Building the right board for a SPAC transaction: Three crucial considerations

The boards of companies that are going public through SPACs typically need to reshape themselves quickly. Considering new requirements in advance will help them position themselves for successful transactions.

The SPAC boom is unabated in 2021 so far. Building on 2020, when there were 248 SPAC IPOs in the United States, there were a further 91 in January 2021 alone. As companies are considering merging with SPACs to go public, their boards are facing new challenges, and they will need to move at unprecedented speed to meet them.

Private company boards typically consist of the founders and investor representatives. They do not face the scrutiny or regulatory requirements public company boards do. As a company prepares to go public, it often needs to revamp its board to ensure it meets exchange requirements and expectations from public markets. The difference for companies merging with SPACs is that they will need to shore up their governance on an expedited timeline because the operating company must be able to meet public company reporting obligations on the date of the closing and hit independence milestones across the first year as a public company.

Boards of operating companies that may merge with a SPAC will benefit from considering both their composition and their processes now, in three areas: prioritizing independent committee leaders; modeling public company best practices; and being intentional about diversity and inclusion. In all of these areas, boards should begin their rethink by looking at both regulatory requirements and the actions of best-in-class boards of their public peers.

1. Crucial among the new expectations is that chairs of major committees (audit, compensation, and nominating and governance) will be independent. Prioritizing a strong independent audit chair is typically a good first step. This sends an important signal to the markets about the importance of the role and having that person in place can help in recruiting for other chair roles. New directors who have public company audit experience and/or IPO experience (either via a board or executive experience) will likely have a shorter learning curve. Boards will almost certainly need to reach beyond their existing networks to find qualified new directors and so they will benefit from expanding relationships as soon as possible.

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2. Beyond prioritizing independent committee leadership, boards will also benefit from instituting a number of public company best practices in terms of process including term limits or retirement age, independent director compensation that aligns with public company peers, and director and officer insurance. Having best-in-class processes may also help boards attract strong public company directors.

Boards considering a SPAC merger may also want to reconsider their size over time; given that early investors often sell off—and then no longer hold board seats—it may be that the board will need to temporarily increase in size to meet expectations for public companies but will naturally shrink to what the chair and nominating committee consider the ideal size for the long term.[1] Conversely, boards may decide to consummate the merger with a relatively small board, focusing on the task at hand and then shortly reconvening to map out a robust board succession strategy.[2]

3. Finally, expectations for corporate diversity and inclusion have never been higher. This includes diversity in terms of gender, race and ethnicity, and LGBTQ+ status as well as diversity in terms of backgrounds, skill sets, and strategic needs. Other research by Heidrick & Struggles suggests that as any company seeks to add diversity to its board, it should prioritize adding diversity that aligns with the company's overall corporate strategy, including considerations of the employee base and end customers.[3] Boards will also want to consider recent exchange requirements for diversity and institutional investors' growing focus on its importance.[4]

However, without inclusion, diversity is just numbers. For boards, this means that chairs, in particular, need to take responsibility for ensuring the board will have an inclusive culture that will allow its new members to coalesce and newer directors to acclimate and contribute quickly.[5]

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As the SPAC boom rolls on, the boards of companies that are planning to go public through merging with SPACs will best position themselves for fast action by starting to think about the right composition and processes for when they go public now.

1 For more on other benefits of reconsidering board fundamentals, see Alice Breeden, Theodore L. Dysart, and David Hui, "Building the foundation for better board refreshment," Heidrick & Struggles, January 7, 2021, heidrick.com.

2 For more on board succession planning, see Bonnie W. Gwin and Jeffrey S. Sanders, "Board succession 2020: Three steps toward long-term effectiveness," Heidrick & Struggles, August 13, 2020, heidrick.com.

3 For more, see Krishnan Rajagopalan and Lyndon A. Taylor, *Meeting the Inclusion Imperative: How Leaders Can Link Diversity, Inclusion, and Accelerated Performance*, Heidrick & Struggles, April 30, 2020, heidrick.com.

4 For example, in December 2020, NASDAQ announced that it is seeking permission to adopt new listing rules requiring all NASDAQ companies to have, or explain why they do not have, at least two diverse directors. See Nasdaq, "Nasdaq to Advance Diversity through New Proposed Listing Requirements," press release, December 1, 2020, nasdaq.com.

5 For more on board composition and culture, see Alice Breeden, David Hui, and Anne Lim O'Brien, *Future-Proofing Your Board*, Heidrick & Struggles, May 29, 2020, heidrick.com.

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