SPAC in Europe – Recent Developments in European Capital Markets

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Russia to Liberalize Placement of Company Shares Abroad

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London IPOs – Good Corporate Governance Is Essential

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I n volatile IPO markets, a SPAC can take companies public with a comfortable level of certainty for the transaction. In light of volatile capital markets, so-called special purpose acquisition companies (SPACs) are becoming increasingly popular with investors in European markets. SPACs, which originated in the United States, are newly formed shell companies that raise money in an initial public offering and follow the sole purpose of completing the merger or acquisition of a privately held company (the so-called “business combin- nation”). Since the SPAC is already public, the privately held target company will automatically become publicly listed upon completion of the business combination. The management of a SPAC is mostly com- posed of prominent sponsors such as Steve Wozniak, the co-founder of Apple; Dan Quayle, former vice president of the United States; or, in the case of a recent Euro- pean SPAC IPO, the German and Italian ex- ecutives Florian Latenstein, Roland Berger and Vito Gambarelli. At the same time, the downside for investors is limited. If spon- sors fail to present a suitable target company within a certain time period, investors are refunded. In the case of a target com- pany being identified, the SPAC will be re- quired to seek shareholder approval. Recent examples of successful SPAC IPOs are the listing of Italy’s Investment S.A. on the Milan Stock Exchange in January this year with a placement size of more than 150 mil- lion euros, and European CleanAir 1 SE (“ECT 1”) on the Frankfurt Stock Exchange for 115 million euros in October 2010. While ECT1, the second SPAC IPO on the Ger- man market, focused on investment in a clean-tech company, Italy was the first of its kind in the Italian market and focused primarily on Italian targets. In addition, the first European SPACs have completed their business combinations making the SPAC industry more mature in Europe. Although the worst effects of the finan- cial crisis seem to be behind us, fast-growing and small and mid-sized companies from emerging markets that are aiming to raise capital through a listing in the European Union or the United States have significant volatil- ity in the target markets. To- gether with legal hurdles, corporate re- structuring and increased transparency, this brings risks and uncertainties that can be avoided by selling one’s business to a SPAC. Selling a company to a SPAC is nei- ther difficult nor risky, but also results in a public listing. In fact, SPACs are highly motivated buyers, as the sponsors of a SPAC typically have to complete a trans- action within 18 to 24 months. The SPAC is furthermore well-prepared to finance the merger or acquisition of a target company with the proceeds of the IPO. In contrast with targets domiciled in jurisdictions that impose regulatory restrictions on issuers surrounding going private deals, the SPAC model is also used to avoid or ease these legal restrictions. Investors in SPACs get the opportunity to participate in a selected investment at an early stage but, compared with private eq- uity investments, they may benefit from the liquidity and transparency provided by a publicly listed company. In difficult IPO mar- kets, the management of a SPAC can take advantage of the flexibility in terms of the timeline in which the SPAC may structure its investment program which provides investors with substantial upside potential. Investors may also appro- ximate the result and make it more prominent market experts in making an investment decision. The legal challenges of a SPAC IPO lie in the structuring process, in which tax and regulatory impacts for the sponsors, the SPAC, the potential target and the in- vestors need to be analyzed, and the pros and cons of the interests of these various groups need to be weighed in a structuring approach on the basis of this analysis. All in all, the SPAC model constitutes an attrac- tive alternative in a situation of a lack of demand and may constitute a new gateway for Russian companies to access the European capital markets.

