

SEC Adopts Final Rules Regarding SPACs and De-SPAC Transactions to Impose Additional Disclosure and Reporting Requirements

Article By:

David A. Bartz

On 24 January 2024, the US Securities and Exchange Commission (SEC), by a 3-to-2 vote, adopted the long-awaited final rules regarding special purpose acquisition companies (SPACs), shell companies, and projections. The final rules are intended to enhance investor protections in SPAC initial public offerings (IPOs) and in subsequent business combination transactions between SPACs and private operating companies (de-SPAC transactions). SEC Chairman Gensler reiterated that the SEC feels investors in de-SPAC transactions should have the traditional protections available in an IPO and the adopted rules are designed to largely align with the “time tested” protections available in an IPO. The final rules impose additional disclosure and reporting requirements for both SPAC IPOs and de-SPAC transactions and are summarized below.

The final rules come almost two years after the SEC proposed rules in March 2022. Since then, the activity in both SPAC IPOs and de-SPAC transactions has slowed down considerably, and SPAC market practices have generally evolved in response to the SEC’s earlier proposed rules. Even with the SPAC market’s current decline, the SEC noted that SPAC activity has become a much larger part of the modern securities markets and that SPAC activity may increase again in the future, and if that does occur, the final rules are designed to more closely align de-SPAC transactions with the traditional protections available in an IPO.

ENHANCED DISCLOSURES AND ENHANCED INVESTOR PROTECTION

- The SEC adopted new Subpart 1600 of Regulation S-K with disclosure requirements applicable to SPACs regarding, among other things:
 - The SPAC sponsor (including its experience, business, roles and responsibilities, and compensation) and any material potential or actual conflicts of interest involving the SPAC sponsor;
 - The dilutive effects of securities held by the SPAC sponsor and transactions entered into in connection with the de-SPAC transaction;
 - The background, material terms, and effects of the de-SPAC transaction;
 - Any transfers or arrangements related to the transfer of SPAC securities by the SPAC sponsor or others and descriptions of any agreement, including any payments,

between the SPAC sponsor and unaffiliated security holders of the SPAC regarding redemption;

- The material terms of any agreements regarding restrictions on when the SPAC sponsor and its affiliates may sell SPAC securities;
 - If the law of the jurisdiction in which the SPAC is organized requires its board of directors to determine whether the de-SPAC transaction is advisable and in the best interests of the SPAC and its shareholders, disclosure of that determination and the factors considered in that determination; and
 - Whether the SPAC or SPAC sponsor has received any report, opinion, or appraisal from an outside party or unaffiliated representative relating to the de-SPAC transaction, as well as certain disclosures concerning the report, opinion, or appraisal.
- Under the adopted final rules, 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, as amended (Securities Act).
 - The final rules require a minimum dissemination period of 20 calendar days (or the maximum period allowable by the SPAC's jurisdiction, if such period is less than 20 calendar days) for prospectuses and proxy or information statements filed in connection with a de-SPAC transaction.
 - The final rules also require redetermination of "smaller reporting company" status within 45 days after the consummation of the de-SPAC transaction.

BUSINESS COMBINATIONS INVOLVING SHELL COMPANIES

The SEC adopted new Rule 145a under the Securities Act providing that any business combination of a reporting shell company (that is not a business combination related shell company) involving another entity that is not a shell company is deemed to involve an offer, offer to sell, offer for sale, or sale within the meaning of Section 2(a)(3) of the Securities Act.

The SEC adopted updates to Regulation S-X governing financial statement requirements applicable to transactions involving shell companies and private operating companies to generally align disclosures with those in IPOs.

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