Grant Thornton

Snapshot

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SEC proposes rules to improve SPAC disclosures

The SEC issued a Proposed Rule, *Special Purpose Acquisition Companies, Shell Companies, and Projections*, which would enhance disclosures in both a special purpose acquisition company's (SPAC's) initial public offering (IPO) and a subsequent business combination transaction between a SPAC and a private operating target (a de-SPAC transaction). The proposed amendments are intended to improve the relevance, completeness, clarity, and comparability of the disclosures, as well as to provide additional protections for investors.

The proposal's comment period ends on the later of 30 days after it is published in the *Federal Register* or May 31.

Regulation S-K

The proposed amendments would add new Subpart 1600 to Regulation S-K and amend forms and schedules used in a SPAC IPO and a de-SPAC transaction to require specialized disclosures. New Subpart 1600 would include definitions of certain SPAC-related terms as well as require the following information:

- *Proposed Items 1602 and 1604:* Simplified tabular dilution disclosures, as well as other specified disclosures including sponsor compensation and conflicts of interest, in "plain English" on the prospectus cover page and in the prospectus summary
- *Proposed Item 1603:* Additional disclosure around the SPAC sponsor and its affiliates, promotors, and any actual or potential material conflicts of interest as well as the nature and amount of all compensation
- *Proposed Item 1605:* Disclosure of background, the material terms, and the effects of a proposed de-SPAC transaction
- *Proposed Items 1606 and 1607:* Statement on whether the SPAC reasonably believes that the de-SPAC transaction and any related financings are fair or unfair to investors; reasons for the opinion; and whether a fairness report, opinion, or appraisal was obtained from an outside party
- *Proposed Item 1608:* Disclosures in Schedule TO that align to any related disclosures in a document filed in connection with a de-SPAC transaction
- *Proposed Item 1609:* Disclosure related to financial projections in a de-SPAC transaction, including the purpose of preparation, the party that prepared the projections, all material bases and assumptions, and whether the projections still reflect the view of management or the board of the SPAC or target

The above disclosures would be required to be presented in Inline XBRL format.

Enhanced projections disclosure

The proposal would also amend Item 10(b) of Regulation S-K to expand and update the disclosures required when projections are used. The proposed disclosures include a clear distinction between projected measures that are based on historical financial results compared to those that are not based on historical financial results. Further, the presentation of projections that are not based on historical financial results would ordinarily be presented with equal or

lesser prominence than those that are based on historical financial results. The proposed amendments would require any projected measure that includes a non-GAAP financial measure to be accompanied by (1) a clear definition of the measure, (2) a description of the most comparable GAAP financial measure, and (3) an explanation of the usefulness of the non-GAAP financial measure.

Alignment of disclosures to an IPO

The proposal would add new and amend existing rules to align the disclosure requirements more closely for private operating companies entering the capital markets through a de-SPAC transaction with those of a traditional IPO, including the requirement to

- Treat the private operating company as a co-registrant when a SPAC files a registration statement on Form S-4 or F-4 for a de-SPAC transaction, and make their management and directors signatories to the Form and subject them to the Section 11 liability under the Securities Act of 1933 (Securities Act).
- Disclose information required by Regulation S-K Items 101, 103, 304, 403, and 701 about the private operating target in the registration statement so that shareholders are provided with this information before making voting, investment, or redemption decisions. This information would subject the issuers and other parties to liability under Sections 10 and 11 of the Securities Act and align the protections to those afforded to investors in a traditional IPO.
- Provide the prospectuses, proxy, and information statements to investors at least 20 calendar days prior to a shareholder meeting.

The proposed amendments would also amend the definition of a smaller reporting company (SRC) to require a re-determination of SRC status within four business days following the consummation of a de-SPAC transaction.

Additionally, the proposal would remove the “penny stock” condition from the definition of “blank check company” and would re-define that term to make the liability safe harbor in the Private Securities Litigation Reform Act of 1995 for forward-looking statements, such as projections, unavailable in filings by SPACs and certain other blank check companies.

Finally, the proposal would create a rule that deems underwriters in a SPAC IPO that participate in the de-SPAC transaction or any related financing transaction to be underwriters in the registered de-SPAC transaction.

Shell company business combinations

The proposed amendments would add new Rule 145a to the Securities Act, which would deem a business combination transaction that involves a shell company, including a de-SPAC transaction, to be a sale of securities to a reporting shell company’s shareholders. The new rule would provide shareholders with full disclosure and liability protections under the Securities Act in such a transaction.

Regulation S-X

The proposal would also add new Article 15 to Regulation S-X and related amendments to align the financial statement requirements of a private operating company involved in a business combination transaction with a shell company to those requirements for a traditional IPO, as follows:

- *Proposed Rule 15-01(a):* To codify existing staff guidance to require that the private operating company’s financial statements be audited by an independent accountant in accordance with the standards of the Public Company Accounting Oversight Board.
- *Proposed Rule 15-01(b):* To require that the private operating company’s financial statements be presented in accordance with Articles 3 and 10, or with Article 8 if an SRC, of Regulation S-X.
- *Proposed Rule 15-01(c):* To require that the age of the private operating company’s financial statements be based on Rule 3-12 of Regulation S-X (or, for an SRC, Rule 8-08, if it were filing its own initial registration statement).
- *Proposed Rule 15-01(d):* To require the application of the acquired business or real estate operation rules in Regulation S-X to the financial statements of an acquired business that is not the predecessor entity. In addition, S-X Rule 1-02(w) would be amended to require the use of the private operating company’s financial statements as the denominator in the significance calculation.
- *Proposed Rule 15-01(e):* To allow a registrant to exclude the financial statements of a shell company for periods prior to the acquisition if both (1) the financial statements of the shell company have been filed for all required periods through the acquisition date, and (2) the financial statements of the registrant include the period in which the acquisition was consummated.

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According to SPAC Analytics, total U.S. IPO proceeds from SPACs in 2021 accounted for 68 percent of total IPO proceeds, with that percentage increasing to 83 percent this year up through March 31, 2022. There are reportedly over 600 SPACs currently seeking a target. Once a target is identified, the merger generally is consummated within a few months.

In light of the increased SPAC transactions, the SEC's proposal seeks to codify certain interpretive guidance issued by the SEC staff and standardize existing practices, some of which are outlined in OCA's statement and CorpFin's statement, as well as to add additional investor protections. We believe it is important for interested companies, investors, and other stakeholders to provide feedback to the SEC on the proposal.

We also encourage private operating companies that are seeking to go public through a SPAC merger to prepare in advance; to assess their resources, including their capabilities to function as a public company on an accelerated timeline; and to consult with qualified securities counsel before proceeding.

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

Safe harbor under the 1940 Act

The proposed amendments would add new Rule 3a-10 to the Investment Company Act of 1940 (1940 Act), which would provide a safe harbor from a SPAC qualifying as an "investment company," as defined in Section 3(a)(1)(A) of the 1940 Act, when certain conditions are met. As currently written, the proposal would not amend the definition of an "investment company" in Section 3(a)(1)(C), which primarily focuses on an issuer holding investments with a value exceeding 40 percent of its unconsolidated assets.

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