Russia to Liberalize Placement of Company Shares Abroad

O n March 11, 2011, head of the Fed- eral Service for Financial Markets, Vladimir Milovidov announced to Kommersant that the FSFM plans to liber- alize Russian companies’ ability to place shares outside of Russia. In nutshell, the proposal will permit Russian companies to place their shares abroad in the form of de- positary receipts without any percentage limitations. At present, the general limita- tion on placing shares, including depositary receipts, outside Russia is 25 per- cent. Because of the limited capital marketization of the Russian economy, even after the successful merger of the MICEX and RTS exchanges, expanding Russian companies’ access to foreign capital is critical for con- tinued growth against the background of the continuing financial crisis. The FSFM will lift the existing restrictions gradually, Milovidov said. The restrictions on placing depositary receipts will be first be eliminated in countries where the FSFM has signed a memorandum on information ex- change with the local regulators. At present there are 15 such memorandums between the FSFM and foreign financial regulators. However, there is no such memorandum in place with the Financial Services Author- ity in Britain or the Securities and Exchange Commission in the United States, the most important markets for depositary receipts. Notably, the FSFM has signed a memora- ndum with the German Federal Financial Su- pervisory Authority. We note that the changes announced by Milovidov are not yet reflected even in draft legislation. It is impossible to predict the exact form that the restrictions will take on when the proposed changes will become effective. Currently, placing shares outside of Rus- sia, including placing “foreign securities” (depositary receipts), is allowed only with the prior permission of the federal govern- ment. This procedure is set forth in regulations approved by the FSFM Decree of June 10, 2009 No. 09- 21-p (hereafter, the “Regulations”). The Regulations set forth a number of lim- itations (quotas) on placing or circulating shares of a Russian issuer outside Russia, including placing and circulating foreign se- curities (depositary receipts). The number of shares of a Russian issuer that can be placed outside Russia may not exceed 25 percent of the total number of shares of the same category for Quotation List A, 15 percent for Quotation List B, and 5 percent for foreign issuers (Quotation List C). The applicant is an issuer of foreign securities (depositary receipts) incorporated in a state whose regulators have entered into a mem- orandum with the FSFM, then up to 25 per- cent of the total number of the Russian is- suer’s shares may be offered in that state. If the Russian issuer is a private company, the maximum of 25 percent of shares was not allowed. This restriction has forced Russian issuers to reorganize as non-Rus- sian holding companies.

London IPOs – Good Corporate Governance Is Essential

D espite the depressed nature of the world equity markets in recent times, London remains one of the lead- ing financial centers for international fund- raisings and foreign equity trading. From its roots in the 17th century, the London Stock Exchange has evolved into one of the world’s largest and most international stock exchanges. With a wide choice of routes to market, there are currently more than 3,000 companies listed in London from over 70 countries, including 100 from Russia and the CIS. In addition, the United Kingdom has the largest foreign exchange, foreign equi- ties and over-the-counter derivatives market to be found anywhere in the world. When preparing for a listing in London, an important consideration for any issuer is corporate governance. Following a number of regulatory reviews, this became a key fo- cus for investors and the press during the downturn in the financial markets.

The U.K. corporate governance regime does not operate on a one-size-fits-all ba- sis, and there are few mandatory regula- tory requirements under the rules applying to U.K.-listed companies. Instead, compa- nies with a premium listing on the main mar- ket follow the U.K. Corporate Governance Code (the “Code”). This must be applied on a “comply or explain” basis, with companies being obliged to set out in their annual re- ports the reasons for any non-compliance. Within the Code there are variations that ap- ply to companies with small capital market- ization – a recognition that full compliance may be disproportionately difficult for those companies.

The rules applying to companies on AIM – the London Stock Exchange’s international market for smaller growing companies – do not contain any prescribed governance re- quirements, although it is common for compa- nies to report on a comparable approach to corporate governance, and the expectation among in- vestors is that companies will follow the ap- propriate guidelines. Depending on the size and complexity of the company’s business, it may be that the guidance published by the Quoted Companies Alliance, which is aimed at smaller companies, will be the most ap- propriate.

Recent research has revealed that over- seas AIM-listed companies show the lowest level of corporate governance. However, there has been reflected in adversive public commen- tary. The recent update of the Code made it clear that companies should be more atten- tive to following the spirit of the Code as well as the specific principles. In addition to the practicality and commer- cial considerations faced by companies as a result of the Code, companies will need to consider and put policies in place to en- sure compliance with the impending Bribery Act. The Bribery Act is intended to come into force later this year as a new cor- porate offence of failing to prevent bribery. There is speculation that companies whose only connection with the United Kingdom is a London listing may be excluded, but it is conceivable that such companies may be caught, given the broad scope of the act. The principles-based approach of the U.K. corporate governance regime and the absence of prescribed regulatory require- ments make it important for companies to develop their own appropriate governance structure and to educate directors about their responsi- bilities. Without the right governance structure, it is unlikely that the most of an extended London listing, they should consult advisers at an early stage of the listing process to ensure that appropri- ate measures are implemented. Failure to follow an appropriate structure will delay the listing and cost companies a much more difficult to raise money in London.

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