DECEMBER 2021

REPORT

PARIS: FRONTLINE FINANCIAL CENTRE FOR SPACS

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le club des juristes

AD HOC COMMISSION

PARIS: FRONTLINE FINANCIAL CENTRE FOR SPACS

REPORT OF LE CLUB DES JURISTES

Ad hoc Commission
DECEMBER 2021

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CONTENTS

SUMMARY OF THE REPORT

Special Purpose Acquisition Companies ("SPACs") are companies with no operational activity which are listed on the stock market in order to raise capital for the subsequent acquisition of one or more target companies. While not a new phenomenon, SPACs were the source of a financial bubble in the US market in mid-2020. The stock market frenzy surrounding this vehicle has highlighted the benefits and risks associated with it, the latter relating mainly to the complexity of the instruments used and the conflicts of interest that may arise.

Although the number of IPOs of these vehicles is now slowing, this report shows that SPACs represent an opportunity both for French entrepreneurs and for Paris as a financial centre. As a new IPO instrument, a new method of financing or of external growth for companies and a new asset class for investors, the vehicle meets some real and specific needs. Despite the difficulties currently faced by SPACs, these vehicles should nonetheless remain among the stock market instruments available to companies and investors.

An examination of the various characteristics of SPACs indicates that French law is already able to accommodate this type of company. The recent listing of several SPACs in France shows that there are no major obstacles to the establishment of this vehicle.

However, while the legal system does not prevent the formation of SPACs, several adjustments would improve the competitiveness of the Paris marketplace. A first set of adjustments would be to tailor certain practices to the SPAC phenomenon. For example, drawing up a standardised prospectus and taking into account the specific nature of the vehicle in the governance rules set out in the AFEP-MEDEF code would help to make the market more attractive. Other more ambitious changes proposed by the Commission call for amendments to legislative provisions. Going beyond the sole issue of SPACs, these amendments are aimed at meeting the requirements of high-growth companies and bringing French law into line with practices in the main financial centres. They consist of introducing the possibility of multiple voting rights in listed companies and revising certain rules on increases of capital and delegations.

INTRODUCTORY CHAPTER

THE SPAC PHENOMENON

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THE SPAC PHENOMENON

To introduce the SPAC phenomenon, we should briefly outline its origin as an investment vehicle (**Section 1**), its operation (**Section 2**) and its development on the financial scene (**Section 3**), as well as the problems to which the Commission has sought to respond in drawing up this report (**Section 4**).

SECTION 1.

THE ORIGIN OF SPACS

Special Purpose Acquisition Companies (SPACs) are far from being a new phenomenon. These companies first appeared in the US in the mid-1980s as so-called Blank Check Companies, aimed at raising funds on the financial markets to acquire companies whose exact profile had yet to be identified. Following various financial scandals, however, the use of Blank Check Companies was strictly regulated from 1992 onwards with the enactment of Rule 419 of the Securities Act[1].

After Blank Check Companies had fallen into disuse for several years, a new generation of SPACs appeared in 2003[2], before coming to a halt at the end of 2008 owing to the financial situation. However, this investment vehicle re-emerged in 2018 and has since sparked a significant increase in interest[3]. Far from being insignificant, the return of SPACs can be explained in particular by the large amount of liquidity circulating in the financial markets[4]. In addition to the excess of global savings, money was created as a result of the central banks' unprecedented buy-back programmes of public debt issued by governments in response to the Covid-19 crisis[5].

Before highlighting the current proliferation of these companies in the various financial centres, we need to describe the way in which they operate.

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1. Ph. Tomas, *"Special Purpose acquisition companies - Bientôt des Special Purpose Acquisition Companies en France?"* ("Special Purpose Acquisition Companies soon in France?")", Revue de Droit bancaire et financier No 2, study 10, March 2016, esp. No 3.
2. Ph. Tomas, *op. cit.*, No. 4.
3. J.-J. Daigre, *"La fièvre des SPAC, ou comment faire du coté avec du non coté"* ("SPAC fever, or how to make listed out of non-listed"), *Bull. Joly Sociétés*, September 2021, No. 200 j7, p. 1.
4. Thus in France alone, between the first quarter of 2020 and the first quarter of 2021, the surplus of household financial savings was €142 billion, increased from €115 billion at the end of 2020 (Banque de France, Monetary and Financial Statistics Directorate, *L'impact de la crise du Covid-19 sur la situation financière des entreprises et des ménages en avril 2021* (The impact of the Covid-19 crisis on the financial situation of companies and households in April 2021), 31 May 2021, p. 1).
5. La Correspondance économique, *La Banque centrale européenne (BCE) maintient son cap expansionniste face aux incertitudes de la pandémie* (The European Central Bank (ECB) keeps to its expansionary course in the face of pandemic uncertainties), 23 avril 2021.

SECTION 2.
THE OPERATION OF SPACS

Whilst no formal scheme has been established, nonetheless it seems possible to identify a traditional model of SPAC from US practice. Although the practice is constantly evolving, the vehicle still has several characteristic features.

A SPAC is a non-operating company that is listed on the stock market in order to raise capital for one or more subsequent investment transactions. Following its listing, the SPAC uses the funds raised to acquire one or more unlisted target companies, usually in sectors with high growth potential. This second phase, relating to the acquisition of a target, is called a "de-SPAC" or "initial business combination".

Within these special companies, there are two categories of shareholders: founders, who are also called "sponsors", and investors, who acquire their stake in the company when the funds are raised.

The founders initiate the creation of the SPAC and bear the costs of setting up the vehicle[6]. At the outset of the project, they hold securities of a different class from those held by the investors. Their shares or composite securities are referred to by the term "promote". The promote, subscribed for by the founders at a price generally equivalent to 2-3% of the subscription price of the SPAC's securities at the time of the IPO, is likely to represent up to 20% of the SPAC's capital. At the time of the IPO, these shares are not listed on the market. They only become convertible into listed ordinary shares once the de-SPAC has been completed, or at a later date depending on the movement of the share price. The terms and conditions applicable to these securities held by the sponsors vary from one SPAC to another, depending on the market conditions surrounding the listing of these vehicles.

When a SPAC is listed on the stock exchange, the investors acquire "units", each consisting of one share and a fraction of an instrument which is also listed, called a "warrant". Usually exercisable for a period of 3 to 5 years after the de-SPAC transaction, a full warrant, once exercised, enables the holder to obtain one share. Following US practice, each unit is usually offered at a price of €10 and the exercise price of the warrants is set at €11.50. At the time of the IPO, it is customary for the founders also to participate in the fundraising and subscribe for units of the same nature as those offered to the other investors, for an amount usually equivalent to 2% of the total amount raised. Owing to the founders' special status, shares and warrants held by them are

6. In the US, these costs represent between 5 and 7.5% of the funds raised at the time of the IPO (Reuters, *U.S. SEC focuses on bank fee conflicts as it steps-up SPAC inquiry - sources*, 13 Jul. 2020; GigCapital, *The Special Purpose Acquisition Company (SPAC) or Private to Public Equity (PPE)™ Initiative; Shanga Consult, SPACs - How does it work ?*). In Europe, as the market practice of SPACs is not yet well established, the costs of setting up these vehicles are much more variable.

often subject to a lock-up commitment for a period of time, usually until the first anniversary of the de-SPAC transaction or earlier if the market capitalisation of the company exceeds a certain threshold.

Once the IPO has been completed, the funds raised are placed in an escrow account until the first acquisition of a target company. However, such acquisition must take place within a given timescale, usually 24 months from the IPO of the SPAC. The acquisition decision is, as a rule, made by the directors of the SPAC, but it may also require a vote of the general meeting of shareholders. In order to be selected, however, the target must match a number of characteristics laid down at the time of the SPAC's formation, particularly in terms of its size and business sector[7]. At the end of the acquisition process, the SPAC will in most cases merge with the target company, allowing the latter rapid access to the financial market and its shareholders to hold liquid securities. If no acquisition is made within the 24-month period, the SPAC is dissolved. The sums originally raised are then returned to the investors, and the sponsors bear the risk of loss on their promote.

At the time of the de-SPAC, the investors have a right of withdrawal. This right enables them, thanks to the amount placed in an escrow account at the time of the IPO, to request the repurchase of their shares at the subscription price. The mechanism thus assures the investors that they will not suffer the consequences of an unwanted acquisition. The completion of the acquisition also opens the beginning of the exercise period for the warrants distributed at the time of the fundraising[8]. During this exercise period, when the closing price of the shares admitted to trading reaches a certain level, the warrants may nonetheless, subject to prior notice, be bought back by the SPAC at an extremely low price. This option thus makes it possible to limit the return made by the investors, by forcing them to exercise their options promptly. Lastly, at the time of the de-SPAC, additional funds may be raised and/or borrowed by the SPAC, e.g. through a private placement, to complete the financing of the target acquisition.

Alongside this traditional model, new practices are developing. The operating procedures of some newer vehicles sometimes depart from the market model described above. For example, Special Purpose Acquisition Rights Companies ("SPARCs"), pioneered by Bill Ackman, alter the timing of deals and only begin raising funds once a target company has been identified[9]. In this way, the investors do not have their funds tied up during the search for a target and the founders are not subject to a time constraint for the search.

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7. The target should generally represent at least 80% of the funds placed in the trust.
8. In principle, the investors may keep their warrants even if they have exercised their right of withdrawal on their shares.
9. Les Echos, *Bill Ackman crée un nouveau véhicule financier, les SPARC, une variante des SPAC* (Bill Ackman creates a new financial vehicle, SPARCs, a variant of SPACs), 7 June 2021; Le Temps, *Après les SPACs, les SPARC vont faire des étincelles* (After SPACs, SPARCs will make sparks fly), 13 June 2021; Barron's, *Bill Ackman Wants to Liquidate His SPAC. Hello, SPARC*, 20 August 2021; Bloomberg Opinion, *SPAC Suit Leads to SPARCs*, 23 August 2021.

However, despite some variations specific to each vehicle, SPACs correspond to a standardised practice and appear, for unlisted companies, as an alternative solution to traditional financing and IPO transactions. For providers of capital, the process offers the possibility of investing in structures similar to private equity funds while benefiting from liquidity and certain protections, particularly in terms of information and the right of withdrawal.

SECTION 3.
THE DEVELOPMENT OF SPACS

An overview of the figures regarding SPACs shows the considerable development of this vehicle on the US and European financial scenes.

In 2016, 13 SPACs were listed in the US, representing 12% of all IPOs on the New York Stock Exchange in that year. The phenomenon increased significantly in 2019, with an additional 59 vehicles entering the US market. It then exploded the following year to reach 69% of new IPOs in the first two quarters of 2021. Between 1 January 2021 and 1 July 2021, more than 345 SPACs were listed on the New York Stock Exchange, raising $107 billion alone[10]. As SPACs may acquire targets three to five times their size in terms of valuation, the vehicles created in 2021 in the US market alone represent nearly $500 billion in business value. While many de-SPAC transactions have already taken place, more than 420 SPACs are still looking for a target company to acquire[11].

Notwithstanding a clear slowdown in the listing of these vehicles on the US market[12], the SPAC phenomenon has also spread to Europe. There are now more than twenty active SPACs in Europe. Despite the slowdown in the formation of these vehicles since the summer of 2021, existing SPACs in Europe represent around €5 billion in equity and €35 billion in terms of business value[13]. Although the majority of European SPAC founders currently choose Amsterdam as their listing venue, even where there are French sponsors[14], the Paris market has not been left behind. Besides *Mediawan*, the first French SPAC to be

10. For a numerical presentation of the SPAC phenomenon in the US: https://spacanalytics.com/
11. *Ibid.*
12. On this slowdown, see below Chapter 2, Section 1.
13. For the history of SPAC listings and funds raised in Europe between 2005 and 2021: AMF (the French Financial Markets Authority), *SPAC : Opportunités et risques d'une nouvelle façon de se coter en Bourse* (Opportunities and risks of a new way of listing on the stock market), Jul. 2021, p. 4.
14. This includes the case of the SPAC Pegasus, co-founded by Financière Agache, Bernard Arnault's holding company, Tikehau Capital, Jean-Pierre Mustier and Diego De Giorgi. Listed in Amsterdam, it is now the largest SPAC in Europe (L'Écho, *La plus grande SPAC cotée en Bourse à Amsterdam* (The largest SPAC listed on the Amsterdam stock market), 29 April 2021; Wansquare, *La Spac de Tikehau et Jean-Pierre Mustier lève 500 million euros* (The SPAC of Tikehau and Jean-Pierre Mustier raises €500 million), 29 April 2021). More recently still, Michael and Yoel Zaoui, associates of Jean Raby, Michel Combes and Olivier Brandicourt, announced the creation of Odyssey Acquisition, which is now listed on the Amsterdam stock market after raising €300 million to invest in health and new technologies (Les Echos, *Les frères Zaoui lance une SPAC* (The Zaoui brothers launch a SPAC), 30 June 2021; Odyssey Acquisition, *Odyssey Acquisition successfully raises €300 millions via a private placement of units*, 2 July 2021).

listed on the stock market in 2016[15] and now delisted following a public buyout offer by the founders in December 2020[16], the French market now has five active SPACs: 2MX Organic, Accor Acquisition Company, Transition, Dee Tech et I2PO.

- **2MX Organic :**
  Founded by Xavier Niel, Matthieu Pigasse and Moez-Alexandre Zouari and listed in December 2020 with a €300 million fundraising, 2MX Organic aims to make acquisitions in the production and distribution of consumer durables sector[17].

- **Accor Acquisition Company :**
  Europe's first industrial SPAC, Accor Acquisition Company was founded by the Accor group and listed on the stock market in May 2021 after a €300 million fundraising. The aim of the structure is to acquire one or more companies in sectors related to Accor's core hotel business[18].

- **Transition :**
  Founded by Xavier Caitucoli, Erik Maris and the Eiffel Essentiel SLP fund, the company has completed a €215 million fundraising. Its objective is to make one or more acquisitions in the energy transition sector in order to support the emergence of a new player on the European scene[19].

- **DEE Tech :**
  Formed by Marc Menasé, Michaël Benabou, Charles-Hubert de Chaudenay, MACSF Épargne Retraite, and IDI, this vehicle, which announced that it had successfully raised €165 million through a private placement, aims to acquire a high-potential technology company in order to create a European giant in this field[20].

- **I2PO :**
  Founded by Artémis, Iris Knobloch and Combat Holding, this latest French SPAC raised €275 million on 20 July 2021. It intends to create a European leader in the entertainment and leisure sectors[21].

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15. This SPAC, founded by Xavier Niel, Matthieu Pigasse and Pierre-Antoine Capton, raised €250 million before making several acquisitions in the media and audiovisual sector (Ch. Cardon, *"Special Purpose acquisition companies - Mediawan: retour sur la première SPAC française"* (Special Purpose Acquisition Companies - Mediawan: a review of the first French SPAC), Revue de Droit bancaire et financier No. 4, July. 2016, prat. 4).
16. AMF, Dec. No. 220C5194, *Mediawan*, 30 November 2020.
17. 2MX Organic, Press release, 7 December 2020.
18. Accor Acquisition Company, Press release, 28 May 2021.
19. Transition, Press release, 18 June 2021.
20. Dee Tech, Press release, 23 June 2021.
21. Euronext, I2PO SPAC *lists on Euronext Paris*, 20 July 2021.

SECTION 4.

PROBLEMS NOTED BY THE COMMISSION

This report aims to address three distinct but complementary problems.

The first invites us to question the value of SPACs for France. Should we see this new vehicle as an opportunity for Paris as a financial centre and French entrepreneurs or, on the contrary, should we consider it as a speculative device that we should be wary of?

