

Capital Markets Alert

March 2022

SEC Proposals To Amend Rules For SPAC and De-SPAC Transactions

In response to “an unprecedented surge” in the number of initial public offerings (IPOs) by special purpose acquisition companies (SPACs), the Securities and Exchange Commission (SEC) today voted to propose sweeping changes to those provisions of the federal securities laws most relevant to SPACs, the private companies they seek to take public and the financial intermediaries involved in these deals. The SEC noted that the market for SPAC IPOs had grown exponentially in recent years, with over \$83 billion and \$160 billion raised in 2020 and 2021, respectively. The proposed amendments were approved for public comment in a split 3-1 vote of the commissioners and followed five previous pronouncements from the SEC regarding SPACs.

The primary concerns identified by the SEC include:

- Amount of sponsor compensation and other costs, and their dilutive effects on a SPAC’s shareholders
- Use of projections in de-SPAC transactions
- Lack of named underwriters in de-SPAC transactions that would typically perform gatekeeping functions
- Potential conflicts of interest between sponsors and retail investors

The proposed changes are focused on improving disclosure, particularly regarding fairness to investors and potential conflicts of interest, and providing additional investor protections in both SPAC IPOs and de-SPAC transactions. These changes include new requirements applicable to the financial statements to be filed by the private company and deem it a “co-registrant” under any S-4 or F-4 registration statement filed regarding the de-SPAC transaction, both changes to better align these



filings with those used in traditional IPOs. Similarly, a new rule would expand underwriter liability for those financial intermediaries acting as underwriters in a SPAC IPO to a subsequent de-SPAC transaction, assuming certain conditions have been met, and render the liability safe harbor for forward-looking statements unavailable for SEC filings by SPACs. A special safe harbor also would be created under the Investment Company Act of 1940 to alleviate concerns that a SPAC might have to comply with regulations affecting the mutual fund industry.

The fact sheet regarding the rule proposal is [here](#), and the full proposing release is [here](#). The comment period regarding the proposed amendments runs until the later of 60 days following publication of the proposing release on the SEC website and 30 days from publication in the Federal Register.

Loeb’s SPACs team is reviewing the proposals in detail and expects to submit comments to the SEC regarding those areas of the amendments it believes would benefit from the perspectives of the team and our clients.

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6936 REV1 03-31-2022