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A New Development in Private Equity: The Rise and Progression of Special Purpose Acquisition Companies in Europe and Asia

Brandon Schumacher

A New Development in Private Equity: The Rise and Progression of Special Purpose Acquisition Companies in Europe and Asia

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Abstract:

This comment presents a comparative study of Special Purpose Acquisition Companies (SPAC) in the international context and the United States. In the course of examining international SPACs, it is necessary to first discuss and analyze the history and development of private equity and how SPACs became established players in the domestic and international markets. This comment will examine the impact that these short-term investment devices have had for investors, SPAC management, and private companies. The paper will evaluate the perceived advantages and disadvantages of using a SPAC as an acquisition form, as well as reflect on potential future developments pertaining to both the United States and the international setting. While a particular emphasis is set forth as to Europe and Asia, this scholarship aims to advance ideas and make reflections applicable to the entire international community.

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I. INTRODUCTION

Private equity is a force to be reckoned with. It has quickly become a major player in the United States, despite its relatively recent development as an investment strategy. While private equity exists in the international setting, and is constantly expanding, its growth has been slower than in the United States.[1]

Within the broad field of private equity, the development of both a new kind of corporation and a bold innovative investment device emerged: the Special Purpose Acquisition Company (SPAC). As with any recent and important progression, SPACs bring much attention, as well as many unanswered questions.

This comment attempts to shed light into a relatively uncharted but rapidly expanding field of investment opportunities. The following discussion advocates for the increased use of SPACs in the international context, both as an alternative method for privately held companies to go public (commonly called an initial public offering)[2] and an avenue for private equity investment opportunities.

This comment begins with a brief discussion of the history of private equity and SPACS, examining their methods of operation and the advantages and disadvantages that come forth as a result. The comment then briefly touches upon the regulation of SPACs in the United States,[3] as well as discussing in detail regulations that have been proposed or enacted in the international context.[4] The aim of the paper is to advocate for the increased use of SPACs throughout the domestic and international settings. The comment examines and sets forth data and analysis on SPACs in the United

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1 *See* Alexandros Seretakis, *A Comparative Examination of Private Equity in the United States and Europe: Accounting for the Past and Predicting the Future of European Private Equity*, 18 FORDHAM J. CORP. & FIN. L. 613, 616 (2013).

2 *See Initial Public Offering*, INVESTOPEDIA, https://www.investopedia.com/terms/i/ipo (defining an initial public offering as "[t]he process of offering shares in a private corporation to the public for the first time") asp (last visited Nov. 18, 2018).

3 *See* SIMON M. LORNE & JOY MARLENE BRYAN, 11 ACQUISITIONS & MERGERS: NEGOTIATED AND CONTESTED TRANSACTIONS § 3:11.20 (Nov. 2019) (citation omitted) (stating "FINRA and stock exchange rules govern SPAC's. SEC Securities Act Rule 419 may also apply to a SPAC IPO if the IPO is not structured to avoid Rule 419's application, which means requiring escrow of IPO offering proceeds and banning any trading of SPAC securities until after consummation of an acquisition as well as filing a Form 8-K upon any disbursement of escrowed IPO offering proceeds").

4 *See Asia/Pacific*, 44 INT'L L. 595, 604 (2010) (stating that in South Korea "the Financial Services Commission (FSC) has proposed amendments to introduce special purpose acquisition companies (SPACs) to the Enforcement Decree of the Financial Investment Services and Capital Markets Act and the Financial Investment Business Regulations"; *see also* Salvatore di Salvatore & Niccolo′ Scardaccione, *Italy: Trusts and Foundations for the Newly Established "Aim Italia*," Trusts & Trustees, July 1, 2009 (stating that the Italian Stock Exchange regulates for "funds raised by the SPACs among public investors have to be deposited and segregated in escrow into a trust account until the target company and object of the buy-out transaction is duly identified").

States, as well as in countries where they have been implemented and substantially used.[5] While an emphasis is set forth as to Europe and Asia, this scholarship seeks to advance ideas and make reflections applicable to the entire international community. The paper concludes with a discussion of the potential impact of increased SPAC usage, and presents a future outlook regarding SPACs in the international context going forward.

II. HISTORY AND COMPONENTS OF PRIVATE EQUITY INVESTMENTS

A. History of Private Equity Investments

A senior partner at Texas Pacifico Group, a leading private equity firm, once said, "you can't pick up the paper or turn on the TV and not hear about P.E. [private equity]."[6] The recent surge in "public-to-private" buyout activity in the United States "calls into question the continued preeminence of the public company."[7] The recent rise of private equity in the modern United States investment market has been striking, especially considering its relative youth and somewhat humble beginnings.

The beginnings of private equity can technically be traced to 1901, when J.P. Morgan bought Carnegie Steel Company for $480 million, the first trade of what would become the private market we know today.[8] In 1907, the Bessemer Trust was founded; a "family office" used to invest $50 million in proceeds in private businesses and other exclusive holdings.[9] But the private equity market did not begin to take off until after World War II. The modern origins developed when American Research and Development Corp. and J.H. Whitney & Company, two of the earliest venture capital firms, were both established in 1946.[10]

The events of 1958 allowed the private equity market to evolve into the current-day private equity practice that exists in the United States today. During the grips of the "Cold War," President Dwight D. Eisenhower enacted the Small Business Act of 1958 in an effort to bump up technological advances against the Soviets.[11] The Act allowed licensed venture capital firms, known as "Small Business Investment Companies" (SBICs), to borrow money from the government at below-market interest rates to be used

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5 *See* Elena Ignatyeva, Christian Rauch & Mark Wahrenburg, *Analyzing European SPACs*, 17 J. PRIV. EQUITY 64, 66 (2013).

6 Brian Cheffins & John Armour, *The Eclipse of Private Equity*, 33 DEL. J. CORP. L. 1, 2 (2008) (citing Andrew Ross Sorkin, *Of Private Equity, Politics and Income Taxes*, N.Y. TIMES, Mar. 11, 2007, at 37).

7 *Id.*

8 *The History of Private Equity*, INVESTMENT U, https://www.investmentu.com/content/detail/private-equity-history (last visited Feb. 3, 2019).

9 *Id.*

10 *Id.*

11 *Id.*

for investing in entrepreneurial ventures.[12] This spurred the growth of venture capital limited partnerships in the 1960s.

In 1969, due to an increase in capital gain tax rates and the diminishment of the initial public offerings market, the focus shifted away from financing new ventures to expanding companies that were already in the private equity managers' portfolios.[13] Over the years, private equity has experienced greater growth spurts in some periods than others, due in large part to changes in the regulatory and tax systems, as well as the overall market strength.[14] That being said, "private equity has been one of the largest and fastest-growing asset classes in finance."[15] Hitting record performance levels in 2013 and 2014, more than 2,000 private equity firms sought an estimated $700 billion of capital commitments from investors in 2015.[16] According to the American Investment Council, there were 4,188 private equity firms and 14,214 companies backed by private equity firms in the United States in 2015.[17]

B. Components of Private Equity Investments

Private equity encompasses a wide variety of investments involving unregistered securities in private companies. A customary characteristic of private equity is illiquidity due to transactions involving unregistered securities.[18] "Private equity includes venture capital, development capital, mezzanine capital, [leveraged buyouts], and distressed investing."[19]

Private equity firms were developed as the primary means for investors to purchase private and public companies by using private capital. In regard to public companies, the goal of private equity firms is to delist the company from the public markets, effectively taking the company private.[20] Private equity firms pool together the funds of individual and institutional investors and invest these funds in public or private enterprises.[21] One of the main functions of private equity, and maybe its greatest appeal, is that private equity offers investors an opportunity to invest in private businesses that are

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12 *Id.*

13 *Id.*

14 *See id.*

15 Sung Eun Kim, *Typology of Public-Private Equity*, 44 FLA. ST. U. L. REV. 1435, 1441 (2017).

16 *Id*.

