SPAC mergers.

12) For SPAC shareholders, its more beneficial for the SPAC to do Industry Rollups, than for the SPAC to do only one acquisition (which is the typical case). However, the typical SPAC promote gives the SPAC-Sponsor significant incentives to execute only the Initial Acquisition (after which the SPAC-Sponsor usually loses voting-control of the SPAC and cannot compel or arrange additional acquisitions, and cannot make use of its much-vaunted management skills). The existence and validity of the typical US SPAC-Sponsor's promote is entirely based on completion of the SPAC's Initial Acquisition. Between the 6th month and the 18th month after the SPAC's Initial Acquisition, the typical US and European SPAC-Sponsors don't hold significant senior executive management positions at the SPAC, and don't own substantial equity-stakes in the SPAC (they typically own less than seven-percent of the post-merger SPAC's equity on a fully-diluted basis). Thus, the much hyped "experience" of the SPAC-Sponsors (hyped in the roadshows and SEC filings) is usually not applied to the company/companies acquired by the SPAC, and thus can be deemed to be misleading. In order for the SPAC-Sponsor to critically and effectively apply management and M&A skills to the company/companies acquired by the SPAC, the SPAC-Sponsor has to retain post-acquisition voting-control of the SPAC. CB Insight (2021) noted that ".....SPACs recorded a median post-merger return of negative 65.3% (-65.3%) in the 12 months after a merger, according to Klausner and Ohlrogge. Overall, high redemption rates and share dilutions make investing in SPACs potentially risky for investors that aren't as familiar with SPAC incentives and structures.....".

The SPAC+[®]™, SPAC++[®]™ and SPAC+++[®]™ models reduce or eliminate such problems through **Factors 1, 2, 3, 4, 5, 6, 10, 14, 16, 17 & 18** (which are defined above).

7.2. Harmful Speculation And Algorithmic Arbitrage In Cyber-Physical Systems.

Traders/investors Speculate about, and arbitrage SPAC shares and associated Warrants and the negative effects of such trading is or can be amplified by the Shareholder-approval requirement and the 18-24 month time limit for executing the Initial Acquisition, both of which can increase harmful market-volatility. A significant portion of such Speculation and Arbitrage occurs in Cyber-Physical Systems (fintech systems, internet portals, trading systems, cellphones/laptops/desktops; etc.) and consists of Algorithmic (automated) Trading.

The SPAC+®™, SPAC++®™ and SPAC+++®™ models reduce or eliminate such harmful Speculation and Arbitrage through **Factors 2, 4, 6, 7, 10, 13, 14, 16 & 18** (defined above).

7.3. Nonlinearity And Regret: The Shareholder-Approval Requirement For Each Proposed Acquisition By A Listed SPAC Is Inefficient And Redundant.

That is because:

- 1) By investing in the SPAC (at IPO), the same shareholders have implicitly voted for the SPAC-Sponsor's judgement and experience in expansion/strategy and M&A (and since it takes most US SPACs 4.5-7.5 months from their IPO date to complete their Initial Acquisition, there isn't any need to repeat the voting process).
- 2) SPAC IPO shareholders as a group can be allocated at least 40%-50% of the SPAC's board seats, so that if they don't like a proposed acquisition, they can vote within the board to reject the acquisition. The costs and uncertainty of having so many different SPAC shareholders analyze the De-SPAC merger (and other mergers/acquisitions) is unjustifiable, and merely increases actual and potential market-volatility since such analysis partly relies on relative-value analysis.
- 2) In most US SPACs, a shareholder can vote to approve the SPAC's Initial Acquisition and also simultaneously vote to redeem his/her shares (disgruntled shareholder-groups can use the clause to harm Staying-Shareholders).
- 3) Such voting can introduce and or increases the risks of criminal misconduct such as manipulation, collusion/conspiracy, bribery and fraudulent/unnecessary proxy-contests (US SPACs have been sued in US courts for fraudulent/misleading proxy-statements).
- 4) Many SPAC shareholders may not have sufficient knowledge to evaluate mergers/acquisitions and the necessary post-acquisition integration, strategy and expansion issues.
- 5) Such voting can create disputes and personality conflicts between the SPAC-Sponsor and shareholder-groups.
- 6) Such voting increases the risks of violations of securities laws by a wider group of persons.
- 7) Several parties have filed lawsuits against SPACs for inadequate or false disclosures in proxy-statements.
- 8) The shareholder-approval requirement (for each proposed acquisition by a listed SPAC) combined with historically very high redemption-rates (by SPAC shareholders) exposes the SPAC-Sponsor to unnecessary *Reputational-Capital risk* and *Credibility risk* which in turn, reduces the SPAC's Opportunity-Set, and increases market-volatility and Financial Instability.

The SPAC+®™, SPAC++®™ and SPAC+++®™ models reduce or eliminate such problems through **Factors 2, 3 & 4** (defined above).

7.4. Nonlinearity, Systems And Regret: The Shareholder-Approval Requirement For Each Proposed Acquisition/Merger By A US Listed SPAC Makes The SPAC Look More Like A 1940-Act Company Or A Partnership Or A Secured Exchangeable-Loan.

- 1) A 1940-Act investment company¹³ – because:

¹³ See: White & Case (sept. 2021). *Over 60 of the Nation's Leading Law Firms Respond to Investment Company Act Lawsuits Targeting the SPAC Industry.* <https://www.whitecase.com/publications/alert/over-60-nations-leading-law-firms-respond-investment-company-act-lawsuits>.

See: "Special Purpose Acquisition Companies and the Investment Company Act of 1940". Posted by E. Ramey Layne, Michael C. Holmes, and Robert Ritchie, Vinson & Elkins LLP, on Friday, September 3, 2021. <https://corpgov.law.harvard.edu/2021/09/03/special-purpose-acquisition-companies-and-the-investment-company-act-of-1940/>

- a) the main business of the SPAC is acquiring companies and if each acquired company is less than 50% of the SPAC's equity-value and if the SPAC-shareholders repeatedly vote to approve/reject each proposed acquisition, then they may be deemed to be making investment decisions and the SPAC can be classified as an investment company.
- b) the main business of the SPAC is acquiring companies and if the SPAC repeatedly acquires less than 50% (fifty percent) of the equity-value of target-companies, and if the SPAC-shareholders repeatedly vote to approve/reject each such proposed acquisition, then the SPAC may be deemed to be an investment company.
- c) the shareholder-voting can be re-characterized as a proposal to “.....engage in the business of investing, reinvesting, owning, holding or trading in securities,.....” and or a proposal to “.....acquire “investment securities having a value exceeding 40 percent of the value of its total assets (exclusive of government securities and cash items) on an un-consolidated basis.....”.

See <https://www.sec.gov/investment/fast-answers/divisionsinvestmentinvcoreg121504htm.html> which states: “.....Section 3(a)(1)(C) of the Investment Company Act defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire “investment securities” having a value exceeding 40 percent of the value of its total assets (exclusive of government securities and cash items) on an unconsolidated basis. See Section 3(a)(2) of the Investment Company Act.....”. The exceptions to that definition are as follows:

- a) Rule 3a-8 provides an exemption for some research and development companies.
- b) Rule 3a-1 provides an exemption by applying an assets-and-income test (excluding Government securities and cash items).
- c) Rule 3a-2 provides a temporary exception for a company that “has a bona fide intent to be engaged primarily, as soon as is reasonably possible” in a non-investment business (indicated by the entity's officers' tasks, its business activities and its board resolutions).

2) A limited partnership or general partnership – because:

- a) The main business of the SPAC is acquiring companies and by voting for/against the De-SPAC, the SPAC's IPO shareholders are actively participating in the SPAC's operating decisions, and are not gaining profits mostly from the “*efforts of others*”; and the SPAC IPO shareholders invested cash in the SPAC. Usually, the SPAC's IPO shareholder own at least eighty percent of its votes and assets.
- b) the SPAC's IPO shareholders take similar risks as the SPAC-Sponsor, and the SPAC-Sponsor functions as, or has a role that is the equivalent of that of a General Partner in a limited partnership.
- c) The SPAC issued Class-A shares (80% of total votes) and Class-B shares (20% of total votes) to shareholders and the SPAC-Sponsor respectively, and the rights/obligations of each class are similar to those in statutory partnerships (ie. LPs and GPs).

3) An Exchangeable-Loan (with creditor-in-possession)– because:

- a) On the IPO date, the SPAC issues the loan and grants its Units (Stock and Warrants) as Collateral. The Warrants in each Unit can be deemed to be imputed interest for the loan (and the SPAC stocks that trade at discounts to their NAV may confirm this approach). At De-SPAC, the lender (SPAC-shareholder) elects to either: 1) call the loan (redeem the shares for cash or other consideration) and retain or sell the Warrants, or 2) permanently and irreversibly exchange the loan for the stock and Warrants. The lender (SPAC shareholder) holds title to the imputed/implicit collateral (SPAC shares). The relatively short period of time between the SPAC's IPO date and the De-SPAC date (usually 4.5-7.5 months) and the nature of the redemption-right supports this approach.
- b) On the IPO date, the SPAC issues the loan and grants its Units (Stock and Warrants) as Collateral. The Warrants in each Unit can be deemed to be imputed interest for the loan (and the large numbers of SPAC stocks that trade at discounts to their NAV may confirm this approach). If sufficient lenders (SPAC shareholders) vote to reject any proposed Initial Acquisition, then at the dissolution/liquidation date of the SPAC, the lender (SPAC-shareholder) mandatorily calls the loan (redeems the shares for cash or other consideration) and

retains or sells the Warrants or the Warrants expire. The lender (SPAC shareholder) holds title to the imputed/implicit collateral (SPAC shares). The relatively short period of time between the SPAC's IPO date and the liquidation/dissolution date (usually 18-30 months) and the nature of both the voting for the Initial-Acquisition and the mandatory terminal-redemption supports this approach.

c) Other debt-equity classification criteria and re-characterization factors are as follows:

- 1) *thin-capitalization (and possible insolvency) of SPACs* - where the SPAC-investors' capital is considered to be debt (and also the SPAC-Sponsor's class-B shares usually doesn't have any meaningful value until the De-SPAC). In such cases, the SPAC can be deemed to be insolvent immediately after the completion of its IPO. In the US, several new ETFs were created in 2021 solely to invest in SPACs on the theory that SPAC shares are essentially debt (with or without imputed-interest) that is repaid at DeSPAC.
- 2) *The requirement of repayment of the debt doesn't depend solely on the success of the SPAC* – the De-SPAC redemption right can be exercised (and the SPAC-shareholders redeem their shares) regardless of whether or not the SPAC executes the Initial Acquisition or performs well. Some SPAC-shareholders simultaneously redeem their shares and vote for the Initial Acquisition.
- 3) *The identity of interests of the lender and the borrower* - the majority of SPAC-Shareholders are usually different from the SPAC entity, the SPAC-Sponsor, the target-company and the target-company's shareholders.
- 4) *The existence of actual or implied security/collateral for the loan* – in these circumstances, the SPAC-shares held by SPAC shareholders can be deemed to be imputed/implied or “constructive” collateral for the loan.
- 5) *The “expectation of repayment” of the debt* - the De-SPAC redemption-right creates valid and actionable expectations of repayment of the loan; and in the US and as of 2021, more than 97% of hedge funds redeemed their SPAC shares.
- 6) These “loans” created by traditional SPAC structures are probably usurious because of the value of the Warrants (in each “Unit”) and the short-term of the loan (in the US, the time period between the IPO date and the De-SPAC date is usually 4.5-7.5 months).

On the criteria for the classification of debt and equity, see Nwogugu (2020; 2008a). The SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models can solve these through the following: 1) voting rights for shares and CVPS in the Units; 2) reduction/elimination of redemption rights or mandatory simultaneous redemption of both the stock and the warrant in the “Unit”; and 3) in SPAC++^{®TM} and SPAC+++^{®TM} models, any redemption is tied to the success of the SPAC; 4) by **Factors 5 & 6** (which are defined above).

7.5. Nonlinearity, Systems And Regret: Transaction-Costs, Litigation/Enforcement Costs And Significant Dilution Make SPACs Inefficient And More Expensive As A Backdoor Route To An Exchange Listing¹⁴.

While most SPACs do only one acquisition, the best use for a SPAC is for Industry Rollups of private companies and SMEs. The SPAC route to exchange-listing is often hyped to be much cheaper and more efficient (in terms of economic cost, time, market-impact and systemic risk) compared to a traditional IPO. If the traditional IPO process is deemed expensive, given that most potential IPO candidates don't have access to SPACs and that most SPACs do only one acquisition, the proper solution is to find ways to reduce IPO costs, instead of mis-using SPACs as a back-door to an exchange listing.

The main elements of “integrated SPAC IPO” costs are as follows:

¹⁴ Gahng, Ritter & Zhang (July 2021) stated in part: “.....Second, from a private operating company's point of view, we find that merging with a SPAC is a much more expensive way of going public than a traditional IPO. The total cost of the median company going public via a SPAC merger between January 2015 and February 2021 was 15.1% of the post-issue market cap, while it was 3.3% for the traditional IPOs. However, we still find that many private companies choose to go public via a SPAC merger.....”.

i) Under the typical US/European SPAC structure and in SPACs' Initial Acquisitions and in contrast to traditional IPOs, the Target-company shareholders face and experience significant equity dilution by as much as 35%, from the following sources:

- 1) the exercise of the Warrants (owned by the SPAC-Sponsor, SPAC-shareholders, and the underwriting investment banks); and
- 2) the SPAC-Sponsor's shares/promote (15%-20% of the SPAC's equity).

