

Simin Sun and Hayley Hervieux in Bloomberg Law: 'Practical Considerations Before Selling Your Company to a SPAC'

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This is a time of great opportunity and anxiety for owners looking to exit from privately owned companies. Whether you are engaged in a bidding process or someone has brought an unsolicited offer to the table, one of the most important considerations is the identity of the buyer.

As a seller of a privately owned company, you would evaluate many potential acquirers. A strategic acquirer may be looking to add your customers, your products or your employees to their existing portfolio. Alternatively, a financial acquirer, such as a private equity fund, may think your company is ripe for modernization to achieve greater returns. There are also a number of non-traditional acquirers such as employee stock ownership plans whereby your company would be purchased by its current employees. Recently, special purpose acquisition companies (SPACs) have gained significant popularity, making them one of the more active potential acquirers in the market today.

Previously, SPACs were primarily used to help a company go public without having to undergo the rigors of an initial public offering (IPO). Today, SPACs have taken on the role of traditional financial acquirers looking for privately owned companies that they think can turn a profit.

As seasoned investors and management teams pour into the SPAC space, there are a variety of reasons why an offer from a SPAC may be a very attractive option, usually including a high premium compared to other potential acquirers. However, selling to a SPAC is a very unique process when compared to selling to a traditional strategic or financial acquirer, and this process adds complexity to the transaction, increases the time to closing, affects the certainty of closing, and may even have an impact on the ultimate purchase price paid. Before accepting an offer to sell your company to a SPAC, below are seven practical considerations and potential ways to mitigate some of the risks associated with a SPAC transaction.

Uncertainty of Closing

In order to close a SPAC acquisition, the SPAC first has to approve the transaction and appropriate funding must be available. The approval step carries little risk, since the SPAC will usually be controlled by its sponsor. The funding is more complicated, given the unique nature of the SPAC. The proceeds raised during the SPAC's IPO phase are placed into a trust account for about 18 to 24 months while the management team seeks an appropriate target. As a result, a SPAC transaction is subject to the possibility that investors might withdraw their funds.

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