17 *Id.*

18 Seretakis*, supra* note 1, at 619.

19 *Id.*

20 Note, *Going Private*, 84 YALE L. J. 903, 903 (1975) (defining "going private" as when publicly held corporations or private investors "reacquire from investors all the publicly held common stock in their firms." This effectively transforms a public company into a private company, and, accordingly, the company no longer issues stock that is regulated or transferable via the public markets).

21 Kim, *supra* note 15, at 1441.

not otherwise readily available to buy and sell in the public markets.[22] Private equity firms provide the opportunity for multiple investors to be able to invest in private companies or public companies in going-private transactions.

This is a significant investment device, as in almost all cases, an individual investor on their own does not have enough capital to purchase a significant share in a company. However, the private equity *firm* is the actual owner of the portfolio company;[23] the investors in a private equity fund have a purely passive role.[24] The private equity *fund* management is "solely responsible for identifying acquisition targets, providing management services to any acquired companies (including by negotiating their financings), and, after a few years, selling them off again" in the hopes of making a profit on their initial investment.[25]

III. HISTORY OF BLANK CHECK COMPANIES

SPACs originated as a direct result of the development and emergence of "blank check companies" in the 1980's. "A blank check offering is an initial public offering of a company that has been formed for the purpose of raising money and buying an already existing company."[26] By the end of the 1980's, fraud and abuse were rampant in the penny stock market; penny stocks were not registered and were not traded on a national securities exchange.[27] Blank checks provided an avenue to perpetuate this abuse.[28] The area drastically required regulation, which prompted Congress to pass the landmark Securities Enforcement Remedies and Penny Stock Reform Act of 1990.[29] Although the Act substantially limited and restricted blank check

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22 *Id.*

23 *See Portfolio Company: Everything you Need to Know*, UPCOUNSEL, https://www.upcounsel.com/portfolio-company (stating that "[a] portfolio company is a term used to describe a company in which investors own equity in a company or buy out a company. The goal of the investor is to increase the value of the portfolio company and earn a return on their initial investment.").

24 Elisabeth de Fontenay, *Private Equity Firms as Gatekeepers*, 33 REV. BANKING & FIN. L. 115, 123 (2013).

25 *Id.* at 123-24.

26 Derek K. Heyman, *From Blank Check To SPAC: The Regulator's Response to The Market, and The Market's Response to The Regulation*, 2 ENTREPRENEURIAL BUS. L.J. 531, 533 (2007); *see also* Office of Investor Education & Advocacy, *Blank Check Company*, http://www.sec.gov/answers/blankcheck.htm (The SEC defines a blank check company as "a development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies, other entity, or person.") (last visited Jan 29, 2020).

27 Heyman, *supra* note 26, at 535.

28 *See* H.R. REP. 101-617 (1990), at 11 (stating "[a] common method or [sic] perpetrating penny stock fraud is through the marketing of 'shell' corporations, or 'blank check companies' with no operating history, few employees, few or no discernible assets, and no legitimate likelihood of success in the future"); see also *id.* at 11-16 (detailing examples of "blank check companies" being used as vehicles for fraud against investors).

29 Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No.

companies, they were not outlawed entirely. Then SEC Chairman Richard Breeden recognized that "blank check offerings could be and were used in legitimate business transactions outside the penny stock area."[30] The restrictions imposed by the Act provided substantial protection to investors, and the use of blank check companies as a vehicle for fraud effectively diminished.

IV. EMERGENCE OF SPACS IN THE UNITED STATES

Due to the implications of the Penny Stock Reform Act of 1990, the "onerous requirements of [the Act] made it nearly impossible for a blank check company to complete an acquisition."[31] As a result, blank check companies effectively disappeared, but rematerialized in the form of SPACs.[32] Similar to the blank check companies of the 1980s, SPACs have "no operating history, assets, revenue, or operations, and are designed to raise capital in the public equity markets."[33] But, because SPACs avoid the penny stock restrictions imposed by the Act, "SPACs are exempt from the controls Congress imposed on blank check offerings and are therefore no more regulated than traditional public offerings."[34]

A SPAC is a special form of "blank check" company.[35] This entity surfaced in the United States in the early 1990s.[36] The SPAC is a company that is formed to raise funds in a public stock offering for the purpose of purchasing a private business.[37] Typically, using a SPAC, a "private equity fund or a team of experienced executives with a solid track record . . . raise[s] a no-asset 'blank check' IPO on the market with a time frame of eighteen to twenty-four months to acquire a company."[38] If a target is found, investors in the SPAC "have a pre-acquisition choice either to get their money back, or to remain as 'shareholders of the now-public firm.'"[39] Sometimes called a "poor man's private equity fund,"[40] SPACs give a wide range of investors

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101-429, 104 Stat. 931 (1990).

30 H.R. REP. 101-617 (1990), at 22.

31 Daniel S. Riemer, *Special Purpose Acquisition Companies: SPAC and SPAN, Or Blank Check Redux?*, 85 WASH. U. L. REV. 931, 946 (2007).

32 *Id.* at 932.

33 *Id.* at 933.

34 *Id.*

35 Lorne & Bryan, *supra* note 3, at § 3:11.20.

36 Jeffrey A. Baumel, *A Primer For Small-Cap Financing in the New Millennium*, 240 N.J. LAW. 48, 48 (2006).

37 Heyman, *supra* note 26, at 540 (2007).

38 Efraim Chalamish, *SPACs Are Back*, GLOBAL FIN. (Dec. 8, 2016), https://www.gfmag.com/magazine/december-2016/spacs-are-back.

39 Usha Rodrigues & Mike Stegemoller, *Exit, Voice, and Reputation: The Evolution of SPACs*, 37 DEL. J. CORP. L. 849, 851 (2013) (citation omitted).