This significant dilution typically occurs without any assurance or guarantee of, or incentive for good post-acquisition operating performance of the SPAC. The dilution is also directly proportional to the increases of the SPAC's post-IPO stock-prices. Thus, for some companies (and where such SPAC-driven dilution occurs) SPACs are actually a more expensive route to an exchange listing than a traditional IPO. However, where the SPAC simultaneously acquires several companies for its Initial-Acquisition, the dilution of each group of Target-company shareholders can be much less.

ii) The second element of SPAC IPOs is transaction-costs incurred in the SPAC and De-SPAC process which can exceed those of IPOs. Those transactions-costs include but are not limited to the regular SPAC IPO costs (underwriters fees/commissions; dilution; the underpricing of shares in IPOs; travel/admin expenses; filing costs; legal and accounting costs); the proxy-voting costs; other De-SPAC costs incurred by the SPAC; the costs of arbitrage by investors around the De-SPAC period; the costs of market-volatility and uncertainty before the Initial-Acquisition; monitoring costs (of regulators; the SPAC-Sponsor and institutional investors; the target-company's pre DeSPAC and DeSPAC costs; the due diligence costs; etc..

iii) The third cost element of SPAC IPOs is litigation and enforcement costs – which consists of the regular litigation costs (lawsuits against the SPAC-Sponsor, the target-company's board of directors and the underwriting investment banks; etc.); the costs of D&O insurance policies (for the SPAC-Sponsor, the target-company and the post DeSPAC company), the government's enforcement costs and court-related costs; etc.

iv) The fourth cost element of SPAC IPOs is the significant Opportunity Costs of holding SPAC shares before the Initial Acquisition.

Direct-listing costs include the investment banking fees, the regulatory filing fees and legal/accounting fees; initial underpricing of shares, and investor relations costs.

Note that the per-target-company share of most components of SPAC IPO costs (mentioned above) declines as the number of target-companies acquired by the SPAC increases. These foregoing issues support the position that SPACs are best used for Industry Rollups of many companies, instead of being used as a back-door to an exchange listing for just one company.

The SPAC+[®], SPAC++[®] and SPAC+++[®] models greatly reduce equity-dilution and the "effective-cost" of SPACs through the structure of the SPACs, and by **Factors 3, 6, 8,9,10, 13 & 14** (which are defined above).

7.6. SPACs Are Different From Private Equity Funds, ETFs And Hedge Funds.

Contrary to popular opinions in the SPAC and finance/accounting literatures, SPACs differ substantially from private equity ("PE") funds, hedge funds ("HF") and ETFs in the following ways:

i) **Compensation** – PE funds managers are usually paid a "compensation" that usually consists of a fixed "Base Fee" (usually a fixed cash amount or an "annualized" 1%-2% of the fund's quarterly AUM which is usually paid in cash) plus a "Performance fee" (that is 10%-20% of the fund's profits or increase in value; and sometime such fees are paid only if the fund achieves a specific "hurdle-rate" periodic return). HF-managers are usually paid a "compensation" that usually consists of a fixed "Base Fee" (usually a fixed periodic cash amount or an "annualized" 1%-2% of the fund's quarterly AUM which is paid in cash) plus a "Performance-Fee" (that is usually 10%-20% of the fund's profits or increase in value; and sometimes such fees are paid only if the fund achieves a specific "hurdle-rate" periodic return). ETF-managers are usually paid a Base Fee that is 0.15-2% of the ETF's AUM. On the contrary, the SPAC-Sponsor isn't paid any "compensation" but is treated as a cofounder of the SPAC and gets "Contingent Founder's Shares" in the SPAC. The SPAC-Sponsor's shares are issued but their liquidity and values are greatly contingent on there being a De-SPAC, on lock-up agreements, and on

any vesting requirements imposed by the De-SPAC merger agreement. There is a big difference between a fee and cofounder's shares.

ii) **Downside Risk** – the PE fund manager isn't exposed to downside risk, and gets its Base Fee regardless of how the PE fund performs. The typical HF-manager and ETF-manager aren't significantly exposed to downside risk, and get their Base Fee regardless of how the hedge fund or ETF performs, respectively. On the contrary, the SPAC-Sponsor isn't paid any cash fees, and is significantly exposed to the SPAC's downside risk (eg. dissolution of the SPAC, or declines of the SPAC's post-DeSPAC stock-prices).

iii) **Incentives** – the incentives of the SPAC-Sponsor on one hand, and the PE fund manager, the HF-manager and ETF-manager varies significantly, and each is exposed to different time-varying distortion-factors. As of 2021, traditional SPAC-Sponsors faced greater and relatively more severe Principal-Agent problems and Incentive-Distortions, and also have non-traditional incentives such as: 1) control over the size and timing of the De-SPAC merger; 2) limited control over any De-SPAC vesting requirements imposed on the Sponsor's promote; 3) control over the choice of a shareholder vote (and nature of proxy statements) or a Tender-Offer for redemption of shares; 4) control over the size, amount, terms and timing of any of the SPAC's post-IPO pre-DeSPAC PIPE transactions; 5) limited control over the composition of the SPAC's post-DeSPAC board of directors.

iv) **Skill Sets** – the required skill sets of SPAC-Sponsors on one hand, and PE Fund managers, HF-managers and ETF-managers differ substantially. The SPAC-Sponsor's role requires more in-depth technical (tax, accounting, Applied Math) knowledge of M&A, entrepreneurship, corporate restructurings, public equity markets, Internal-Controls, economics-of-agreements and Warrants. Those of PE fund managers (who focus on non-control investments, control investments and mergers/acquisitions) are more of investments (public-equities; debt/loans), PE fund mandates/requirements, macro finance/economics, private-markets and IPOs. Those of HF-managers (who focus on non-control investments, control investments and Special Situations) are more of investments (swaps/derivatives, public-equities/debt/commodities/currencies), HF requirements/mandate, macro finance/economics and IPOs. Those of ETFs differ in terms of focus on ETF requirements/mandate, Indexing, swaps/derivatives, investments (public-equities/debt/commodities/currencies, swaps/derivatives), market-volatility, market-liquidity, and asset-selection.

v) **Insurance Policies** – the considerations, cost and risk factors for PE fund manager's, HF-Managers' and ETF managers' insurance policies (D&O policies; business interruption policies; etc.) differ from those of SPAC-Sponsors. The significant and growing differences in the costs and terms of D&O insurance policies, M&A insurance policies and business-interruption insurance policies of SPAC-Sponsors on one hand, and PE fund managers, HF-managers and ETF-managers in the US is evidence of the substantial differences in their risk-profiles, downside-risks and skill-sets.

vi) **Investment Horizons and "Performance-Pressures"** – the investment horizons of PE fund managers (4-8 years), HF-managers (0.5-36 months), ETF managers (3-60 months) and SPAC-Sponsors (18-36 months) differ; and SPAC-Sponsors face much more pressure to perform (because of their promote and incentives and the time-limits for De-SPAC) than PE fund managers.

vii) **Critical Trigger Factors** – the factors that trigger the PE Fund manager's, HF-manager's and ETF-manager's returns, legal-liability, *Reputation-Loss* and aspirations are very different (in terms of timing, magnitude/exposure, nature/structure, multiplier-effects, costs, reputational-impact; etc.) from those of the typical SPAC-Sponsor.

viii) **Fiduciary Obligations** – the nature, extent and legal enforceability of the fiduciary obligations of a PE fund manager, a HF-manager and an ETF-manager differ from those of the typical SPAC-Sponsor. In the US, those differences are manifested in the different volumes of new/continuing lawsuits against SPAC-Sponsors, HF-managers, ETF-managers and PE fund managers for breaches of fiduciary duties.

ix) **Types Of Permitted Transactions And Investments** – PE funds can make non-control-investments (50% < of target-company equity), control investments (20% < of target-company equity), or purchases of a portfolio of illiquid/liquid assets, investment in swaps/derivatives; and can also execute mergers/acquisitions of portfolio companies. HFs can make only non-control-investments (50% < of target-company equity), control investments (20% < of target-company equity), or purchases of a portfolio of illiquid/liquid assets, and can also execute mergers/acquisitions of portfolio

companies; and can invest in listed shares/bonds/warrants, currencies/commodities and swaps/derivatives. ETFs can only make investments in swaps/derivatives, companies (mostly liquid shares/interests) and illiquid/liquid assets, currencies/commodities, but generally cannot execute mergers/acquisitions of portfolio companies or PIPEs/private-placements or non-control investments in private entities. SPACs can only acquire or merge with one target company or a group of target-companies (either at once or sequentially).

Thus, PE Fund managers, HF-managers (especially those that don't have any experience as industry executives) and ETF managers that become SPAC-Sponsors may be unqualified.

A potentially actionable problem is that SPACs are sometimes wrongly marketed to investors (including retail investors) as being very similar to, and being a more "liquid" type of hedge funds and PE funds.

7.7. Nonlinearity, Systems And Regret: SPACs Can Increase Financial Instability And Systemic -Risk, And The Standardization Of Most US And European SPACs (And Heavy Reliance On Inefficient Stock-Warrants) Is Sub-Optimal And Can Increase The Occurrence Of "Zero-Sum Outcome Effects".

Nwogugu (2014) explained why REIT shares are derivatives and why REITs are non-financial SIFIs (systemically important financial institutions). Similarly, and as explained below, traditional SPACs' Class-B shares are derivatives (Warrants or Forward-purchase agreements).

SPACs can cause or increase Financial Instability and o Systemic-Risk because of the following reasons:

- i) Standardization of SPACs can cause or increase systemic risk and Financial Instability because: it increases harmful relative-value analysis and comparisons (see below).
- ii) SPACs can increase market volatility because of controversies and uncertainty De-SPAC and the SPAC-Sponsor promote. By itself, the traditional SPAC structure generates "large-scale" controversies that increase actual and potential disagreements among investors about not only the true values of SPAC stocks and warrants but also market-volatility, directional movements of Indices, interest rates, bond rates, short-term expected returns, Beta, alpha, etc.. These disagreements affect fixed-income instruments, stocks, options, convertibles and warrants in various sectors including: 1) non-SPAC equities in various industries especially technology, automobiles, entertainment, telecom, media, biotech, etc.; 2) SPACs; 3) corporate bonds; 4) high-yield bonds; 5) government bills and notes (some traders/arbitrageurs short corporate bonds and government bonds and use the proceeds to buy SPAC Units (SPAC stocks and warrants); 6) repo markets; 7) equity swaps markets, 8) listed options and warrants and convertible securities.
- iii) SPACs often cause investors' relative-value analysis and comparisons of SPACs to other asset classes such as hedge funds, REITs, ABS and ETFs.
- iv) SPACs trigger regulatory filings and public announcements that directly and indirectly affect many actual and prospective investors.
- v) Given the sizes of SPACs and their target-companies (usually between \$100 million and \$15 billion), they affect a group of global institutional investors that have significant amounts of cash (ie. hedge funds, pension funds, insurance companies, endowments, foundations; etc.) – such that the effects of SPACs can be consciously or unconsciously transferred to analysis of other domestic or international markets.
- vi) The typical SPAC structure provides inflection-points that serve as arbitrage and speculation fulcrums (such as the SPAC IPO, the De-SPAC voting, the redemption voting and SPAC's PIPE offerings) which increase Financial Instability and Systemic Risk.
- vii) SPACs often acquire large-cap (valued at above \$10 billion) and medium-cap (valued at \$2-\$10 billion) and small-cap (valued at \$300 million to \$2 billion) companies, which are almost immediately included in large-cap, medium-cap and small-cap equity and bond Indices. Thus, the prospects of, and actual inclusions (of SPACs and post-DeSPAC companies) and deletions (of other companies) from equity and bond Indices greatly affects, and cause volatility of such indices and securities, which can be transmitted to foreign stock markets and bond markets.

viii) The aggregation of effects of high redemption-rates, SPAC dissolutions, exercise of SPAC Warrants, vesting-requirements for SPAC-Sponsor shares across SPACs can have Multiplier Effects and increase Financial Instability and Systemic Risk.

ix) The standardization of the main terms of traditional SPACs can greatly increase Thus, Financial Instability and Systemic Risk, partly because: 1) it increases harmful relative-value analysis and comparisons of SPACs to other asset classes such as hedge funds, REITs, ABS and ETFs; 2) it increases market volatility because of uncertainty De-SPAC and the SPAC-Sponsor promote; 3) SPACs trigger regulatory filings and public announcements that directly and indirectly affect many actual and prospective investors.

x) Actual and possible/potential examples of the adverse effects of standardization are as follows: 1) when the US SEC released its accounting rule-change for SPAC Warrants in April 2021 (and simultaneously noted that many SPACs use very similar Warrant structures) and as a result, the volume of SPAC IPO filings suddenly declined from 298 in Q1-2021 to only 61 in Q2-2021; 2) the possible re-characterization of the SPAC IPO and its De-SPAC as one *Integrated Transaction*; 3) the possible re-characterization of the SPAC Class-A shares as loans or Partnership Interests or 1940-Act company shares.

xi) Given the sizes of SPACs and their target-companies (usually between \$100 million and \$15 billion), they affect a group of global institutional investors that have significant amounts of cash (ie. hedge funds, pension funds, insurance companies, endowments, foundations; etc.) – such that the effects of SPACs can be consciously or unconsciously transferred to analysis of other domestic or international markets.

xii) Most SPAC structures actually increase Regret among SPAC-Sponsors, SPAC-shareholders and would-have-been/prospective SPAC-shareholders, and increase Nonlinearity in trading patterns of SPAC shares/Warrants and in its risk-profile. For example, Nonlinearity means that: 1) small actions by the SPAC-Sponsor or small changes in expected and actual redemption-rates can have much larger effects on the prices and trading patterns of the SPAC’s stock and Warrants; 2) large actions by the typical US and European SPAC-Sponsor to organize the SPAC and effect shareholder voting for the Initial Acquisition often results in small improvements in the SPAC’s value.

xiii) The global SPACs market is a large-scale *system-of-systems* and is at the intersection of the following large-scale systems (markets): 1) global stock markets (including stock-Indices, Warrants, convertible securities and listed options markets); 2) global fixed income markets; 3) Insurance and re-insurance markets; 4) global Private-Equity and M&A markets; 5) the hedge funds sector; 6) the markets for regulations (M&A regulations; accounting regulations; securities law; etc.), and for both private and public enforcement of regulation/statutes; 7) the global technology markets and technology/biotech commercialization markets, and the TMT (technology, media, telecom), sustainability and automobile sectors; 8) the global currency markets (foreign investors invest in, and sponsor SPACs). Thus, small changes in the SPAC market can have disproportionately greater changes in any of these markets and vice-versa; and the SPAC market can transmit shocks from one of these markets to other markets.

xiv) As of mid-2021, the global new-issue SPAC market (US dollar volume of annual new SPAC IPOs) was nearly as large as the dollar volume of US annual IPOs (see Figures 1, 2 & 3 in this article). More importantly:

- 1) many retail and institutional investors wrongly perceived SPACs (and SPACs are being wrongly presented and marketed) as a viable alternative to an IPO (and to private equity funds and hedge funds) and thus may have applied similar investment criteria.
- 2) IPO markets have crashed, and have caused broader stock market crashes (eg. in 2000 in the US; in 2007-2009 in the US; in 2015 in mainland China; and in 2020 in the US).
- 3) IPO markets affect future M&A volumes and debt-issuance volumes (some companies that can’t execute IPOs instead issue debt which increases their bankruptcy/default risk, and the risks of “*Domino-Effects*” and Financial Instability).

