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IPO News Desk

IPO Professionals Speak:

Blank Checks IPOs - SPACs to Be Back in '07

2/20/07 – In 2004 we started to see the rise of Blank Checks offerings in the IPO market. In that year SIC Code 6770 designated offerings were fourth among all SIC Codes. By 2005, Blank Checks captured first place with 12% of the IPO market by number of IPOs with 28 offerings. That number was twice that of the next SIC Code classification (2834) Pharmaceutical Preparation companies with 14. This trend continued in '06 with 15% of all IPOs coming from SIC 6770 classified offerers. That dominance is continuing with the opening of the IPO market this year with six Blank Checks already public to date.

The Interviewees – We invited attorneys from three firms which have been active in Blank Checks/SPACs ["Specified Purpose Acquisition Company"] to answer a few questions on current and future prospects within the space. To get a West Coast perspective, we first brought in **Gian-Michele a Marca** and **Kenneth Guernsey** who together completed two Blank Checks in 2006 from their San Francisco office at **Cooley Godward Kronish LLP**. Then we turned to two stalwarts in Blank Checks representations from New York – **David Alan Miller** of **Graubard Miller** who worked on eight completed SPACs last year (the most of any attorney in the period), and **Mitchell Nussbaum** of **Loeb & Loeb LLP** who led all issuer's lawyers with the most completed IPOs in 2006 (five offerings, four being Blank Checks IPOs).



Mitchell S. Nussbaum is partner and chair of the Corporate Securities Practice Group of **Loeb & Loeb LLP**. He focuses on corporate and securities law, with particular emphasis on representation of U.S. and foreign public corporations, investment and commercial banks, private emerging growth companies in public and private financings (equity and debt), and federal securities law compliance. He has had extensive experience with technology and other companies in the U.S., as well as a broad range of companies in Asia. Mr. Nussbaum has represented numerous Asian companies that have listed on U.S. stock exchanges. He provides general corporate, securities, and business counseling to corporate clients and their officers and directors. He advises investors and investee entities with respect to venture capital financings. He also negotiates and documents acquisitions, mergers, reverse mergers, proxy contests, tender offers, and control contests and has represented issuers and underwriters in more than 20 SPAC offerings.

Do you see the steady stream of new Blank Checks registrations coming back or do you see this waning trend continuing and affecting the future pipeline of Blank Checks offerings?

I believe you will see filings pick up quite a bit for the first six months of this year. There are probably three reasons for this. First there were several SPACs that announced acquisition targets that came to a vote towards the end of last year. I believe that the marketplace was sitting back waiting to see the results of these

votes or see how a liquidation would be executed in the event of a negative vote. It appears that from the investor's perspective, a sufficient percentage of those deals that came to a vote were approved and those deals were consummated. For the transactions that did not get approved, investors did receive the return of their funds as promised. Second, SPACs have performed favorably in the marketplace. And, third, funds have tended to allocate more funds towards these deals towards the beginning part of the year.

Based on your experiences with recent Blank Checks to what would you attribute the process becoming seemingly longer rather than shorter?

I don't see that the offering process is becoming longer. I actually see that the offering part of the process is actually becoming shorter than some of the busy periods we had over the last couple of years. The merger proxy part of the process filed as part of the acquisition seems to me to be the challenge in terms of shortening the process. This process has averaged around six months and it would be beneficial to the product if this part of the process becomes more streamlined.

What are the main legal issues which you have to address now as Blank Checks have evolved over their two year run?

Over the past two years, the largest legal issues in this space related to (1) the ability of insiders buying in the offering while waiving liquidation rights so that trust fund percentages increase; (2) the company's ability to extend the acquisition period; (3) the accounting treatment of the public warrants; and (4) the Delaware requirements related to stockholder approval of the liquidation of the SPAC.

What trends in issues, legal or otherwise, surrounding Blank Checks IPOs do you see looming in the future?

It is difficult to project what the big ticket legal issues will be in the future but I believe that bankers, management teams and lawyers will continue to be creative with these structures so that they continue to provide additional value to investors and management teams. In my experience, this type of creativity involves working through significant legal issues before they can be implemented on a widespread basis.

Other than the possibility of larger offerings, what other factors will affect the Blank Checks arena as bulge bracket investment banks increase their involvement in this IPO space?

I believe that the principal factors effecting SPACs going forward will be new features and performance of the acquisition targets.

Do you see more future Blank Checks created to focus on non-U.S. targets?

Yes. SPACs need to be competitive with private equity firms and other private LBO firms. Due to some of the restrictions of the vehicle, i.e. time needed to complete the acquisition – I believe they are most likely to focus on areas that are less competitive with those firms. The emerging market countries are an excellent alternative. ■■

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