40 *See, e.g.*, Jim Fink, *Special Purpose Acquisition Companies (SPACs): Will Investors Live Long and Prosper?*, INVESTING DAILY (Apr. 10, 2012), http:// www.investingdaily.com/10914/special-purpose-acquisition-companies-spacs-will-investors-live-long-and-

the option to invest in an opportunity previously only afforded to wealthy investors: the opportunity to invest in a fund that acquires a private company.[41]

V. COMPONENTS OF SPACS

Although SPACs are an important and rapidly developing type of investment, they remain relatively unknown. Thus, it comes as little surprise that current literature pertaining to them is sparse.[42] SPACs constitute a uniquely public form of a private equity fund.[43] It is a newly formed company "offering its securities in an initial public offering (IPO) to fund the acquisition of a yet-to-be identified target company."[44] The SPAC holds ninety-five percent of the gross IPO offering proceeds in trust until an acquisition is consummated; five-percent of the gross IPO offering proceeds can be used for routine operating expenses, but not for salaries or commissions for management.[45] If an acquisition does not occur within twenty-four months of the IPO, the SPAC must liquidate and return the investors' IPO investments.[46] A transaction must have a fair market value of eighty percent or more of the SPAC's net assets.[47] A shareholder who does not approve of the proposed merger has a right to liquidate his investment in the SPAC.[48] This effectively gives investors the right and proper assurance that they will be notified of any proposed merger, and, if the investor does not approve, they will be given their full investment back before the deal takes place.

During the IPO stage, investors purchase units "representing one or more shares of common stock and one or more warrants exercisable for one share of common stock at a discount to the offering price."[49] Essentially, investors are purchasing shares of the SPAC because they have faith in the founders of the SPAC, the SPAC's sponsors ("managers"). Investors are taking a chance that the managers will be able to locate and acquire a lucrative private company using the assets being held in escrow from the IPO of the SPAC. If this occurs, it is likely that the share price of the SPAC, already a public company, will increase as long as the private company that

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prosper.

[41] *See* Carol Boyer & Glenn Baigent, *SPACs as Alternative Investments: An Examination of Performance and Factors that Drive Prices*, 11 J. PRIV. EQUITY 8, 8 (2008) ("SPACs . . . provide the public with access to the private equity investments area, which was previously available only to institutional clients such as hedge funds and investment banks.").

[42] *See* Rodrigues & Stegemoller, *supra* note 39, at 855.

[43] *See id.* at 851.

[44] Lorne & Bryan, *supra* note 3, at § 3:11.20.

[45] *Id.*

[46] *Id.*

[47] *Id.* (describing the net assets as the proceeds consisting from the SPACs' IPO).

[48] *Id.*

[49] *Id.*

is being acquired is a prosperous investment. As mentioned, the investors also are usually offered warrants where they are entitled to purchase additional stock in the SPAC at a discount.

VI. ADVANTAGES OF SPACS

SPACs are a unique investment opportunity that have a considerable number of advantages for all of the parties involved: the target company and its owners, the SPAC's IPO investors, and the SPAC managers.

A. Advantages for the Target Private Business

In the view of the target business and its owners, a SPAC may be an advantageous way for a small company to raise cash without having to conduct an IPO of its own. There is little interest in the market for small company IPOs, which effectively leaves smaller companies with few options to raise cash.[50] Additionally, many operating company management teams do not wish to give up a portion of control to private equity investors.[51] Finally, a standard initial public offering raises money that must go to help finance the company. But the present owners often want to cash-out from the deal. If management prefers to cash out, then allowing the company to be purchased by a SPAC means "they will not have to sell their own shares in the public market. Their own shares can be among those purchased by the SPAC."[52] In sum, a SPAC may be more convenient to the target business and its owners. It can significantly help avoid the problem that small companies potentially face in taking their business to the public market.

B. Advantages for the SPAC Management

In the view of the SPAC management, the SPAC provides an effective way to raise money and purchase a company to manage. Although managers receive no salary, a "portion of the net offering proceeds that are not held in escrow will be used to pay for directors' and officers' insurance, legal, and accounting expenses. The costs of due diligence on prospective targets, as well as the costs of negotiation, structuring, and gaining shareholder approval for the merger, will also be paid from this money."[53] The funds that will go to pay for these expenses are considered to be the "working capital of the company."[54] It is "clearly convenient" for the management team to have this working capital available as it searches for and attempts to complete its business acquisition.[55] Additionally, the managers typically receive a twenty-percent interest in the SPAC's shares as compensation for locating and

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50 Heyman, *supra* note 26, at 547 (citation omitted).
51 *Id.*
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.*

negotiating a purchase of a profitable target company.[56] This interest becomes quite valuable if a deal is made, as in practical terms, the share price of the SPAC is likely to rise if the deal is deemed to be profitable.

C. Advantages for the SPAC Investor

As discussed,[57] the main benefits of SPACs for investors include the right for their investments to be returned if a target company is not acquired within twenty-four months or if investors decide that they personally do not approve of the proposed transaction.[58] Investors also have the opportunity to make a substantial profit from their initial investment if the acquired company is perceived to be a profitable company (and the stock price rises as a result).[59] SPACs provide an opportunity for all investors, regardless of the amount of capital they have, to get a piece of the action in a private equity investment. They provide "a way of getting exposure to private equity style deals without having millions of dollars to invest."[60]

VII. DISADVANTAGES OF SPACS

It is worth noting that there are some potential disadvantages of SPACs. SPACs are still a highly sophisticated and usually high-volume investment; it is not surprising that "the SPAC remains a risky investment."[61] It possesses no assets other than the management's professed "know-how"; "the investor is basically betting on the management to make a wise purchase decision and to negotiate a good deal."[62] Presumably, the investor would not invest in a SPAC without confidence in knowing who the management is and their prior history of investment success. Regardless, there are structural reasons why SPACs could run into problems.[63] University of Florida finance professor Jay Ritter has noted that the eighteen or twenty-four-month time deadline imposed on the management to make an acquisition, while protecting investors by forcing a return of their investment if no deal is consummated during this time frame, puts management under severe time pressure.[64] Generally, the management of the SPAC receives a 20 percent interest in the

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[56] *Id.* at 550.

[57] *See supra* Part IV.

[58] *See* Heyman, *supra* note 26, at 543 (stating that the SPAC will fail, and an investor will receive his investment back, if "more than 20% of the SPAC investors . . . vote against the proposed merger").

[59] *See* Part V; *see also* Heyman, *supra* note 26, at 549.

[60] Heyman, *supra* note 26, at 548-49 (citing Martin Sikora, *Blank Checks Add Buyers*, 41 MERGERS & ACQUISITIONS: DEALMAKER'S J. 22, 22 (2006)).

[61] *Id.* at 549.

[62] *Id.*

[63] *See id.*

[64] *Id.* (stating "[i]n terms of the executive involved, they've got every incentive to do a deal, whether it makes sense or not, because if they don't do one, they give the money back . . . if they do a deal, that entitles them to a gravy train of salary for the foreseeable future.").

SPAC as their compensation fee upfront. Unlike investors, however, they are not entitled to get any of this interest back if the acquiring transaction does not occur. This creates an almost do-or-die situation for the SPAC management. Thus, management has every incentive to make an acquisition within the requisite time period. Coupled with the requirement that management must spend at least eighty percent of the SPAC's assets on a transaction, this could lead to the SPAC's management overpaying for the target company or attempting to convince investors to approve a poor acquisition.[65]

VIII. ARGUMENT FOR CONTINUED SPAC USAGE IN THE UNITED STATES

Although potential disadvantages exist, it appears that SPAC's advantages outweigh any disadvantages. As discussed,[66] the SPAC investor has a powerful tool at their disposal: provided that twenty percent reject a proposed transaction, the investors are able to block any deal that they may not deem advantageous. Additionally, any individual investor, if they decide that they do not favor the proposed transaction, can leave the SPAC and get their full initial investment returned.

