Bill Ackman and Pershing Square Launch Largest SPAC To Date: A Harbinger of Things to Come?

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On July 22, 2020, Pershing Square Tontine Holdings Ltd. ("Pershing Square Tontine"), a special purpose acquisition company ("SPAC") sponsored by funds managed by hedge fund billionaire Bill Ackman's Pershing Square Capital Management L.P. ("Pershing Square"), began trading on the New York Stock Exchange. SPACs, also known as blank check companies, are non-operating entities formed to identify and complete a business combination in a given period of time after the SPAC's IPO. Offering 200 million units at $20 per unit, Pershing Square Tontine raised $4 billion in its initial public offering, far outpacing Churchill Capital Corp III's $1 billion IPO as the largest SPAC IPO to date.

A Booming Market for SPACs. Pershing Square Tontine's IPO is the latest development in what has already been a record-breaking year for SPAC activity. As of July 22, 2020, 47 SPACs have IPO'd in 2020, compared to 59 in all of 2019 and 46 in all of 2018. In addition to being on target for the largest number of SPAC IPOs by deal count, SPAC IPOs this year have raised over $18 billion, compared to $12.1 billion in 2019. In fact, SPAC IPOs have represented 38% of all dollars raised in the 2020 IPO market (versus approximately 15% in recent years), with more SPACs going public than any other IPO sector. Merger activity in the SPAC space has also broken records, with Churchill Capital Corp. III announcing an $11 billion deal with health-care company MultiPlan Inc., the largest SPAC merger to be signed up to date.

Features of Pershing Square Tontine. In addition to the $4 billion raised in the IPO, Pershing Square has committed to acquire an additional $1 to $3 billion of units pursuant to a forward purchase agreement, resulting in a minimum of $5 billion at the SPAC's disposal for its initial business combination. According to its prospectus, the SPAC intends to potentially acquire a minority interest in a "larger-capitalization private company (with market capitalization of $10,000,000,000 or more)." Given that most SPACs look to purchase 100% of one or more companies, and have far less capital to deploy than Pershing Square Tontine, Ackman's SPAC will have the ability to acquire an interest in a far larger and perhaps well-known company than the usual SPAC target.

The size of the SPAC, its potential targets and name recognition of the sponsor, are only three of the unique features of Pershing Square Tontine. The following are some of the more significant deviations from the customary terms and structure of a typical SPAC:

- **No Founder Shares**. In a striking deviation from customary terms, Pershing Square is foregoing the typical 20% "promote", consisting of founder shares provided to the sponsor for nominal consideration. Instead, Pershing Square will purchase warrants, at their fair market value, that are not transferrable or exercisable until three years after the closing of the initial business combination. Typically, sponsor warrants are exercisable 30 days after closing of the initial business combination. The Pershing Square Tontine warrants may represent only 5.95% of the post-business combination company and are only exercisable at a 20% premium. This structure is less dilutive to stockholders than the typical founder share structure and, according to the prospectus, Pershing Square believes "this incentive structure is better aligned with our stockholders and potential merger partners." However, it is important to note that Pershing Square holds 100 shares of Class B common stock (as opposed to the Class A shares offered in the IPO), with each share of Class B common stock carrying a number of votes such that, in the aggregate, the 100 shares of Class B common stock held by the sponsor have the voting power of 20% of the issued and outstanding common stock of Pershing Square Tontine immediately following the IPO.

- **Non-detachable Warrants**. In another significant departure from typical SPAC structure, an investor that elects to redeem its shares in response to the acquisition transaction entered into by the SPAC must also give up 2/3 of the warrants the investor received along with its SPAC shares. Traditionally, an investor kept all of its warrants if it redeemed its shares, leading to arbitrage opportunities for investors who could redeem their shares, recouping their original investment, and hold onto their warrants. This type of arbitrage opportunity still exists with Pershing Square Tontine, but its attractiveness is significantly diminished by the reduced number of warrants a redeeming stockholder will hold.

- **"Tontine" Warrants**. Pershing Square Tontine provides an additional incentive to stockholders to not redeem their shares in connection with the SPACS's initial business combination. Not only do redeeming shareholders lose their warrants, but all warrants received by the company from redeeming shareholders will be put into a pool to be distributed pro rata to the shareholders who do not redeem their shares. The name "Tontine" is a reference to a 17th century investment plan into which investors contributed capital in exchange for their pro rata shares of an annuity payment, with each surviving investor's share of the payment increasing as other investors died. Like the 17th century investment plan, this structure rewards those who remain.

- **Director Forward Purchase Agreement**. In addition to the forward purchase agreement with Pershing Square described above, Pershing Square Tontine will enter into a forward purchase agreement with certain independent directors of the SPAC pursuant to which the independent directors agree to purchase an aggregate of $6 million of units, a feature not seen in typical SPACs.

AN ENTIRELY NEW SPAC MARKET?

Previously, there has been very little variation in SPAC terms, including regarding the sponsor promote and how redemptions worked. With Pershing Square Tontine, the lack of dilution from founder shares and ability of Pershing Square to only exercise its warrants three years after an acquisition at 20% premium will likely result in greater alignment between the goals of public stockholders with that of the sponsor. In addition, given the "tontine" warrant structure described above, we would expect the risk of significant redemption to be less than in a typical SPAC, potentially resulting in increased funding certainty for the SPAC (and potential counterparties).

In an environment where the SPAC market was already booming, the size and high-profile nature of the sponsor alone would have made Pershing Square Tontine noteworthy. However, Pershing Square has seemingly turned the market on its head overnight with a major rewrite of some of the terms that had appeared to be firmly baked into the SPAC structure until now, and was favorably received by the market, with shares up 6.5% at the close of its first day of trading, and increases as high as 9% during the debut trading day. Time will tell how other sponsors bringing SPACs to market respond.

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Please do not hesitate to contact us with any questions.

NEW YORK

Christopher Anthony
canthony@debevoise.com

Steven J. Slutzky
sjslutzkyl@debevoise.com

Erica C. Reich
ecreich@debevoise.com