Snapshot

FEBRUARY 8, 2022
SNAPSHOT 2022-01

CAQ issues highlights of June 2021 SEC Regulations Committee meeting

The Center for Audit Quality (CAQ) recently issued highlights of the June 23, 2021 virtual joint meeting between its SEC Regulations Committee and the SEC staff. The SEC Regulations Committee meets periodically with the SEC staff to discuss emerging financial reporting issues relating to SEC rules and regulations. Key topics discussed at the meeting are summarized here.

Omission of pre-merger SPAC financial statements

The SEC staff and committee members discussed an example where a calendar-year special purpose acquisition company (SPAC) merged with a calendar-year private operating company through a reverse recapitalization in the first quarter of 2021. After the completion of the merger, the registrant intended to file a new registration statement on Form S-1.

In this example, the staff indicated that it would not object to the registrant omitting the SPAC's pre-merger historical financial statements from Form S-1 if that form includes both the registrant's financial statements for a post-merger interim period and the private operating company's historical financial statements retrospectively revised to reflect the impact of the share exchange.

Change in accountants' disclosure in a de-SPAC transaction

Committee members asked the SEC staff whether disclosure under Regulation S-K, Item 304(a), is required in a proxy statement or registration statement on Form S-4 when a nonreporting target in a SPAC transaction has experienced a change in accountants during the last two years or a subsequent interim period.

The staff indicated that while disclosure under Item 304(b) is required in such proxy or registration statements on Form S-4, disclosure under Item 304(a) is not required but may be included if material.

Loss of EGC status

The SEC staff discussed an example where a calendar-year registrant loses emerging growth company (EGC) status because it exceeds the rolling three-year $1 billion nonconvertible debt issuance threshold subsequent to its fiscal year-end (for example, January 2021) but before its 2020 Form 10-K is filed. The staff deliberated whether non-EGC reporting requirements are applicable to the 2020 Form 10-K.

The staff indicated that EGC status is lost on the date when the nonconvertible debt issuances exceed the $1 billion threshold and that the entity must comply with non-EGC reporting requirements from that point on. Further, they stated that form eligibility is determined on the date when the form is filed. In this scenario, the registrant would apply the non-EGC reporting requirements to the 2020 Form 10-K, including the auditor attestation requirements related to internal control over financial reporting and the adoption of any new or revised accounting standards that were previously deferred.

The staff also indicated that the same conclusion would apply to a reverse merger where the accounting acquiror issued more than $1 billion in nonconvertible debt during a relevant three-year period.

Contacts

Kendra Decker
Partner-in-Charge
SEC Regulatory Matters
T +1 202 521 1530
E Kendra.Decker@us.gt.com

Rohit Elhance
Partner
SEC Regulatory Matters
T +1 202 861 4110
E Rohit.Elhance@us.gt.com