That being said, it is important that target companies and investors keep the potential downsides in mind when considering whether to conduct business with a SPAC. If the investors ultimately vote against a proposed transaction, the target company has effectively wasted three to six months in negotiations, and the investors "who approved the deal—which could be up to 79%—will have to get their money back, net of fees and expenses which can range from 8 to 15% of the total amount."[67] The investors lose their stock warrants in the SPAC and the managers essentially come away with nothing for the time and energy spent organizing the SPAC and pursuing target companies to potentially acquire.[68]

In sum, these disadvantages do not seem to outweigh the substantial advantages that SPACs provide to the target business, the managers, and the investors. In a capitalistic market, these few downsides appear to be normal functions of risk that correspond with undertaking intricate investments.[69] The mechanism that SPACs provide target private companies to "go public" is significant.[70] Further, the potential downsides to the SPAC managers and

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65 *Id.* at 550.

66 *See supra* Part IV.

67 Heyman, *supra* note 26, at 550 (citing Scott Malone, *Crunch Time Coming for Blank-Check Companies*, REUTERS, Mar. 26, 2006).

68 *Id.*

69 *See id.*

70 *See* Christian O. Nagler & David A. Curtiss, *Market Trends 2017/18: Special Purpose Acquisition Companies* (SPACs), KIRKLAND & ELLIS https://www.kirkland.com/-/media/publications/article/2018/04/market-trends-201718-special-purpose-acquisition-c/lexisnexis-spac--naglercurtiss-aug-2018.pdf (stating "SPACs continue to be an attractive

investors are mitigated as long as a profitable target company is acquired within twenty-four months. This is typical, as long as seasoned and competent management are running the SPAC.[71] The mitigation of risk that SPACs provide to target companies and investors, while still allowing for the remarkable potential of profitable gain, make SPACs a viable and attractive investment opportunity.

IX. PRIVATE EQUITY INVESTMENTS IN EUROPE

A. History of Private Equity Investments[72]

Although private equity originated in the United States, and the United States remains the dominant market leader today, private equity has spread throughout Europe.[73] "The [United Kingdom] represents the most active European private equity market both in terms of transaction value and volume."[74] "The [United Kingdom]'s attractiveness is based on its stable and favorable regulatory environment, sophisticated third-party advisers, well-developed debt and equity capital markets, and positive attitude towards entrepreneurial risk."[75] "Germany and France, the largest and second-largest European economies respectively," utilize private equity but on a significantly smaller scale than the United Kingdom.[76]

Outside of the United Kingdom, the European markets governing private equity transactions have been somewhat hostile. Despite this, "the European private equity market [has] managed to grow and mature from 1996 onwards."[77] In 2001, European leveraged buyout activity (LBO)[78] for

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vehicle for raising capital and an efficient pathway for privately held businesses to become publicly traded on an expedited timeline compared to a traditional IPO") (last visited Apr. 1, 2020).

71 *Id.* (stating "[m]arket interest remains strong . . . [w]hile it may be challenging to repeat the robust IPO pace of 2017, the SPAC IPO market should remain strong in 2018").

72 It is worth noting that when this article discusses the history of private equity investments in the European and Asian context, the article is generally referring to the implementation and regulation of these types of investments by European and Asian countries. The article does, however, sometimes refer to the history or usage of United States companies (or companies in other foreign countries) making private equity investments in these particular international settings as well, which regularly occurs.

73 *See* Seretakis, *supra* note 1, at 616.

74 *Id.*

75 *Id.* at 616–17.

76 *See* Mike Wright et al., *Leveraged Buyouts in the U.K. and Continental Europe: Retrospect and Prospect*, 18 J. APPLIED CORP. FIN. 38, 38–39 (2006).

77 Seretakis, *supra* note 1, at 663.

78 Patrick Curtis, *What Is A Leveraged Buyout?*, WALL STREET OASIS, https://www.wallstreetoasis.com/what-is-a-leveraged-buyout-lbo (last visited Feb. 3, 2019) (defining leveraged buyout as "the purchase of a company while using mainly debt to finance the transaction. Leveraged Buyouts are usually done by private equity firms and rose to prominence in the 1980s.").

the first time "exceeded that of the United States."[79] This was a result of "economic forces fuel[ing] the growth of private equity and overc[oming][Europe's] unfavorable legal regime. The introduction of the common currency, the euro, and the development of the European single market facilitated cross-border acquisitions by eliminating currency risks and investment barriers."[80] However, concerns still remain for the future growth of the European private equity market. Subject to already relatively stringent regulations on the transactional level, the European Union adopted the Alternative Investment Fund Managers (AIFM) Directive 2011 in the aftermath of the global financial crisis.[81]

The Financial Crisis provided an opportunity for Germany and France, "the [two] main proponents of stricter regulation" of the private equity industry, to pass further restrictive legislation.[82] Despite the United Kingdom's strong resistance, the final version of the AIFM Directive was "adopted after eighteen months of intense lobbying and heated negotiations."[83] "The main goal of the AIFM Directive is to create a harmonized regulatory and supervisory framework for alternative investment fund managers . . . [t]he need for regulation was premised on . . . the systemic risk that [lack of transparency] posed to the financial system."[84] While concerns exist that the AIFM Directive could result in an "exit of private equity firms and funds from Europe,"[85] it appears that "underlying economic forces have provided and will continue to provide a boost to European private equity activity."[86]

That being said, the potential impact of the United Kingdom leaving the European Union is profound. On June 23, 2016, the United Kingdom voted via referendum to leave the European Union.[87] While "Brexit" was delayed several times, the U.K. officially departed the European Union on January

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79 Seretakis, *supra* note 1, at 663.

80 *Id.* at 664 (stating additional factors that have led to the growth of private equity in Europe as "the abundant liquidity in the financial system made European banks eager to provide financing to private equity sponsors. European banks were also increasingly willing to provide larger loans for private equity transactions. The development of a European high-yield debt market, virtually non-existent before 1997, provided an additional source of funding for private equity dealmakers" and "[a]nother important factor was the financialization of Europe during the 2000s. Europe saw its financial sector *grow* exponentially, with European countries embracing the latest innovations of finance.").

81 *Id.* at 655.

82 *Id.*

83 *Id.*

84 *Id.* at 655-56.

85 *Id.* at 665.

86 *Id.* at 665.

87 *See* Steven Erlanger, *Britain Votes to Leave E.U.*, N.Y. TIMES (June 23, 2016), https://www.nytimes.com/2016/06/25/world/europe/britain-brexit-european-union-referendum.html.

31, 2020.[88] The ramifications this has had in the United Kingdom, and indirectly for the rest of Europe, have thus far been mixed.[89] The likelihood that the United Kingdom will no longer fall under the regulations of the AIFM, which has created a single marketplace for private equity firms in the E.U., may cause a "mass exodus from the [United Kingdom] as investors set up shop" in other countries.[90] However, a potential "silver lining" for the U.K. is that the "European Commission and European Securities and Markets Authority are currently considering allowing a number of non-E.U. jurisdictions to access certain provisions of the AIFM directive."[91] In any event, the U.K.'s favorable regulatory markets, coupled with the "quality of its companies and their capacity to adapt,"[92] seemingly would mitigate many possible negative consequences of Brexit in the United Kingdom. The impact of Brexit for the rest of the European private equity markets, and SPACs in particular, remain uncertain and will be an important development to monitor going forward.

