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SEC Adopts Final Rules Relating to SPACs

On January 24, 2024, the Securities and Exchange Commission (SEC) adopted [final rules](#) related to special purpose acquisition companies (SPACs). A SPAC is a shell company organized and managed by a sponsor that conducts an initial public offering (IPO) with the intent to merge with a private operating company within a specified timeframe (a “de-SPAC transaction”). While generally structured as a merger and acquisition (M&A) transaction, a de-SPAC transaction enables the private target company to become publicly traded on a stock exchange without conducting its own IPO. SPACs have been an area of interest for the SEC for some time now, given their complexity and growth in popularity, as evidenced by a spike in de-SPAC transactions, compared to traditional IPOs, between 2020 and 2022.

The SEC’s adopting release for the final rules notes several concerns about the SPAC structure and de-SPAC transactions, including concerns about SPAC sponsor compensation and other costs that can have a dilutive effect on a SPAC’s shareholders, potential conflicts of interest in the SPAC structure and de-SPAC transactions (e.g., the SPAC sponsors’ compensation being contingent on the completion of the de-SPAC transaction could lead sponsors to enter into de-SPAC transactions that are unfavorable to unaffiliated shareholders), the use of unreasonable or potentially misleading projections, and SPAC governing documents and stock exchange listing rules under which SPAC shareholders can vote in favor of a proposed de-SPAC transaction yet redeem their shares prior to the closing of the transaction. The final rules are intended to enhance disclosures and provide additional investor protections in SPAC IPOs and subsequent de-SPAC transactions. A brief summary of the final rules is provided below.

New Subpart 1600 of Regulation S-K and Related Amendments –

These new rules include specialized disclosure requirements for SPAC IPOs and de-SPAC transactions, requiring, among other things:

- additional disclosures about the SPAC sponsor, potential conflicts of interest, and dilution, including specific descriptions of compensation to be received by the SPAC sponsor and the dilutive effect it may have on SPAC shareholders;
- certain disclosures on the prospectus' outside front cover page and in the prospectus summary of registration statements filed in connection with SPAC IPOs and de-SPAC transactions; and
- additional disclosures regarding de-SPAC transactions, including:
 - if the law of the jurisdiction in which the SPAC is organized requires its board of directors (or similar governing body) to determine whether the de-SPAC transaction is advisable and in the best interests of the SPAC and its shareholders, or otherwise make any comparable determination, disclosure of that determination, and
 - if the SPAC or SPAC sponsor has received any outside report, opinion, or appraisal materially relating to the de-SPAC transaction, certain disclosures concerning the report, opinion, or appraisal.

The new rules also include structured data requirements, which require SPACs to tag all information disclosed pursuant to Subpart 1600 of Regulation S-K in Inline XBRL in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual.

The final rules adopt amendments to provide procedural protections and to more closely align the disclosures provided to investors, as well as the legal obligations of companies, in de-SPAC transactions with those in traditional IPOs. In particular, the final rules:

- amend the registration statement forms and schedules filed in connection with de-SPAC transactions to require additional specific disclosures about the target company;

- require a 20-calendar-day minimum dissemination period for prospectuses and proxy and information statements filed for de-SPAC transactions, where consistent with local law;
- provide that a target company in a registered de-SPAC transaction is a co-registrant on the registration statement used for the de-SPAC transaction such that the target company will be subject to liability under Section 11 of the Securities Act of 1933;
- make the forward-looking statement safe harbor under the Private Securities Litigation Reform Act of 1995 unavailable to SPACs, including with respect to projections of target companies in a de-SPAC transaction, by defining “blank check company” to encompass SPACs (and other companies that would be blank check companies but for the fact that they do not sell penny stock); and
- require re-determination of “smaller reporting company” status following a de-SPAC transaction.

New Rule 145a – This new rule specifies that any business combination of a reporting shell company (other than a business combination related shell company) involving another entity that is not a shell company involves a sale of securities to the reporting shell company’s shareholders.

New Article 15 of Regulation S-X and Related Amendments – These new rules will more closely align the financial statement reporting requirements in business combinations involving a shell company and a target company with those in traditional IPOs.

Expanded Item 10(b) and New Item 1609 of Regulation S-K – The final rules also include disclosure requirements related to projections, including disclosure of all material bases of the projections and all material assumptions underlying the projections. All public companies should take note of the final rules in this area, as they update and expand guidance on the use of projections in all SEC filings, not just those related to a de-SPAC transaction.

Investment Company Act Guidance – While the SEC did not adopt proposed Rule 3a-10 under the Investment Company Act of 1940, which would have provided a safe harbor from the definition

of investment company, it did issue guidance regarding the status of SPACs under the Investment Company Act. Depending on the individualized facts and circumstances, a SPAC could be an investment company at any stage of its operations. The SEC provided the following list of activities of a SPAC that would raise concerns about its status as an investment company under the Investment Company Act:

- the nature of the SPAC's assets and income (g., not engaging in a de-SPAC transaction but instead acquiring a minority interest in a target company with the intention of being a passive investor);
- management's activities (g., the SPAC's directors, officers and employees are not actively seeking a de-SPAC transaction);
- duration (g., failure to consummate a de-SPAC transaction within 12–18 months);
- promotion (g., a SPAC that holds itself out in a manner that suggests that investors should invest in its securities primarily to gain exposure to its portfolio of securities prior to the de-SPAC transaction); and
- merging with an investment company (g., if a SPAC were to engage or propose to engage in a de-SPAC transaction with a target company that meets the definition of investment company, such as a closed-end fund or a business development company).

The final rules will become effective 125 days after publication in the Federal Register. Compliance with the structured data requirements (which requires tagging of information in Inline XBRL) will be required 490 days after publication of the final rules in the Federal Register.

For more information concerning the new SPAC rules or other securities law topics, please contact the authors or any attorney in Frost Brown Todd's [Public Companies](#) practice group.

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