

Swedish SPACs

1 Introduction

- 1.1 Listings of Special Purpose Acquisition Companies (“SPACs”) have been popular in the US for a long time, including in the last decade. Despite high activity in the Swedish IPO market, with record breaking numbers of transaction and great demand for new IPOs (also for companies that are in early phase and not yet profitable), SPACs have yet to be introduced in Sweden. We have, however, noted an increased interest from clients around the possibility to launch a Swedish SPAC and in this memorandum, we outline the basic concept of a SPAC and describe key issues/hurdles to be considered in relation to Swedish SPAC listing projects.
- 1.2 A SPAC is a shell company formed for the purpose of raising funds in an initial public offering (“IPO”), and subsequently, acquiring another operating company or business (the “Target”). Usually, the offering consists of redeemable shares, as well as warrants. If the investor decides to redeem its shares in the SPAC, the investor gets back its initial investment together with an interest component. If the investor wishes to remain in the SPAC upon the Target being identified, the investor lets the redemption right lapse. The warrants give the investor additional upside if the SPAC is successful.
- 1.3 The Target is normally not identified at the time of the IPO (which is why SPACs sometimes are referred to as “blank check” companies¹). However, a key driver of the SPAC is its management team, which often has substantial expertise within a specific industry or sector where the Target is to be identified and later acquired.² The management team is also normally invested in the SPAC, which is viewed as positive by investors as the management team has ‘skin in the game’. Participation by management is important to attract highly qualified managers to the SPAC.
- 1.4 Should no deal be made within a certain time following the IPO, typically 24 months, the equity of the SPAC is returned to the investors, and the SPAC delisted.³ Before acquiring the Target, the SPAC seeks approval from the investors at a general meeting of the shareholders. An investor who votes against the proposed acquisition may choose to have its shares redeemed.⁴
- 1.5 Some key reasons for SPAC listings becoming popular in the US (as alternative to traditional IPOs) is that the traditional IPOs are believed to be slower and more costly.⁵

¹ Jenkinson, T and Souse, M, *Why SPAC investor should listen to the market*, draft February 2009, page 2.

² Lewellen, S M., *SPACs as an Asset Class*, draft 24 March 2009, page 3.

³ Lakicevic, M and Vulanovic, M, *A Story on SPACs*, November 2011, page 3.

⁴ <https://corp.gov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction/>.

⁵ <https://www.excelsiorgp.com/resources/what-is-a-spac-and-why-are-they-suddenly-so-popular/>.

Further, SPAC listing offers efficient access to capital and the ability to build value for its founders (e.g., the management team), while also providing a fast and flexible way to make private companies public.

2 Prospectus requirements and the view of the SFSA

- 2.1 In order to make an offering of securities to the public in Sweden, the issuer is required to prepare a prospectus, which has to be approved by the Swedish Financial Supervisory Authority (“**SFSA**”) (there are prospectus exemptions, but these are not covered in this memorandum, since none of them would make a large SPAC offering to the public in Sweden exempt from the prospectus requirement) and the relevant trading venue (which is covered separately below).
- 2.2 The content of a prospectus needs to meet the requirements of the Regulation (EU) 2017/1129 and the Commission Delegated Regulation (EU) 2019/980, supplementing the Prospectus Regulation. Since the SPAC lacks operating history at the time of listing, we are of the view that several of the requirements would be difficult to meet, especially regarding financial history and business description. We have been in contact with the SFSA and asked it about its view. The SFSA informed us that it has noted and follows the current public interest for SPACs. However, the SFSA also informed that it has not published any guidance regarding the application of the prospectus requirements in relation to a SPAC. It may also be noted that no prospectus regarding SPACs has been approved by the SFSA according to the SFSA.
- 2.3 To Dagens Industri, Leonard Weber Landgren, deputy director of market monitoring at the SFSA, stated that he cannot anticipate whether this type of shell company will meet the information requirements of a prospectus, as the SFSA has not yet had any case of a SPAC in Sweden to review. Further, Mr. Weber Landgren emphasized that the information requirements differ between prospectus types and depend, among other things, on the industry in which the issuer operates, the type of securities to be admitted to trading and how the transaction is intended to be carried out.⁶
- 2.4 As described above, the SFSA’s position on SPACs is not very detailed at this stage. In absence of precedents and clear guidance from the SFSA, we are of the view that a listing project relating to a Swedish SPAC, needs to factor in the potential hurdles presented by complying with the applicable prospectus requirements, as interpreted by the SFSA.