▸▸▸ Chapter 1. The value of SPACs for France

The second problem concerns the capacity of French regulations to accommodate the SPAC phenomenon. A second chapter will therefore be devoted to the ability of the existing law to accommodate the traditional SPAC model in France.

▸▸▸ Chapter 2. Accommodating SPACs in French law

Finally, the last question concerns possible improvements to the French legal system within which SPACs are intended to operate. Taking a forward-looking approach, the final chapter will outline the amendments considered appropriate by the Commission.

▸▸▸ Chapter 3. Possible improvements to the legal system

CHAPTER 1

THE VALUE OF SPACS FOR FRANCE

While the SPAC is sometimes portrayed as a purely speculative shell whose development in Europe would be undesirable and which would even constitute, for some, "a major scam" ("*une grande arnaque*")[22], a more detailed analysis calls for this description to be qualified. Hence, although the foreign experience, particularly in the US, demonstrates that the use of the vehicle is not risk-free (**Preliminary section**), the interviews conducted by the Commission encourage this vehicle to be regarded as a real opportunity, both for Paris as a financial centre (**Section 1**) and for French entrepreneurs (**Section 2**).

PRELIMINARY SECTION.
RISKS RELATING TO THE SPAC PHENOMENON: THE FOREIGN EXPERIENCE

Before evaluating the extent to which SPACs are of value to the Paris market, it seems helpful to look at practice in the US, as their experience of SPACs is longer and more highly developed than in France (**§1**), and then to examine the reactions of the main European and Asian markets to the development of this type of company (**§2**).

§1. The US experience

The US experience shows that the attractiveness of the SPAC as an investment vehicle is not without its dangers. The excessive use of the vehicle in early 2020 led to the creation of a financial bubble (**A**) which did not leave the US supervisory authorities and the market unmoved (**B**).

A. The US financial bubble

The exponential growth of SPACs in the US has already been described[23]. Far from being the result of economic rationality on the part of the players operating in the market, the development of SPACs is the result, in particular, of the extremely generous policy of the Fed and the phenomenon of excess liquidity currently affecting the US market[24]. The proliferation of these vehicles created a real bubble and had an impact on the integrity of the market[25]. Indeed, although the SPAC is not in itself a risky instrument, in particular owing to the blocking of the funds raised and the existence of a right of withdrawal for the benefit of investors at the time of the de-SPAC, the proliferation of these companies on the New York Stock Exchange has had three particularly problematic consequences.

22. An expression taken from the Commission's interview with Ms Colette Neuville on 13 July 2021.
23. See above, Introductory Chapter, Section 3.
24. Les Échos, *Politique monétaire, Fed, taux d'intérêt : La Réserve et la Marquise* (Monetary policy, Fed, interest rates: The Reserve and the Marchioness), 8 June 2021.
25. It should be noted, however, that the SPAC bubble remains much smaller than the sums generated in private equity: the $700 billion of cash available for SPAC transactions is still a far cry from the $2 trillion circulating in private equity.

First, the increase in the number of SPACs brought extreme pressure to bear on founders when choosing target companies. Indeed, in view of the significant development of SPACs, there is no guarantee that the market has enough suitable targets capable of absorbing the demand. The figures bear this out. Of the SPACs that have been listed or announced an IPO since 2017, 44% were still actively seeking an acquisition in the autumn of 2020[26]. Today, more than 420 SPACs are still looking for a target[27]. This disconnect between supply and demand therefore encourages sponsors to identify and close their acquisitions extremely quickly, sometimes without conducting sufficiently exhaustive due diligence on the target companies. Following the 2019 acquisition of the Akazoo music streaming service by the SPAC Modern Media Acquisition Corp., it was revealed that the former management of the target company had falsified certain accounting documents[28]. Similarly, following its IPO *via* a SPAC in June 2020, electric and hydrogen vehicle manufacturer Nikola is now under investigation for fraud, with the company accused of lying about the progress of its technology and the performance of its vehicles[29].

Secondly, the plethora of these vehicles, combined with the short timeframe in which the acquisition of the target must take place, generates serious risks of conflicts of interest between founders and investors. The success of a SPAC relies almost entirely on the analytical skills of the founders, who are tasked with finding a promising target within a particularly short timeframe. If no such acquisition takes place, the SPAC is liquidated and the founders lose a substantial part - if not all - of their invested capital, which is then used to pay the company's operating expenses. Conversely, in the case of a quick acquisition, the founders will be able to make a significant capital gain, thanks to the promote and the exercise of their warrants. As the deadline for the acquisition approaches, the founders may therefore have an interest in making an acquisition even though it would not be in the interests of the SPAC and its investors. This observation is borne out in practice. Some economic studies point out that the financial performance of these companies is better in the pre-acquisition phase than after the acquisition Indeed, while the performance of these vehicles is generally strong prior to the de-SPAC[30], it was noted that SPACs which made an acquisition between January 2019 and June 2020 lost, on average, 12% of their value within six months and 35% of their value within 12 months of acquiring the target[31]. The founders may also be affected by other conflicts of interest that may be related to their activities outside the SPAC. Owing to their great expertise in the target's sector, they may therefore be tempted to seize opportunities in that sector to

26. Duff & Phelps, *Market Report on Special Purpose Acquisition Companies*, Autumn 2020.
27. https://spacanalytics.com/
28. PR Newswire, *Akazoo Special Committee Determines Former Akazoo Management and Associates Participated in Sophisticated Multi-Year Fraud*, 21 May 2020.
29. Bloomberg, *SEC Examining Nikola Over Short Seller's Fraud allegations*, 14 September 2020.
30. M. Klausner, M. Ohlrogge, E. Ruan, "A Sober Look at SPACs", *ECGI Working Paper Series in Finance*, April 2021.
31. Bain & Company, *Global Private Equity Report 2021*, pp 61-62.

the detriment of the company, or suggest a target solely because of their economic links to it[32]. In order to reduce such conflicts of interest at sponsor level, it is increasingly common for investors to negotiate the right to have access to part of the promote shares in return for their contribution, even though they retain the right to request for their shares to be repurchased at the time of the de-SPAC. New areas of conflicts of interest are therefore emerging, this time on the side of the investors.

Lastly, excessive use of this vehicle may have given people to understand that they offer a regulatory advantage. According to some, as compared with traditional public offerings, SPACs benefit from a lighter liability regime when providing information to the market[33]. Under this analysis, the founders are said to benefit from the "safe harbor" provisions of the Private Securities Litigation Reform Act when disseminating financial projections, making it possible to guard against the risks of litigation relating to the delivery of incorrect information. This belief, which has since been widely challenged, may have led to the opportunistic use of the SPAC mechanism in some cases and to the dissemination of misleading information to the market[34]. Of the 276 US SPACs that have recently announced their de-SPACs, more than 12% now have their management facing legal liability[35].

B. The reactions of the SEC and the market

The Securities and Exchange Commission ("SEC") decided to respond to the increasing number of behaviours likely to disrupt the proper functioning of the market. In two communications in April 2021, the SEC expressed its views on several issues relating to SPACs.

In a first communication dated 8 April 2021, John Coates, Acting Director, Division of Corporate Finance, indicated that the SEC would remain extremely vigilant with regard to financial projections issued and communications made in the context of de-SPAC transactions[36]. Concerned that SPACs could be used as a method of being listed on the stock market while circumventing basic market disclosure rules, the statement began by noting that any material misrepresentation

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32. On conflicts of interest liable to occur in the context of SPACs, see also: AMF, SPAC : *Opportunités et risques d'une nouvelle façon de se coter en Bourse* (Opportunities and risks of a new method of listing on the stock market), July 2021, p.8.
33. J. Coates, SPACs, *IPOs and Liability Risk under the Securities Laws*, 8 April 2021.
34. Since the acquisition last February of the electric car maker Lucid Motors by the SPAC Churchill Capital IV, the valuation of a target company on the basis of financial projections has been the object of criticism.
35. Woodruff Sawyer, *As Predicted: More SPACs Are Leading to More Litigation*, 22 June 2021. The recent legal action against Bill Ackman's SPAC Pershing Square Tontine Holdings is evidence of this. In this case, a dissenting shareholder filed a lawsuit in the New York Federal Court seeking to recharacterise the SPAC as an investment company. If such a characterisation were upheld, the SPAC would then be subject to compliance with the Investment Company Act of 1940, which requires the founders of SPACs to disclose more information to the market and limits the fees that may be paid to them (Les Echos, *Un procès met la SPAC de Bill Ackman en péril* (Court case endangers Bill Ackman's SPAC), 21 August 2021).
36. J. Coates, SPACs, *IPOs and Liability Risk under the Securities Laws*, 8 April 2021.

or omission in financial disclosures could result in liability for its authors. The debate around “safe harbors”, said to benefit de-SPAC transactions in terms of financial projections in contrast to traditional IPO transactions, was then discussed in detail. The conclusion reached by John Coates is discouraging, to say the least: the alleged advantage of SPACs in the field of financial projections is "uncertain at best"[37].

The SEC's objective is clear: the statement is intended to emphasise that SPAC-related excesses cannot go unpunished. The authority's recent actions show that it no longer hesitates to take legal action in order to secure convictions of SPAC founders or the management of target companies who provide misleading information[38]. The statement also points out that there is no justification for a major difference between the information given to the market in the context of a traditional IPO and that given in the context of a de-SPAC. In a similar vein, the SEC's Investor Advisory Committee also recommended that the market authority regulate SPACs more actively by placing greater emphasis on the rules of the Securities Exchange Act of 1934 which govern the disclosure of information[39].

Less than a week after the SEC's first statement, a second was issued on 12 April[40]. Dealing with the accounting treatment of warrants issued in connection with SPACs, the SEC statement identified two types of common stipulations in warrant contracts that it believed would prevent them from meeting the criteria of accounting standard ASC 815-40. As a result, such warrants should not be capable of qualifying as equity for accounting purposes. Under this position, even though almost all warrants issued by SPACs are currently treated as equity, they should, in the future, be accounted for as debt. While this amendment is more formal than substantive and does not result in any change to the characteristic features of SPACs, nonetheless it has important practical consequences[41].

The first outcome of this statement is to delay the timetable for SPAC transactions. The steps relating to the correction of this accounting error and the restatement of previous financial statements may take some time, especially as it affects almost all SPACs currently operating in the US market. The statement *de facto* makes it necessary to revalue warrants and offers the vehicles concerned an alternative: to alter the

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37. J. Coates, SPACs, *IPOs and Liability Risk under the Securities Laws: “Despite all of this, it may still be thought that the PSLRA offers something for SPACs not available to conventional IPOs. But that, too, is uncertain at best”*.
38. SEC, SEC *Charges SPAC, Sponsor, Merger Target, and CEOs for Misleading Disclosures Ahead of Proposed Business Combination*, 13 July 2021.
39. Investor Advisory Committee, *Recommendations of the Investor as Purchaser and Investor as Owner Subcommittees of the SEC regarding Special Purpose Acquisition Companies*, 9 September 2021; Cooley LLP, *SEC's Investor Advisory Committee to consider recommendations regarding SPACs*, 8 September 2021; Bloomberg, T*ougher SPAC Disclosure Rules Endorsed by SEC Advisory Group*, 9 September 2021.
40. J. Coates et P. Munter, *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies*, 12 April 2021.
41. Davis Polk, *SEC Statement on Accounting Treatment of Warrants in SPAC Transactions Will Have Significant Near-Term Impact on Capital Markets*, 14 April 2021; Kirkland & Ellis, *A SPAC Curveball*, 15 April 2021; Pillsbury, *SPAC FAQs: SEC Staff Statement on Accounting Issues for SPAC Warrants*, 26 April 2021.

characteristics of the warrants in order to be able to account for them as equity or, failing that, to obtain a valuation of the value of the debt represented by the warrants - such valuation by an audit firm being likely to take time owing to the complexity of these instruments[42].

In addition, until the accounting error is corrected, the position results in the suspension of certain financial disclosures by SPACs, causing difficulties both before and after the de-SPAC transaction. The statement thus has a direct impact on the liquidity of the securities held by investors. Indeed, the delay in executing transactions, combined with the decrease in the capital-debt ratio which is one of the criteria for judging the profitability of a company, directly tarnishes the image of such companies.

Here again, it is possible to guess the intention of the US authority: the statement reveals a desire to regulate the market and burst the SPAC bubble before it becomes too big[43]. The objective seems to have been achieved, as SPACs have since visibly come to a halt in the US market. Between 2 April and 30 April, only 14 of these vehicles were listed on the stock market, compared to nearly 100 in March[44].

Market players have also responded to these positions by developing new, more virtuous practices that seek to achieve a greater balance between the interests of founders and investors. It can thus be seen that the lock-up period of the founders' promote has increased, ensuring that the sponsor is not just pursuing a speculative interest when the de-SPAC takes place, but a medium/long term vision that will coincide with that of the investors. Similarly, the share of the promote, which is usually equal to 20% of the SPAC's capital, is tending to decrease, allowing investors to hold a larger percentage of capital, thereby rebalancing the gains between founders and investors. In addition, the practice of the staggered promote is on the rise. In order to ensure a better balance of interests, this stepped remuneration structure makes it possible, instead of the sponsor being fully remunerated by the conversion of its promote into listed ordinary shares at the time of the de-SPAC, for the conversion to be partly conditional on the performance of the target after the acquisition. It can also be seen that more and more SPACs are making the de-SPAC transaction conditional on a vote of the general meeting of shareholders in order to avoid leaving the decision to the management alone. Lastly, new variants of the standard vehicle are emerging, such as the SPARC[45].

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42. Kirkland & Ellis, *A SPAC Curveball*, op. cit, p. 10.

43. R. Freedman, *"SPAC warrants as liability called an expensive change"*, CFO Dive, 19 April 2021, p. 36; D. Harty et G. Dhokalia, *"Accounting issue opens 'Pandora's box' of possible SPAC financial statements"*, S&P Global Markets, 3 May 2021, p. 41.

44. S&P Global Market Intelligence, *RIP SPACs July 2020 April 2021*, 26 April 2021.

45. See above, p. 11.

§2. The European and Asian experience

In spite of the risks identified in the US, many financial centres have seen fit to change their regulatory frameworks in order better to accommodate the SPAC as a vehicle. Believing that these companies do not pose a significant risk, some (A) European and (B) Asian financial centres have adopted, or are planning to adopt, appropriate regulations.

A. The reaction of European countries

The two main reactions in Europe have come from the northern countries, which have changed the NASDAQ Nordic market rules (i), and from the United Kingdom, which has introduced changes to make it more welcoming to SPACs (ii).

i) NASDAQ Nordic rules revisions

On 1 February 2021, NASDAQ Nordic[46] included in its Main Market Rulebook for Issuers of Shares specific provisions applicable to the admission to trading of SPACs[47]. In essence, the provisions aim to translate the US SPAC model into the Nordic market rules. In doing so, the provisions cover the entire life cycle of the SPAC, from the IPO to the completion of the de-SPAC.

As regards the IPO, the new regulations logically exempt SPACs from the requirement to have financial statements covering their last three financial years[48]. On the other hand, they require all SPACs to place at least 90% of the funds raised at the time of the IPO in an escrow account[49].

As regards the search for and acquisition of target companies, the market regulations introduce a minimum size for the target company to be acquired, i.e. 80% of the amount of the funds deposited, and limit the target search period to 36 months from the SPAC's IPO[50].

Lastly, as regards approving the choice of company, the market rules introduce a twofold requirement for the transaction to be approved, both by a majority of the independent directors of the SPAC and by a majority of the shareholders[51]. They also provide that once the acquisition has been approved, any investor, whether or not it has voted against the proposed acquisition, may have its shares repurchased[52].

These new provisions came into effect on 1 February for NASDAQ Stockholm, 1 March for NASDAQ Helsinki, 12 April for NASDAQ Copenhagen and 1 June for NASDAQ Iceland.