B. Emergence of SPACs in Europe

The relatively recent success of the private equity market in Europe, as well as the prospects for continued viability in the future, have led to the emergence of SPAC investments in certain European countries. Further, SPACs in Europe have developed as an attractive investment as they are subject to substantially less regulatory measures than traditional private equity in Europe.[93] The first IPOs of European SPACs started in 2005, only two years after the first SPAC went public in the United States.[94]

A notable difference between European SPACs and American SPACs is that European SPACs tend to have more flexible regulations and tend to not subject the management to as many stringent requirements. For example, according to the United States stock exchanges requirements, specifically the NASDAQ and New York Stock Exchange, the target company must have a "minimal fair value accounting for 80% of the trust amount in order to

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88 *See* Peter Barnes, *Brexit: What Happens Now?*, BBC NEWS (Feb. 5, 2020), https://www.bbc.com/news/uk-politics-46393399.

89 *See* Leah Hodgson, *No-Deal Means No Deals? How Brexit Could Impact UK Private Equity*, PITCHBOOK (Jan. 14, 2019), https://pitchbook.com/news/articles/no-deal-means-no-deals-how-brexit-could-impact-uk-private-equity (stating that "there has been significant fluctuation in the number of transactions and the amount of capital invested in U.K.-based businesses from European investors since 2016").

90 *Id.*

91 *Id.*

92 *Id.*

93 *See* Ignatyeva, *supra* note 5, at 71 (stating that while SPACs regulated by U.S. stock exchanges "are not allowed to have any specific target company under consideration at the time of the IPO, European stock Exchanges . . . do not have these regulations"); *see also id.* at 77 ("European SPACs perform the complete process of potential target selection, shareholder voting, and transaction closing significantly faster.").

94 *Id.* at 65.

constitute a qualified business combination and to finish the SPAC's investment lifecycle."[95] To the contrary, many European stock exchanges do not subject the management to these requirements, giving the European SPACs the "opportunity to complete multiple smaller acquisitions instead of a single, extremely capital-intensive acquisition."[96]

Additionally, despite SPACs being listed on European stock exchanges, "European SPACs do not necessarily have a focus on Europe, either in terms of target companies and investors or in their actual country of incorporation."[97] As a result, it appears that European SPACs do not make much use out of any home-court advantage they may have pertaining to Europe in comparison to non-European SPACs.[98] Instead, SPACs are generally listed on European stock exchanges due to beneficial tax considerations and the seemingly friendlier regulations provided in Europe than the United States.

C. Advantages of European SPACs

The European SPAC industry, although comparable to American SPACs in most respects, share some key differences. If effectively utilized, the advantageous tax considerations and friendlier regulatory measures in Europe act as important advantages for European SPACs.

First, unlike the SPACs in the United States, SPACs in Europe are allowed to have a specific targeting company in mind during the SPAC's IPO stage.[99] This provides SPAC management with the opportunity to incentivize investors to invest in the SPAC as SPAC managers have the option to discuss with potential investors the companies they are considering targeting.[100] This benefits the investor, who has a clearer picture of the exact direction the SPAC is pursuing and, therefore, the risks they are assuming in making their investment.

Additionally, the United States stock exchanges requirements, specifically the NASDAQ and New York Stock Exchange, that the target

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[95] *Id.* at 71; *see also SPAC 101: Transaction Basics and Current Trends*, WINSTON & STRAWN (2018), https://www.winston.com/images/content/1/3/v2/135061/Winston-Strawn-SPAC-Basics-Presentation-2018.pdf.

[96] Ignatyeva, *supra* note 5, at 71.

[97] *Id.* at 65.

[98] *Id.* at 65, 67 (advocating that the driving force behind a given regional focus are "tax considerations" and "stock exchange regulations"); *see also id.* at 77 ("European SPACs do not necessarily purchase European target companies and do not have investors from Europe. Rather, they can be seen as international SPACs that are listed on European stock exchanges.").

[99] *Id.* at 71.

[100] It is worth noting that this does have the drawback of increased potential for fraud insofar as SPAC management may provide potential SPAC investors with deceptive information in order to lure them into investing in the SPAC. That being said, this drawback is mitigated by the fact that the SPAC investors retain the right to withdraw from the SPAC before the acquisition is completed and receive their full investment back.

company must have a "minimal fair value accounting for 80% of the trust amount in order to constitute a qualified business combination and to finish the SPAC's investment lifecycle" generally does not apply to European SPACs.[101] To the contrary, many European stock exchanges do not subject the management to these requirements, giving European SPACs the "opportunity to complete multiple smaller acquisitions instead of a single, extremely capital-intensive acquisition."[102] This is advantageous to the SPAC managers as it provides them with greater flexibility in the type of targeting companies they pursue. It is also advantageous to the targeting company, as previously discussed,[103] that there are many small companies that are seeking to go public. The absence of this regulation allows for an increased number of private companies to have the opportunity to become a public company, particularly in regard to smaller companies. Finally, it may benefit the investor, as data exists pertaining to European SPACs that "bigger and perhaps more high-profile acquisitions are not always more successful in terms of either operational or stock performance."[104] It is thus no surprise that European SPACs execute "multiple smaller acquisitions in contrast to the single, large transactions that are typical of U.S. SPACs."[105]

D. Possibilities for Future SPAC Reform in Europe

European stock exchanges generally share significant differences with the SPAC market in the United States. It might be thought that because certain SPAC managers deliberately shy away from the United States, despite the United States continuing to be the "biggest and most established SPAC market in the world," that they may do so to utilize more of a "home-court advantage" in "exploiting unique insights into the domestic European markets." [106] However, in reviewing the limited research available regarding European SPACs, this does not appear to be the case. Seemingly, the European markets are utilized more as a proxy for non-European investors to take advantage of the advantageous tax considerations and looser regulations available than for European investors to gain a competitive edge in the market.[107]

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[101] *See* Ignatyeva, *supra* note 5, at 71.

[102] *Id.*

[103] *See supra* Part VI.A (stating that "a SPAC may be an advantageous way for a small company to raise cash without having to do an IPO of its own").

[104] Ignatyeva, *supra* note 5, at 77 (describing a comparison of more and less successful SPACs to show "SPAC founders who choose smaller targets with more operational profitability also show a better stock performance").

[105] *Id.*; *see also id.* at 65. (stating "European SPACs are more flexible and able to complete their acquisitions more quickly, because of much less restrictive regulation at the European stock exchanges").

[106] *Id.* at 67.