The “*standardization*” of most US and European SPACs (ie. organizational structure; securities; IPO offering terms; IPO offering-prices; etc.) that were launched/listed during 2014-2021 is sub-optimal and potentially destructive because:

- 1) It can increase Financial Instability risk and Systemic Risk (much like what happened in the US asset-backed securities trusts markets during 2007-2009 wherein liquidity suddenly declined at the signs of slight troubles).
- 2) It raises serious and actionable Antitrust questions about whether there is a “cartel” that controls the offering/IPO terms of SPACs; and questions about potential or actual violations of unfair business practices statutes. Gahng, Ritter & Zhang (July 2021) provides a list of the largest shareholders of SPACs (and alludes to “.....the so-called “SPAC Mafia” members.....”) based on the amount of capital invested in SPACs (data from SPAC Research - <https://www.spacresearch.com/>). See Nwogugu (2008a;b). In the USA, it also raises actionable questions about violations of both federal and state RICO statutes. Nwogugu (2008a) explained how ABS and associated trusts violated FRICO statutes.
- 3) Actual and possible/potential examples of the adverse effects of standardization are as follows: i) when the US SEC released its accounting rule-change for SPAC Warrants in April 2021 (and simultaneously noted that many SPACs use very similar Warrant structures) and as a result, the volume of SPAC IPO filings suddenly declined from 298 in Q1-2021 to only 61 in Q2-2021; ii) the possible re-characterization of the SPAC IPO and its De-SPAC as one *Integrated Transaction*; iii) the possible re-characterization of the SPAC Class-A shares as loans or Partnership Interests or 1940-Act company shares.
- 4) It increases required SPAC returns which most “standardized” SPACs can get only by underpricing the transaction-values of their acquisition-targets; but with so many US-focused SPACs chasing the same or similar target-companies, it distorts the pricing of Mergers/Acquisitions.
- 5) It causes excessive investor focus and reliance on the SPAC-Sponsor who may not conduct thorough due diligence and whose economic (returns; capital-appreciation; cash; risk-management; reputation) and psychological (status; aspiration; anxiety; risk-taking; reputation) objectives often differ from those of SPAC shareholders partly because of the typical SPAC-Sponsor’s promote (15%-20% of the SPAC’s equity) and the SPACs’ structures. Such mis-placed investor focus leads to omission of critical elements of the SPAC structure and implicit incentives that can greatly reduce SPACs’ risk and improve investor-returns.
- 6) SPACs’ heavy reliance on inefficient Warrants¹⁵ can significantly distort the risk and economics of SPACs. The average annual US “Ex-Warrant” SPAC returns for 2015-2020 have been consistently negative, whereas the average annual US “Warrants-included” SPAC returns for the same time period have been positive. See: Orlick (May 2021) and other researchers cited herein. That is significant evidence that standardization and most terms of existing SPACs are sub-optimal. As mentioned above, its well settled in the finance literature that there is financial contagion in stock and options/Warrant markets, that stocks and Warrants often don’t reflect the fundamental performance of underlying companies, that the options/warrant market often leads associated stocks, and that many listed Warrants often benefit from overall market volatility, and thus Warrant prices contain plenty of “Expectations”, volatility-value and “Time-Value” that obscures the problems inherent in the structure and terms of SPACs in the US and Europe.
- 7) Hedge funds that redeemed their SPAC shares earned an average annualized return of 11.6% as of 2020. Some US SPACs have experienced redemption-rates as high as 90% at De-SPAC voting. Given the above-mentioned negative US annual “Ex-Warrant” SPAC returns for 2015-2020, that is significant evidence that:
 - a) standardization and most terms of existing US SPACs are sub-optimal.
 - b) the redemption feature of SPACs is being grossly mis-used by some institutional investors that redeem their shares regardless of the merits of the proposed Initial Acquisition (as noted herein, SPAC investors can simultaneously vote to approve an Initial Acquisition and to redeem their SPAC shares). Some investors redeem their shares and hold onto their Warrants
 - c) The mis-use of the SPACs’ redemption feature (and the associated high redemption-rates) distorts the pricing of M&A deals, the SPACs’ Opportunity Set, the SPACs’ equity-values and investors’ returns. That is, the high redemption-rates are not solely attributable to the quality of proposed De-SPAC Mergers/acquisitions, but are caused mostly by institutional investors that

¹⁵ See: “Pershing Square Tontine Holdings, Ltd. Releases Letter to Shareholders”. August 19, 2021. <https://www.businesswire.com/news/home/20210819005824/en/Pershing-Square-Tontine-Holdings-Ltd.-Releases-Letter-to-Shareholders>.

are using the SPACs' redemption-rights as an investment strategy (and ETFs have been created to focus solely on this redemption-based investment strategy), wherein they buy the SPAC's "Units" at or around its IPO solely to redeem the SPAC shares and keep the Warrants at the De-SPAC voting.

CB Insight (2021) noted that "..... From sponsor risk to low-quality companies to supply & demand concerns, SPACs are far from perfect..... Retail investors that buy and hold on open markets frequently lose out, because they're typically buying in at a premium. Those that hold onto their shares for a stake in the merged company are overwhelmingly losing money: SPACs recorded a median post-merger return of negative 65.3% in the 12 (twelve) months after a merger, according to Klausner and Ohlrogge. Overall, high redemption rates and share dilutions make investing in SPACs potentially risky for investors that aren't as familiar with SPAC incentives and structures.....".

8) Standardization can increase the occurrence and effects of "Zero-Sum Outcomes" of SPAC dynamics wherein: a) any gain by the SPAC-shareholders (both IPO shareholders and post-IPO shareholders) is a loss (or will likely result in a loss) to SPAC-Sponsors, and vice-versa; and or b) any gain by the SPAC-IPO shareholders and the SPAC-Sponsor is a loss (or will likely result in a loss) to target-company shareholders, and vice-versa.

As of 2021, most SPAC structures actually increase or could increase *Regret* among SPAC-Sponsors, SPAC-shareholders and would-have-been/prospective SPAC-shareholders, and increase Nonlinearity in trading patterns of SPAC shares/Warrants and in its risk-profile. For example, Nonlinearity means that: i) small actions by the SPAC-Sponsor or small changes in expected and actual redemption-rates can have much larger effects on the prices and trading patterns of the SPAC's stock and Warrants; ii) large actions by the typical US and European SPAC-Sponsor to organize the SPAC and effect shareholder voting for the Initial Acquisition often results in small improvements in the SPAC's value.

On the contrary, the SPAC+[®]™, SPAC++[®]™ and SPAC+++[®]™ models are *Regret-Minimization* oriented and reduces or eliminates *Regret* among SPAC-Sponsors, SPAC-shareholders and would-have-been/prospective SPAC-shareholders; and can also reduce Nonlinearity in the SPAC's risk-profile and the trading patterns of its stock and Warrants.

The SPAC+[®]™, SPAC++[®]™ and SPAC+++[®]™ models are sufficiently different from most existing SPACs, and provide higher probability of greater and positive investor returns. The Warrants in the SPAC+[®]™, SPAC++[®]™ and SPAC+++[®]™ "Units" that are issued to the SPAC's IPO investors: i) don't separate from the associated stock until specific conditions occur (which reduces the volatility-value, speculation-value and time-value of such Warrants); ii) have an Upwards-Ratcheting clause that adjusts the Warrants' Exercise-Price upwards based on the SPAC's post IPO stock prices ("Factor-10"). In SPAC+++[®]™ models, the CVPS also has a *ratcheted-up* Conversion-Price (Factor-10). Under the SPAC+[®]™ and SPAC++[®]™ models, SPAC shareholders that approve a merger/acquisition cannot redeem their shares or Warrants; and shareholders that vote to reject the Initial Acquisition can remain shareholders or can redeem both their Shares and Warrants for cash or for the SPAC's debt instruments (thus all of a SPAC shareholder's voting decisions apply to both their shares and Warrants, which reduces speculation and Arbitrage) ("Factor-5"). Under the SPAC+[®]™, SPAC++[®]™ and SPAC+++[®]™ models, the SPAC-Sponsor automatically waives its redemption-rights for Class-A shares, CVPS and Warrants if the SPAC is dissolved/liquidated (the SPAC-Sponsor loses the stock, CVPS and Warrant components of the sponsor promote upon dissolution of the SPAC) (Factor-12).

7.8. Nonlinearity, Regret And SPACs' Low Quality-Control: Churchill Capital IV's (CCIV) Troubled Acquisition Of Lucid Motors, And The Negative Effects Of "Premature" Listings, And SPACs' Hype And Reliance On Forecasted Financial Data (Which Triggers Securities Law Compliance And Not The Merger-Law Safe-Harbor).

US and European SPACs facilitate listings of companies that otherwise would not meet the "operating performance" and Internal-Control requirements for traditional IPOs (eg. revenues; accounting audits; internal controls; etc.). According to a CB Insight (2021) article: ".....One study showed that, between 2003 and 2013, 58% (fifty-eight percent) of companies that merged with SPACs failed - a higher rate than traditional IPOs. Even if companies don't fail outright, some negative press may have outsize impact on the SPAC reputation for companies considering this process in the future. For example, electric truck company Nikola went public via SPAC in March 2020, despite not earning any revenue in 2019 and lacking a clearly viable

truck model. It saw its market cap jump to \$29 Billion — higher than Ford’s — before its CEO and chairman resigned and the SEC opened an investigation into the company for fraud.....”. Such De-SPAC failures can have negative *Multiplier Effects* and can increase investors’ required returns not only in SPAC investments but also in “related” investments. Such high De-SPAC failure-rates confirm that the traditional SPAC model is inefficient, and that compelling SPACs to focus on Industry Rollups (rather than just one acquisition) can vastly improve De-SPAC outcomes, partly because: i) it changes SPAC-Sponsors’ acquisition criteria; ii) it places more emphasis on post-acquisition integration and management skills; iii) it de-emphasizes the use of ineffective Warrants.

SPACs’ misplaced use of forecasted financial statements¹⁶ in De-SPAC acquisitions triggers required compliance with securities laws (and not merger law, as most SPAC-Sponsors believe) because:

¹⁶ Gahng, Ritter & Zhang (July 2021) stated in part: “.....Moreover, in the U.S., it has been widely believed until recently that merger law applies rather than securities issuance law for business combinations, and merger law provides a “safe harbor” provision for forecasts of future revenue and profits that security issuance law lacks, essentially providing a regulatory arbitrage opportunity for private operating companies.....”. See: “*Congressional SPACtivity Continues: Draft Legislation Proposes to Eliminate Safe Harbor Protection for Projections in SPAC Transactions - Updates from recent U.S. House Committee on Financial Services hearing and proposed legislation*”. (2021). By Pillsbury (Davina K. Kaile, Stephen B. Amdur, Bruce A. Ericson, Matthew Oresman, Nathaniel M. Cartmell). <https://www.pillsburylaw.com/en/news-and-insights/draft-legislation-eliminate-safe-harbor-protection-spac-transactions.html>. This article stated in part: “.....As previously noted in Pillsbury’s earlier article, one factor that has contributed to the rise in SPACtivity has been the availability to SPACs of certain features unavailable to companies going public through traditional IPOs, most notably the Private Securities Litigation Reform Act (PSLRA) safe harbor for forward-looking statements. On May 21, 2021, the U.S. House Committee on Financial Services released draft legislation to amend the Securities Act of 1933 (the Securities Act) and the Securities Exchange Act of 1934 (the Exchange Act) to exclude all SPACs from the safe harbor. Section 27A of the Securities Act and Section 21E of the Exchange Act currently exclude from the safe harbor, forward-looking statements made “.....in connection with an offering of securities by a blank check company.....”.....”. See: “*SPACs: Is the PSLRA Safe Harbor Driving the Boom?*”. DealLawyers.com (Feb. 3, 2021). By John Jenkins. <https://www.deallawyers.com/blog/2021/02/spacs-is-the-pslra-safe-harbor-driving-the-boom.html>. See: *SPACs, IPOs and Liability Risk under the Securities Laws*. By John Coates Acting Director, Division of Corporation Finance, US SEC. April 8, 2021. <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws>. See: “*M&A Projections: Safe Harbor? Don’t Count On It*”. Jan. 26, 2021. <https://www.deallawyers.com/blog/2021/01/ma-projections-safe-harbor-dont-count-on-it.html>. This article stated in part: “.....Anne Lipton has an interesting blog that addresses the lengths to which judges will go to avoid providing liability protection to projections that look to be.....well.....a little on the “shady” side. She focuses on two recent cases involving alleged “lowballing” of a seller’s projections in order to make a deal appear more favorable – the Chancery Court’s decision in *In re Mindbody Securities Litigation* (US District Court, Southern District of New York; September 2020; <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2019cv08331/522430/52/>), and a California federal court’s decision in *Karri vs. Oclaro* (US District Court, Northern District of California; Oct. 2020).