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46. NASDAQ Nordic comprises NASDAQ Copenhagen, NASDAQ Helsinki, NASDAQ Iceland and NASDAQ Stockholm.
47. NASDAQ, Nordic Main Market Rulebook for Issuers of Shares, February 2021.
48. Article 2.18.1 Nordic Main Market Rulebook for Issuers of Shares.
49. Article 2.18.2, Nordic Main Market Rulebook for Issuers of Shares.
50. Article 2.18.2, Nordic Main Market Rulebook for Issuers of Shares.
51. Article 2.18.4 and 2.18.5, Nordic Main Market Rulebook for Issuers of Shares.
52. Article 2.18.7, Nordic Main Market Rulebook for Issuers of Shares.

(ii) The Hill Review recommendations in the UK

On 3 March 2021, a report by a working group chaired by Jonathan Hill was submitted to the UK Treasury[53]. The report called for changes to various UK listing rules, including some that directly affect the practice of SPACs.

In order to make the current rules more flexible, the report recommends removing the UK rule that the listing of SPAC shares must be suspended upon the announcement of the de-SPAC transaction[54]. It also recommends that the prospectus regime, which is mandatory at the time of a SPAC's IPO, be rethought in order to alleviate the constraints arising from it[55]. Lastly, it calls for facilitating the disclosure of financial projections by reducing the liability of issuers and their management[56].

To ensure investor protection in the particular context of SPACs, the report recommends that the Financial Conduct Authority ("FCA") consider rules relating to the information that must be disclosed by the company at the time of the announcement of a de-SPAC transaction, the voting rights of shareholders in approving the choice of target, the right of redemption for SPAC investors prior to the completion of a transaction; and, where appropriate, the size of SPACs below which the presumption of a suspension of trading should continue to apply[57].

In line with this report, the FCA launched a consultation in April on the presumption of a suspension of trading in a SPAC's shares when a de-SPAC transaction is announced[58]. Following this consultation, which closed on 28 May 2021, the FCA published a "Policy Statement" containing the new rules adopted in this area[59]. The changes are designed to provide an alternative route to market for vehicles that show higher levels of protection. Provided a SPAC meets certain characteristics that ensure a level of protection and transparency for investors, the new regulatory framework therefore suggests removing the presumption of a suspension of trading at the time the potential acquisition of a target is announced. That said, while the objective is first and foremost to ensure better investor protection, the changes are primarily aimed at making the London Stock Exchange a more attractive listing venue for SPACs, particularly in the context of Brexit.

The conditions that need to be met in order to have the presumption of suspension removed amount to imposing a SPAC constitution close to the American model. To benefit from this favourable regime, the FCA therefore requires:

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53. *UK Listing Review*, 3 March 2021.

54. *UK Listing Review*, pp 28- 31.

55. *UK Listing Review*, pp 32- 36.

56. *UK Listing Review*, pp 38- 40.

57. *UK Listing Review*, p. 31.

58. FCA, *Investor protection measures for special purpose acquisition companies: Proposed changes to the Listing Rules*, Consultation Paper, CP21/10, April 2021.

59. FCA, *Investor protection measures for special purpose acquisition companies: Changes to the Listing Rules*, Policy Statement, PS21/10, July 2021.

- a minimum of £200 million being raised at the time of the vehicle's listing[60];
- the funds raised being placed with a third party in order to reserve their use for specific purposes (share redemption, reverse takeover, return of capital in the event of a liquidation)[61];
- setting a time limit for finding and acquiring a target. This period, set at 24 months following the listing of the SPAC, may nonetheless be extended by 12 months with the approval of the shareholders[62];
- the requirement of a vote of the board of directors and of the general meeting of shareholders before the de-SPAC is carried out. The Listing Rules also require that certain individuals, such as the sponsors, be excluded from voting and that a statement be published in the event of a potential conflict of interest between a director, the target or its subsidiaries[63];
- the existence of a redemption option allowing investors to exit the company before an acquisition is completed[64]; and
- the provision of sufficient information to investors on the key terms and risks of the SPAC, from the time of the vehicle's IPO[65] up to the time of the de-SPAC[66].

The changes to the Listing Rules resulting from the Policy Statement took effect on 10 August 2021.

B. The reaction of Asian countries

As a pioneer in this field, the Security Commission Malaysia adapted its regulations very early on to take into account the specific nature of SPACs (i). Following the same model, the Singapore Exchange launched a public consultation to submit a proposal for a regulatory framework for SPACs to market participants. This consultation resulted, on 3 September 2021, in the introduction of new market rules for SPACs (ii).

(i) Equity Guidelines of the Securities Commission Malaysia

Malaysia's pioneering SPAC listing framework was introduced in a set of guidelines issued by the Security Commission on 8 May 2009 which came into effect on 3 August 2009. The Malaysian SPAC regulations have since been supplemented and are now extremely detailed[67]. It governs the entire life cycle of the SPAC over almost a dozen pages.

Under this regulation, a SPAC must raise a minimum of RM150 million[68] at the time of listing[69], and place at least 90% of the funds raised in a

60. LR 5.6.18A (1) of the Listing Rules sourcebook.
61. LR 5.6.18A (2) of the Listing Rules sourcebook.
62. LR 5.6.18A (3) of the Listing Rules sourcebook.
63. LR 5.6.18A (4), (5) and (6) of the Listing Rules sourcebook.
64. LR 5.6.18A (7) of the Listing Rules sourcebook.
65. LR 5.6.18A (8) of the Listing Rules sourcebook.
66. LR 5.6.18D of the Listing Rules sourcebook.
67. Security Commission Malaysia, Equity Guidelines, Chapter 6, SC-GL/EG-2009 (R4-2020).
68. i.e. Around $49 million.
69. Paragraph 6.09 Equity Guidelines.

trust account[70]. In addition, the SPAC must show that its management team has appropriate expertise in the business sector of the potential target companies[71]. In order best to align the interests of investors and founders, the market rules require the latter to make a minimum investment and set several periods during which their shares are non-transferable[72].

With regard to the target acquisition transaction, the Security Commission requires that the choice of the target be approved by 75% of the shareholders, it being understood that the SPAC's founders and management team are not allowed to vote on this resolution[73]. Typically, the regulations provide that any dissenting shareholder has a right to have its shares repurchased at the time the target is acquired[74].

Lastly, it is specified that the de-SPAC must be completed within a maximum of 36 months from the date of the listing[75] and that the target must have a value of at least 80% of the aggregate amount of the funds placed in trust[76].

(ii) Changes to the Singapore Exchange's Mainboard Rules

On 31 March 2021, the Singapore Exchange published a consultation seeking comments from the public on a proposed listing framework for SPACs[77]. The consultation sought to create a balanced regime that would provide the necessary flexibility for the listing of SPACs while protecting investors from certain risks inherent in this type of vehicle. In order to do this, the public's views were sought on a wide range of issues, from market admission rules to de-SPAC requirements. The consultation closed on 28 April and resulted in new market rules that came into force on 3 September 2021.

As regards the listing rules, the Singapore Exchange now requires SPACs to have a minimum market capitalisation of S$150 million[78], a minimum listing price of S$5 per share[79], and an escrow of at least 90% of funds raised until a target is acquired[80]. In order to ensure a better alignment of interests between founders and investors, the regulations also limit the maximum amount of promote allocated to the founders[81] and require them to hold a minimum stake in ordinary shares based on the market

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70. Paragraph 6.21 Equity Guidelines.
71. Paragraph 6.13 Equity Guidelines.
72. Paragraph 6.14 et seq. Equity Guidelines.
73. Paragraph 6.39 and 6.40 Equity Guidelines.
74. Paragraph 6.25 Equity Guidelines.
75. Paragraph 6.02 and 6.35 Equity Guidelines.
76. Paragraph 6.34 Equity Guidelines.
77. Singapore Exchange, *Proposed Listing Framework for Special Purpose Acquisition Companies*, 31 March 2021.
78. Rule 210 (11) (a) Singapore Exchange Mainboard Rules.
79. Rule 210 (11) (c) Singapore Exchange Mainboard Rules.
80. Rule 210 (11) (l) Singapore Exchange Mainboard Rules.
81. Rule 210 (11) (f) Singapore Exchange Mainboard Rules.

capitalisation of the SPAC[82]. As in Malaysian law, several periods of non-transferability of founders' shares are also provided for[83].

The new regulation also introduces rules governing the target acquisition period. According to these, the search period for a target company should not exceed three years[84] and the size of the target should not be less than 80% of the funds raised[85]. In addition, the acquisition is subject to a requirement to be approved by both a majority of the directors and of the independent shareholders[86]. Lastly, the de-SPAC transaction must involve the drafting of a report on the target's profile by an independent valuer, the disclosure of certain information[87], and offer all the independent shareholders the possibility of exercising their right of withdrawal[88].

SECTION 1.
AN OPPORTUNITY FOR PARIS AS A FINANCIAL CENTRE

Far from the excesses seen in the US market, the reception given to SPACs in European and Asian countries shows that this vehicle, which is quick to set up and flexible, above all represents an opportunity for the various financial centres. The interviews conducted by the Commission show that the situation is no different for France: the vehicle is both a new and particularly attractive asset class for investors (§1) and an innovative listing device (§2).

§1. SPACs, a new asset class

SPACs are a new asset class in the financial market.

For professional investors, the process offers the opportunity of participating in transactions that offer a potentially high return while limiting exposure to economic risk through the right to have their securities repurchased at the time of the de-SPAC transaction. Some investors take full advantage of the economic benefits of the vehicle, perhaps to the point of distorting the principle. By systematically using their right of withdrawal in order to have their shares repurchased, some hedge funds only retain their warrants and only exercise them when the SPAC's share price increases, which in practice enables them to have exposure only to increases[89].

82. Rule 210 (11) (e) Singapore Exchange Mainboard Rules.
83. Rule 210 (11) (h) Singapore Exchange Mainboard Rules.
84. Rule 210 (11) (m) (i) (ii) Singapore Exchange Mainboard Rules.
85. Rule 210 (11) (m) (iii) Singapore Exchange Mainboard Rules.
86. Rule 210 (11) (m) (viii) Singapore Exchange Mainboard Rules.
87. Rule 210 (11) (m) (v) (vi) Singapore Exchange Mainboard Rules.
88. Rule 210 (11) (m) (x) Singapore Exchange Mainboard Rules.
89. Some SPACs seek to neutralise these practices by requiring investors who exercise their right of redemption to renounce their warrants, which will then be distributed among the remaining investors using the *tontine* mechanism. This is the case with Bill Ackman's SPAC, Pershing Square Tontine Holdings Ltd.

Also, as Professor Philippe Thomas points out, the vehicle offers investors the possibility of making an indirect investment in unlisted securities while benefiting, in the relatively short term, from the liquidity of a listed security. That said, the situation appears to be "significantly more favourable" than in the case of private investments[90].

This new asset is also not unattractive to more modest savers. While retail investors do not, in principle, have direct access to these securities, they might nonetheless benefit indirectly from them through products offered by collective investment schemes.

§2. SPACs, a new way of listing on the stock market

The SPAC is also an advantageous new tool for financial engineering. The vehicle has intrinsic qualities and cannot be seen only as a means of circumventing IPO regulations, contrary to the role it has sometimes played in US practice[91]. If the practice of SPACs is developing in France, it is because it meets certain requirements, including a specific need of the financial market. The interviews conducted indicate that the SPAC offers benefits distinct from those of the traditional IPO process.

While the mechanism allows for an extremely rapid, almost turnkey listing of the target company, the SPAC appears above all to be a more appropriate listing instrument for certain companies, for two reasons.

First, practice shows that listings made using this vehicle have much higher success rates than traditional listings. Because the de-SPAC operation is usually well advanced before it is made public, the success rate of the overall project is considerably increased. The mechanism is therefore an attractive route for companies with a high risk of failure in a traditional IPO, i.e. for growth companies, especially in the field of new technologies. In this respect, SPACs represent "a new area of development for stock exchanges"[92].

In addition, the founders and their expertise offer potential target companies qualified individuals with whom to discuss the dynamics of listing and the valuation of the companies. Conducting due diligence prior to a potential IPO of a target company ensures better diclosure of information to investors, unlike the traditional IPO model, where investors only have access to the information published in the prospectus. These exchanges and the founders' expertise thus make it possible to establish a fixed valuation price before the actual listing

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90. Ph. Thomas, *"Bientôt des Special Purpose Acquisition Companies en France ?"* ("Special Purpose Acquisition Companies soon in France?"), *op. cit.*, No. 12.

91. See above, p. 15 ff.

92. AMF (the French Financial Markets Authority), *SPAC : Opportunités et risques d'une nouvelle façon de se coter en Bourse* (The SPAC: Opportunities and risks of a new way of listing on the stock market), July 2021, p. 11.

of the company, whereas for a traditional IPO, such valuation remains uncertain until the day of the listing. This strategic dialogue makes the use of SPACs as a listing instrument more appropriate for some companies, particularly in sectors where it is difficult to anticipate the future valuation of a company.

Far from being a bubble phenomenon or a means of circumventing the regulatory framework for IPOs, the SPAC represents a twofold opportunity for the Paris market. For the investor, the instrument is likely to offer a high return, with limited risk exposure owing to the right to have the securities repurchased. For issuers, the vehicle provides a new IPO device which, without replacing the traditional model, complements it to meet a specific market need and offer a new mode of financing to certain companies[93].

SECTION 2.
AN OPPORTUNITY FOR FRENCH ENTREPRENEURS

Over and above its appeal for the financial market, the SPAC also represents an opportunity for the real economy. A valuable asset for French entrepreneurs, this vehicle also (depending on its purpose) represents a means of financing for French entrepreneurs (§1) and a means of external growth for listed companies (§2).

§1. Financial SPACs, a means of financing for companies

There is little doubt that SPACs represent a vehicle for developing entrepreneurship in France. This vehicle is a real financing resource, allowing target companies to access the financial markets following a rapid listing process and also to raise funds which, under the agreement between the SPAC and the target's shareholders, may be injected into the target so that it has the necessary liquidity to pursue its growth.

Alongside private equity, which in recent years has enabled many companies to grow and reach sufficient maturity, the SPAC offers these same companies the opportunity to continue to grow *via* the financial markets. To take just one French example, the transactions carried out by Mediawan over the last three years have made it possible to carry out around sixty acquisitions of companies and to offer each of them a new financial base and more qualified expertise[94].

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93. In similar vein: A. Rampbell, S. Kupor, "In Defense of the IPO, and How to Improve It", *Andreessen & Horowitz, 28 August 2020: "An IPO, SPAC, or Direct Listing can each make sense in the right context for the right company, and each will hopefully improve. The handy rule of thumb is: if you need money, an IPO, for all its flaws, makes the most sense and is probably the best option; if you don't, a Direct Listing may be preferable; if you need money, speed, and certainty, a SPAC may be best".*

94. MEDIAWAN, *Mediawan réalise avec succès l'acquisition initiale de Groupe AB* (Mediawan successfully completes initial acquisition of AB Group), 31 March 2017; *Mediawan acquiert la majorité du capital de Palomar* (Mediawan acquires majority stake in Palomar), Press Release, 15 Jan 2019; *Mediawan finalise l'acquisition de Lagardère Studios* (Mediawan completes the acquisition of Lagardère Studios), Press release, 2 Nov. 2020; *Mediawan expands its presence in Spain and creates an ambitious Spanish production hub*, 10 Nov. 2020.

The use of SPACs listed on the Paris Stock Exchange is a valuable means of financing and also helps to keep innovative companies on French soil[95]. In the field of new technologies, the sponsoring of a SPAC by public or private institutional investors would allow technology companies to continue to benefit from the financing they have enjoyed since their formation. It would also avoid their flight to the US market[96].