[107] *See id.* at 77 ("European SPACs do not necessarily purchase European target companies and do not have investors from Europe. Rather, they can be seen as international SPACs that

It is puzzling as to why the data shows that European SPAC managers "use home-court advantages in terms of market knowledge and investor contacts only to a minor degree."[108] European SPACs would significantly benefit from effectively utilizing these home-court advantages in the future. Hypothetically, SPAC managers could pursue a locally owned or operated target in their own domestic market and raise capital through the local stock exchange. In this sense, they likely would be able to gain a competitive advantage over their foreign counterparts. Foreign SPAC managers might not be as attuned to the intricacies of the respective local market and its economy.[109] This targeted approach "is well-known and used in venture capital and buyout funds, whose managers are known to run so-called industry-specialist funds."[110] Despite the potential benefits in utilizing this approach, and the multiple advantages that SPACs provide, European managers have generally, somewhat ironically, not been a major player within the European stock market.[111]

The perceived benefits of utilizing home-court advantages for SPAC managers trickle down to SPAC investors, as well as SPAC target companies. As a result of European SPAC managers investing in target companies located in their domestic stock markets,[112] the SPAC investment as a whole would be better served and likely more profitable for each party involved. Specifically, it can be expected that the SPAC managers would make better informed decisions with the target companies they pursue. They are more attuned to the intricacies of the local market and its economy, as well as the particular target companies themselves, than foreign SPAC managers. This should increase the chances that the SPAC's share price will increase after the transaction is complete, as there is a greater likelihood that the chosen target company is an advantageous purchase for the SPAC.

Additionally, SPAC investors would feel more confident in the management's selected target company and that the proposed transaction will lead to increased profits for the SPAC.[113] As opposed to SPAC investors

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are listed on European stock exchanges.").

[108] *Id.* at 65.

[109] This is not to say that acquiring a target company located within the SPAC's own domestic market will always be the right, or the best, decision for the SPAC to make. Instead, it is being advocated that, generally, this approach would lead to advantageous benefits for each party involved in the SPAC process.

[110] *Id.* at 67 (describing industry-specialist funds as "funds that target companies from a given industry in a given market with which the fund managers are familiar").

[111] Coupled by Europe's favorable tax considerations and the loose regulations imposed on SPAC investments, utilizing home-court advantages seems to be a relatively no-brainer for European SPAC managers.

[112] It is important to recognize that not every European country has a domestic stock market, nor, for that matter, has a private equity industry that utilizes SPACs. Generally, this analysis pertains to European Union countries, as the E.U. adopted the AIFM Directive to help regulate the private equity industry. *See supra* Part IX.A.

[113] This is not to say that there would no longer be a need for SPAC investors to evaluate

relying on foreign management, even with the advantage of the fortuitous European tax considerations and looser regulations,[114] the foreign managers do not have the requisite knowledge and expertise of the local market and economy. By assuring investors that the SPAC managers do have this level of expertise and knowledge, the investors will feel more confident with the SPAC management's decisions. This should lead to a higher number of proposed transactions that become completed acquisitions, as it is more likely that the investor will have faith in the management's decision of the right target company to acquire. Further, this will lead to fewer confrontations and animosity during the target company approval process, less investors that leave the SPAC and ask for their investment "buy-in" back before the acquisition is complete,[115] and an overall more fluent and timely process[116] for the SPAC to complete the acquisition of the target company.

Finally, this would benefit the target company itself.[117] As discussed,[118] the target company and its owners usually seek to become a public company as quickly and efficiently as possible. The SPAC's characteristics are advantageous to a target company in mitigating the problems that small companies often face in getting to the public market. Here, there is a greater chance that the SPAC managers proposed transaction will be approved by the investors.[119] Additionally, the increased likelihood that the investors approve the deal should lead to a more amicable and efficient negotiating process between the SPAC's managers and the target company. This will increase the chances that an acquisition agreement is reached. Finally, the target company also wants the SPAC to be profitable and the share price to increase as a result of the transaction. It is, in fact, the private targeting company that is being effectively merged with the SPAC to become a public company. Although some of the target company's management may cash out of the deal and sell their shares, many will continue to work for the newly formed public company. Confidence in the SPAC's management should help assure the targeting company that going public via a SPAC device, and with this particular SPAC, is the right choice for the future success of the

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the SPAC managers' proposed target company acquisitions; this would still need to be done on a case-by-case basis carefully and diligently.

[114] *See* Ignatyeva et al., *supra* note 5, at 67.

[115] It is important to note that if fewer investors ask for their investment money back before the SPAC acquisition is completed, the SPAC will have more money to work with in purchasing target companies and paying for the SPAC managers' operating expenses.

[116] It is expected that increased confidence by SPAC investors in SPAC management to make well-informed and prosperous target company acquisition decisions will lead to a quicker and more efficient approval process.

[117] As discussed, it is worth noting that, unlike in the American SPAC industry, European SPACs are allowed to have a particular target in mind when soliciting investors.

[118] *See supra* Part VI.A.

[119] This is mainly due to the increased confidence that the investors will now have in the SPAC's managers that the proposed target company is one worth acquiring. Thus, it is more likely that the proposed transaction will be approved in a timely and efficient manner.

company.[120]

X. PRIVATE EQUITY INVESTMENTS IN ASIA

A. History of Private Equity Investments

Although to a lesser extent than in the United States and Europe, private equity investments are utilized in Asia. Private equity carries a relatively strong reputation in Asian countries, where many see it as "sources of not just funds, but also management expertise."[121]

In recent decades, private equity growth has been particularly strong in Southeast Asia. Major reasons attributing to this success are the new regulations and other measures put in place by the Association of Southeast Asian Nations (ASEAN) in 2000.[122] These reforms, which were "largely modeled" on those in the U.K. and the United States, helped improve corporate governance practices to protect the interests of investors and "have served as a catalyst for private equity funds to invest in the region."[123] A recent move by the ASEAN Economic Community may continue to spur even more private equity activity in the future.[124]

Private equity investments have also been robust in China in the past two decades. As recently as 2000, private equity was "little known in China."[125] However, by 2010, private equity funds in China were incredibly prevalent.[126] In a series of new regulations and decisions, the "Chinese government at the national, provincial and municipal levels sent strong signals encouraging the country's private equity industry."[127] As laws and regulations continue to develop "rapidly," it is no surprise that "the market is now seeing more and more highly competitive local firms."[128]

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[120] The decision of the target company in choosing which particular SPAC they are going to reach an acquisition agreement with should not be taken lightly by the targeting company. It is a significantly important decision, considering that the private company is essentially investing the future of its company in the hands of the SPACs management, as well as the applicable financial support of the investor, to become a public company.

[121] *See* Ryushiro Kodaira, *How private equity is shaking up Southeast Asia*, ASIAN REVIEW (June 27, 2018), https://asia.nikkei.com/Spotlight/Cover-Story/How-private-equity-is-shaking-up-Southeast-Asia.

[122] *See id.*

[123] *Id.*

[124] *See id.* (In January 2018, ASEAN "abolished nearly all tariffs in the bloc, giving companies a stronger incentive to formulate cross-border strategies in Southeast Asia" and that "private equity firms will likely play a significant role in these M&A deals").

[125] Lawrence Zhan Zhang, *The Legal Environment for Foreign Private Equity Firms in China*, 16 FORDHAM J. CORP. & FIN. L. 839, 841 (2011).

[126] *See id.* (identifying that in 2010 "eighty-two new China-focused private equity funds [] raised a total of $27.6 billion, and 363 new investments in the total amount of $10.3 billion").