“..... The court wouldn’t allow a straight-up projections claim to proceed [in *Mindbody*], but it did hold that the proxy materials contained an “actionable omission because Defendants’ statements about Vista’s 68% ‘premium’ implied that Mindbody had no non-public information that would materially affect its share price.... Here, the 68% measuring stick would only have been informative to shareholders if the Defendants believed that the December share price was an accurate reference point. By invoking the ratio of Mindbody’s share price to Vista’s offer, Defendants impliedly warranted that, to their knowledge, the share price as of December 21, 2018, was not undervalued”. Get it? The court wouldn’t allow a lawsuit based on the false projections themselves – and didn’t want to just come right out and say there was a duty to update the false guidance (indeed, it denied so holding) – so, it threaded the needle by treating references to a premium as their own, present-tense half-truths about the true value of the stock. But that’s nothing compared to the contortions in *Oclaro*. There, again, plaintiffs alleged that defendants lowballed projections in order to drive the stock down, thus justifying the

- i) US SEC regulations and securities law statutes cover “forward looking statements” in any context;
- ii) the SPAC’s and the target-company’s shares and Warrants are deemed to be “securities”; and the SPAC’s De-SPAC acquisition involves transactions in “securities”;
- iii) “non-financial-forecast statements” such as valuation estimates and growth estimates (by the issuer or M&A party) that are forward-looking statements or are related to forward-looking statements are also covered by securities laws.
- iv) Omissions by the issuer or M&A party (that can cause significant divergence of opinions among investors) in forward-looking statements are also covered by securities laws.

Thus, SPAC-Sponsors that use forecasted financial statements to market SPAC De-SPAC acquisitions (ie. in proxy statements) maybe liable for: i) unreasonable and unsupported forecasted financial data; ii) unreasonable or unsupported valuation estimates that are wholly or partly based on financial forecasts that are used in De-SPAC M&A; iii) unsupported non-financial statements that are directly or indirectly related to the forecasted financial data that are used in De-SPAC M&A; iv) omissions that are related to financial forecasts that are used in De-SPAC Mergers/Acquisitions.

SPACs’ unjustified heavy reliance on their forecasted financial statements and varying estimates of the future viability of their technologies has been very costly, and the stock-prices of most such SPACs (that relied on future estimates for their De-SPAC acquisitions) have performed poorly. CCIV was a SPAC that acquired Lucid Motors¹⁷ (an electric vehicle company) in 2021. The post De-SPAC shares prices of Lucid was as high as \$65 during 2021 but it subsequently declined to about \$23 (as of August 2021) and \$25.43 (as of mid-

merger. There, again, the court held that false projections were protected by the PSLRA safe harbor. But what wasn’t protected were valuation estimates derived from the projections, or representations about how the projections were prepared, including representations that they were prepared in good faith, and those claims were allowed to proceed. Now, defining “forward-looking” has always been something of a challenge in securities cases, but saying the projection is protected by the safe harbor but the valuation based on that projection is not protected is some next-level hairsplitting.....”.

These decisions illustrate that there are all sorts of semantic gymnastics available to a court that wants to avoid applying the PSLRA safe harbor or state law limitations on liability for forward-looking statements to projections that it views with suspicion. So, maybe the best way to reduce the risk of liability for projections is to be careful not to put yourself in a position where the plaintiff can argue that you viewed the safe harbor as a “license to lie.”.....”.

See: “*Safe Harbor Disclaimers: A License to Lie?*”. Nov. 13, 2018.

<https://www.thecorporatecounsel.net/blog/2018/11/safe-harbor-disclaimers-a-license-to-lie.html>. This article stated in part: “.....This “IR Magazine” article says that a recent study suggests that critics of the forward-looking statements safe harbor may have a point when they say it gives companies a “license to lie.” Here’s the intro:

“.....When forward-looking statements are accompanied by a legal disclaimer, inexperienced investors are more likely to forgive a company missing its projections – even when management is shown to have knowingly misled investors, according to a new academic study published recently in “*The Accounting Review*.” The research was led by H. Scott Asay of the University of Iowa and Jeffrey Hales of the Georgia Institute of Technology. They contend that legal disclaimers protect public companies from reprisal and therefore harm vulnerable investors in the process – going so far as to cite one attorney’s description that these disclaimers afford management the ‘license to lie’.....”

The study broke investors into four groups, all of whom were given the same company release to review. They were told that the company missed its earnings projections. The first two groups were told that management acted in good faith. One group’s press release contained a legal disclaimer, while the other groups did not. Both of the first two groups were less inclined to seek compensation for the missed projections, and the legal disclaimer had no effect on their views.....The second two groups were provided with the same information, except that they were told management knew that it couldn’t hit its projections. Those investors in the group whose press release included a disclaimer were less inclined to seek compensation than those whose press release did not include a disclaimer. The study’s authors contend that this means disclaimers are likely to dissuade investors from pursuing claims – even if they know they’ve been lied to.....”.

¹⁷ See: “*Is Lucid Motors Stock A Buy Or Sell After Recent SPAC Merger?*”. Aug. 05, 2021.

<https://seekingalpha.com/article/4445381-lucid-motors-stock-buy-sell-spac-merger>.

September 2021) which is still higher than the CCIV's IPO price of \$10. As of August 2021, Lucid had marginal revenues and hadn't delivered its first EV model, and much of its hype and over-valued stock price has been based on forecasted financial statements and estimates of future viability of its technologies, rather than actual operating performance. Many retail and institutional investors that purchased CCIV/Lucid's shares in CCIV's post-IPO hype have lost substantial money. Even though Lucid had a cash balance of at least US\$5 billion in August 2021 (far more than Tesla had immediately after its IPO), it's unlikely that Lucid's share price will ever climb back up to \$65 in the near term without additional acquisitions and or huge capital infusions.

On the contrary, SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} SPACs will acquire only companies that generate revenues (typically, at least US\$1 million of annual gross revenues) and have earning-power, and won't use forecasted financial statements in marketing their IPO or De-SPAC Mergers (**Factor-11**).

7.9. Nonlinearity And Regret: The SPAC's IPO And De-SPAC Merger/Acquisition Are One Single "Integrated Transaction", And The US Merger-Law Safe-Harbor Provisions Don't Apply To Its IPO.

Another issue that hasn't been fully examined or examined at all by researchers and courts is whether (given the SPAC's objective and structure and the nature of the traditional SPAC-Sponsor's Class-B shares) the SPAC's IPO and De-SPAC merger/acquisition can be deemed (re-characterized) as one single "*Integrated Transaction*". This issue of "Integration" (the "*Step-Transactions Doctrine*"¹⁸) is increasingly relevant given the objectives, structures and outstanding-dollar-volumes of SPACs. As of 2021, the typical SPAC's IPO and De-SPAC were one *Integrated Transaction* (an IPO) because of the following reasons:

i) For SPACs that complete only one acquisition/merger before the second or third Anniversary of their IPO date, under the "*End-result Test*" (see Knight & Knight [May 2021] in the footnotes below), the *Step-transaction Doctrine* applies because the separate transactions (the IPO and the De-SPAC) are component parts of a single transaction intended from the pre-IPO stage to produce the same result which is the listing of the Target-Company on an exchange.

ii) For SPACs that execute only one acquisition/merger before the second or third Anniversary of their IPO date, under the "*Interdependence Test*" (see Knight & Knight [May 2021] in the footnotes below), the *Step-Transaction Doctrine* applies because the series of transactions (the SPAC's IPO and the De-SPAC processes) are so interdependent that, without completion of all the transactions, each individual transaction would have been individually useless. That is, without the SPAC's IPO, there won't be a De-SPAC and conversely, without the De-SPAC the SPAC IPO would be meaningless and the SPAC will be dissolved. A substantial portion (by market-value) of the SPAC's securities that are issued in its IPO (the SPAC's Units' Warrants and the SPAC-Sponsor's Class-B shares and warrants) either cannot be exercised or have no or negligible value until the De-SPAC merger/acquisition occurs. Thus, the components/elements of one step of the transaction substantially depends on the other step/steps of the transaction.

iii) For SPACs that do only one acquisition/merger before the second or third Anniversary of their IPO date, under the "*Binding-Commitment Test*" (see Knight & Knight [May 2021] in the footnotes below), the *Step-transaction Doctrine* applies because at the time of the first transaction (the SPAC's IPO or upon the pre-IPO raise of the Sponsor-risk capital), there is a binding commitment to complete all the step transactions (ie. to complete the De-SPAC, or in the alternative, to dissolve the SPAC).

¹⁸ See: Knight, R. & Knight, L. (May 2021). "A Walk Through The Step-Transaction Doctrine". *The Tax Adviser*. <https://www.thetaxadviser.com/issues/2021/may/step-transaction-doctrine.html>. This article states in part: ".....The IRS may apply the step-transaction doctrine, a rule of substance over form, in a variety of taxpayer circumstances to deny tax benefits derived from a series of transactions that should more properly be treated as a single transaction.

- The courts have developed three tests to analyze whether the step-transaction doctrine applies to a series of transactions: the end-result test, the interdependence test, and the binding-commitment test.
- Under the *end-result test*, if the separate transactions were component parts of a single transaction intended from the outset to produce the ultimate result, the step-transaction doctrine would apply.
- Under the *interdependence test*, the step-transaction doctrine applies if a series of transactions are so interdependent that, without completion of all the transactions, the individual transactions would have been fruitless on their own. Under the *binding-commitment test*, which is seldom invoked, the doctrine applies if, at the time of the first transaction, there is a binding commitment to complete all the transactions.....".

- iv) The “*Interested Parties & Temporal-Integration Test*” – which is as follows:
- 1) Its mostly the same parties that are involved in both the SPAC IPO and the De-SPAC – ie. the SPAC-Sponsor, the SPAC, the underwriting investment bank (whose fees are split into two parts payable at IPO and at De-SPAC) and the SPAC-shareholders. The Target-Company party to the De-SPAC merger, but can also be deemed to indirectly participate in the SPAC IPO because of the many IPO terms that are contingent on the De-SPAC (and the Target-Company sometimes influences or modifies such terms – eg. the post-DeSPAC vesting requirements for the SPAC-Sponsors promote).
 - 2) Also, most US SPACs complete their De-SPAC merger/acquisition within 4.5-7.5 months after their IPO date, which is a relatively short time-period that is less than one accounting period (one fiscal year).
- v) The “*Sequential Capital-Flow Test*” (a new test for applicability of the *Step-Transaction Doctrine*) - most (>90%) of the SPAC’s assets arise solely from its IPO and are used in the De-SPAC merger/acquisition. The SPAC’s, and SPAC-Sponsor’s and the SPAC-shareholders’ post-IPO pre-DeSPAC cashflows are significantly affected by the De-SPAC primarily because of the sequential nature of the step transactions (the IPO and the De-SPAC).
- vi) The “*Sequential Outcome-Dependency test*” (a new test for applicability of the *Step-Transaction Doctrine*) - The outcome of the first transaction (the SPAC’s IPO) is substantially related to, and is or can be severely distorted by the terms and execution of the subsequent transactions (ie. De-SPAC Merger/Acquisition) - by the redemptions of SPAC shares at De-SPAC; and or by the identity of the SPAC-shareholders and their votes for or against the De-SPAC merger/acquisition; and or by the De-SPAC agreement’s imposition of post-DeSPAC vesting requirements on the SPAC-Sponsor’s Class-A/Class-B shares.
- vii) The “*Successor-Entity Test*” (a new test for applicability of the *Step-Transaction Doctrine*) -- The SPAC is a new entity and the “*Successor-Entity*” to the Target-Company. That is, the SPAC entity is the surviving entity, and carries on the same business as the Target-Company after the De-SPAC; and its mostly the same executives of the Target-Company and or the SPAC-Sponsor that continue to manage the post-DeSPAC entity. Thus, the SPAC’s incorporation, IPO and De-SPAC are one single Integrated Transaction.
- viii) The “*Regulatory Integration Test*” (a new test for applicability of the *Step-Transaction Doctrine*) - the same set of statutes/regulations governs all or most of the step transactions, and the use of different regulations for at least fifty percent of the step-transactions results in a different outcome for all or most of the step transactions.
- ix) The *Payoff Test* (a new test for applicability of the *Step-Transaction Doctrine*) – the total (monetary and non-monetary) payoffs of at least fifty percent of all the participants in all the step-transactions are affected by any change in at least fifty percent of the step-transactions. This test is substantially different from the *Interdependence Test* because it emphasizes the magnitude of effects, actual payoffs, the joint effects of change and payoffs, the

Even if the IPO and De-SPAC merger/acquisition are deemed to be one *Integrated Transaction*, the US Merger-Law safe-harbor provisions don’t apply to the SPAC’s IPO, and are pre-empted by securities law for the same reasons stated above and because the “*Integrated Transaction*” is an IPO.

