Grant Thornton

# Snapshot

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## SEC staff issues statements on SPAC mergers

The staff of the SEC's Office of the Chief Accountant (OCA) and Division of Corporation Finance (CorpFin) issued two statements addressing certain accounting, financial reporting, and governance issues in relation to mergers of private operating companies (targets) with special purpose acquisition companies (SPACs).

### OCA statement

In its statement, OCA reminds all stakeholders in the merger transaction to fully understand and fulfill their professional responsibilities, which is critical so that the companies involved meet their obligations under federal securities laws and investors are provided with high quality financial information. OCA also reminds companies of the importance of corporate board oversight, including the role of the audit committee and communication between all stakeholders.

The statement highlights certain complex accounting and financial reporting matters that the target may encounter during the merger transaction, including the use of U.S. GAAP or IFRS Standards, public company disclosure requirements, determination of the accounting acquirer, and accounting for earn-out compensation arrangements.

Further, OCA reiterated that auditor independence is a shared responsibility between audit committees, management, and auditors, and that independence is considered the foundation to the credibility of the financial statements. The statement indicates that all parties to the merger should consider the following factors:

- Compliance with both PCAOB and SEC independence rules when auditing the target
- Performance of the appropriate client acceptance and continuance procedures, which includes auditor independence under the SEC's rule
- Assessments of auditor independence early in the merger transaction since such consideration may result in the need for the target to retain a new auditor. The SEC's general standard[1] of independence applies to all periods in the registration statement. Further, an auditor is not independent if, for example, they would be in the position of auditing their own work or acting as management.
- Consultation with OCA on auditor independence issues, as necessary, including questions on partner rotation requirements and the preparation of the target's financial statements by the auditor

### CorpFin statement

CorpFin's statement reminds both SPACs and targets involved in merger transactions to consider certain limitations, including the following:

- The combined company is not eligible to incorporate certain reports under the Securities

[1] See Regulation S-X, Rule 2-01(b), and Section II.A.2 of Release No. 33-10876.

Exchange Act of 1934 into Form S-1 until three years after the completion of the merger transaction.

- The combined company is not eligible to use Form S-8 for certain compensatory securities offerings until at least 60 calendar days after the combined company has filed current Form 10 information.
- The combined company is an "ineligible issuer" under Rule 405 of the Securities Act of 1933 for three years following the merger transaction. The statement includes a list of certain consequences to consider.

CorpFin's statement also highlights certain considerations for targets related to maintaining books and records as well as internal controls, since they may not have prior experience with things such as annual and interim reporting, application of SEC rules and disclosure requirements, and the adoption of new accounting standards. Given the necessary expertise required upon consummation of the merger transaction, targets may need to develop such capabilities in advance.

Further, in order for a combined company to remain listed on a national securities exchange, such as the New York Stock Exchange or Nasdaq, it must satisfy certain qualitative and quantitative initial listing standards. Those include corporate governance matters, such as requiring (1) a majority independent board of directors, (2) an independent audit committee consisting of directors with specialized experience, (3) independent director oversight of executive compensation and the director nomination process, and (4) a code of conduct applicable to all directors, officers, and employees. The statement reminds targets to consider how they will maintain these listing requirements throughout and after the merger transaction.

**Grant Thornton insight**

As noted by SPAC Analytics, total U.S. IPO proceeds from SPACs in 2021 is close to 70 percent of total IPO proceeds, and there are over 400 companies currently seeking a target. Once a target is identified, the merger generally is consummated within a few months.

We encourage private operating companies that are seeking to go public through a SPAC merger to prepare in advance, review the considerations noted in these statements, assess their resources and capabilities to function as a public company on an accelerated timeline, and consult with qualified securities counsel.

For further information on accounting and financial reporting issues that arise in SPAC merger transactions, refer to Grant Thornton's Viewpoint, *Merging with a SPAC.*

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