Capital Markets Alert
April 2021

SEC Staff Provides SPAC Guidance

Special purpose acquisition companies (SPACs), shell companies that go public with the intention of identifying private companies to enter into business combinations with and enabling the private companies to avail themselves of the SPACs' public company status, have caught the eye of the media—and of regulators. Last week, it was reported that the Securities and Exchange Commission had begun an informal inquiry into investment bank practices around SPACs (read our alert on the inquiry here.) The staff of the SEC Division of Corporate Finance also recently issued a statement outlining matters that private companies should consider before undertaking a business combination with a SPAC, including that:

- Financial statements for the acquired private company must be filed, pursuant to Form 8-K, within four business days of the completion of the business combination; the 71-day extension available to an operating company making an acquisition is unavailable.
- Incorporation by reference of Exchange Act reports or proxy or information statements into registration statements on Form S-1 will not be permitted to the combined company until three years after the completion of the business combination.
- The combined company will be ineligible to use Form S-8 until 60 days after the combined company has filed current Form 10 information.
- The combined company will be an "ineligible issuer" under Securities Act Rule 405 for three years following the completion of the business combination, meaning that, among other things, the combined company cannot qualify as a well-known seasoned issuer and may not:
  - Use a free writing prospectus
  - Conduct a roadshow that constitutes a free writing prospectus, including an electronic roadshow
  - Rely on the safe harbor of Rule 163A from Securities Act Section 5(c) for pre-filing communications

The staff also noted that acquired private companies must be prepared, post-acquisition, to meet Exchange Act requirements to maintain appropriate books and records, internal financial controls, and disclosure controls and procedures, and to comply with annual and interim reporting obligations. In addition, to maintain its exchange listing on any exchange on which the SPAC's shares trade, the combined company must continue to meet the exchange's listing standards, including quantitative standards regarding composition of the public float and qualitative corporate governance standards.

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6628 REV1 04-12-2021