The consequences of an *Integrated Transaction* (that is an IPO) can be significant for all parties (the SPAC, the SPAC-Sponsor, the SPAC-shareholders, the investment banks and the Target-Company) in terms of accounting (financial statements), taxation and financing impact but its seldom discussed or disclosed in SPACs’ regulatory filings and financial statements.

SPAC+^{®™}, SPAC++^{®™} and SPAC+++^{®™} models reduce or eliminate these foregoing problems by focusing on Industry Rollups, and through **Factors 4, 5, 6, 10, 11 & 14** (which are defined above).

7.10. Nonlinearity, Systems And Regret: The US SEC’s April 2021 Accounting Interpretation¹⁹ Will Significantly And Negatively Affect SPACs – A New Accounting Rule ?.

¹⁹ See: “*Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies (“SPACs”)*”. US SEC, Division of Corporate Finance, Washington DC, USA.

The US SEC's April 2021 accounting-interpretation for SPACs' Warrants has drastically changed the economics, disclosure and liability of SPACs which hitherto, had relied heavily on Warrants for investment returns and to justify the existence of SPACs. The new US SEC accounting statement states that most SPAC Warrants are corporate liabilities, and that many SPACs use similar Warrant structures (standardization).

The April 2021 SEC accounting-interpretation will probably force many US SPACs to prepare Accounting Restatements and a Form-8K (an Item 4.02, *Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review*) for filing at the US SEC. The April 2021 US SEC accounting interpretation also caused new SPAC SEC-filings to drastically decline to just 61 in Q2-2021 and 88 in Q3-2021, from 298 in Q1-2021. That confirms the author's (Michael C. Nwogugu's) hypothesis that the traditional US and European SPAC structures are very inefficient and are heavily dependent on Warrants for investor returns.

On the contrary, none of the Warrants issued as part of SPAC+^{®™} and SPAC++^{®™} SPACs can be classified as liabilities under US GAAP or IASB's IFRS or US SEC accounting regulations, and if there is any

<https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs>. This article stated in part: ".....**Indexation.**

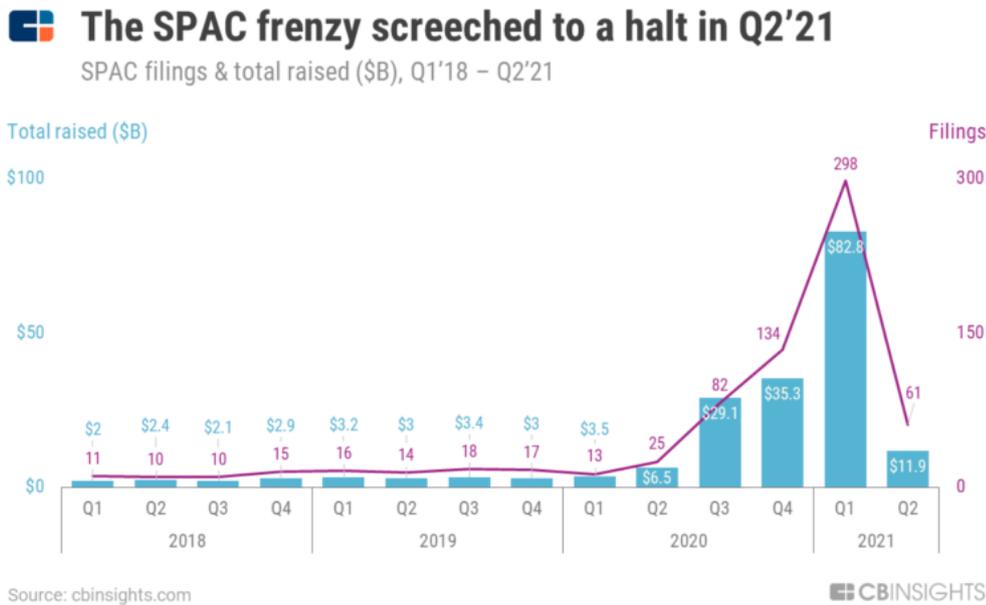
U.S. Generally Accepted Accounting Principles ("GAAP") includes guidance that entities must consider in determining whether to classify contracts that may be settled in its own stock, such as warrants, as equity of the entity or as an asset or liability.[4] Evaluation of this guidance requires an evaluation of the specific terms of the contract and also of an entity's specific facts and circumstances. An equity-linked financial instrument (or embedded feature) must be considered indexed to an entity's own stock in order to qualify for equity classification.[5] While many instruments include a fixed strike price or a fixed number of shares used to calculate the settlement amount, other instruments may include variables that could affect the settlement amount. Such variables do not preclude a conclusion that the instrument is indexed to an entity's own stock if the variables would be inputs to the fair value of a fixed-for-fixed forward or option on equity shares. To assist in an entity's evaluation, GAAP includes a list of such inputs.[6] We recently evaluated a fact pattern relating to the terms of warrants that were issued by a SPAC. In this fact pattern, the warrants included provisions that provided for potential changes to the settlement amounts dependent upon the characteristics of the holder of the warrant. Because the holder of the instrument is not an input into the pricing of a fixed-for-fixed option on equity shares, OCA staff concluded that, in this fact pattern, such a provision would preclude the warrants from being indexed to the entity's stock, and thus the warrants should be classified as a liability measured at fair value, with changes in fair value each period reported in earnings.

Tender Offer Provisions.

GAAP further includes a general principle that if an event that is not within the entity's control could require net cash settlement, then the contract should be classified as an asset or a liability rather than as equity.[7] However, GAAP provides an exception to this general principle whereby equity classification would not be precluded if net cash settlement can only be triggered in circumstances in which the holders of the shares underlying the contract also would receive cash. Scenarios where this exception would apply include events that fundamentally change the ownership or capitalization of an entity, such as a change in control of the entity, or a nationalization of the entity.[8] We recently evaluated a fact pattern involving warrants issued by a SPAC. The terms of those warrants included a provision that in the event of a tender or exchange offer made to and accepted by holders of more than 50% of the outstanding shares of a single class of common stock, all holders of the warrants would be entitled to receive cash for their warrants. In other words, in the event of a qualifying cash tender offer (which could be outside the control of the entity), all warrant holders would be entitled to cash, while only certain of the holders of the underlying shares of common stock would be entitled to cash. OCA staff concluded that, in this fact pattern, the tender offer provision would require the warrants to be classified as a liability measured at fair value, with changes in fair value reported each period in earnings. The evaluation of the accounting for contracts in an entity's own equity, such as warrants issued by a SPAC, requires careful consideration of the specific facts and circumstances for each entity and each contract. OCA is available for consultation on accounting and financial reporting issues, including relating to an entity's specific fact pattern on issues similar to those described above or on other instruments and accounting issues.....". See: "SPAC FAQs: SEC Staff Statement on Accounting Issues for SPAC Warrants". By Davina K. Kaile. Pillsbury (US Law firm). <https://www.pillsburylaw.com/en/news-and-insights/sec-staff-statement-on-accounting-issues-for-spac-warrants.html>."

future change in accounting regulations that compels such classification, such Warrants shall be automatically restructured by the SPAC to eliminate the specific features that make them liabilities (**Factor-13**).

Figure-1: US SPAC Filings And Total Amounts Raised By SPACs In Each Calendar Quarter (2018-2021).



Source: <https://www.cbinsights.com/research/report/what-is-a-spac/>

Figure-2: US SPAC Activity (As Of Q3-2021).

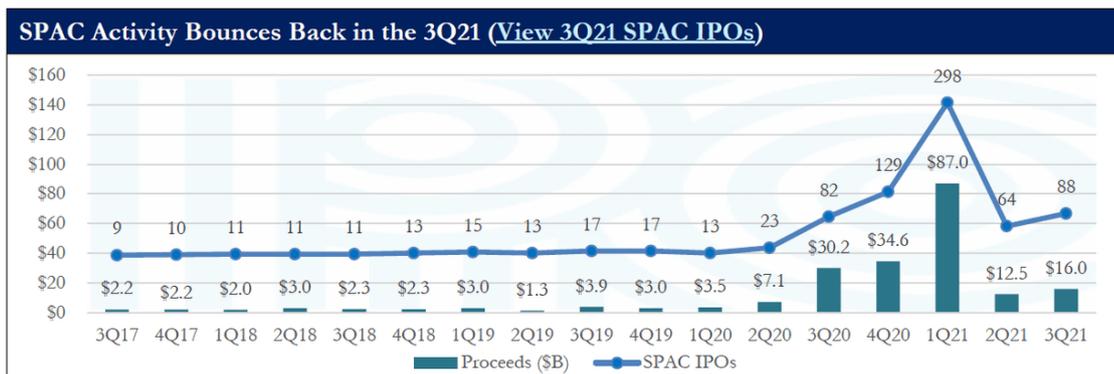
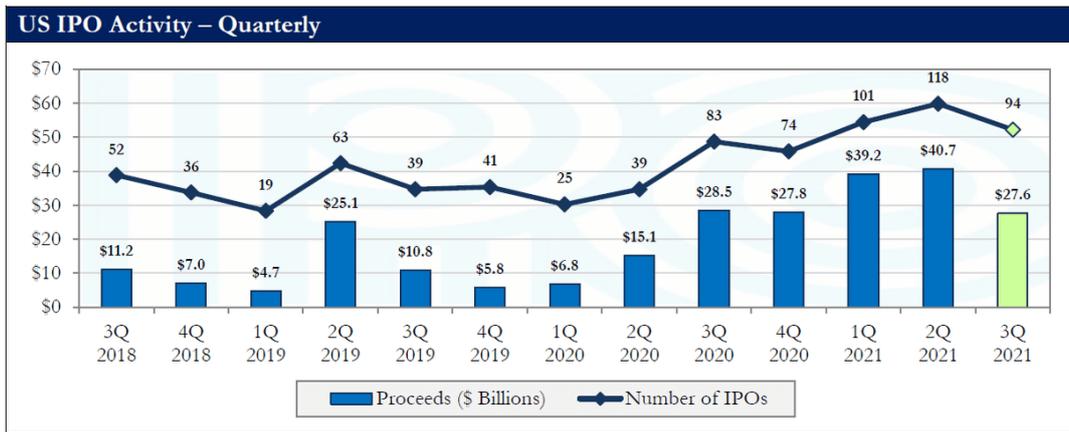


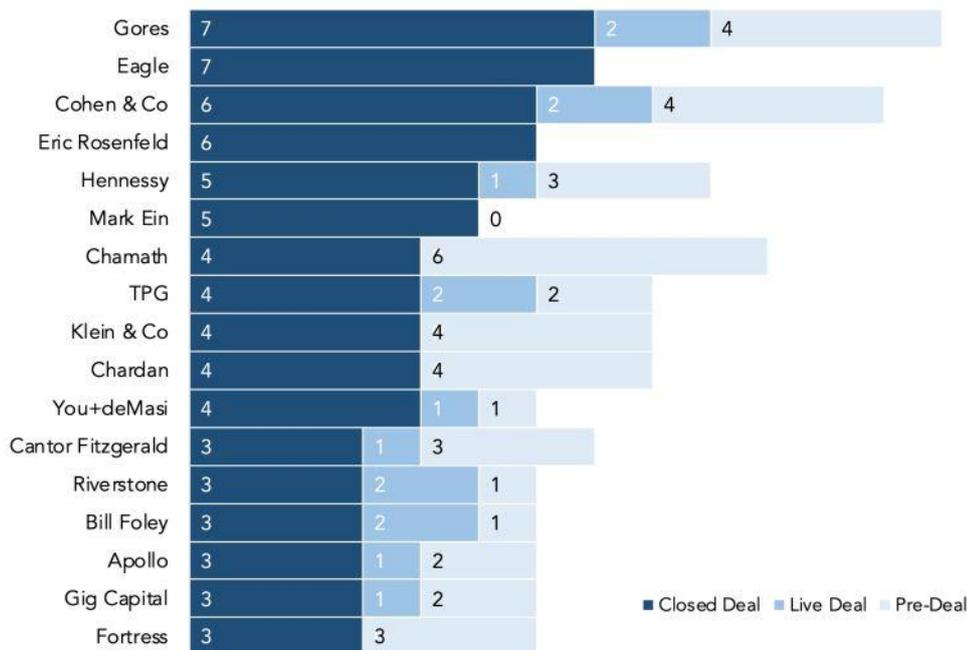
Figure-3: US IPO Activity (As Of Q3-2021).



Source: Renaissance Capital. Data includes IPOs and direct listings with a market cap of at least \$50mm and excludes closed-end funds and SPACs.

Figure-4: Serial SPAC-Sponsors (October 2021).

SERIAL SPAC SPONSORS BY VOLUME



Data: SPAC Research, Oct 31, 2021



7.11. The SPAC-Sponsor Cannot Legally Approach, Express Interest In, Or Discuss With Target-Companies Before The SPAC’s IPO.

This prohibition on SPAC-Sponsors slows down the M&A process and is a disadvantage for SPAC-Sponsors, but may be relevant for other reasons and can benefit SPAC-investors because it reduces uncertainty around the IPO date and for the IPO-price, and results in less disagreement among prospective IPO investors (less-problematic book-building by the investment banks) and thus can reduce IPO costs.

7.12. Nonlinearity And Systems: Unqualified SPAC-Sponsors.

In the US, many SPAC-Sponsors are totally unqualified and have never worked on M&A transactions and Industry Rollups and or have never been credible senior executives in industry, and or are not licensed/certified as Accountants or Financial Analysts and or don’t know anything about Corporate/Product Strategy, expansion/growth (eg. Strategic alliances, licensing, Joint Ventures, etc.) and post-acquisition integration.

These “Fake-Sponsors” are usually influential and include former sports professionals, “Influencers”, Public-Speakers, and entertainment celebrities (and even portfolio managers that don’t have experience as senior executives in industry or in M&A and Industry Rollups). The Fake-Sponsors greatly reduce the credibility of SPACs (and associated M&A processes) and increase harmful speculation and volatility in SPAC stock markets (much like the celebrity-endorsed non-governmental cryptocurrencies that the US SEC has found to have been illegally issued to the general public).