§2. Industrial SPACs, a means of external growth for listed companies

Although industrial SPACs, also known as corporate SPACs, are not a new phenomenon, they are still not widely used on the financial scene. There are currently around ten in the US and only one in Europe. Unlike the traditional SPAC, the aim of this vehicle is not only financial. More broadly, it involves an entrepreneurial project.

In most cases, this structure is initiated by a listed company. By creating the vehicle, such companies aim to raise funds to invest in a sector that is related to their main activity. Unlike the traditional IPO process, which can take several months, the creation of a SPAC takes only a few weeks. This provides a means for sponsor companies to raise funds quickly in order to acquire stakes in companies with which business partnerships can be established.

The process can be helpful for listed companies in carrying out external growth operations or minority investments in order to create a new ecosystem without their shareholders being able to criticise them for using equity capital or diluting their core business.

In the US, for example, the Simon Property Group ("SPG"), a leading commercial real estate company, launched a SPAC in February 2021[97]. As the sole founder, SPG plans to use this new vehicle to make several acquisitions in sectors related to its activity, in various fields: wellness, health, education, hotels and restaurants.

In France, the Accor-sponsored SPAC, Accor Acquisition Company, had its first day of trading on 1 June[98]. As the first industrial SPAC listed on Euronext Paris, it offers Accor the possibility of investing in companies beyond the hotel sector, without directly using the group's cash for this purpose. Through this vehicle, Accor plans to forge strategic links in sectors related to its core business such as restaurants, workplaces, wellness, entertainment, events and hotel-related technology[99].

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95. La Tribune, *"La Bourse doit permettre aux innovations de rester dans une Europe souveraine"* ("The Stock Exchange must allow innovations to remain in a sovereign Europe"), 9 Apr. 2021.
96. Les Échos, *Ces startups françaises qui transfèrent leur siège social aux États-Unis* (These French startups that are moving their headquarters to the US), 17 Oct. 2019.
97. Nasdaq, *Real estate firm's SPAC Simon Property Group Acquisition prices $300 millions IPO*, 19 Feb. 2021.
98. Euronext, *Accor Acquisition Company s'introduit en Bourse sur Euronext Paris* (Accor Acquisition Company goes public on Euronext Paris), 1 June 2021.
99. Accor Acquisition Company, Press release, 28 May 2021.

CHAPTER 1 - CONCLUSION

The practice of SPACs is gradually gaining ground in the French market without, at this stage, the excesses that have been observed in the US market. This development may represent an opportunity for French entrepreneurs and for Paris as a financial centre. As a new listing instrument, a new means of financing and of external growth for companies and a new asset class for investors, the SPAC has its place in the Paris market, especially as the French legal system has shown itself able to accommodate this new type of vehicle.

CHAPTER 2

ACCOMMODATING SPACS IN FRENCH LAW

Unlike some foreign countries which have introduced special regulations for SPACs, France has not enacted a body of rules specific to this vehicle. The French legal system is sufficiently flexible to accommodate SPACs, as evidenced by the existence of several such vehicles in the French market. The Financial Markets Authority (*Autorité des marchés financiers - "AMF"*) emphasised in its press release of 15 April that "the legal system and regulatory requirements in force in France enable the listing of SPACs to be accommodated in Paris while offering appropriate protection to investors"[100].

Indeed, the French legal system offers many mechanisms that can be used to accommodate the traditional SPAC model on French soil. Whether these involve the holding of funds in escrow, the creation of units or the right of withdrawal available to investors, a detailed examination of the existing law demonstrates that there are no overriding obstacles to the creation of SPACs in line with the structure adopted in the US market. Moreover, the French legal system offers a degree of flexibility, which is helpful for anticipating future developments.

Therefore, while the pool of SPACs is currently larger in Amsterdam than in Paris, this is due less to purely legal considerations than to psychological ones. To illustrate this, the discussions in this chapter will follow the life cycle of the company from its formation (**Section 1.**), through its operation prior to acquisition of the target (**Section 2.**), up to completion of the de-SPAC (**Section 3.**). The same observation applies to tax matters (**Section 4.**).

SECTION 1.
THE FORMATION OF SPACS

Since SPACs are from the outset intended to be listed on a financial market, only a corporate form that is compatible with listing may be chosen (**§1**). Once this has been determined, the company's IPO will result in the raising of funds and the issue of financial securities (**§2**).

§1. Corporate form

Within the limits of the applicable regulations, there is a free choice of corporate form for a SPAC[101]. In practice, the public limited company (*société anonyme - "SA"*) is currently the most common corporate form

100. AMF, *Le cadre juridique français permet d'accueillir les SPAC à Paris tout en veillant à la protection des investisseurs* (The French legal system allows for SPACs to be accommodated in Paris while ensuring investor protection), 15 Apr. 2021.

101. A SPAC must have a corporate form that is compatible with listing and must fit within the framework set by European law. On this last point, the European authorities should take advantage of the current review of the AIFM Directive to decide on its possible application to SPACs (cf. against the application of the Directive to this type of company, see S. Sabatier et A. Mauduit-Ridde, *"SPAC : les clés d'une opération réussie"* ("SPACs: the keys to a successful transaction"), *Fusions & acquisitions Magazine* (Mergers and Acquisitions Magazine), 2021 p. 6 et seq.).

used. While this entity does not allow an open-ended company (*société à capital variable*) to be formed, it does offer the possibility of issuing different classes of shares, including redeemable preference shares which allow the holders to request the repurchase of their shares at a predetermined price upon the occurrence of an event provided for in the articles of association. In this way, according to some authors, the process allows for an "almost perfect replication" of the US SPAC under French law[102]. This explains why, of the six French SPACs created to date, all have been in the form of SAs, the first having opted for a dual structure with a management board and a supervisory board[103] and the other five for a single board structure[104].

However, the SA is not the only structure that can theoretically be used to form a SPAC. Although to date no SPAC under French law has yet opted for the corporate form of a limited partnership with shares (*société en commandite par actions - "SCA"*), the latter is certainly not without its advantages[105]. The use of SCAs would allow for the creation of a SPAC as an open-ended company[106], which would facilitate capital transactions. This would also give investors a right of withdrawal that is already governed by the French Commercial Code[107]. Lastly, this form would provide some protection against possible unsolicited takeover bids[108]. This type of company in practice makes it possible to distinguish political power, which is in the hands of the general partners, from capital ownership, which is in the hands of the limited partners. It would therefore allow the sponsors, as general partners, to maintain a stable and effective management team. Despite these advantages, this corporate form differs from the traditional SPAC model and remains largely unknown to foreign investors. This explains the current success of the public limited company, which is consistently chosen by the founders of SPACs created in France.

Lastly, using a European Company (*société européenne - "SE"*) to form a SPAC would offer a twofold advantage to the founders. Governed by Articles L. 229-1 et seq. of the Commercial Code and by the European Regulation of 8 October 2001[109], these companies make it possible both to benefit from the flexibility of the public limited company model[110] and to facilitate the transfer of the SPAC's registered office when the acquisition of the target company is completed, without such transfer

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102. S. Lambert, *"L'acclimatation des SPAC en France"* ("The acclimatisation of SPACs in France"), Bull. Joly Société, Dec. 2011, p. 1033 et seq., esp. p. 1035.

103. Mediawan, whose shares are no longer listed, was effectively set up as an SA with a management and supervisory board.

104. This is the case of 2MX Organic, Accor Acquisition Company, Transition, Dee Tech and I2PO.

105. L. Faugérolas, C. Cardon, *"Les SPAC bientôt cotées en France ?"* ("SPACs soon to be listed in France?), Bull. Joly Bourse June 2011, p. 396 et seq., esp. No. 19-20.

106. Confirming the possibility of creating an open-ended SCA: M.-H. Monsiéré Bon, *"Capital variable"* (Variable Capital), Rép. Soc. Dalloz, Dec. 2010, No. 104 et seq.

107. Article L. 231-6 of the Commercial Code.

108. A. Viandier, *OPA OPE et autres offres publiques* (Public offers to purchase or exchange and other public offers), 5th edition, Francis Lefebvre, 2014, No. 651 et seq.

109. Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

110. Article L. 229-1 para. 2 of the Commercial Code.

giving rise either to the dissolution of the company or to the creation of a new legal entity[111]. Unfortunately, SEs cannot be formed *ex nihilo* and must necessarily result from a merger[112], the creation of a group holding company[113], the formation of a European subsidiary[114] or the transformation of a public limited company, provided such company has had a subsidiary in another country of the European Economic Area for at least 2 years[115]. In practice, this corporate form is therefore excluded for the creation of a SPAC which, by definition, does not carry out any operational activity before its listing. In order to remedy this unfortunate state of affairs, consideration could be given to making the conditions for the formation of SEs more flexible so as to offer all European SPACs the possibility of using a common corporate form.

§2. Fundraising

Once the corporate form has been decided upon, the arrangements for listing the vehicle must be considered. Like any IPO, the listing of a SPAC on the market requires the issue of a prospectus (A). In addition, the fundraising requires a distinction to be made between the situation of the founders (B) and that of the investors (C).

A. The prospectus

The IPO of a SPAC and the placement of the securities issued in connection with it follow broadly the same rules as a traditional IPO. The placement may thus be made with both institutional and retail investors[116]. As a result, in accordance with the European Regulation of 14 June 2017[117] (the "Prospectus Regulation"), the listing of a SPAC on a regulated market will require the drafting of a prospectus[118].

To be approved, the prospectus must contain the information required by the Prospectus Regulation and detailed in the Euronext rules. However, some of the information required seems, at first sight, difficult to reconcile with the nature of a SPAC. A SPAC does not initially carry out any operational activity and has usually only been in existence for a few months when the application for listing is made. It therefore seems awkward to require the founders to provide annual financial statements for the three financial years prior to the listing application, accompanied by a detailed description of the company's business[119].

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111. Article 8 Reg (EC) No 2157/2001 above. For an analysis of the provisions relating to the transfer of the SE's registered office, see: M. Menjucq, "Régime de la société européenne" ("The regime of the European company"), Rép. Société Dalloz, Jan. 2019, No. 78 et seq.
112. Article 2 §1 Reg (EC) No 2157/2001 above.
113. Article 2 §2 Reg (EC) No 2157/2001 above.
114. Article 2 §3 Reg (EC) No 2157/2001 above.
115. Article 2 §4 Reg (EC) No 2157/2001 above.
116. On this point, see below pp 39-40.
117. Reg (EU) No 2017/1129 of 14 June 2017 *on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC*.
118. However, a disclosure document would be sufficient in the case of an offer on an unregulated market.
119. Art. 6302/1 *Règles de marché d'Euronext, Livre I, Règles harmonisées* (Article 6302/1 Euronext Market Rules, Book I, Harmonised rules).

However, this hurdle is only apparent. In accordance with Article 18 §2 of the Prospectus Regulation, which allows this information to be dispensed with "subject to adequate information being provided to investors", Article 6302/2 of the Euronext Harmonised Rules allows for such information to be omitted if this is justified by the issuer's activity. Similarly, the Commercial Code allows for the incorporation of a company by way of a public offering, even though such a company will, by definition, be unable to provide documents relating to its last three financial years[120]. The French legal system is flexible enough to allow a SPAC to be listed on the stock exchange.

In return for this flexibility, which takes into account the specific characteristics of SPACs, the AMF nonetheless requires that the information provided to investors in the prospectus be as complete and comprehensible as possible[121]. A reading of the prospectuses issued upon the IPOs of SPACs in France confirms this: particular care is taken over the data relating to the business sector of potential target companies, to the problems inherent in this type of vehicle and to the management of conflicts of interest that may arise.

In its Public Statement of 15 July, the European Securities and Markets Authority ("ESMA") specified the various items of information on which national authorities must focus their scrutiny[122]. In order to ensure investor protection and promote coordinated action by national authorities, ESMA invites authorities to verify that SPAC prospectuses mention the general functioning of the vehicle, its governance, the strategy and objectives pursued, the arrangements for escrow accounts regarding the funds raised, the experience of the management team, the identity of the majority shareholders, the risks incurred by investors, particularly in terms of conflicts of interest, the nature and rights attached to the financial securities issued, the arrangements for carrying out the de-SPAC (the appropriate body, information to be provided, method of financing), as well as any supplementary information that the competent authorities may consider necessary[123].

Having said this, and although some adjustments are still possible, the rules surrounding the issue of the prospectus illustrate the current flexibility of the regulations, which permits the listing of a SPAC while offering real protection to future investors[124].

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120. Article. L. 225-2 et seq. of the Commercial Code.

121. AMF, *Le cadre juridique français permet d'accueillir les SPAC à Paris tout en veillant à la protection des investisseurs*, *op. cit.*

122. ESMA, *SPACs: prospectus disclosure and investor protection considerations*, 15 Jul. 2021.

123. ESMA, *SPACs: prospectus disclosure and investor protection considerations*, 15 Jul. 2021.

124. In similar vein: J. Granotier, "Les SPAC : des véhicules d'investissements qui ont la cote (mais jusqu'à quand ?)" (SPACs: investment vehicles which are popular (but until when?))" , *Dr. Sociétés* No. 7, Jul. 2021, ref. 7.

B. The investors

Following the US model, when a SPAC is listed, investors acquire units, each consisting of one share and a fraction of an instrument called a warrant. This mechanism, which is a characteristic feature of SPACs, can be transposed into French law. To achieve the same result, redeemable preference shares (*actions de preference stipulées rachetables*) should be issued[125] and accompanied by share warrants (*bons de souscription d'actions*) that will allow investors in the future to acquire shares at a predetermined price[126].

In addition to the nature of the financial securities allocated to investors at the time of the IPO, the SPAC's entry into the market also raises questions about the appropriate listing segment for trading the securities. Although SPAC securities are theoretically accessible to all types of investor, the risks associated with this instrument[127], although not insurmountable, nonetheless suggest that these assets should be reserved for professional investors only, at least before the de-SPAC transaction is completed. On this point, all those interviewed agreed with the position expressed by the AMF last April[128] that SPACs should be reserved for the professional segment of Euronext Paris. Owing to the financial risk attached to this type of investment structure, it does seem advisable to reserve SPAC securities to qualified investors only, as defined in Article L. 411-212 of the French Monetary and Financial Code.

Here again, it is clear that the French system offers the necessary flexibility for the incorporation of SPACs and the proper protection of the investors' interests. Created in December 2007, the professional segment of the Euronext regulated market allows financial securities to be listed without being offered to the public[129]. Trading in securities admitted to the professional segment is restricted to qualified investors and is only open to other investors if they have been duly informed of the characteristics of this segment by their investment services provider[130].

Using the professional segment is not without its advantages. In addition to allowing the prospectus to be drawn up in a language other than French[131], the process also makes it possible to limit access to the SPAC to a limited circle of investors by retaining a high entry ticket, which will demonstrate investor interest. Of course, once the de-SPAC has been completed and the merger with the target has taken place, it will still be perfectly possible to list the shares in the general segment of Euronext.

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125. Article 228-11 and 228-12 III of the Commercial Code.
126. Article 228-91 et seq. of the Commercial Code.
127. These risks relate to the complex structure of a SPAC, potential conflicts of interest and the difficulty of valuing the target.
128. AMF, *Le cadre juridique français permet d'accueillir les SPAC à Paris tout en veillant à la protection des investisseurs*, 15 Apr. 2021.
129. Article 516-18 of the AMF General Regulations.
130. Article 516-19 of the AMF General Regulations.
131. Article 212-2 of the AMF General Regulations.

