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June 13, 2022

Office of the Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Via Email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: File Number S7-13-22**

**Proposed Rule on Special Purpose Acquisition Companies, Shell Companies, and Projections**

Dear Office of the Secretary:

Grant Thornton LLP appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC or Commission) Proposed Rule on *Special Purpose Acquisition Companies, Shell Companies, and Projections*. We appreciate the Commission's efforts to enhance disclosures for the benefit of investors, as well as to codify existing interpretive guidance and current practice for a business combination transaction between a special purpose acquisition company (SPAC) and a private operating company (de-SPAC transaction). We are providing our comments on this proposing release based on our firm's perspective gained primarily from serving public companies as independent accountants, including interaction with the SEC staff in this capacity. We encourage the Commission to continue its outreach to investors and other stakeholders on the overall utility of the information disclosed in documents filed to facilitate SPAC IPOs and de-SPAC transactions prior to finalizing rulemaking in this area.

**Private operating company as co-registrant on Form S-4 and F-4**

The proposing release would amend the instructions to the signature block of Forms S-4 and F-4 to state that the term "registrant" for purposes of a de-SPAC transaction refers to both the SPAC and the target company. The private operating company and its officers and directors who sign such registration statement would be subject to liability under Section 11 of the Securities Act of 1933 (the Securities Act). Further, footnote 141 of the proposing release states that "as a co-registrant of the Form S-4 or Form F-4, the private operating company would have an Exchange Act reporting obligation pursuant to Section 15(d) of the Exchange Act following the effectiveness of the registration statement."

We recommend the Commission clarify in the adopting release whether the private operating company would be required to file such registration statement under its own

unique Central Index Key. The issuer designation will impact public accounting firm reporting under the following rules and standards:

- PCAOB Form AP reporting under Rule 3211, *Auditor Reporting of Certain Audit Participants*
- PCAOB Form 2 reporting under Rule 2200, *Annual Report*
- Dual standards reporting under Statement of Auditing Standards 131, *Amendment to Statement on Auditing Standards No. 122 Section 700, Forming an Opinion and Reporting on Financial Statements*

Additionally, a proposed amendment to Form S-1 states “if the securities to be registered on this Form will be issued in a de-SPAC transaction, attention is directed to the requirements of Form S-4 applicable to de-SPAC transactions, including, but not limited to, General Instruction L.” To avoid any diversity in practice, we recommend the final rule include explicit language that such Form S-1 should include all information for the private operating company that would have been required in a Form S-4.

Finally, the Commission may consider codifying the concepts in Staff Legal Bulletin No. 18, “Exchange Act Rule 12h-3,” (SLB18) in the event that a de-SPAC merger transaction registration statement is declared effective but the shareholders do not vote in support of the transaction. In such cases, the target of the failed merger will remain subject to reporting obligations under Section 15(d) of the Exchange Act as an issuer, absent a path to suspend its reporting obligation. It appears that SLB18 would apply by analogy, but it may be useful to codify such guidance in any final rule.

### **Aligning de-SPAC transactions with initial public offerings**

We note the SEC’s efforts to align the treatment of private operating companies entering the public markets through de-SPAC transactions with that of companies conducting traditional IPOs.

### **Re-determination of smaller reporting company status**

We note the proposed amendment to the definition of “smaller reporting company” (SRC) would require a re-determination of SRC status of the post business combination entity within four business days following the consummation of a de-SPAC transaction (“re-determination date”). If the post-combination entity does not meet the definition of an SRC at the re-determination date, as noted in footnote 155 of the proposing release, it would continue to be able to rely on the scaled disclosure accommodations for an SRC when filing a registration statement between the re-determination date and the date the post-business combination company files its first periodic report, provided the SPAC qualified as an SRC before a de-SPAC transaction and was the legal acquirer in the de-SPAC transaction.

