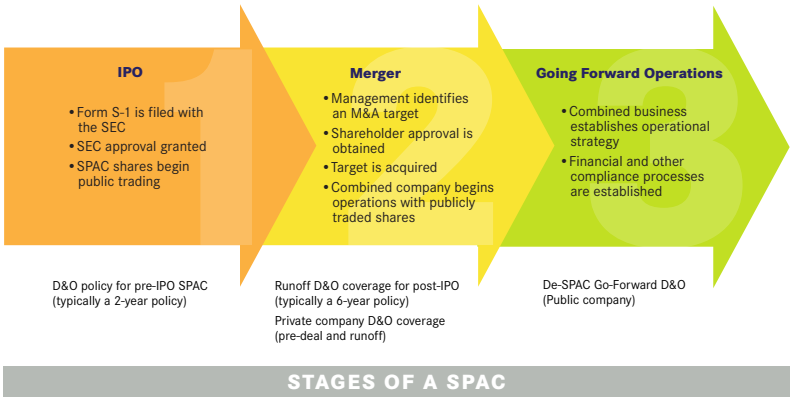
SPAC COVERAGE CONSIDERATIONS

While SPAC's, often referred to as a "blank check company," have become very popular, the speed and intense pressure to have the SPAC go public in a short window of time, presents risks both before and after the merger/acquisition of the target operating company. Recently, SEC warnings on potentially improper accounting for warrants and increased scrutiny to earnings projections have caused worry, but investor appetite for SPAC's continues. While 2020 showed a tremendous jump in the number of SPAC IPO transactions, 2021 is shaping up to become a record year.

INSURING SPAC'S

As they go through their IPO and the subsequent M&A process, SPACs face many regulatory, legal, and business hurdles, including obtaining the appropriate amount and type of insurance for each stage of their lifecycle.



› SPAC IPO

Operating companies that go through an IPO process are sued frequently and for a variety of reasons. Lawsuits are brought by stockholders against a company's management and directors and usually allege material misstatements and omissions in the IPO registration statement.

› SPAC Business Combination

After the IPO, the SPAC has the funds to purchase or merge with another company. The SPAC's management team must find an attractive target company and complete the merger or acquisition (the "de-SPAC" transaction), typically within 18 to 24 months after the IPO. Risks include failure to de-SPAC, self-dealing, breach of fiduciary duties, target's shareholders, SEC investigations, creditors and short seller pressures.

› De-SPAC

As soon as the parties close on the business combination, the D&O coverage of the SPAC and that of the target entity are no longer in effect. The new entity's directors and officers must be covered by a new D&O insurance policy. There are up to three different D&O policies that may need to be placed before the transaction closes: a tail policy for the SPAC company's D&O policy, a tail policy for the target company's D&O policy, and D&O insurance that needs to be put in place for the new publicly traded company.

LITIGATION RISKS

While SPAC IPO's haven't been the target of extensive litigation to date, there are considerable indications that the Securities and Exchange Commission may be sharpening its focus on SPAC's. In addition, there are certainly vulnerabilities during the merger process as well as for the de-SPAC organization.

1. Shareholder plaintiffs alleging damages for material misrepresentations or omissions of facts in the S-1 registration statement.
2. Merger and acquisition suits challenging completeness of the proxy statement filed during the de-SPAC process.
3. Merger and acquisition suits when the target company performs poorly.
4. Securities class action suits against the newly public operating company typically alleging poor due diligence or making false and misleading statements.
5. Bankruptcy suits.

THE BOTTOM LINE

The market for D&O coverage for SPAC's and IPO companies changes rapidly, with pricing extremely volatile, requiring a sophisticated approach to ensuring the program is negotiated and customized. A trusted insurance expert highly experienced in SPAC's and how to insure them needs to be brought into the process as early as possible to ensure coverage for critical risks, future potential claims management, and the latest developments in terms and conditions.

SPAC COVERAGE CONSIDERATIONS

UNDERWRITING CONSIDERATIONS

As each SPAC is unique, it's important that potential insurers understand as much as possible about them to ensure optimal pricing and coverage. Some of the most important areas for review include the experience of everyone involved, the metrics for target acquisitions, and the investment strategy moving forward. The areas underwriters focus on the most are:

- SPAC sponsor experience
- The management team and their experience
- Private investment in public equity (PIPE) funding to be considered
- Investment strategy
- Target industry sector
- Size of offering
- Outside professional firms (Investment Bank, Law Firms, Auditors, etc.)

In every aspect of underwriting, transparency is of utmost importance, from the roadshow representations made to investors to compensation structures.