C. The founders

As individual shareholders of the SPAC, the founders hold shares of a different class from those of the investors, which are classified as 'promote'. The promote has generally been subscribed for by founders at a price equivalent to 2 - 3% of the subscription price of the shares at the time of the IPO and typically represents 20% of the SPAC's capital and voting rights. At the time of the IPO, these shares are not tradeable on the market and only become convertible into listed ordinary shares once the de-SPAC is completed, or subsequently once certain thresholds in the issuer's share price are reached. In parallel with these special instruments, founders sometimes also participate in the fundraising to the extent of 2 or 3% of the total amount of the IPO[132] and thereby acquire listed ordinary shares on the same basis as the other investors.

Here again, although French law still prohibits the use of multiple voting shares in listed companies[133], the preference share mechanism makes it possible to accommodate these practices by authorising the creation of shares separate from those of the investors to which special rights and duties are attached[134]. For example, the preference share mechanism allows founders to choose the SPAC's management team without owning a majority of the company's capital. In practice, a French SPAC's articles of association thus provide that the shares allotted to the founders give them the right to appoint half the members of the board of directors. In return, these shares offer a devalued right to a distribution of the liquidation surplus. In the event of the liquidation of the company, the founders will only be reimbursed for their investment after all the investors have been reimbursed, which in practice means a risk of losing all or part of the promote.

To ensure an alignment of interests with the investors, and in keeping with the practice in traditional IPOs, the founders' shares are also subject to non-transferability undertakings, usually formalised through a shareholders' agreement included in the prospectus. The legality of such undertakings, which reduce the liquidity of the founders' shares, might have been called into question. However, the French system seems to allow this practice[135].

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132. In particular to pay the costs of the IPO and of operating the SPAC.

133. See *infra* p. 62 et seq.

134. Art. 228-11 et seq. of the Commercial Code.

135. O. Dexant-De Bailliencourt, *Les pactes d'actionnaires dans les sociétés cotées* (Shareholders' agreements in listed companies), préf. H. Synvet, Dalloz, 2012, esp. No. 21.
As Professor Olympe Dexant-de Baillencourt points out in her doctoral thesis, "Once a shareholder may decide not to sell his shares, he must also be able to limit his right contractually to sell them in the future. Agreements limiting the transferability of shares therefore do not adversely affect the market and consequently should not be prohibited." The author notes, however, that the validity of this type of clause is more questionable if almost all of a company's securities are subject to covenants limiting their transferability, which cannot be the case where a SPAC is concerned.

SECTION 2.
THE OPERATION OF SPACS BEFORE THE ACQUISITION OF THE TARGET

Once the IPO has been completed, the funds raised by the SPAC are placed in escrow (§1) for the duration of the search for the target to be acquired (§3). During this interim period, the SPAC's governance rules give rise to questions (§2).

§1. The escrow (*séquestre*) of the funds raised

To ensure that the investors are reimbursed if they exercise their right of withdrawal, or in the event of an early liquidation of the SPAC, the classic structure provides for the entirety of the funds raised to be placed on deposit until the acquisition transaction is completed. While in the US this is done through a trust, the escrow technique performs exactly the same function.

Placing funds in escrow, which may be set up by a simple contract[136], consists of entrusting a banking institution with the task of administering sums invested until a given event occurs[137]. In the context of a SPAC, the receiver (*séquestre*) assures the investors that the company has sufficient funds to buy back their shares at the time of the de-SPAC transaction or to redeem them in the event of an early liquidation.

Owing to its contractual nature, the ways of setting up and operating an escrow are particularly flexible. It may thus be formed in consideration of a payment or free of charge[138]. Where it is free of charge, it is nonetheless governed by the rules governing deposits: the escrow bank must therefore be entitled to the reimbursement of expenses incurred in preserving the deposited item and must be compensated for all losses caused by such deposit[139].

In this area, determining the debtor of the costs relating to the escrow is not without difficulty. US practice appears to fluctuate. While some investors were initially prepared to bear the costs relating to the escrow[140], practices seem to be evolving and are tending rather to attribute to the founders the obligation to bear the costs associated with the escrow. The elasticity of a French escrow and the wide contractual freedom it offers make it possible to adapt the mechanism to developments in

136. Article 1956 of the Civil Code.

137. Although the first SPACs set up under French law were able to benefit from an escrow account of the Caisse des dépôts et consignations through the notaries in charge of the escrow, a reading of Article 518-17 of the Financial Monetary Code (*Code monétaire financier*) reveals that such activity does not fall within the remit of this public institution. In the circumstances, using the Caisse appears to constitute a fairly obvious misuse of the spirit of the institution.

138. Articles 1957 and 1958 of the Civil Code.

139. Article 1947 of the Civil Code.

140. This includes the negative interest currently charged on cash deposits.

practice. The hybrid solution currently used in the US market, which consists of having the founders bear the cost of the escrow through the dilution of their stake in the SPAC's capital or through the assumption of negative interest in the event of a reimbursement, could thus be transposed into French law.

§2. The governance of SPACs

The governance of SPACs before the de-SPAC gives rise to questions about the possible application of a governance code to SPACs (A), and about the terms of remuneration and profit-sharing of the directors (B).

A. The application of a code of governance

Once a SPAC has been listed it is, despite its particularities, a company whose securities are admitted to trading on a regulated market. As such, the vehicle is subject to the regulatory requirements that apply to listed companies. Pursuant to Articles L. 22-10-10, L. 225-37-4 and L. 225-68 of the Commercial Code, SPACs must therefore designate a governance code and follow its recommendations in order to guarantee the proper functioning of its governance structures and the quality of the financial information it provides. By providing a framework for the governance of listed companies, such recommendations contribute directly to the protection of shareholders and, more indirectly, to maintaining the integrity of the financial markets. This specific French feature should therefore be welcomed, even though one might question the relevance of applying certain provisions of these codes in the period prior to the de-SPAC.

The main governance code involved is that of the AFEP-MEDEF – the *Association française des entreprises privées* (French association of private enterprises) and the *Mouvement des Entreprises de France* (French Business Confederation[141], which is supplemented by an implementation guide published by the High Committee on Corporate Governance (*Haut Comité de Gouvernement d'Entreprise*)[142]. At first sight, applying this code seems particularly welcome in the context of SPACs. Given the risks of conflicts of interest mentioned above, it seems all the more necessary that their governance should be strictly regulated. The AFEP-MEDEF code directly addresses this risk, with Article 20 recommending that all directors *"disclose to the board any conflict of interest situation, including potential conflicts"* and refrain *"from attending the discussion or taking part in the vote on the corresponding resolution"*. The code also states that directors must have the necessary skills and expertise to carry out their du-

141. AFEP-MEDEF, *Code de gouvernement d'entreprise des sociétés cotées* (Corporate Governance Code of Listed Corporations), Jan. 2020.

142. Haut Comité de Gouvernement d'Entreprise, *Guide d'application du code AFEP-MEDEF* (Implementation Guide to the AFEP-MEDEF code), March 2020.

ties[143]. These recommendations offer valuable assurance to investors that the governance of SPACs involves more than a board of directors simply for show.

Some of the recommendations, however, are particularly burdensome given the distinctive nature of SPACs, as they establish a very detailed governance system. In particular, compliance with the numerous articles governing the remuneration of corporate officers and extending over more than five pages[144], such as the need to set up a remuneration committee[145], does not seem helpful for a SPAC that has no operational activity at the beginning of its existence.

Although it is possible to depart from these recommendations by following the 'comply or explain' principle[146], the situation requires the founders to specify in the prospectus the points from which they intend to depart owing to the specific nature of the SPAC. Such formalities make the listing process more cumbersome and may create a negative image for some foreign investors. Moreover, this stringency is likely to be a drawback for the Paris market in comparison with other European markets, which often have reduced governance requirements and therefore facilitate the rapid listing of a SPAC. In this area, while applying a governance code contributes to investor protection, a specific adjustment tailored to SPACs would seem desirable[147].

B. The directors' remuneration and profit-sharing

Under French law, directors' remuneration traditionally takes the form of being awarded so-called *"jetons de présence"* (directors' fees)[148]. In addition to this traditional form of remuneration, there is also the question of directors' profit-sharing in a company's success. In the US, the practice is to award shares to directors in order to give them an interest in the SPAC's stock market success. In doing so, the practice allows for a better alignment of the interests of directors and investor-shareholders.

In France, the AFEP-MEDEF code recommends that directors buy shares[149]. It recommends that directors be personal shareholders

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143. Articles 6 and 13 of the AFEP-MEDEF Code.

144. Articles 25.1.1 to 25.3.4 of the AFEP-MEDEF Code.

145. Articles 18.1 to 18.3 of the AFEP-MEDEF Code.

146. This principle, which allows for a departure from some of the recommendations, is explained in paragraph 27.2 of the code. Under this provision, if the company wishes to depart from the application of certain provisions of the code, it must indicate in a specific section the recommendations of the code that it is not applying, with the related explanations. Moreover, such explanation must be *"comprehensible, relevant and detailed. It must be substantiated and geared to the specific situation of the company and indicate, in a convincing manner, why such specific situation justifies the departure; it must indicate the alternative measures adopted, if any, and describe the actions that make it possible to maintain compliance with the aim of the relevant provision of the code."*

147. For a proposal, see *infra* pp 61-62.

148. Since the reform of the PACTE Law, the term "directors' fees" has been replaced by "remuneration" (Article L. 225-45 of the Commercial Code).

149. Article 20 of the AFEP-MEDEF code.

and own a minimum number of shares that is significant in relation to the remuneration they receive. If directors do not hold these shares when they take office, the code even recommends that they use their remuneration to acquire them.

Plainly, such holding of capital must always be reasonable. Excessive shareholding is not desirable. In order to strike a balance, the AFEP-MEDEF code makes the status of an independent director conditional on not exceeding the threshold of 10% of the company's capital or voting rights[150]. While this recommendation seems appropriate in the context of a SPAC, in that it ensures that the majority of directors will hold only a limited stake in the capital, it is still necessary to determine which class of shares should be accessible to them.

In the context of a SPAC, two options are possible. The first enables the interests of the directors and investors to be aligned and consists of incentivising the directors through the allocation of ordinary shares. The second option provides more leverage in terms of incentive and on this occasion aligns the interests of directors with those of the founders. It amounts to giving directors the right to buy promote shares by allowing, for example, the establishment of a stepped, so-called "staggered promote"[151]. The latter practice limits the risk of conflicts of interest for directors by aligning the performance of their securities with the evolution of the issuer's share price post de-SPAC.

Both options have their respective advantages and disadvantages. Both are compatible with the AFEP-MEDEF recommendations and should therefore be open to the various SPACs incorporated in France.

§3. The search for a target

Once the funds have been raised, the SPAC's management team has a sole objective: to find one or more target companies to acquire. However, they do not have total freedom in the choice of target. The acquisition must take place within a certain timescale (A), meet a number of requirements regarding the size or business sector of the target (B), and lastly comply with the rules preventing conflicts of interest (C).

150. Article 9.7 of the AFEP-MEDEF code: *"Directors representing major shareholders of the corporation or its parent company may be considered independent, provided these shareholders do not take part in the control of the corporation. Nevertheless, beyond a 10% threshold in capital or voting rights, the Board, upon a report from the nominations committee, should systematically review the qualification of a director as independent in the light of the make-up of the corporation's capital and the existence of a potential conflict of interest."*

151. On this practice in the I2PO and Dee Tech SPACs, see p. 21 above.

A. The timescale for completing the acquisition of the target

Following the US model, the SPAC has a limited period in which to complete its de-SPAC. If no acquisition is made within this period, the company will be liquidated, allowing investors to recover their initial investment in priority to the sponsors. As the founders' rights in the distribution of the liquidation surplus are subordinated to those of the investors, the distribution may in practice result in an almost total loss of the sponsors' initial stake. As some authors point out, this highly original structure offers investors twofold protection: it requires the management to be fully involved in the acquisition project and, at the same time, offers shareholders the sort of full financial protection that is usually reserved for bondholders[152].

The typical lifespan of a SPAC before a de-SPAC is 24 months from listing. Depending on the state of the market, this can go up or down and there are SPACs with lifespans ranging from 18 to 24 months, which may be extendable[153]. For example, recent amendments to the Nasdaq Nordic[154] and Singapore Exchange Mainboard Rules[155] allow the period to be extended to 36 months from the listing of the SPAC. The increase in this period, which keeps the de-SPAC within a reasonable timescale, is intended to prevent an acquisition from being completed in too much of a hurry.

Under French law, determining the lifespan of a pre-acquisition SPAC is not a matter for the law[156]. It is a matter of constitutional freedom. Such freedom is to be welcomed: it demonstrates the flexibility of the French system. An examination of the lifespan of SPACs formed in France confirms this. While the first wave of SPACs had a 24-month period in which to complete their acquisitions[157], some more recent vehicles provide for the possibility of an additional 6-month period if certain conditions are met[158], while others offer their shareholders the right to vote for an extension of the initial period[159].

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152. L. Faugérolas, C. Cardon, "Les SPAC bientôt cotées en France ?" ("SPACs soon to be listed in France?)", *op. cit.*, No. 14.
153. In the event of an extension, it is regularly stipulated that the founders' promote will be reduced, giving them an incentive to complete the acquisition within the original timeframe, without the need for an extension.
154. Section 2.18.3 of the Nordic Main Market Rulebook for Issuers of Shares.
155. Rule 210 (11) (m) (i) (ii) of the Singapore Exchange Mainboard Rules.
156. Article 1838 of the Civil Code sets only the maximum duration of the company, which may not exceed 99 years. An extension of this period is, however, possible in the circumstances provided for in Article 1844-6 of the Civil Code.
157. This was the case for the Mediawan, 2MX Organic and, more recently, Dee Tech and I2PO SPACs.
158. In this respect, see the Accor Acquisition Company and Transition SPACs.
159. I2PO's *statuts* (articles of association) provide that the 24-month period may be validly extended by a two-thirds majority vote of an extraordinary general meeting of the shareholders.

B. The business sector and value of the target

As the SPAC does not initially carry out any operational activity, it seems necessary to determine from the outset the business sector of potential targets in order to provide a framework for management action and to inform investors' decisions. In the US, while the scope of the target company's business may be more or less broadly defined, it must in any event be identified before the SPAC is listed.

In France, in return for the flexibility granted in the drafting of prospectuses[160], the AMF requires a detailed presentation of the business sector of the targets being sought. Thus, the area of business in which the target is to operate is set out in the IPO documentation and is a condition for carrying out the de-SPAC transaction.

In addition to the business, practice also requires that the value of the target represents a certain amount of the funds raised in the IPO. Thus, according to the traditional model, SPACs may only acquire targets whose size is at least equal to 80% of the funds raised in the IPO. A similar rule was included in the latest revision of the Nasdaq Nordic rules[161]. French law, without imposing it, does not prevent the setting of an equivalent percentage.

In practice, compliance with this requirement does not cause any real difficulty. One can see a multiplier effect between the size of the SPAC and the size of the target, with SPACs acquiring companies that are three to five times larger through an increase in reserved capital that allows the raising of additional funds. Moreover, it should be noted that this size criterion may be met by the acquisition of several target companies, as long as the aggregate sum of the acquisitions reaches the required percentage. Therefore, while in the current model founders tend to target large businesses, there is nothing to prevent the emergence of an alternative practice based on the acquisition of several medium-sized targets[162].

C. Managing potential conflicts of interest

As the US experience illustrates, one of the major risks associated with SPACs is the conflicts of interest that may arise during the search for a target[163]. As the latest AMF study on these vehicles points out, this risk exists just as much under French law[164].

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160. See above p. 37 et seq.
161. Section 2.18.3 of the Nordic Main Market Rulebook for Issuers of Shares.
162. However, this could cause practical problems, particularly in terms of a dilution of the target's shareholders.
163. See above p. 15 et seq.
164. AMF, SPAC : *Opportunités et risques d'une nouvelle façon de se coter en Bourse, op. cit.*, p. 8.