[127] *Id.*

[128] *Id.* at 843.

B. Emergence of SPACs in Asia

Despite the robust private equity market throughout Asia, the use of SPACs has not yet taken off in all Asian markets. It is important to note that this does not mean that SPAC investments targeting Asian private companies have not occurred throughout Asia in recent years.[129] However, only two Asian markets currently regulate SPACs: Malaysia and South Korea.

It is somewhat surprising that, despite the strong private equity market throughout Asia, only two Asian countries currently regulate SPACs. Pertaining to China, the use of SPAC investments by foreign investors to complete mergers and acquisitions with Chinese companies has increased in recent years.[130] The surge of China-targeted SPACs is driven predominantly by Chinese target companies themselves.[131] Chinese target companies are "typically interested in merging with a U.S. SPAC to increase visibility, obtain enhanced prestige of becoming a U.S. listed public company, and enable them to obtain liquidity out of China."[132] The size of the China-targeted market "provides large scale opportunities for continued growth."[133]

While China has recently loosened regulations in hopes of stimulating further economic growth,[134] they have not yet addressed the SPAC market. Strong reasons exist for China to do so. Besides the obvious economic advantages, political factors are also advantageous for China to retain its companies on domestic exchanges: more Chinese companies would effectively be regulated in China and less in America . . . And China regulating SPACs would indirectly hurt the United States economy, which would provide a tool in the widespread "political sparring between China and the United States."[135]. It will be particularly interesting to follow future SPAC developments in China.

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[129] *See* Jie Xiu & Brian C. Daughney, *China Targeted M&A Re-Emerges in SPAC World*, N.Y.L.J. (Oct. 26, 2018), https://www.law.com/newyorklawjournal/2018/10/26/china-targeted-ma-re-emerges-in-spac-world/ (stating that "[t]he use of a SPAC vehicle to complete mergers and acquisitions with China targeted companies is not new" and "China-target SPACs are providing a new wave of public listings and business combinations in the United States").

[130] *Id.* (stating "there has been an uptick in China targeted mergers and acquisitions using the formerly and again popular reverse-merger concept through special purpose acquisition companies").

[131] *See id.*

[132] *Id.*

[133] *Id.*

[134] *See* Aidan Yao, *China's Monetary Policy Loosening is a Sign that the Central Bank is Gearing Up for a Fight*, SOUTH CHINA MORNING POST (July 4, 2018), https://www.scmp.com/comment/insight-opinion/china/article/2153565/chinas-monetary-policy-loosening-sign-central-bank ("The People's Bank of China's decision to cut the reserve requirement ratio by 50 basis points suggests the central bank has finally started to fine-tune monetary policy in response to growing pressure on the economy and rising risks to financial stability.").

[135] *See* Elizabeth Macbride, *Why this $35 Billion Private Equity Firm is Still Bullish on China*, CNBC (Oct. 2, 2019), https://www.cnbc.com/2019/10/02/35-billion-private-equity-firm-is-bullish-on-china-despite-trade-war.html.

In late 2009, South Korea became the first Asian country to implement regulations and allow SPACs to list on its stock exchange.[136] In 2011, Malaysia followed suit and became the first Southeast Asian country to follow suit.[137] The regulations both countries passed, for the most part, mirror the regulations of SPACs in the United States.

In South Korea, the regulations relating to SPACs require that: a minimum of ninety percent of the proceeds of the IPO be held in trust pending merger with the target company; the SPAC dissolves if it fails to consummate a merger within three years of its IPO; and the SPAC does not select its target prior to its IPO formation.[138] Similarly, in Malaysia, the regulations relating to SPACs require that: a minimum of ninety percent of the proceeds of the IPO be held in trust pending merger with the target company; at least eighty percent of the amount held in trust be used for qualifying acquisitions; the qualifying acquisition take place within thirty-six months from the close of IPO formation or the SPAC is forced to dissolve; and SPACs abort proposed qualifying acquisitions if more than twenty percent of their public shareholders vote against such an acquisition.[139]

C. Reflection on SPACs in Malaysia and South Korea

While it is too early to reach a definitive conclusion regarding the impact that SPACs have had and will continue to have in the future on the Malaysian and South Korean markets,[140] the early indications seem to be positive.[141]

In Malaysia, given the current business environment, SPACs "appear[] to be a viable means for small local companies planning to break into the E&P [Energy & Petroleum] sector, whether domestic or overseas."[142] Malaysian SPACs have attracted significant industry attention and have secured investment from leading financial institutions and sovereign wealth

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[136] *See* Kab Lae Kim, *The Characteristics of SPAC Investments in Korea*, 22 KOREA CAP. MARKET INST. 9, 10 (2010).

[137] *See* Cheryl Yvonne Achu, *SPACs Remain Important for Capital Market*, NEW STRAITS TIMES (Apr. 30, 2016), https://www.nst.com.my/news/2016/04/142569/spacs-remain-important-capital-market.

[138] *Asia/Pacific*, 44 INT'L L. 595, 604 (2010).

[139] Achu, *supra* note 137.

[140] *See id.* (stating "because of the SPAC's 'newness', the grasp of [SPACs] is still low, not only among investors but also regulators and certain financial industry players").

[141] *Cf.* Mark Rao, *Structural Issues Hindering SPAC's Growth in Malaysia*, MALAYSIAN RES. (July 9, 2018), https://themalaysianreserve.com/2018/07/09/structural-issues-hindering-spacs-growth-in-malaysia/ (stating that "[t]he success of special-purpose acquisition companies (SPACs) in Malaysia can be undermined by arbitraging and other structural issues, creating a need to *reassess the market structure in support of them*") (emphasis added).

[142] *See* Chee Yew Cheang, *Malaysia's Special Purpose Acquisition Companies Expands Upstream*, RIGZONE (Sept. 18, 2014), https://www.rigzone.com/news/oil_gas/a/135068/malaysias_special_purpose_acquisition_companies_ expands_upstream/?all=hg2.

funds.[143] Although Malaysia does not require SPACs to be involved in the oil and gas industry, many of the SPACs listed on the market so far are involved with oil and gas.[144] It will be interesting to track the success of these SPACs in the years ahead and if SPACs outside the oil and gas industry start to have more of a presence in the Malaysian markets.

In South Korea, the government adopted SPACs as an "alternative investment vehicle in order to facilitate capital investment for small-medium companies in need of investment for the business which has a significant growth potential."[145] South Korea currently has over fifteen SPACs actively trading on its market.[146] SPACs "have garnered a lot of interest from retail investors."[147] It will be interesting to track the success of these SPACs in the years ahead.

D. Future Outlook of SPACs in Asia

As mentioned, it is somewhat surprising that given the robust history of private equity investments in Asia, SPACs currently have a minimal role in the Asian markets. As this article discusses, there are many advantages that SPAC investments provide for all parties involved.[148] While there are also potential disadvantages of SPACs,[149] the advantages, coupled with effective regulatory and tax measures, seem to clearly outweigh any disadvantages.