7.13. Nonlinearity And Regret: ESG And Sustainability In SPACs.

While some SPACs advertise that they focus partly or wholly on sustainability/ESG, their efforts are mostly and exclusively focused on selecting and or acquiring target-companies that: i) have relatively high or above-average sustainability/ESG scores and rankings, or ii) are in “clean” or “circular economy” sectors; and or iii) have announced waste-reduction and energy-use reduction measures. Since the typical US and European SPAC-Sponsor loses voting control of the SPAC at De-SPAC (and doesn’t hold post-DeSPAC senior executive positions at the SPAC), they don’t have the corporate power to effect Sustainability and ESG measures at the acquired companies.

On the contrary, the SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} approaches to Sustainability and ESG is organic, multi-faceted and continues after De-SPAC and is explained herein and above (**Factor-8**).

7.14 Nonlinearity, Systems And Regret: During 2021, The Stocks Of Many US SPACs Were Trading At Discounts To Their NAV And The Trend Is Increasing.

This negative trend²⁰ can be attributed to varied reasons including but not limited to the following:

²⁰ See: “Pershing Square Tontine Holdings, Ltd. Releases Excerpt from Pershing Square Holdings, Ltd. Report”. August 24, 2021. <https://www.businesswire.com/news/home/20210824005843/en/Pershing-Square-Tontine-Holdings-Ltd.-Releases-Excerpt-from-Pershing-Square-Holdings-Ltd.-Report>. This article stated in part: “.....The market value of SPACs in general and PSTH, in particular, declined since the beginning of the year, which along with PSTH’s failure to consummate the Universal Music Group transaction likely contributed to PSTH’s stock price declining to a level approximating its \$20 per share cash in trust. On Friday last week, PSTH’s share price declined to slightly below NAV for the first time. Nearly all pre-merger SPACs have traded at discounts to NAV since earlier this year. We believe this is due to many poor outcomes for investors in conventional SPACs after they have completed their merger transactions. The poor incentives of conventional SPACs – enormous compensation for a SPAC sponsor for just getting a transaction done regardless of the outcome for shareholders, combined with limited Sponsor “skin in the game” – are the principal problems.”.

See: “It’s Now a Buyer’s Market for SPACs as Deal Terms Get Sweetened”. *Barron’s*. By Andrew Bary. Sept. 10, 2021. <https://www.barrons.com/articles/tesla-levis-constellation-brands-vmware-and-other-stocks-for-investors-to-watch-this-week-51633287600>. This article stated in part: “.....New SPAC issuers are under pressure to give more to investors because all but five of nearly 400 SPACs that have yet to reach deals are trading below their trust values—normally \$10 a share. Some 427 SPACs have come to market in 2021, raising \$125 billion, according to *SPACInsider*..... Investors are asking for their money in many recent SPAC mergers, with some deals experiencing 90%-plus redemption rates. The largest and highest profile SPAC, Bill Ackman’s Pershing Square Tontine Holdings (PSTH), illustrates the tougher times in the market. On Friday morning, it was trading at \$19.70, down a penny. It is below its trust value of \$20 a share, after topping \$30 earlier this year at the height of the SPAC mania. Pre-deal SPACs like Pershing Square Tontine are attracting interest as bond alternatives since they yield an average of about 2% to their windup dates..... SPACs initially issue units consisting of common shares and warrants and then separate them. With warrants sometimes worth around \$1, new-issue buyers of SPACs can get 50 cents or more in potential warrant value in addition to the common shares. Klymochko says that many new SPACs are putting \$10.10 or \$10.20 into their trusts as a sweetener for investors. The new Kensington SPAC offers investors a 10-cent bonus if the sponsor extends the life from 12 months to 18 months and then another 10 cents from 18 months to 24 months. In a recent merger deal involving Sustainable Opportunities Acquisition Corp , roughly 90% of investors elected to redeem their shares and about two-thirds of the institutional investors who had agreed to purchase \$330 million of stock in the merger transaction decided to back out. It’s unusual for these investors in PIPEs (private investment in public equity) to opt out of their original commitments. Most post-deal SPACs

- i) The poor stock price performance of SPACs that have completed the De-SPAC processes; and the poor “Ex-Warrant” returns of SPACs.
- ii) Confusion about the valuation and accounting treatment about SPACs’ Warrants (especially after the US SEC announced new SPAC accounting regulations in April 2021). Also investors seem to be attributing more value to the SPACs’ Warrants (ie. allocating more value in the \$10 per-unit price to the Warrants).
- iii) SPACs’ excessive reliance on Warrants, and the current and expected significant dilution at and after the De-SPAC transaction – such dilution is sometimes as much as 35% (thirty-five percent).
- iv) The high redemption-rates of SPAC-shareholders (at De-SPAC) and mis-use of the SPAC’s redemption feature by institutional investors.
- v) Speculation and Arbitrage activity by traders.
- vi) Post IPO entry into SPAC stock markets by “low/moderate sophistication” retail investors.
- vii) Investors’ reactions to the traditional Sponsor-Promote (15%-20% of the SPAC’s equity) regardless of whether or not the SPAC-Sponsor invested cash in the SPAC.
- viii) Highly publicized problems of specific SPACs and failed acquisitions (such as Pershing Square Tontine Holdings, Ltd.’s failure to acquire Universal Music Group).
- ix) Litigation against SPACs.
- x) Starkly un-qualified SPAC-Sponsors.

7.15. Nonlinearity And Regret-Theory: The Current SPAC Structures Increase D&O Insurance Costs And The Probability Of Lawsuits.

As of 2021, the current SPAC structures used in the US and Europe increases the costs and deductibles of Directors & Officers Liability insurance²¹ policies. In the US, the costs of D&O insurance policies increased by more than 200% during 2015-2021 which was substantial evidence that the probability of SPAC lawsuits increased during the same period. That is partly attributable to the biases, controversies, wrong incentives and illegalities inherent in the traditional SPAC structure (which were obscured by hype and the SPAC Warrants) and which are now becoming public and are increasingly being litigated.

SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models reduce or eliminate these foregoing problems through **Factors 1-17** (which are defined above).

7.16. Nonlinearity, Regret And Incentive-Conflicts: The Current SPAC Structures Increase The Sensitivity Of SPACs To Acquisition-Price Proposals In De-SPAC Acquisitions.

are trading below their original \$10 offering prices, giving investors pause about participating in merger transactions.”.

²¹ See: “Uptick in SPAC lawsuits could spark more D&O price hikes”. Judy Greenwald, June 08, 2021.

<https://www.businessinsurance.com/article/20210608/NEWS06/912342362/Uptick-in-SPAC-lawsuits-could-spark-more-D&O-price-hikes-directors-and-officers->

See: Priya Cherian Huskins, “Why More SPACs Could Lead to More Litigation (and How to Prepare)”. *A.B.A. Business Law Today* (June 25, 2020).

See: Willis Towers Watson (April 2021). *SPAC sponsors: Why D&O Coverage is critical (ABCs of SPACs, Part III)*. <https://www.willistowerswatson.com/en-CA/Insights/2021/03/SPAC-sponsors-Why-D-O-Coverage-is-critical>.

See: *SPACs, IPOs and Liability Risk under the Securities Laws*. By John Coates, Acting Director, Division of Corporation Finance, US SEC. April 8, 2021. <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws>.

See: Bruce A. Ericson, Ari M. Berman and Stephen B. Amdur, “*The SPAC Explosion: Beware the Litigation and Enforcement Risk*”. Harvard Law School Forum on Corporate Governance (Jan. 14, 2021).

See: Ellison Ward Merkel, et. al., “*Litigation Risk in the SPAC World*”. Quinn Emanuel Trial Laws. (Sept. 30, 2020).

See: Jeff Montgomery, “*SPAC Investor Sues in Chancery Over MultiPlan’s Stock Drop*”. Law360 (Mar. 25, 2021).

See: Jennifer Bennett, “*Canoo Faces Investor Suits Over Post-SPAC Deal Focus Changes*”. Bloomberg Law (Apr. 5, 2021).

As of 2021, the current SPAC structures used in the US and Europe increases the sensitivity of the SPAC to the proposed/actual acquisition-price of the target-company in the Initial Acquisition. As a result, the number of annual failed acquisition-proposals by SPACs (failed because of disagreements over the acquisition-price) has increased during 2014-2021. The greater the acquisition-price, then: 1) the greater the dilution of holdings of the target-company shareholders; 2) the greater the dilution of SPAC shareholders; 3) the greater the value of the Warrants in the SPAC's units; and 3) the greater the probability that the SPAC's IPO investors won't redeem their shares.

In order for the SPAC-Sponsor and the SPAC's IPO investors to get a reasonable percentage of the post-merger SPAC's equity, the SPAC-Sponsor will try to underprice the target-company. Thus, in the traditional SPAC model, the SPAC-Sponsor is faced with often conflicting incentives.

Failed acquisition proposals are costly to the SPAC-Sponsor, the target-company and SPAC-shareholders because of the associated transaction costs, arbitrage, uncertainty and loss of reputation.

SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models reduce or eliminate these foregoing problems through **Factors 1, 3, 5, 10, 13, 15, 16 & 17** (which are defined above).

7.17. Nonlinearity, Systems And Regret: The SPAC-Sponsor's Class-B Share Can Be Deemed (Re-Characterized) To Be A Contingent Exchangeable-Loan Or A Forward Purchase Agreement Plus A "Right", And Is Inefficient And Costly.

In most SPACs, the SPAC has dual class shares (usually Class-A shares for SPAC-shareholders and with 80% of votes and pre-DeSPAC economic interest; and Class-B shares for the SPAC-Sponsor and with 20% of votes and pre-DeSPAC economic interest) and the SPAC-Sponsor's Class-B shares are subject to a lockup agreement (usually until the later to occur of twelve months after the IPO date, or the date of De-SPAC merger/acquisition; and henceforth, the "Lockup Expiration Date"). Usually, the SPAC-Sponsor's Class-B Shares:

- i) are not redeemable prior to, and the Warrants in the SPAC's IPO "Units" can't be exercised before the De-SPAC Transaction.
- ii) aren't entitled to vote for/against the De-SPAC or to vote to extend the time required to execute a De-SPAC Transaction.
- iii) don't have redemption-rights at De-SPAC.
- iv) are automatically converted into a "grossed-up" number of the SPAC's Class-A shares at De-SPAC.

Also, in the traditional SPAC model and before the SPAC's IPO, the SPAC usually grants founders Warrants to the SPAC-Sponsor in exchange for its payment of the underwriting discount and may award restricted Class-A Shares to the SPAC-Sponsor. See Nwogugu (2014). In such circumstances, the SPAC-Sponsor's Class-B share is equivalent to, and can be re-characterized as one of the following:

- i) a Unit that consists of one "Limited SPAC Voting-Right" and a *Contingent Exchangeable Loan* that has the following terms:
 - 1) Loan Principal – the dollar amount of the Class-B shares at issuance.
 - 2) Imputed Interest – either the value of the Warrants issued to the SPAC-Sponsor; or a share of the post-DeSPAC stock gains that accrue to the SPAC-Sponsor.
 - 3) Term – the earlier to occur of the De-SPAC or the dissolution of the SPAC.
 - 4) Repayment – the loan principal is automatically exchanged for the SPAC's Class-A shares at De-SPAC, or is automatically extinguished at dissolution of the SPAC.

Other classification criteria are as follows:

- 1) *The requirement of repayment of the debt substantially depends on the success of the SPAC* – the "debt" won't be repaid unless there is a De-SPAC.
- 3) *The identity of interests of the lender and the borrower* – the SPAC-Sponsor is usually different from the SPAC entity, many SPAC IPO-Shareholders, the target-company and the target-company's shareholders.
- 4) *The existence of actual or implied security/collateral for the loan* – in these circumstances, the SPAC Class-B shares held by the SPAC-Sponsor can be deemed to be imputed/implied or "constructive" collateral for the loan.
- 5) *The "expectation of repayment" of the debt* - the mandatory De-SPAC exchange/conversion right creates valid and actionable expectations of repayment of the loan.

- 6) These “loans” created by traditional SPAC structures are probably usurious because of the value of the Warrants (in each “Unit”) and the short-term of the loan (the time period between the IPO date and the De-SPAC date is usually 4.5-7.5 months).
- ii) a Unit that consists of one “*Limited SPAC Voting Right*”, plus a *forward purchase agreement* that has a zero or negligible exercise price, and permits the SPAC-Sponsor to acquire the SPAC’s Class-A public shares (by tendering it Class-B shares), beginning from the Lockup Expiration Date and until the earlier to occur of the De-SPAC date or the SPAC’s liquidation/dissolution date (collectively, the “*SPAC-Sponsor Distortion*”).

The use of the term “limited” reflects the fact that the Class-B share grants only limited SPAC voting-rights to its holder. The common factor is that the foregoing Warrant and the Forward Purchase Agreement are structurally very similar, and have similar payoffs and can increase post-DeSPAC dilution and SPAC shares’ post-IPO volatility and uncertainty. It’s obvious that the *SPAC-Sponsor Distortion* can distort (and cause conflicts of) merger/acquisition pricing and the incentives of the SPAC-Sponsor, the SPAC’s IPO-investors, the underwriter investment banks and the target-company and thus, is both costly and inefficient.

Unfortunately, most SPAC IPO disclosure statements, financial statements and regulatory filings don’t treat the SPACs’ Class-B shares as Warrants or “*Constructive Warrants*” or forward purchase agreements, and don’t mention the risk of re-characterization of the Class-B shares as Warrants or forward-purchase Agreements which can result in litigation. Also, the US SEC’s April 2021 new accounting statement/interpretation about SPAC Warrants affects the tax and accounting classification of SPACs’ Class-B shares.