In France, the control exercised by the AMF at the time of the vehicle's listing makes it possible to manage this problem. The control measures, described in the prospectus, are based on the key role of the independent directors, the numerous information obligations[165], the mandatory use of fairness opinions and the establishment of prohibitions on voting or acquiring a company with which a founder or director has too many links. Having said this, each control carried out takes into account the personality and business sectors of each sponsor and director of the SPAC[166].

In support of this system, the AFEP-MEDEF code requires each director *"to disclose to the board any conflict of interest situation, including potential conflicts"* and to abstain *"from attending the discussion or taking part in the vote on the corresponding resolution"*[167].

Lastly, the system of regulated agreements provided for in the Commercial Code also contributes to the proper management of such conflicts[168].

New market practices that have arisen in response to certain abuses also help to contain potential conflicts. For example, an obligation to convene a general meeting to have the choice of the target approved by the investors is developing, as is the practice of the staggered promote, which makes it possible to make part of the founder's remuneration conditional on the performance of the target after acquisition, in place of full remuneration at the time of the de-SPAC. The practice also tends to lengthen the period of non-transferability of the founders' shares in order to ensure a better alignment of the interests involved.

SECTION 3.

THE OPERATION OF SPACS UPON THE ACQUISITION OF THE TARGET

The completion of the de-SPAC marks the final stage in the SPAC's life cycle (§1). Once the acquisition has been confirmed, details of how the transaction will be completed must be specified (§2).

§1. The acquisition of the target

Once the target has been selected, the choice must still be approved by the appropriate bodies (A). If there are dissenting shareholders, the acquisition gives investors the option to request a repurchase of their shares (B).

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165. See above p. 37 et seq.
166. AMF, *Le cadre juridique français permet d'accueillir les SPAC à Paris tout en veillant à la protection des investisseurs, op. cit.*
167. Article 20 of the AFEP-MEDEF code.
168. Article L. 225-38 et seq. of the Commercial Code.

A. The approval of the choice of target

The choice of the target to be acquired is, in principle, made by the SPAC's management team. A simple or enhanced majority vote is then required in order to approve the transaction and initiate the de-SPAC. In addition to this first vote, practice is also tending to make the choice of the target conditional on a vote in favour by a general meeting of the shareholders. Although this model is not always used, it is clear that it is becoming dominant. For example, the Nasdaq Stock Market[169], Nasdaq Nordic[170], the Equity Guidelines of the Securities Commission Malaysia[171] and the Mainboard Rules of the Singapore Exchange[172] all require that the choice of target be subject to a twofold majority vote: that of the directors and that of the shareholders.

Under French law, the choice is made by the SPAC's board of directors. The approval of the target to be acquired is the responsibility of the directors[173], who are responsible for adopting all strategic decisions relating to the company. The acquisition does not, in itself, require a change to the SPAC's articles of association[174]. As a matter of principle, therefore, a vote of the shareholders' meeting is not required. Although the AMF has not deemed it appropriate to require a vote in general meeting in the ordinary case of a purchase of significant assets by listed companies[175], it has not yet ruled on the requirement for such a vote in the specific context of a de-SPAC[176]. Given the distinctive structure of SPACs and international practice in this area, it is possible that the AMF may in future recommend a shareholder vote on the initial business combination, even if it takes the form of a simple acquisition.

Although French law is not fully in line with US practice, which prescribes that shareholders be consulted, the French legal system appears to be satisfactory. By leaving the question of voting to the constitutional

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169. IM-5101-2 (c) & (d) Nasdaq Stock Market.

170. Sections 2.18.4 and 2.18.5 Nordic Main Market Rulebook for Issuers of Shares.

171. Rules 6.39 and 6.40 Equity Guidelines Malaysia.

172. Rule 210 (11) (m) (viii) Singapore Exchange Mainboard Rules.

173. Article L. 225-35 of the Commercial Code.

174. However, the point must be clarified: while the choice of target does not involve a change to the articles of association, some of the ways in which the de-SPAC is completed may involve such a change. In such a case, a vote of the extraordinary general meeting of the SPAC's shareholders will be necessary (see below pp 52-54).

175. In its position on the purchase and disposal of significant assets in listed companies, the AMF has not deemed it appropriate to recommend that a general meeting be convened to vote on the acquisition of a significant asset. It has taken the view that calling an ordinary meeting is not appropriate and that it *"might place French listed companies at a serious competitive disadvantage [in the international arena], owing to the delays and uncertainty that such a consultation would entail, encouraging sellers to exclude them in principle from the disposal process"* (AMF, *Les cessions et les acquisitions d'actifs significatifs* (Disposals and acquisitions of significant assets) - DOC No. 2015-05, 15 June 2015, p. 7). On the basis of this same position-recommendation, the AMF has nonetheless drawn up a best practice guide to ensure that shareholders are properly informed, that the company's interests are respected and that the conflicts of interest which may arise during an acquisition are managed (*ibid.*, pp 7-8). This guide could be applied to a de-SPAC.

176. In its press release of 15 April, the AMF merely stated that it was paying attention to "the procedures for approving the initial acquisition transaction" (AMF, *Le cadre juridique français permet d'accueillir les SPAC à Paris tout en veillant à la protection des investisseurs, op. cit.*)

freedom of each SPAC and to the contracts entered into between founders and investors, the French system allows the creation of highly varied vehicles. A quick overview of the vehicles created suffices to illustrate this. Whereas Mediawan, Accor Acquisition Company and Transition make the choice of a target conditional on the agreement of the majority (sometimes an enhanced majority) of the management body and the general meeting, 2MX Organic and Dee Tech do not require any shareholder vote[177].

B. The investors' right of withdrawal

In the vast majority of cases, SPACs undertake to offer to repurchase their shareholders' securities when their first acquisition is completed. While this right may be expressed in a variety of ways, it is customary for the repurchase to be offered at the initial subscription price of the securities, thus covering the risk exposure until the de-SPAC is actually completed.

French law allows such a procedure to be put in place. While several routes may be followed, such as using an open-ended SCA[178], French SPACs in practice use redeemable preference shares[179]. Although this process differs from the redemption right that exists in US law, these distinctive shares nonetheless have the advantage of a well-established legal regime that makes them an easy-to-use quality instrument.

Allocated to investors at the time of the fundraising, the terms of redemption of the preference shares are set out in the articles of association. The mechanism thus makes it possible, in predefined events, to have the shares repurchased at a predetermined price equal to their subscription price[180].

§ 2. Completion of the acquisition transaction

Once the target has been chosen, the details of how the de-SPAC transaction will be completed (A) and the location of the new entity in the event of a merger (B) still need to be determined.

177. While the vote is not directly necessary, completing the de-SPAC may involve an extraordinary general meeting of the SPAC (see below pp 52-54).

178. See above pp 35-36.

179. Article L. 228-12 of the Commercial Code.

180. From an accounting point of view these redeemable shares appear to respresent a debt for the SPAC. Indeed, on the basis of IAS32, these shares should not be considered as equity but as financial liabilities. This accounting standard, referred to in European Regulation 1126/2008 of 3 November 2008, which adopts certain international accounting standards in accordance with Regulation 1606/2002, states that it is the substance of a financial instrument, rather than its legal form, that determines its classification in a company's statement of its financial position. However, if there is an option that gives the holder the right to present his or her investment to the issuer for redemption in exchange for cash or another financial asset, IAS 32 considers this to be a "puttable instrument [that] meets the definition of a financial liability"

A. Procedure for completing the acquisition transaction

In practice, the de-SPAC may be achieved through a number of processes. Three are used in particular: acquisition, contribution and merger. French regulations allow for all three methods.

First, it is possible to carry out the transaction by way of an outright acquisition. The shares of the target company may be purchased by the SPAC. In this case, the shareholders of the target will not become direct shareholders of the SPAC and completion of the transaction will be conditional on the existence of the necessary funds to proceed with the purchase. In parallel with this decision, it is therefore not uncommon for SPACs to raise additional funds from one or more institutional investors through a private placement.

In addition to this first method, one may also proceed by way of a contribution in kind. The transaction is then carried out by contributing all the shares of the target company to the SPAC. In return, the SPAC will issue new shares to the target's shareholders. This procedure, frequently used in practice, calls for several comments.

First, the transaction may require the drafting of an issue prospectus. Pursuant to the Prospectus Regulation, a prospectus is required if the newly issued securities represent, over a period of twelve months, more than 20% of the securities already admitted to trading on the same regulated market[181].

Secondly, as with any transaction requiring an issue of new shares, this method will require a capital increase, the implementation of which may be delegated to the SPAC's management team. To decide on the increase, a two-thirds majority vote of an extraordinary general meeting of the shareholders will be required[182].

In addition, particular attention should be paid to the rules on exceeding thresholds and the regulations on takeover offers. After the transaction, a shareholder of the target company, acting alone or in concert, might hold a percentage of the SPAC's capital or voting rights that is equal to or greater than the threshold for making a mandatory offer, currently set at 30%[183]. A draft offer for the entire share capital of the SPAC would need to be filed accordingly, unless an exemption were obtained from the AMF on the basis of Article 234-9 3° of its General Regulations.

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181. Article 1, 5. a) of Regulation EU No. 2017/1129, *op. cit.*

182. Articles L. 225-96 and L. 225-129 of the Commercial Code. Not being able to proceed on the basis of a simple majority may make French law less attractive. However, the Commission did not consider it desirable to change all the existing majority rules in order to meet a need that relates only to SPACs.

183. Article L. 433-3, I of the Monetary and Financial Code ; Article 231-1 et seq. of the AMF General Regulations.

Lastly, the transaction may take the form of a merger[184]. While this method may allow the de-SPAC to be carried out straight away, it may also be carried out later once the target has been acquired. The merger with the target company may be carried out in different ways. While it most often takes place through the acquisition of the target by the SPAC or of the SPAC by the target, known as a reverse merger, it may also take place through the creation of a new company[185].

Whichever method is chosen, the merger will require the agreement of the shareholders of the SPAC and of the target, and therefore a vote at an extraordinary general meeting of both companies[186]. In the case of a foreign target, particularly a non-European one, the implementation of a cross-border merger may give rise to a number of extra difficulties. In practice, this may be remedied by carrying out a reverse triangular merger, which consists of creating a holding company whose purpose is to acquire both the SPAC and the target company[187].

B. Location of the new entity

Once the de-SPAC has been completed, the location of the new entity still needs to be determined. There are many possible combinations. The regulations allow a distinction to be made between the location of listing of the company and the location of its registered office. Depending on the location of the registered office of the target and the SPAC, and the way in which the merger is carried out, the French system offers many possibilities for the location of the new company and the law that will apply to it.

This range of options therefore makes it possible to list a foreign target company in France while maintaining its registered office in a different country. The high calibre of the French supervisory authority should also encourage the listing of foreign target companies on the Paris market.

184. While a merger is an attractive option in the case of a traditional SPAC because it allows the target to be listed quickly, it is not always desirable. Since a corporate SPAC is more likely to retain a minority stake in its target companies, a merger would appear inappropriate.

185. Article L. 236-2 Commercial Code.

186. *Ibid*.

187. Given its operational and financial objectives, as well as its advantages for both the SPAC and the target, such a merger should not be open to challenge by the tax authorities on the grounds that it would constitute a "quick merger", either on the grounds of anti-abuse provisions or of an abnormal act of management.

SECTION 4.
TAX ASPECTS

As mentioned above, the French legal system is well equipped to accommodate SPACs. The same may be said of the tax law which, by using existing legal resources, makes it possible without undue difficulty to ascertain the tax consequences of all stages in the life of a SPAC, whether for the SPAC itself, the founders or the investors.

This will be so, for example, in the case of instruments subscribed for by the founders (the promote) in the form of preference shares or share warrants. If such shares or warrants offer the founders the prospect of an enhancement of their rights (particularly financial) should the de-SPAC transaction prove successful, the conditions for subscribing for them should not be open to criticism, since these advantages are generally offset by significant restrictions[188]. Therefore, the capital nature of the gains realised on the sale of the founders' shares should not give rise to any difficulty.

Similarly, the conversion of such preference shares should naturally fall within the scope of the tax deferral regimes provided for in the General Tax Code (*Code Général des Impôts - "CGI"*), whether for individuals acting in respect of their private assets[189] or for businesses[190].

Individual investors holding ordinary shares might also benefit from the PEA or PEA-PME regimes, as appropriate.

Moreover, the SPAC represents an attractive alternative for real estate investments that could be combined with existing competitive tax vehicles such as the SIIC regime.

188. Such as the devalued right in respect of a liquidation distribution which goes with the founders' shares and the temporary non-transferability of such shares.
189. Article 150-0 B of the CGI.
190. Article 38, 7 of the CGI.

CHAPTER 2 - CONCLUSION

Analysis shows that French law appears to be capable of accommodating the traditional SPAC scheme. This is illustrated by the fact that SPACs based on the American model have been listed in France. Whether it be the procedures for setting up a SPAC, its operation prior to acquisition or the completion of the de-SPAC transaction, each stage in the life cycle of this vehicle can be implemented by mechanisms already offered by French law. The study carried out shows that the French system already offers the possibility of creating units, of placing the funds raised in escrow and of offering a right of redemption to shareholders opposed to the acquisition.

In the absence of specific regulations for SPACs, French law leaves operators a degree of discretion to determine certain key issues, such as the lifespan of the vehicle or deciding which bodies should approve the acquisition. This flexibility in the vehicle's structuring makes it possible to accommodate developments in market practice.

The secure French system also provides safeguards capable of addressing in an intelligent way the risks inherent in SPACs which relate to the complex structure of the vehicle, potential conflicts of interest and the difficulty of valuing the target company. The analysis was further endorsed by the AMF press release of 15 April: "the legal system and regulatory requirements in force in France enable the listing of SPACs to be accommodated in Paris while offering appropriate protection to investors"[191].

Despite these advantages, it is clear that some French sponsors are choosing not Paris but Amsterdam as the location for listing. Accordingly, although no change to the legal system seems essential, various improvements might be considered in order to increase the attractiveness of the Paris market and, more broadly, that of the European market.

191. AMF, *Le cadre juridique français permet d'accueillir les SPAC à Paris tout en veillant à la protection des investisseurs*, 15 Apr. 2021.

CHAPTER 3

POSSIBLE IMPROVEMENTS TO THE FRENCH LEGAL SYSTEM

As a financial centre, Paris is not without its strengths. As the second largest investor base in Europe, the French ecosystem also has a competitive advantage owing to the high calibre of its regulatory authority. Those who were interviewed emphasised the high quality of discussions with the AMF and the speed with which cases are dealt with, in contrast to other European markets which have at times been swamped.

However, when it comes to the actual hosting of SPACs, the evidence is indisputable: Paris is still far behind Amsterdam. With 12 SPACs listed on Euronext Amsterdam in 2021 alone, the Netherlands is now the SPAC capital of Europe[192].

In order to improve Paris's competitiveness as a financial centre, the Commission has considered several changes to the legal system which, although not absolutely *necessary*, appear *desirable* in order to make Paris more attractive as a financial centre.

The first innovations do not require any legislative measures and simply require a position to be taken by market participants (Section 1). The second innovations, on the other hand, concern company law; more far-reaching, these would require changes to be made to legal provisions (Section 2).

SECTION 1.
DESIRABLE POSITIONS TO BE TAKEN BY MARKET PARTICIPANTS

The influence of a financial centre does not depend solely on the legal rules that govern it. It is also closely linked to the image that the financial centre projects of itself: improving its attractiveness must therefore involve a communications drive (§1). Moreover, there is little doubt that altering certain practices relating to the issue of an IPO prospectus (§2) and the application of the AFEP-MEDEF governance code (§3) would also make the French market more competitive.