Even though SPACs currently play a minimal role in the Asian markets,[150] this presents an advantageous growth opportunity for both investors and SPAC management. The Asian SPAC markets utilize more flexible and less stringent regulations than American markets. Specifically, Asian markets allow SPAC management an additional year to acquire a target company before the SPAC is forced to dissolve.[151] This helps ease concerns that SPAC management may not have enough time to select and acquire the right target company.[152] Additionally, this rule helps mitigate the risk that

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143 *Id.*

144 *See* Rao, *supra* note 141.

145 *See Review and Implementation of SPACs in Korea*, FIN. POL'Y (Mar. 24, 2010), https://fsckorea.word press.com/2010/03/24/review-and-implementation-of-spacs-in-korea/.

146 *See Kim*, *supra* note 138.

147 *KRX fails to properly screen SPAC's takeover of firm*, KOREA TIMES (Jan. 8, 2012), http://www.koreatimes.co.kr/www/news/biz/2013/08/602_102425.html (stating retail investors' interest is a result of allowing "public stock market investors to invest in deals that are usually considered to be reserved for private equity firms").

148 *See supra* Part VI (discussing the many advantages for the SPAC management, SPAC investor, and the target private company).

149 *See supra* Part VII (discussing the disadvantages of SPACs).

150 *See supra* Part X.B.

151 *Compare* Lorne & Bryan, *supra* note 3, at § 3:11.20 (specifying that the SPAC has two years to acquire a target company before being forced to dissolve in the United States); *with* Xiu & Daughney, *supra* note 130 (specifying that the SPAC has three years to acquire a target company before being forced to dissolve in Asia).

152 Heyman, *supra* note 26, at 549 (noting that University of Florida finance professor Jay

management will propose a target company simply to ensure that the SPAC is not dissolved. As discussed, a SPAC's managers have "every incentive to do a deal, whether it makes sense or not, because if they don't do one, they give the money back . . . if they do a deal, that entitles them to a gravy train of salary for the foreseeable future."[153] It appears that SPAC managers, investors, and target companies will all benefit from this regulation. Accordingly, it is likely that SPAC investment will increase in the coming years as these markets continue to develop and evolve.

Asia differs from American markets in advantageously extending the time frame before a SPAC is forced to dissolve. That being said, the American private equity and SPAC market is the largest and most prosperous in the world.[154] Accordingly, American regulations in place have shown to be quite effective. The Asian markets have smartly mirrored their other regulations to essentially fit the Americans.[155] Given the strength and prominence of the American economy and its proven track record of private equity and SPAC success, this is a strong indication that the Asian markets have a bright future ahead.

It is no surprise that the two Asian countries that currently regulate SPACs on their markets have experienced strong initial investment. Every indication is that SPACs will match the success of the Asian private equity industry and continue to increase in both use and profitability in the coming years.[156]

XI. FUTURE OF SPACS IN THE WORLD ECONOMY

SPACs should continue to be an important and effective investment device going forward. The prospects for continued success and growth of SPACs in both the American and the international markets are strong. As discussed, SPACs provide a beneficial alternative to private companies as a means to avoid the traditional IPO in going public. While the traditional IPO has a storied history, especially in the United States, there are significant drawbacks. Especially in regard to small private companies, the SPAC seems

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Ritter believes that a time deadline of twenty-four months, imposed on the SPAC management to make a transaction before the SPAC is dissolved, puts management under severe time pressure).

153 *Id.*

154 *See* Seretakis, *supra* note 1, at 616.

155 *Compare supra* Part V; *with supra* Part X.B (showing Asian and American SPACs to share many similar regulating provisions mandating a minimum of ninety percent of the proceeds of the IPO to be held in trust pending merger with the target company; at least eighty percent of the amount in trust account to be used for qualifying acquisitions; and for SPACs to abort proposed qualifying acquisition if more than twenty percent of its public shareholders vote against the qualifying acquisition).

156 *See* Achu, *supra* note 137 (stating "with the recent increase in offering sizes, the presence of top-tier underwriters and active involvement of talented management teams, combined with a strong equity market, SPACs should continue to attract investors and provide a platform for growth").

to be a much more advantageous option. A SPAC is a great way for a small company to raise cash without having to conduct an IPO of its own. There is little interest in the market for small company IPOs, which effectively leaves smaller companies with few options to raise cash.[157] Additionally, many operating target company management teams do not wish to give up a portion of control to private equity investors.[158] In a traditional private equity transaction involving a private company, the acquiring private equity firm will often replace the acquired company's board of directors with new management. Further, a private equity firm will often restructure the acquired company, with the ultimate goal of taking the company public at a later time. Alternatively, a SPAC provides a greater possibility that the acquired company's directors will be able to retain control, and the private company instantaneously becomes a public company after the SPAC transaction is complete. This process enforces important regulatory safeguards while still allowing significant profitable gain for both SPAC managers and investors.[159]

It will be important to carefully monitor the continuing progression of SPACs, especially outside the United States. Favorable regulations have already led to the emergence of significant SPAC investments in many European countries.[160] The strong potential exists for further growth if European SPAC managers are able to effectively utilize home-court advantages.[161] Although SPACs have thus far played a more limited role in Asian markets, early indications in Malaysia and South Korea are promising.

The continued growth of private equity investments throughout the world's markets bode well for the increased use of SPAC investments.[162] The emergence of SPACs is an "encouraging indication that the market is always evolving."[163] It is critical that all SPAC parties continue to "actively explore creative capital solutions that can be used to solve whatever sourcing or funding dilemma they may be facing"[164] going forward. As long as both the participants of a SPAC transaction and the governments tasked to enforce regulations stay attuned to evolving market trends, SPACs will continue to

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[157] Heyman, *supra* note 26, at 547.

[158] *Id.*

[159] *See supra* Part VI.B; *see also supra* Part VI.C.

[160] *See supra* Part IX.B.

[161] *See supra* Part IX.D.

[162] In a sense, "modern-day SPACs closely resemble 'one-time liquid' private equity (PE) funds: SPACs are publicly traded so that investors can easily dispose of their ownership stakes at any time." Ignatyeva, *supra* note 5, at 64 (noting that SPACs are different as they "perform only a single transaction, whereas PE funds usually engage in a number of transactions"; another notable difference is that "SPAC[s] shareholders get to vote on a proposed transaction").

[163] *The Rise of SPACs*, SIXPOINT PARTNERS (Apr. 27, 2018), http://www.sixpointpartners.com/rise-of-spacs/.

[164] *Id.*

prosper.[165] As more SPACs begin to achieve acceptance in the public markets, the "SPAC model may gain even greater acceptance as a viable alternative for sophisticated investors seeking future alternative acquisition vehicles."[166]

The increased use and prevalence of SPACs in both the United States and international setting is beneficial on both a micro and macro level. Private equity investments will no longer be limited to the few and powerful. SPACs provide an advantageous financial opportunity to both small and large investors alike. Small companies will finally be ensured the equal opportunity as large companies to go public. As a result, the economic growth that countries experience will help the worldwide economy to flourish.

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[165] Steven B. Boehm & Hannah L. Friedberg, *Everyman a Venture Capitalist*, 17 BUS. L. TODAY. 13, 17 (2008) (describing "recent developments such as the decision by [American Stock Exchange] to accept SPACs for listing suggest a growing comfort with the SPAC structure").

[166] *Id.*