SPAC+^{®™}, SPAC++^{®™} and SPAC+++^{®™} models avoid/prevent such costs, dilution, incentive-conflicts, litigation-risks, uncertainty and distortions through **Factors 3 & 4** (which are defined above).

7.18. Nonlinearity, Large-Scale-Systems And Regret: Accretive Vs. Dilutive De-SPAC Mergers And The Mis-placed Debate About The Optimal Equity-Market-Value Of The Target-Company In De-SPACs.

Many SPAC-Sponsors and investment banks (especially in the US) have been wrongly conditioned to believe that the optimal size (equity) of a Target-Company in De-SPAC is 3-5 times (3X-5X) the market value of the SPAC’s equity or the amount of cash in the SPAC’s Trust (the “*De-SPAC Size Bias*”) ²². The main justification for the *De-SPAC Size Bias* is that it reduces the dilutive effects of the SPAC-Sponsor’s Promote (and to a lesser

²² See: *SPACs: Which Factors Lead To Merger Success?. There are now over \$146bn of SPAC deals looking for merger candidates. But executing a merger is not the end of the story—many SPAC deals have performed poorly post-merger. What are the key factors in successful deals?* March 19, 2021. <https://www.sia-partners.com/en/news-and-publications/from-our-experts/spacs-which-factors-lead-merger-success>. See: “*SPAC Nasdaq Listing Standards*”. By Laura Anthony. August 2021. <https://securities-law-blog.com/2021/08/10/spac-nasdaq-listing-standards/>. This article stated in part: “.....Nasdaq has issued a proposed rule change that would permit a SPAC to contribute a portion of the amount held in its deposit account to a deposit account of a new SPAC and spin off the new SPAC to its shareholders, thereby enabling multiple business combinations to benefit the same shareholder base. The filing, pending SEC approval, will provide shareholders the right to redeem all of their holdings prior to the first transaction, similar to existing SPACs..... Nasdaq has noticed cases where SPAC sponsors create multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target’s needs. This practice creates the potential for conflicts between the multiple SPACs (each of which has different shareholders) and still fails to optimize the amount of capital that would benefit the SPAC’s public shareholders and a business combination target.....”.

See: “The Issues With SPACs - The blank-check boom shows no signs of slowing, but there are reasons to be wary. *New York Times*. Published Feb. 10, 2021 Updated July 13, 2021. By Andrew Ross Sorkin, Jason Karaian, Michael J. de la Merced, Lauren Hirsch and Ephrat Livni.

<https://www.nytimes.com/2021/02/10/business/dealbook/spacs-blank-check-deals.html>.

See: Cravath, Swaine & Moore LLP (2021). *SPAC Transactions in the United States*.

<https://www.legal500.com/guides/hot-topic/spac-transactions-in-the-united-states/>

See: The SPACs boom: Europe picks up the pace. *Deloitte Insights*. July 2021.

<https://www2.deloitte.com/xs/en/insights/industry/financial-services/spacs-in-europe.html>.

extent, dilution by the SPAC's IPO shareholders), and most of the completed US De-SPAC mergers have been dilutive for the Target-Company's shareholders. The *De-SPAC Size Bias* is wrong and the issues are as follows:

i) The *De-SPAC Size Bias* implies that the traditional SPAC-Sponsor's promote (20% of the SPAC's IPO equity) is excessive and unjustified, and thus shouldn't be allowed to cause noticeable dilution of the Target-Company's shareholders. If so, then its also evidence that the traditional SPAC model is very inefficient.

ii) Implementation of the *De-SPAC Size Bias* incrementally complicates merger/acquisition pricing because of the very high redemption rates that SPAC experience at De-SPAC (redemption rates of 50%-80%, and sometimes as high as 90% as of September 2021). When a SPAC that is worth \$\$100-\$105 million and has about \$95 million in cash in its Trust goes to acquire a company worth \$400 million, and then 50% of the SPAC's shareholders redeem their shares around the Merger Date, it complicates M&A pricing, and Target-Company usually bears the loss because it gets less cash from the SPAC's Trust at De-SPAC (the "*DeSPAC Redemption Loss*"). The *De-SPAC Redemption Loss* maybe actionable as a securities-law claim, or as contract or tort claim (ie. inadequate disclosure; misrepresentation; breach of implied covenant of good faith and fair dealing; breach of trust; etc.).

iii) In order to address the *DeSPAC Redemption Loss*, some Target-Companies have imposed (in the Merger Agreement) post-DeSPAC vesting requirements on the SPAC-Sponsor's SPAC shares wherein the SPAC-Sponsor will lose an increasing percentage of its SPAC shares as more SPAC-IPO-shareholders redeem their shares at De-SPAC. However, such vesting requirements are inefficient as explained in the section below on the De-SPAC merger between Acies Acquisition Corp. and PlayStudios. Other ways to reduce or eliminate the *DeSPAC Redemption Loss* are as follows:

1) The Target-Company and the SPAC can include in the Merger-Agreement, a "*Merger-Date Adjustment Clause*" that grants the Target-Company shareholders a greater percentage of the equity of the combined post-De-SPAC entity, based on the number/percentage of redemptions at De-SPAC (ie. within one day after the De-SPAC Date or the Redemption Date).

2) The SPAC and the SPAC-Sponsor can use the type of Warrants (in the SPAC's Units) specified in the SPAC+^{®TM} and SPAC++^{®TM} models wherein the Warrants have exercise-prices that are initially at-the-money but are ratcheted upwards (increased) upon the occurrence of specified events including the De-SPAC, and or a redemption-rate that exceeds a pre-specified benchmark, and or a large increase in the SPAC's stock-price.

3) The SPAC and SPAC-Sponsor can use the SPAC++^{®TM} and SPAC+++^{®TM} models wherein the SPAC's IPO-shareholders' redemption-rights are eliminated.

4) Even if the SPAC-Sponsor's traditional promote (20% of the SPAC's IPO shares) is deemed excessive and dilutive, the De-SPAC merger can still be *accretive* to the Target-Company's shareholders if the implied per-share Acquisition-Exchange-Price of the SPAC's shares at De-SPAC is lower than the "*redemption-adjusted*" SPAC's book-value per share (cash in the Trust) by at least 20% on the De-SPAC date (ie. the Target-Company's shareholders get a greater-than-normal percentage of the post-De-SPAC combined entity). In such case, the pre-DeSPAC market-values of the SPAC and the Target-Company can be equal or not too different or won't matter.

iv) A De-SPAC merger can be accretive or dilutive²³ or neutral (for the Target-Company's shareholders) depending on the following circumstances:

1) *Dilutive* for the Target-Company shareholders only if the implied per-share Acquisition-Exchange-Price of the SPAC's shares is greater than the "*redemption-adjusted*" SPAC's book-value per share (cash in the Trust) on the De-SPAC date (ie. the Target-Company's shareholders get a lower percentage of the post-De-SPAC combined entity); OR

2) *Accretive* for the Target-Company's shareholders if the implied per-share Acquisition-Exchange-Price of the SPAC's shares is lower than the "*redemption-adjusted*" SPAC's book-value per share (cash in the Trust) on the De-SPAC date (ie. the Target-Company's shareholders get a greater percentage of the post-De-SPAC combined entity); OR

3) *Neutral* for the Target-Company's shareholders if the implied per-share Acquisition-Exchange-Price of the SPAC's shares is exactly equal to the "*redemption-adjusted*" SPAC's

²³ See: Harding, D. & Yale, P. (July 2002). Discipline and the Dilutive Deal. *Harvard Business Review*. <https://hbr.org/2002/07/discipline-and-the-dilutive-deal>.

book-value per share (cash in the Trust) on the De-SPAC date (ie. the Target-Company's shareholders get the correct percentage of the post-De-SPAC combined entity). This distinction is critical for determining the magnitude of the *DeSPAC Redemption Loss*. Thus, assuming a zero-percent redemption-rate, a SPAC valued at \$500 million can merge with a Target-Company that is valued at \$550 million if such De-SPAC merger is *accretive* to the Target-Company's shareholders.

v) The reality is that when the De-SPAC Merger is *Dilutive* (to the Target-Company's shareholders), the *De-SPAC Redemption Loss* increases as the Merger-Date Market-Value of the Target-Companies increases, primarily because it affects both the Acquisition-Exchange-Price and the number of the SPAC's shares that are allocated to the Target-Company's shareholders at De-SPAC (and the relationship is nonlinear). That occurs less when the De-SPAC Merger is *accretive* to the Target-Company's shareholders. Conversely and for similar reasons, when there is *De-SPAC Redemption Loss*, the dilutive effect of the De-SPAC Merger (to the Target-Company's shareholders), increases as the Merger-Date Market-Value of the Target-Companies increases (and the relationship is nonlinear).

vi) The issue of dilutive De-SPAC mergers has been very controversial in the US, and causes or can cause significant *Regret* (among Target-Companies' shareholders), market-volatility, and harmful arbitrage and speculation. That is even more so given that as of July 2021, the average post-DeSPAC returns for US SPAC shareholders was about -65%.

vii) When viewed from a large-scale perspective (aggregation of all the problems caused by the *De-SPAC Redemption Losses* if any, of all post-DeSPAC SPACs), it's obvious that it far outweighs any benefits of traditional SPACs.

viii) In these circumstances, the correct measure of accretion/dilution of the DeSPAC merger is Book-Values and Market-Values (and isn't EPS (earnings-per-share)) because of the following:

- 1) The typical SPAC is a new company, has literally no operations, doesn't generate any revenues but has significant cash which can rapidly increase the earning power of the combined entity. Thus, EPS cannot accurately measure the SPAC's earning-power, operations, human-capital and opportunity-set.
- 2) Some Target-Companies are development stage companies (usually technology/biotech companies) that are not generating any meaningful revenues but have substantial growth potential and have taken-in the equivalent of tens or hundreds of millions of dollars in investor funds. Thus, EPS cannot accurately measure their earning-power, operations, human-capital, intellectual-property and opportunity-set.
- 3) Book-value/Market-Value based measurement of accretion/dilution in Mergers better measures the going-concern earning power and opportunity-set of SPACs and their Target-Companies; and better reconciles the often-divergent differences between Book-value/Market-Value dichotomies and "*expectations*" (of shareholders and investment banks).
- 4) The Finance/Accounting academic literature has documented that Target-Company are prone to perpetrating, and have significant incentives to perpetrate earnings management and asset-quality management in the two years before their merger/acquisition transaction.
- 5) The Finance/Accounting academic literature has documented that corporate executives routinely "manage" and misstate popular accounting metrics such as EPS, ROE, ROA, Debt/equity ratio, EBIT, etc.; partly because their compensation and incentive-packages are often directly based on such accounting metrics, and they try to avoid surprises/shocks that can affect their companys' stock prices.

7.19. The Tontine-Warrant Structure Is Redundant And Unfair, And Pershing Square's Forward Purchase Agreement Can be Re-Characterized.

The *Tontine Warrant* structure was created in the formation of a SPAC (Pershing Square Tontine Holdings or "PSTH") by Pershing Square Holdings, a US investment management company (the SPAC raised about \$4 billion in its IPO and was the largest US SPAC as of September 2021). Other SPACs such as Starboard Value Acquisition Company (SVAC)²⁴ have copied the *Tontine Warrant* structure.

²⁴ See: *Starboard Value Acquisition Company: Market Overlooking Tontine Warrants*. March 09, 2021. <https://seekingalpha.com/article/4412584-svac-market-overlooking-tontine-warrants>.

The *Tontine-Warrant structure* is probably redundant because its already “implicit” in every SPAC that requires stock redemption in cash:

- 1) when an “Exiting-Shareholder” (who voted for redemption) redeems their SPAC shares for cash at the IPO price, the SPAC’s earning-power and Opportunity-Set both decline (the “*Reduced-Opportunity-Set*”), and the Shareholder forgoes the “call option” claim on the SPAC’s future Reduced-Opportunity-Set. Such Reduced-Opportunity-Set automatically reverts to all “Staying-Shareholders” (who voted against redemption) – and that has the same or similar effect as the re-distribution of *Tontine Warrants*. That is, the Staying-Shareholders shouldn’t have to pay the warrant exercise price (or receive Net-Warrants) for gains/capital-appreciation that already accrue to them when Exiting-Shareholders redeem their SPAC shares.
- 2) on the contrary, when an “Exiting-Shareholder” redeems their SPAC shares for the SPAC’s debt-units, they retain a call-option claim on the SPAC’s Opportunity-Set, and the SPAC’s Opportunity Set declines by much less amounts (by at least an amount equal to the PV of interest payments for the debt minus the PV of the associated interest-tax-shields).