§1. The need to communicate the attractiveness of the Paris marketplace

Amsterdam is currently the financial centre of choice for registering SPACs in Europe. While Dutch law allows for the American SPAC structure to be replicated, which partly accounts for its appeal, this does not explain why some French founders prefer to use this centre when the French system also allows for the vehicle to be replicated[193].

192. Figures as at 6 July 2021 (Euronext, *New Amsterdam Invest N.V. lists on Euronext Amsterdam*, Jul. 2021).
193. This is true, for example, of the founders of SPAC Pegasus and Odyssey Acquisition.

The interviews conducted by the Commission revealed two main reasons for the current dominance of the Amsterdam market. The first is the perceived neutrality of this marketplace in Europe. The second is the "sheeplike" mentality of investors, which causes a ripple effect once a market becomes active in a given type of vehicle. The importance of the SPAC market in Amsterdam is therefore attributable more to a subjective reputation for neutrality than to qualities that are objectively superior to those of the Paris market[194].

The work carried out by the Commission and set out in this report shows, however, that investors' fears about the ability of French law to accommodate SPACs are primarily based on preconceptions that need to be challenged. To make the French market more attractive, some hard communications work is needed to adjust this image.

Such work could first be carried out through communications highlighting the quality of the French system and showcasing the legal mechanisms that make it possible to set up SPACs in France. This might take the form of developing templates to promote the security of transactions and establish the idea that the French legal system is accommodating. In this respect, the interviewees noted that the preparation of a guide, setting out in an instructive way the technical solutions that enable a SPAC to be structured under French law, would make it possible to attract more sponsors and investors, particularly pan-European ones. Such an instrument could, for example, be issued and updated by the AMF or a market association.

The communications might then bring cases of successful SPACs to the attention of the public. These messages would be likely to give sponsors confidence in the market's potential, and would undoubtedly change investors' perception of the market and enable Paris to be consolidated as an alternative market to Amsterdam.

§2. The introduction of a standardised prospectus for SPACs

The interviews also indicated that setting up an accelerated timetable for the IPO of a SPAC would offer a significant path to improvement. At the time of listing, SPACs have no operational activity and their securities are reserved for professional investors. Consequently, their listing should not require as much scrutiny as a traditional IPO.

The development of a standardised prospectus for SPACs would be an interesting approach, in that it would make it possible to focus on the most sensitive issues specific to these vehicles, improve investor protection, reassure market participants by offering a standardised and

194. It should be noted, however, that unlike US and French law, it is permissible under Dutch law for no prospectus to be issued at the time of the de-SPAC. This difference is likely to give rise to arbitrage between the markets.

stable framework, and allow for an accelerated review of applications. Moreover, the mechanism would provide a clear set of instructions for founders, without compromising the flexibility of French law[195].

This naturally assumes that the SPAC model is sufficiently standardised so that a standard prospectus can be drawn up. Although this is not yet the case, the development of this type of vehicle in Europe should nonetheless lead to a harmonisation of the practices surrounding its formation. If this were to happen, there would be no obstacle to the introduction of a fast-track procedure for SPACs. Indeed, there is no provision in the Prospectus Regulation that prohibits an accelerated listing schedule for certain types of companies[196]. Moreover, the introduction of such a fast-track procedure should not be seen as unfair to the traditional listing process. As noted above, the listing of a SPAC is not a process in competition with the traditional IPO process, but ancillary to it[197].

§3. The application of the governance code before the de-SPAC transaction

The preceding discussion has highlighted the difficulty of making the SPAC compatible with certain rules of the AFEP-MEDEF code. As the SPAC has no operational activity at the time of its listing, the application of the full governance provisions of this code may appear inappropriate in certain areas[198]. Experience in France shows that it is not uncommon for the listing prospectus of SPACs to mention that certain provisions of the code will be disregarded. To do this, the founders are obliged to use the "comply or explain" procedure which, as well as conveying a negative image of the market, results in making the vehicle's listing process more cumbersome.

This state of affairs cannot be considered satisfactory. Prior to the de-SPAC, there seems no justification for deploying a full governance arrangement to a vehicle that has no activity and whose sole purpose is to acquire a target company. In the specific pre-acquisition context, it would therefore be appropriate partially to exclude the application of the AFEP-MEDEF code to this type of vehicle. To this end, the code could include a special recommendation exempting SPACs from certain rules.

Plainly, if this facility were given, it would still need to be subject to two reservations: one substantive, the other a matter of timing. The

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195. Indeed, the establishment of a simplified prospectus should not result in prohibiting the listing of SPACs that differ from the chosen model. The listing of original SPACs will simply follow a longer process than that proposed by the accelerated timetable.

196. Article 20 §2 of the Regulations cited above. While this provision sets a maximum period for approving a company's prospectus, no minimum period is provided for.

197. See above pp 29-30.

198. See above pp 43-44..

first concerns the nature of the provisions which a SPAC would be exempted from complying with. Excluding certain rules of the AFEP-MEDEF code should not mean that SPACs are exempt from compliance with the provisions covering the risks specific to this type of company, particularly those aimed at managing the conflicts of interest that can arise. The second reservation concerns the duration of this arrangement, which cannot be permanent: once the de-SPAC has been completed, the exemption will no longer be justified; it will then be necessary to apply the governance provisions of the code in full.

SECTION 2.
POSSIBLE IMPROVEMENTS TO THE LEGISLATIVE PROVISIONS

A comparison of how French SPACs work with foreign practices reveals certain rigidities in the current regulations. These rigidities, which are exposed by SPACs, go beyond this phenomenon alone and also highlight the difficulty that French law has in meeting certain requirements of companies operating in growth sectors, particularly technology and biotechnology. Therefore, in order to make French law more competitive in this field, three developments may be considered. The first would be to authorise the use of multiple voting rights in listed companies (§1). The second would be to modernise the regime of delegations and capital increases (§2). The third would be to adjust certain tax regimes so that the specific features of SPACs can be better accommodated (§3).

§1. The introduction of multiple voting rights in listed companies

While redeemable preference shares already allow the SPAC model to be replicated under the existing law[199], introducing the possibility of creating shares with multiple voting rights would offer more freedom to the various parties involved. Widely used in the main financial centres (A), the introduction of this mechanism, provided it was accompanied by a well-balanced regime, would offer a real advantage to Paris as a financial centre (B).

A. Multiple voting rights in the main financial centres

While multiple voting rights are not available to listed companies based in Germany, Spain or Italy[200], the procedure exists in the US (i), the Netherlands (ii) and now tends to be accepted in the UK (iii).

199. See above pp 39-40.

200. While Italian listed companies are not allowed to use a multiple voting share mechanism, they may issue shares with enhanced voting rights (with a maximum of 2 votes), provided such shares are issued prior to the company's IPO and they are held for more than 24 months.

(i) The US dual class stock

In the US, any listed company may provide in its constitution for "dual class stock". This procedure offers the company the possibility of creating different share classes with separate voting rights. However, the issue of such shares is monitored by both the US regulator and the market operator[201].

In practice, the Commission has noted a clear increase in companies using this mechanism. Between 2005 and 2015, the number of US listed companies using this dual-class share structure increased by 44%[202].

(ii) The Dutch multiple voting share regime

In the Netherlands, listed companies may issue two or more classes of shares with different numbers of voting rights. Although Dutch law is particularly flexible in this respect, the freedom is not total. The ratio of shares to voting rights is limited to 3 if the number of shares making up the share capital is less than 100, and to 6 if the number of shares is more than 100.

As in the US, this mechanism is increasingly being used in the structures based in the Netherlands. The index provider MSCI reports that, as at 1 September 2017, 23.1% of the market capitalisation of Dutch issuers that are included in the MSCI ACWI had a multi-class share structure[203].

(iii) The recommendations of the UK's Hill Review

Already outlined, the changes proposed by the Hill Review also recommended allowing the admission of multiple voting shares to the premium segment of the London Stock Exchange. While this proposal is not immediately linked to the development of SPACs[204], its adoption will have a direct impact on this market. To avoid any misuse of the future process, the report nonetheless recommended the adoption of several safeguards[205].

First, and in order to restrict access to the process, the report recommended reserving the allocation of multiple voting rights solely to shareholders performing management duties within a company, and imposing significant restrictions on the transfer of these securities.

In order to keep the mechanism temporary, the report also proposed limiting the duration of multiple voting rights by introducing a 5 year sunset clause[206].

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201. The voting rights/share multiplier ratio is generally permitted up to 10.
202. SEC, *Recommendation of the Investor as Owner Subcommittee: Dual Class and Other Entrenching Governance Structures in Public Companies, Investor Advisory Committee*, March 2018.
203. MSCI, *Should Equity indexes include stocks of companies with share classes having unequal voting rights?* January 2018.
204. In practice, UK SPACs are listed on the standard market segment and not on the premium segment.
205. *UK Listing Review, op. cit.*, pp 19-21.
206. These clauses provide that a mechanism will cease to have effect after a specified date, unless a new decision is taken to extend its effect.

To avoid an excessive concentration of power and to ensure that the economic interests of the holders of multiple voting shares are not totally disconnected from those of the company, the authors of the report also recommended limiting the voting ratio to 20:1, a ratio through which a majority of voting rights may be achieved with 4.8% of the company's capital.

Lastly, the Hill Review proposed limiting the scope of decisions on which multiple voting rights may be taken into account, so that the innovation would serve first and foremost to ensure the sustainability of a company's governance.

B. The French regime of multiple voting rights in listed companies

Unlike unlisted companies, which now have the option of issuing preference shares with multiple voting rights[207], listed companies do not have the option of doing so. For companies whose shares are admitted to trading on a regulated market and unless otherwise provided for in the articles of association, the only possibility is the automatic allocation of a double voting right to all registered shares held for two years[208].

However, the multiple voting rights mechanism is of real interest to the founders of both SPACs and their target companies. For the founders of the SPAC, the process would avoid an excessive reduction of the promote in the event of an increase in capital at the time of the de-SPAC. Similarly, the mechanism would ensure that the founders of the target company retained control of the company after the de-SPAC and could continue to implement their corporate vision.

The interviewees noted, nonetheless, that the introduction of multiple voting rights in listed companies should be accompanied by a well-balanced regime. Based on European and especially US and UK practices, it would be possible to limit multiple voting rights by setting a limit on the multiplier coefficient, regulating their duration and reserving their implementation to certain specific issues, such as those relating to governance.

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207. See Article L. 228-11 of the Commercial Code as amended by the PACTE Act of 22 May 2019 (H. Le Nabasque, *"Les incidences de la loi PACTE sur le financement des sociétés par actions"* ("The impact of the PACTE Act on the financing of joint stock companies"), in Loi PACTE et droit des sociétés, Bull. *Joly Soc.*, June 2019, p. 70 et seq; A Couret, *"Les destinées du droit de vote dans les réformes 2019 du droit des sociétés"* ("The fate of voting rights in the 2019 company law reforms"), JCP E No. 46, 2019, 1501, esp. No. 9 *et seq.*).

208. Article L. 225-123 paragraph 3 of the Commercial Code. On the procedure, see, in particular: A. Couret, *"Le retour du débat sur le droit de vote double"* ("The return of the debate on double voting rights"), JCP E 2013, 1518 ; D. Martin and K. Angel, *"L'instauration d'un droit de vote double automatique : une ambition à la Pyrrhus ?"* ("The introduction of an automatic double voting right: a Pyrrhic ambition?"), JCP E 2014, 1044; S. Torck, *"L'attribution automatique du droit de vote double"* ("The automatic allocation of double voting rights"), Dr. sociétés No. 7, July 2014, dossier 7.

§2. Relaxation of the regime for delegations and capital increases

The various events that occur in the life of a SPAC usually lead the founders to increase the capital at the time of the de-SPAC. This increase can take three forms. To meet a need for liquidity, the increase may first be made in cash, by carrying out a "PIPE" (Private Investment in Public Equity), i.e. an increase of capital reserved for certain investors. The increase may also take place through a contribution in kind, whereby the shareholders of the target company receive shares in the SPAC in return for the contribution of their holdings in the target.

However, the French legal system for capital increases is complex, to the point that it does not seem to meet the requirements of those looking for a secure and easy-to-use system. To illustrate the need to amend the current regime of delegations and the increase of capital, the same approach as for multiple voting rights will be followed. A presentation of existing mechanisms in the main financial centres (A) will be followed by the proposals made by the Commission concerning the French system (B).

A. Delegations and capital increases in the main financial centres

While the US system offers a large amount of freedom regarding delegations and capital increases (i), such flexibility is also found in Europe, especially in Germany (ii), the UK (iii) and the Netherlands (iv).

(i) Delegations and capital increases in the US

In the US, the terms and conditions surrounding capital increases, such as those governing the ability to delegate their implementation, depend very largely on the clauses in a company's constitutive documents. In practice, the capital increase is usually conditional on a vote by a qualified majority, known as a "supermajority", of the general meeting of shareholders. Beyond that, the US system proves extremely flexible. Unless otherwise provided for in the company's constitutive documents, the use of reserved issues and the making of capital increases by contributions in kind are authorised. Delegating such power to the management bodies is also permitted.

However, the market rule known as the "20% Rule" limits this freedom. According to this, where the proposed capital increase in a company would result in the issue of 20% or more of the shares already in issue or of their voting rights, it must meet a number of requirements. In particular, the authorisation of the general meeting of shareholders will be required.

(ii) Delegations and capital increases in Germany

In Germany, the decision to increase the capital is taken by an extraordinary general meeting and requires a two-thirds majority of the voting rights. However, the meeting may delegate its power to

the management board, with the approval of the supervisory board, provided this delegation is subject to a predetermined ceiling and duration. Under the existing law, this delegation may not exceed 5 years or 50% of the existing capital.

In the context of a reserved issue, the German regime allows for the creation of a "*bedingtes Kapital*" ("conditional capital"), which is particularly useful in M&A transactions. This conditional capital is, however, limited to 50% of the existing capital.

German law also permits capital increases to be made through contributions in kind and even allows them to be delegated to the management body. However, the delegation must comply with certain conditions relating to the contributor and the assets contributed. In addition, a contribution auditor must be appointed so that a valuation report can be produced.

(iii) Delegations and capital increases in the UK

English law has the mechanism of so-called authorised capital. By this process, UK limited companies *may*[209] provide in their articles of association for an authorised capital to be stipulated, i.e. to provide for a maximum number of shares that the company is authorised in advance to issue. Thus, while any change to the authorised capital must be effected by a special resolution of the general meeting adopted by 75% of the votes cast, a decision to increase the capital may be taken by a simple majority.

If this option is provided for in the company's articles of association or if it has been voted by the general meeting, the authorised capital also permits the directors to implement an increase of capital. As in German law, however, the delegation must comply with certain conditions: it must specify the maximum number of shares that may be issued and provide for a period that may not exceed five years from the date of the company's incorporation, if this option is provided for in the articles of association, or from the date of a vote on the resolution in other cases. The authorisation may, however, be extended for a further period, which may not exceed five years, and may be revoked at any time by a resolution of the shareholders.

The UK rules on capital increases thus have two advantages at the time of a de-SPAC. The first is the simplicity of using authorised capital, which allows for future capital increases to be voted on by a simple majority in due course. The second advantage is the flexibility of this right, which allows the implementation of capital increases to be delegated to the management bodies for a period exceeding the usual 24-month period to carry out the de-SPAC.

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209. Since the Companies Act 2006, this provision is no longer mandatory.

(iv) Delegations and capital increases in the Netherlands

Dutch law employs the same mechanism of authorised capital. However, it distinguishes between two types of companies: public limited liability companies ("*Naamloze Vennootschap*" or "*NV*") and private limited liability companies ("*Besloten Vennootschap*" or "*BV*"). The rules on capital increases thus vary according to the company in question.

