



How SPAC Sponsors Can Protect Themselves and their Investments in a Cooling Market

Special Purpose Acquisition Companies (“SPACs”) have been on a hot streak, providing sponsors with hefty returns. But risks are growing—as the market appears to cool, litigation and enforcement activity may arise for sponsors. Our International Private Client team offers some advice on how early preparation for worst-case scenarios can save millions in the long run.

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With signs that the SPAC “hot streak” begins to cool, contentious litigation and enforcement activity could spring up. Even before issues arise, SPAC sponsors and their advisors should prepare ahead of time to be best positioned should government regulators or civil litigants raise any red flags over their ventures.

Seize the narrative. If the sponsor does not take control of the narrative from the outset of a contentious litigation or enforcement action, its adversary will likely do so instead. Even in the absence of an immediate threat – be it a government enforcement action or civil litigation – it is still critical to develop a factual counter-narrative regarding the appropriateness of the transaction and all actions taken. This evidence can be deployed affirmatively, as appropriate, in court and before government agencies take action, to strengthen the sponsor’s position.

Take stock of – and test – your (asset) weak spots. Claimants in criminal and civil litigation following SPAC transactions may consider attacking what they see as the “deep pockets” of SPAC sponsors and their non-SPAC-related personal assets. Not all asset structures and jurisdictions are equally protected, and SPAC sponsors should consider analyzing their asset structures, via a sophisticated stress test, to mitigate the risks to any given asset structure ahead of potential contentious litigation or enforcement action.

Mind the target’s debt positions. Similar to the equity markets in the late 1990s, SPACs are increasingly targeting companies with large, high-yield debt positions. These positions will be targeted aggressively in the event of further distress or a default, which may happen if the current market frenzy gives way to a downturn. SPAC sponsors should plan proactively, including by assessing potential litigation risk by creditors seeking to enforce their positions.

Public reputation matters. Large SPAC transactions garner public attention, particularly for high-profile SPAC sponsors. While this publicity can offer ample rewards in the best of times, it can also substantially increase risk and pressure on sponsors in a distressed situation.

The consequences of negative press can be financial and reputational. SPAC sponsors should develop, with competent advisors, a media and PR plan, which anticipates potential legal actions, for any large-scale SPAC transaction that is likely to garner attention from the public (and eventually, from regulatory agencies).

While a few warnings from the SEC don’t necessarily guarantee a “cooling” SPAC market, sponsors and their advisors need to prepare for stormy weather. Preparing for a litany of potential worst-case scenarios can save millions of dollars in the long run.

About Kobre & Kim’s International Private Client Team

Kobre & Kim is a global Am Law 200 law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

Our International Private Client team provides offensive and defensive cross-border litigation and crisis management strategies to ultra-high-net-worth individuals (UHNWIs) with global business interests, to preserve their assets, liberty and reputation. Our multidimensional approach to UHNWI-focused disputes and investigations, which includes the deployment of both in-court and out-of-court strategies, is the premier solution for resolving business disputes and regulatory investigations, tracing and recovering misappropriated funds, defending against asset attacks, as well as acquiring and strategically deploying information to provide UHNWIs with a commercial advantage in their disputes and investigations.

Our lawyers -- including an integrated group of U.S. litigators, offshore lawyers qualified in key jurisdictions, Hong Kong solicitors, and English barristers and solicitors -- litigate in courts around the world.