If the present value of the SPAC’s *Reduced Opportunity-Set* (on a per share basis) is lower than the *Tontine-Warrant* exercise-premium (per share) then a Staying-Shareholder overpays when they exercise the *Tontine-Warrant*. The *Tontine Warrants* don’t provide any meaningful incentives for SPAC-Shareholders to vote against stock-redemption because of the following:

- 1) The Staying-Shareholders still have to pay cash in order to exercise the *Tontine Warrants* (they aren’t Net-Warrants), and the opportunity cost of such cash can be significant and increases over time.
- 2) Assuming that they are “feasible” and are not redundant, the *Tontine Warrants* may provide significant returns to Staying-Shareholders only if substantial shareholders vote for redemption (and their Warrants are re-distributed to Staying-Shareholders), and if that happens, the SPAC’s Opportunity-Set and propensity to complete acquisitions/mergers (and thus the SPAC’s equity-value) will all decline substantially, which in turn will make the *Tontine Warrants* much less valuable or even worthless.
- 3) *Tontine Warrants* create opportunities for side-payments, collusion and bribery that can distort SPAC dynamics and M&A pricing. The SPAC-Sponsor and some SPAC shareholders have incentives to bribe the external-advisors of institutional investors. In another example, two SPAC shareholders can collude wherein the Exiting-Shareholder votes for redemption, gets cash redemption payment for his/her shares, and purchases (or otherwise gets the benefits of) the redistributed *Tontine Warrants* from the Staying-Shareholder, and after a defined time, both shareholders will share their “aggregate assets” (which consists of the redemption cash, accrued interest, the *Tontine Warrants*, the original Warrants in the SPAC Units and the capital appreciation from the Staying-Shareholder’s shares and Warrants).
- 4) *Tontine Warrants* distort the shareholder-voting process by misrepresenting the SPAC’s Opportunity-Set, and by shifting investors’ attention from the merits of the target-company and its acquisition, to the illusory gains from the *Tontine Warrants*.
- 5) At redemption-time (at De-SPAC), the *Tontine Warrant structure* maintains the SPAC’s debt burden (as of 2021 and under US SEC’s April 2021 accounting statement/interpretation, most SPACs’ Warrants were to be classified as liabilities) while reducing the SPAC’s cash-balance and Opportunity-Set, all of which reduces the SPAC’s value and ability to close acquisitions.

Also, Pershing Square’s hyped “*Forward Purchase Agreement*” can be deemed (re-characterized) to be:

- i) a disguised long-term Stock Warrant because: 1) it has similar terms as a Warrant that has a limited exercise-window (ie. a long-term European Call-option); 2) it has similar payoff as a Warrant that has a limited exercise-window (ie. a long-term European Call-option); 3) its contingent on the occurrence of events. See the section above about the SPAC-Sponsor’s Class-B Share as Warrant or a Forward Purchase Agreement plus a “Right”.
- ii) A debt because it’s a “*Constructive Warrant*” and its “exercise” is contingent on events, some of which are outside Pershing Square’s control (see the US SEC’s April 2021 interpretation of accounting rules for SPAC’s Warrants).

SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models don't offer or use any incentives or securities that are similar to the *Tontine Warrant* structure or the *PS-Warrants* (**Factor-9**).

7.20. Pershing Square's Post-Merger Warrant Is Inefficient And Unfair.

With regards to the PSTH SPAC, instead of taking the normal 20% promote, Pershing Square (the SPAC's Sponsor and a US asset management company) paid \$65 million to purchase Warrants that enable it to buy 5.95% of the equity of the post-merger PSTH SPAC at a pre-agreed fixed exercise-price (after the Initial Acquisition) (the "*PS-Warrants*"). The *PS-Warrants* are inefficient and very expensive and are basis for litigation against Pershing Square (ie. breaches of fiduciary duties; breach of the covenant of good faith and fair dealing; conversion of corporate opportunities; etc.) because:

- i) Its reasonably inferable that Pershing Square is probably relying on news, hype, uncertainty, announcements, volatility and time-value to boost the values of the *PS-Warrants*.
- ii) The *PS-Warrants* enables Pershing Square to completely avoid the usual heavy dilution of the SPAC-Sponsor's and the SPAC's IPO shareholders' holdings immediately after the De-SPAC acquisition – in most cases, both groups of investors collectively own less than 7% of the post-merger SPAC. Thus, by using the *PS-Warrants*, Pershing Square gains much more than the traditional SPAC-Sponsor and SPAC IPO investors combined.
- iii) By using the *PS-Warrants*, Pershing Square avoids some or all of the effects of SPAC IPO shareholders' redemptions on the value of the public shares and the effects of reduced cash-balances on the value of the post-merger SPAC.
- iv) The *PS-Warrants* have a fixed exercise price, and thus Pershing Square has significant incentives to over-price, and benefit from overpricing the target-company in the Initial Acquisition (which makes its *PS-Warrants* more valuable).
- v) The *PS-Warrants* enable Pershing Square to reap significant profits regardless of whether or not the De-SPAC Merger is beneficial for the SPAC's shareholders and the Target-Company's shareholders.

SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models don't offer or use any incentives or securities that are similar to the *Tontine Warrant* structure or the *PS-Warrants* (**Factor-9**).

7.21. Nonlinearity And Regret: Some Terms Of The Merger Agreement Between Acies Acquisition Corp And PlayStudios Were Inefficient, Provided Wrong Incentives And Could Have Caused Litigation.

Some of the "acquisition and vesting terms" that pertain to forfeiture, earnouts and anti-dilution²⁵ of post-merger SPAC shares in the merger agreement between Acies Acquisition Corp ("ACAC") and PlayStudios (a mobile game developer) (the "*Acies-Playstudios Post-DeSPAC Vesting Terms*"), are inefficient.

The summary of the *Acies-Playstudios Post-DeSPAC Vesting Terms*, are as follows:

- i) if more than 25% of public shares are redeemed, the SPAC-sponsor forfeits 403,594 Class-B promote shares; and if more than 50% of public shares are redeemed, an additional 403,594 shares will be forfeited; and a proportional amount of public SPAC-sponsor shares will be forfeited if between 25% and 50% of shares are redeemed (collectively, the "*Acies-Playstudios Forfeiture Terms*").
- ii) There is an Earnout provisions for sponsor promotes wherein 450,000 promote shares will be forfeited unless the post-merger stock price stays above \$15.00 for a certain number of days, and another 450,000 promote shares will be forfeited unless the stock price stays above \$12.50 for a certain number of days (collectively, the "*Acies-Playstudios Earnout Terms*").

²⁵ Gahng, Ritter & Zhang (July 2021) stated in part: ".....It is not unusual for SPAC sponsors to have complicated state-contingent compensation structures. For example, the merger agreement between Acies Acquisition Corp ("ACAC") and PlayStudios (a mobile game developer), according to the SEC form 8-K filings, includes the following features..... We show that the market has been adjusting toward a more sustainable equilibrium by making the structure of the SPAC unit less attractive to the SPAC investors, but more attractive to post-merger shareholders. Specifically, we document a downward trend in the fraction of a share that the warrant component of a unit offers. If the merged company prospers and the warrants are exercised, fewer new shares will be issued, and thus there will be less dilution of the merged company's shareholders. We also show that there has been an increase over time in the frequency with which some sponsor shares are subject to vesting requirements. For these shares, the sponsor forfeits them if the post-merger share price does not stay above a specified price for a period of time.....".

iii) The target-company shareholders will be given 7,500,000 shares if the post-DeSPAC stock price equals or exceeds \$12.50 for a certain number of days at least 150 days after, but within five years of the Merger Date; and an extra 7,500,000 shares if the common stock price equals or exceeds \$15.00 for a certain number of days during the same period (collectively, the “*Acies-Playstudios Anti-Dilution Terms*”).

iv) ACAC was obliged to deliver \$200 million in cash (ACAC had \$215 million in trust), and the common equity of PlayStudios was valued at \$1.041 billion (pre-money) based on PlayStudios stockholders receiving 89.1 million shares of ACAC common stock and \$150 million in cash (the “*Playstudios Valuation*”). An additional \$250 million had been committed from PIPE investors at \$10 per share (the “*ACAC PIPE Investment*”). All the post-DeSPAC shares of the SPAC-Sponsor and PlayStudios shareholders were subject to a 12-month lockup.

The *Acies-Playstudios Forfeiture Terms* are inefficient and are basis for lawsuits because:

i) It creates Call-Warrants (granted to the post-merger SPAC and with an exercise price of zero) which under the April 2021 SEC statement/interpretation about SPACs’ Warrants, has to be accounted for a liability because its value doesn’t depend on the SPAC’s stock price.

ii) It creates distorted incentives because redemption-rights are exercised based on arbitrage, market-timing, volatility and other reasons that don’t have any meaningful connection with the SPAC-Sponsor’s ability to select and manage acquisition-targets.

iii) It punishes the SPAC-Sponsor for redemptions, and thus compels SPAC-Sponsors to select from a narrower universe of acquisition-targets which maybe sub-optimal for SPAC-shareholders such as target-companies that: 1) are touted to have “momentum”; and or 2) have strong product/project/client pipelines, and or 3) who make regular positive announcements and have historically strong investor relations activities, and or 4) whose shares are overvalued, and or 5) who have government connections, and or 6) who have regulation-based “protected-positions”; etc..

iv) It provides substantial incentives for SPAC-sponsors and target-companies to perpetrate earnings management, to make side-payments and to bribe advisors of SPAC-shareholders that are institutional investors.

v) Its inefficient because it doesn’t address the root causes of dilution - if for example the De-SPAC merger is dilutive and fifty-percent of SPAC IPO shareholders redeem their shares at De-SPAC and the SPAC-Sponsor forfeits one-hundred percent of its traditional Sponsor-promote (15%-20% of the SPAC’s IPO equity), the Target-Company will still probably incur dilution.

The *Acies-Playstudios Earnout Terms* are inefficient and are basis for lawsuits because:

i) It creates Call-Warrants (granted to the post-merger SPAC and with a zero or negligible exercise price) which under the April 2021 SEC statement/interpretation about SPAC Warrants, has to be accounted for a liability because its value doesn’t depend entirely on the post-merger SPAC’s stock price.

ii) It creates distorted incentives because the SPAC’s post-merger stock price depends on sometimes extraneous factors such as arbitrage, market-timing, volatility and other factors that don’t have any meaningful connection to the SPAC-Sponsor’s ability to select and manage acquisition-targets.

iii) It punishes the SPAC-Sponsor for declines in the SPAC’s post-merger stock-prices, and thus compels SPAC-Sponsors to select from a much narrower universe of acquisition-targets which maybe sub-optimal for SPAC-shareholders – such as target-companies that: 1) are touted to have “momentum”; and or 2) have strong product/project/client pipelines, and or 3) who make regular positive announcements and have historically strong PR and investor relations activities, and or 4) whose shares are overvalued, and or 5) who have government connections, and or 6) who have regulation-based “protected-positions”; etc..

iv) It provides substantial incentives for the SPAC-sponsor and the Target-Company to perpetrate earnings management, to make side-payments and to bribe advisors of SPAC-shareholders that are institutional investors.

v) Its inefficient because it doesn’t address the root causes of dilution and declining post-DeSPAC stock prices which include (but are not limited to) dilutive De-SPAC mergers, exercise of warrants (that have fixed exercise-prices) in the SPAC’s Units and the investment banks’ Warrants (and over-allotment options), and the selection of an un-suitable Target-Company. If for example the De-SPAC

merger is dilutive and fifty-percent of SPAC IPO shareholders redeem their shares at De-SPAC and the SPAC-Sponsor forfeits one-hundred percent of its traditional Sponsor-promote (15%-20% of the SPAC's IPO equity), the Target-Company will still probably incur dilution.

The *Acies-Playstudios Anti-Dilution Terms* are inefficient and are basis for lawsuits because:

- i) It creates Call-Warrants (granted to the target-company's shareholders and with an exercise price of zero) which under the April 2021 US SEC statement/interpretation about SPACs' Warrants, has to be accounted for a liability because its value doesn't depend entirely on the post-merger SPAC's stock price.
- ii) It creates distorted incentives because the SPAC's post-merger stock price depend on extraneous factors such as arbitrage, market-timing, volatility and other reasons that don't have any meaningful connection to the SPAC-Sponsor's ability to select and manage acquisition-targets.
- iii) It punishes the SPAC-Sponsor and the SPAC's IPO investors for dilution of the post-merger SPAC stock-prices, and thus compels SPAC IPO investors to focus on Arbitrage and short-termism instead of being long-term investors.
- iv) Its late, inaccurate and inefficient because: 1) there is time-value of money; 2) there are Opportunity Costs; 3) such adjustment should have been implemented on or immediately after the De-SPAC date and only upon determination of the existence and magnitude of dilution of the Target-Company's shareholders' equity stakes as of the Merger-Date.
- v) Its inefficient because it doesn't address the root causes of dilution and declining post-DeSPAC stock prices which include (but are not limited to) dilutive De-SPAC mergers, exercise of warrants (that have fixed exercise-prices) in the SPAC's Units and the investment banks' Warrants (and over-allotment options), and the selection of an un-suitable Target-Company. For example, the De-SPAC merger can be accretive and the sock-price will still decline during the five-year period. If for example the De-SPAC merger is dilutive, the target-Company's shareholders will incur significant dilution-losses due to improper and late dilution-adjustments if any of the following occur: 1) the post-DeSPAC stock price remains below \$12.25 during the subsequent five years; 2) the post-DeSPAC stock price exceeds \$15 for the specified number of trading days during the subsequent five-year period but causes dilution that is worth more than 30,000,000 shares (ie. twice the amount of the 15,000,000 shares dilution-adjustment); 3) the SPAC's IPO-shareholders and underwriters exercise most of their Warrants (which are significantly dilutive) and the post-DeSPAC stock price remains in or below the \$11-\$12.25 range during the subsequent five-year period.

The "*Playstudios Valuation*" and the "*ACAC PIPE Investment*" were wrong and were basis for lawsuits because:

- i) There may have been violations of the *Business Judgement Rule* and the *Prudent-Person Rule* because the terms were unfair to shareholders of the SPAC.
- ii) The ACAC Pipe Investment was priced at the IPO price which was probably too low.

SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models reduce or eliminate these foregoing problems through **Factors 1, 3, 5, 10 & 12** (which are defined above).

8. Conclusion.

Clearly, the SPAC sector needs to be better regulated, and SPAC investors and underwriting banks should develop better SPAC structures. There are or can be much broader and socially-beneficial uses for new and amended types of SPACs such as SPAC+^{®TM}, SPAC++^{®TM} and SPAC+++^{®TM} models.

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