There may be instances where a private operating company with revenues of less than \$100 million in its most recently completed fiscal year may have provided scaled disclosures in Form S-4 (including only two years of audited financial statements and no separate financial statements for significant equity method investees), however, the post-combination entity may not qualify as an SRC on the re-determination date

as their public float may exceed \$700 million. In such instances, the proposed rule would preclude the post-combination entity to use scaled disclosure alternatives in registration statements filed after it files the first periodic report on Form 10-Q but before it files its first annual report on Form 10-K. In such instances, the post-combination entity would be required to include information in such registration statement that is incremental to what would have been included in the Form S-4 or F-4 (such as three years of audited financial statements instead of two years as well as separate financial statements for significant equity method investees). Similar considerations would apply in instances where the post-combination entity files recast annual financial statements reflecting reverse recapitalization or an error correction after filing its first periodic report on Form 10-Q but prior to filing its first 10-K.

We note that while the provision in Section 7(a)(2)(A) of the Securities Act for providing only two years of audited financial statements is limited to initial registration statements, the SEC staff does not object if emerging growth companies (EGCs) do not present, in other registration statements, audited financial statements for any periods prior to the earliest audited period presented in its initial registration statement.<sup>1</sup> We recommend that the Commission consider if similar accommodations may be warranted to the post-combination entity regarding presentation of audited financial statements and related information (such as MD&A or separate financial statements of significant equity method investees) for periods prior to those presented in the Form S-4 or F-4 for the private operating company.

For de-SPAC transactions consummated shortly after the fiscal year-end of the private operating company but before their financial statements for that annual period are required in a Form 10 registration statement, the post-combination entity will be required to amend the Super 8-K to include such pre-acquisition annual financial statements of the private operating company.<sup>2</sup> The SEC staff clarified<sup>3</sup> that such an amendment is considered equivalent to filing the first Form 10-K subsequent to the consummation of the transaction. We recommend the Commission clarify in the final rule whether such amendment will be deemed to be the first periodic report for the purposes of effectiveness of the SRC status in connection with a de-SPAC transaction.

### **Other matters**

Regulation S-K, Item 308, permits companies that go public through the traditional IPO process to omit management's report on internal control over financial reporting (ICFR) and a related auditor's attestation on ICFR in its first annual report after the effectiveness of the IPO registration statement.<sup>4</sup> Private operating companies that go public through a de-SPAC transaction are not provided such an accommodation by regulation. However, current interpretive guidance generally permits such entities to exclude management's report on ICFR and the related auditor's attestation, pursuant

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<sup>1</sup> See [Generally Applicable Questions on Title I of the JOBS Act](#), Question 12.

<sup>2</sup> See CorpFin's [Financial Reporting Manual](#), Section 12220.1c.

<sup>3</sup> See CorpFin's [Compliance and Disclosure Interpretations, Regulation S-K](#), 215.02.

<sup>4</sup> See Regulation S-K, Item 308, "Instructions to Item 308."



to Section 215.02 of CorpFin's Regulation S-K Compliance & Disclosure Interpretation. We recommend the Commission consider if prudent to codify this practice for de-SPAC transactions.

**Transition period for application of any final rules**

Finally, we recommend the final rule include clear transition guidance, such that issuers in various states of the SPAC and de-SPAC process, and the investors holding such SPAC shares, understand the impact of the final rule on their particular facts and circumstances. For example, the rules may apply at different points in time to a SPAC that does not yet have an effective IPO Form S-1 versus a SPAC that has publicly traded equity and is either currently looking for a target, has a de-SPAC merger agreement in place but does not yet have an effective Form S-4, or has a de-SPAC merger agreement in place, has an effective Form S-4, but the vote on the transaction has not yet occurred at the effective date of the final rule.

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We would be pleased to discuss our comments with you. If you have any questions, please contact Mary Ropes, National Managing Partner of Professional Practice, at 212-542-9630 or [Mary.Ropes@us.gt.com](mailto:Mary.Ropes@us.gt.com).

Sincerely,

/s/ Grant Thornton LLP