3 Nasdaq Stockholm’s requirements

- 3.1 There are several operators of listing venues in Sweden, but when it comes to equity listings, Nasdaq is by far the leading operator, both in terms of number and volume of IPOs. Moreover, it is representatives of Nasdaq who has been present recently in media coverage of the SPAC trend. Based on this, we focus on Nasdaq’s rules in this memorandum, but for other listing venues, other issues and considerations may be of relevance.
- 3.2 Neither the rulebook of the regulated market Nasdaq Stockholm, ‘Nordic Main Market Rulebook for issuers of Shares’, nor the rulebook of the multilateral trading facility

⁶ <https://www.di.se/nyheter/fi-utan-svar-om-spac-trenden-det-ar-svart-att-foregripa/>.

Nasdaq First North Growth Market, 'Nasdaq First North Growth Market Rulebook', contains any provision which at the present specifically enables an IPO of a SPAC.

- 3.3 It may be noted that the previous main market rulebook contained provision regarding 'Acquisition Companies', which would have enabled an IPO of a SPAC, but these were removed when the new rulebook entered into force. One Nasdaq officer informed us that the reason for this was that the rules were not used. We have, however, recently been in contact with Nasdaq, who confirms that it contemplates to issue new rules that enables SPACs by the end of the year. This is also in line with what has been communicated in media by Nasdaq representatives.
- 3.4 To Dagens Industri, Adam Kostyál, Senior Vice President, Head of European Listings at Nasdaq, recently announced that Nasdaq's intention is to create a viable way for SPAC to its Nordic markets prior to the turn of the year. He explained that, as a SPAC lacks operations and an operational history, they cannot be assessed on the same terms as companies that undergo a traditional IPO. Thus, the factors that can be assessed, for example the reputation of the founders and the relevant experience of the management and major investors, are given greater importance.⁷ To Svenska Dagbladet, Mr. Kostyál stated that Nasdaq is working hard to be able to launch a SPAC offer in the Nordic region before the end of the year.⁸ As Nasdaq Stockholm has had specific rules on SPACs before, it is likely that the SPAC offer at least will apply to Nasdaq Stockholm.
- 3.5 Further, Mr. Kostyál explained to Dagens Industri that Nasdaq's rules shall be in line with how other trading venues in the world assess these companies. Nasdaq intends to review SPACs in two steps, where one is a review prior to the admission to trading and another when the company has made a business acquisition. To make it clear for particularly smaller investors in the market, Nasdaq is also considering a special list or segment for SPACs. Mr. Kostyál also explained that the issuer must at least have a vague, usually industry-focused, target of the future business combination, for example 'a technology company in the Nordics', in order to guide the investors in the IPO. When a company has been acquired, the target company will have to fulfil Nasdaq's requirements in a regular IPO process.⁹ To Svenska Dagbladet, Jimmy Kvarnström, Head of European surveillance at Nasdaq, emphasized that the requirements for these companies will be the same as for an ordinary listing.¹⁰

4 Conclusions

There are no Swedish SPACs at the moment, but the structure as such has attracted recent attention in Sweden, not at least at Nasdaq, Sweden's leading venue for equity listings. We are, however, of the view that it would not be possible to list a SPAC at Nasdaq at the moment, unless Nasdaq grant exemptions from its existing rules. However, we understand that Nasdaq is in the process of drawing up rules allowing this, and Nasdaq has guided that these will be in place prior to the end of the year. In light of the end of the year approaching, we would not be surprised if the new rules are slightly delayed, and that Q1 2021 would be a more likely time frame. Upon new rules by Nasdaq being issued, we hope that the SFS will issue a related guidance on

⁷ <https://www.di.se/nyheter/nya-heta-noteringsmodellen-pa-vag-till-stockholmsborsen/>.

⁸ <https://www.svd.se/snart-i-sverige--kandisar-frontar-het-finanstrend>.

⁹ <https://www.di.se/nyheter/nya-heta-noteringsmodellen-pa-vag-till-stockholmsborsen/>.

¹⁰ <https://www.svd.se/snart-i-sverige--kandisar-frontar-het-finanstrend>.

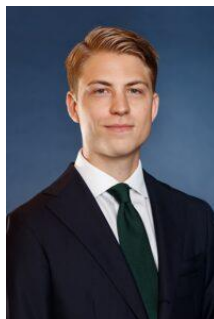
the application of the prospectus requirements for a SPAC structure, which will then remove uncertainty, and clear the path for Swedish SPAC listings. We look forward to 2021 and hope that it will be the year a Swedish SPAC is launched. Do not hesitate to contact us if you would like to know more about this topic.



Johan Wigh



Sebastian Hellesnes



Jacob Elovsson Hultin

The authors assume no liability for the content of this article and accepts no responsibility to update the information contained herein. Any action you take upon the information in this article is strictly at your own risk.

December 2020