In an NV, the articles of association must specify the authorised capital of the company, i.e. the maximum amount of shares which the company is able to issue. In addition, at least 1/5th of the authorised capital must have been issued. Lastly, any change to the authorised capital requires an amendment to the articles of association by a resolution of the general meeting.

In a BV, since 1 October 2012, the articles of association are no longer required to specify the authorised capital of the company. However, if they do so, the requirement to issue 1/5th of the authorised capital does not apply.

In both companies, a decision to increase the capital is taken by the general meeting, which decides by a simple majority of the votes cast, without any quorum being required.

Similarly, any body designated by the articles of association or bya resolution of the general meeting may increase the capital. However, the delegations are subject to several specific conditions depending on the type of company involved. In the case of NVs, the delegation must specify the maximum number of shares that may be issued and may not exceed a period of 5 years, which may in exceptional cases be extended. The authorisation to implement an increase of capital may not be revoked unless the possibility of revocation has been explicitly provided for. In the case of BVs, by contrast, the delegation is not subject to any time limit. On the other hand, the authorisation to proceed with it is always revocable.

The Dutch legal system is more complex than the English regulations, but nonetheless offers real advantages in the context of a de-SPAC, particularly owing to the authorised capital mechanism and the length of the delegations granted to management bodies.

B. The French regime of delegations and capital increases

In France, a decision to increase the capital is taken by an extraordinary general meeting[210]. It requires a two-thirds majority of votes of the shareholders present or represented[211]. The meeting may delegate this

210. Article L. 225-129 of the Commercial Code.
211. Article L. 225-96 of the Commercial Code.

power to the board of directors, both to set the terms and conditions of the issue[212] and to decide on the principle of the capital increase[213]. In the latter case, the meeting must nonetheless set the ceiling, as well as the length of the delegation, which may not exceed 26 months.

Although there are various ways of increasing capital, three are of particular interest for SPACs. They consist of the issue of securities by way of a public offering, a reserved issue and a capital increase through a contribution in kind. The terms and conditions of these transactions will therefore be examined in turn.

Issuing securities by way of a public offering is particularly helpful at the time of a de-SPAC, especially to enable the vehicle to raise additional funds through a PIPE. However, this method of capital increase has certain rigidities, in particular because of a twofold limit on price and volume. For any company whose securities are admitted to trading on a regulated market, the issue price of the securities must be at least equal to the weighted average of the prices of the last three trading sessions, which may be reduced by a maximum discount of 10%[214]. Similarly, where the increase is carried out through an offer to qualified investors, it must be limited to 20% of the share capital annually[215].

To avoid these price and volume constraints, another option is available to SPACs wishing to raise additional funds: to implement a reserved capital issue[216]. This option, however, is not without its drawbacks. It requires that the persons or categories of persons be strictly determined by the general meeting prior to the capital increase, and prohibits the persons so designated from taking part in the vote on the transaction[217]. In addition, the French system requires that the issue be carried out within 18 months of the general meeting that decided on it or voted to delegate it to the body responsible for carrying it out[218].

Lastly, a capital increase by way of a contribution in kind can be an advantageous possibility at the time of the de-SPAC. Open to companies whose securities are admitted to trading on a regulated market, a capital increase to remunerate contributions in kind made to the company may be delegated to the company's board of directors[219]. However, it will be subject to certain limits, including an important one in the context of a SPAC: the increase may not exceed 10% of the share capital of the issuing company.

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212. Article L. 225-129-1 of the Commercial Code.

213. Article L. 225-129-2 of the Commercial Code.

214. Article L. 22-10-52 and R. 22-10-32 of the Commercial Code.

215. Article L. 225-136, 2° of the Commercial Code.

216. For an analysis comparing the advantages and disadvantages of the two processes: P.-A. Conchon, *"Les augmentations de capital 'fermées' dans les sociétés cotées (C. com., art. L. 225-136 et L. 225-138)"* ("Closed-end capital increases in listed companies" (Articles L. 225-136 and L. 225-138 of the Commercial Code)"), *Bull. Joly Bourse* June 2013, p. 310.

217. Article L. 225-138 I. of the Commercial Code.

218. Article L. 225-138 III. of the Commercial Code.

219. Article L. 22-10-53 of the Commercial Code.

The French rules on capital increases are particularly strict and thus present several difficulties at the time of a de-SPAC.

First, the fact that the capital increase is conditional on an enhanced majority vote puts French law at a disadvantage compared to some competing financial centres, which require a simple majority.

Secondly, the length of the delegations granted to the management bodies is particularly short. In the case of a capital increase by a reserved issue, the 18-month maximum duration of the delegation is incompatible with the 24-month period that SPACs usually have to complete their acquisition and carry out a possible PIPE.

Lastly, the volume limits in a public offering or an increase by way of a contribution in kind make it difficult to carry out a de-SPAC, which often takes the form of an increase for the benefit of the target's shareholders who contribute *all* the target's shares in kind[220].

Introducing the concept of authorised capital into French law would solve these difficulties. However, such a proposal seems too ambitious as regards the mechanisms currently in place under the French regulations. For the process does not sit easily with the rules governing capital increases. As matters stand, integrating the concept of authorised capital into French law would be difficult unless a major reform were undertaken. The Commission has therefore preferred to formulate proposals in line with the spirit of the rules governing capital increases. Two amendments to the existing law are thus proposed.

The first concerns the duration of the delegation of the reserved capital increase. This period is currently set at 18 months by Article L. 225-138 of the Commercial Code. The report to the French President accompanying the Ordinance of 24 June 2004 explains that this period is, "for practical reasons, reduced to eighteen months instead of two years. This period makes it possible to avoid any gap in the delegation by the meeting, which may not meet on exactly the same date in the following year"[221]. This period is therefore justified on practical grounds, relating to the desire to avoid a gap in the delegation. However, the current practice of SPACs shows the need to increase this period in order to bring it into line with the period of 26 months under the general law. The Commission therefore proposes to amend this period in order to align it with that provided for in Article L. 225-129-2 of the Commercial Code. It should be noted that this amendment would respect the current spirit of the system, since it would also make it possible to avoid a gap in the delegation.

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220. See above pp 52-53.

221. Report to the French President on Ordinance No. 2004-604 of 24 June 2004 reforming the regime for securities issued by commercial companies and extending to the French overseas territories provisions that have amended commercial legislation, JORF No. 175, 30 July 2004.

In addition to this first amendment, a second change to the legislation appears desirable. It involves introducing a new presumption of delegation. The purpose of this ad hoc delegation, specific to listed companies, would be to allow the board of directors or the management board to designate the parties to whom the capital increase will be reserved. While this amendment is not of direct interest to the largest listed companies, it would meet the requirements of SPACs and fast-growing companies.

Introducing a new form of delegation nonetheless requires arrangements for its implementation. In this respect, several arrangements have been suggested by the Commission. They relate to the overall volume of the transaction, the price set, the management of conflicts of interest and the information provided.

An initial limit on the percentage of share capital that may be increased would seem desirable. This could be 30% annually.

A second could limit potential conflicts of interest. This would involve providing that the person designated as the beneficiary of the increase, if he or she was a director or member of the management board, would be unable to take part in either the discussion or the vote of the board or management board on the transaction.

A third limit could relate to the price. Based on the existing provisions for capital increases by way of public offering, this limit would ensure that the price was at least equal to the weighted average of the prices of the last three stock market sessions preceding the decision of the board of directors of the management board to increase the capital, possibly reduced by a maximum discount of 10%. In certain circumstances, an increase in this discount could be authorised, provided that an independent expert was appointed.

Lastly, in order to ensure that shareholders are properly informed, it would be desirable that a supplementary report to the next ordinary general meeting, certified by the auditor (if any), should describe the definitive terms of the transaction.

Details of the legislative changes required by this last proposal are appended to the report.

§3. Adjustments to the tax system

Leaving aside any tax considerations not specific to SPACs, certain tax regimes might be adjusted in order better to accommodate the characteristics of these vehicles.

For example, the fact that until the de-SPAC transaction the SPAC does not carry out any activity and initially holds only cash might be incompatible with certain tax regimes which require the actual exercise by the company concerned of an operational activity, such as the definition of eligible reinvestments for the maintenance of the tax deferral mechanism provided for in Article 150-0 B ter of the CGI, the definition of eligible investments to qualify as a "tax fund" within the meaning of Article 163 quinquies B of the CGI, or the definition of companies whose securities are eligible for the Dutreil pact regime under Article 787 B of the CGI.

Thus, where one of the founders or investors who is an individual wishes to invest in the SPAC through a holding company following the sale of securities previously contributed to the SPAC less than three years prior to such sale under the tax deferral regime of Article 150-0 B ter of the CGI, the reinvestment in the SPAC may not constitute an eligible reinvestment. It is true that, on the date of the reinvestment[222], the SPAC is not carrying on "a commercial (...), industrial, artisanal, liberal or agricultural or financial activity" and, although the text also refers to reinvestments in companies "whose sole corporate object is to hold shares in companies carrying out [such activities]", the application of this provision to a SPAC is uncertain since, notwithstanding the wording of its corporate object, it will only hold cash until the de-SPAC transaction takes place.

This lack of activity until the de-SPAC takes place is also likely to cause difficulties where the investment in the SPAC is made through a structure benefiting from the status of a "tax fund" within the meaning of Article 163 quinquies B of the CGI, which must in particular ensure that at least 50% of its assets (the "Tax Quota") are invested in companies carrying on a commercial, industrial or artisanal activity or, under certain conditions and limits, in holding companies[223]. Another difficulty may lie in the fact that securities admitted to trading on a regulated or organised market with a market capitalisation of more than €150 million are not taken into account in determining the Tax Quota.

As regards the Dutreil pact regime, the same problems could arise relating to the lack of operational activity by the SPAC until the acquisition transaction. However, unlike the two previous schemes which are assessed at the date of the investment, these problems

222. Which will take place before the de-SPAC transaction.
223. But, in this case, only to the extent of investments in companies carrying out such eligible activity.

could be reduced in the case of the Dutreil regime insofar as the increase in the sponsors' capital, allowing them to access this regime, ought to be contemporaneous with the de-SPAC, and therefore with the establishment of the exercise of an eligible activity[224].

To overcome these difficulties, a number of solutions could be explored in order to extend and secure the application of these regimes to SPACs. For example, one might suggest extending the tax definition of eligible activity to the specific situation of SPACs or to assimilate SPACs to companies carrying out an eligible activity as currently defined[225].

Such an amendment, which would probably require the introduction of a tax definition of SPAC, would not be unprecedented in tax law. Moreover, it would not be contrary to the spirit of the tax rules based on the notion of operational activity insofar as if, at the time of the investment, the SPAC does not yet have any activity or securities on its balance sheet, it has been created to carry out one of these two objects under the supervision of the competent market authority. The SPAC thus has an eligible activity in the making from its inception.

If the discussion is extended to include tax considerations not specific to SPACs, it also appears that certain regimes are likely to hamper the emergence of France as a leading destination for SPACs. They would therefore benefit from being improved in order to enhance further the attractiveness of Paris as a financial centre. This is the case, for example, with the French tax regimes such as the long-term capital gains regime, the parent-subsidiary regime and, more generally, the dividend withholding tax regime, which are not as attractive as some foreign regimes, for example such as those in the Netherlands.

224. Either following the acquisition of the target, or, in the absence of an acquisition, through the potential classification of the SPAC as a managing or intermediate holding company.

225. This would be the case not only from the time of their incorporation but also if, ultimately, no de-SPAC transaction takes place.

CHAPTER 3 - CONCLUSION

While the French legal system already allows for SPACs to be accommodated and provides a favourable environment for their development, certain changes would further improve the competitiveness of Paris as a financial centre, both with regard to the SPAC issue and beyond.

In addition to a necessary communications drive, a first series of improvements would consist in tailoring certain practices to the specific nature of SPACs. For example, drawing up a standardised prospectus and adjusting the governance rules set out in the AFEP-MEDEF code would help to make the market more attractive.

The other more substantial improvements would be aimed at amending the legislative provisions to make French company law more flexible. The introduction of multiple voting rights in listed companies and the revision of the rules on capital increases and delegations would bring French law into line with accepted practices in the main financial centres. Beyond the sole issue of SPACs, these changes would also provide a response to the requirements of companies operating in the health and new technology sectors.

APPENDICES

PROPOSED REWORDING OF ARTICLE L. 225-138 OF THE COMMERCIAL CODE

I. The general meeting, which shall decide on a capital increase, may reserve it for one or more named persons or categories of persons meeting specific characteristics. For this purpose, it may cancel the preferential subscription right. The persons nominated as beneficiaries of this provision may not take part in the vote. The quorum and the majority required shall be calculated after deduction of the shares that they own. The procedure provided for in Articles L. 225-147 and L. 22-10-53 shall not apply.

Where a capital increase is reserved[226] for one or more categories of persons meeting the characteristics that it determines, **the extraordinary general meeting** may delegate to the board of directors or the management board the task of establishing the list of beneficiaries within such category or categories and the number of shares to be allocated to each of them, within the maximum limits provided for in the first paragraph of Article L.225-129-2. When using this delegation, the board of directors or the management board shall draw up a supplementary report to the next ordinary general meeting, certified by the auditor (if any), describing the definitive terms of the transaction.

II. The issue price or the conditions for fixing such price shall be determined by the extraordinary general meeting on the basis of a report by the board of directors or the management board and on the basis of a special report by the company's auditor or, if no auditor has been appointed, by an auditor appointed for this purpose in accordance with the procedures laid down in Articles L. 225-228 and L. 22-10-66.

III. The issue must be carried out within eighteen months of the general meeting which has approved it or which has voted on the delegation provided for in Article L. 225-129.

226. This is a purely editorial amendment that echoes the expression used in the proposed drafting for Article L. 22-10-52-1 of the Commercial Code.

PROPOSED DRAFTING FOR A NEW ARTICLE L. 22-10-52-1 OF THE COMMERCIAL CODE

In companies whose securities are admitted to trading on a regulated market or on a multilateral trading facility subject to the provisions of II of Article L. 433-3 of the Monetary and Financial Code, where a capital increase is reserved for one or more persons designated by name, the extraordinary general meeting may, within the limit of 30% of the share capital, delegate to the board of directors or to the management board its power to approve the increase and to designate such person or persons. If the person designated by name is a director or member of the management board, he or she may not take part in the discussion or the vote of the board or management board on the transaction. The procedure provided for in Articles L. 225-147 and L. 22-10-53 shall not apply.

The issue price shall be set by the board of directors or the management board in accordance with the procedures laid down by a decree of the *Conseil d'Etat* made after consultation with the *Autorité des marchés financiers* [227].

When this delegation is used, the board of directors or the management board shall draw up a supplementary report to the next ordinary general meeting, certified by the auditors, describing the definitive terms of the transaction.

227. See proposed Article R. 22-10-32-1 of the Commercial Code.

PROPOSED DRAFTING FOR A NEW ARTICLE R. 22-10-32-1 OF THE COMMERCIAL CODE

Pursuant to the second paragraph of Article L. 22-10-52-1, the price shall be at least equal to the weighted average of the prices of the last three stock market sessions preceding the decision of the board of directors or the management board to increase the capital for the benefit of one or more persons which it shall designate by name, possibly reduced by a maximum discount of 10%.

Any issuer carrying out a capital increase at a discount to the market price that exceeds the maximum discount authorised by paragraph 1 of this article shall appoint an independent expert who shall apply the provisions relating to independent experts in the General Regulations of the AMF.

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It is acknowledged that the views expressed in this report do not reflect those of the organisations to which its members and contributors belong.

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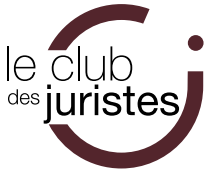
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