Statement on Final Rules Regarding Special Purpose Acquisition Companies (SPACs), Shell Companies, and Projections

Chair Gary Gensler

Jan. 24, 2024

Today, the Commission is considering whether to adopt final rules that will strengthen protections for investors in special purpose acquisition companies (SPACs). I am pleased to support these final rules because they will better align the protections investors receive when investing in SPACs with those provided to them when investing in traditional IPOs.

Suppose a group of strangers came up to you and said: “I have a company. It doesn’t do much of anything, but sometime in the next two years, we’ll merge with another company. I don’t know what that company is yet.”

What if I told you that, if the strangers complete a merger, they get to pocket 20 percent of your investment?

This essentially describes what SPACs do.

There are two stages embedded in the SPAC process. First is when a blank-check company raises money from the public through an IPO, what I call the SPAC blank-check IPO. Second involves the merger or de-SPAC, what I call the SPAC target IPO.

Whatever you call it, this second step of the process functionally is used to fulfill a similar purpose to traditional IPOs.

The federal securities laws provide a range of protections for investors in traditional IPOs—through disclosure, marketing standards, as well as gatekeeper and issuer obligations. This adoption will ensure that similar protections apply to investors in these non-traditional IPOs as much as they do for investors in traditional IPOs. Just because a company uses an alternative method to go public does not mean that its investors are any less deserving of time-tested investor protections. IPOs are IPOs, and as Aristotle once said, “treat like cases alike.”

Whether you are doing a traditional IPO or a SPAC target IPO, SPAC investors are no less deserving of our time-tested investor protections. I say this even as the volume of SPAC transactions are down from the SPAC boom of 2020 and 2021—though I would note, there still were 31 SPAC blank-check IPOs in 2023 and 86 in 2022. Markets ebb and flow, and there could be a change in the future.

Today’s adoption will help ensure that the rules for SPACs are substantially aligned with those of traditional IPOs, enhancing investor protection through three areas: disclosure, use of projections, as well as issuer obligations.

First, the final rules will require additional disclosures from issuing companies at both the SPAC blank-check IPO stage as well as the SPAC target IPO. In essence, the disclosures will include, among other things, specialized disclosure requirements that help inform investors of compensation, dilution risks, and conflicts that may exist within SPACs, as well as provide additional non-financial disclosure about the target private operating company during the SPAC target IPO.

Second, the final rules make SPACs accountable for their forward-looking statements. Investors are harmed when parties engaged in a de-SPAC transaction over-promise future results regarding the target company. Accordingly, today's final rules will remove safe harbor protections[1] and add additional disclosure requirements for projections used in association with de-SPAC transactions. In addition, the final rules update guidance regarding the use of projections in all Commission filings.

Third, the final rules address issuer obligations and liability with regard to SPAC target IPOs. In particular, the final rules require SPAC targets to sign the de-SPAC registration statements, thus making them liable for false or misleading disclosure. In addition, under new Rule 145a, a de-SPAC is deemed to involve a sale, thus subjecting the transaction to registration under the Securities Act.[2]

In finalizing this adoption, we benefitted from public feedback on our proposed rules and made a number of appropriate changes.

Taken together, these steps will help protect investors by addressing information asymmetries, misleading information, and conflicts of interest in SPAC and de-SPAC transactions.

I'd like to thank the members of the SEC staff for their work on these final rules, including:

- Erik Gerding, Mellissa Duru, Betsy Murphy, Luna Bloom, Mark Saltzburg, Dennis Hermreck, Ted Yu, Tiffany Posil, Dan Duchovny, Shane Callaghan, Adam Turk, Kasey Levit, Lisa McCann, Lindsay McCord, Craig Olinger, Melissa Rocha, Ryan Milne, Cicely LaMothe, Jessica Kane, Mary Beth Breslin, Pamela Long, Asia Timmons-Pierce, Robert Errett, Sean Harrison, Jennifer Lopez Molina, Deegi Biteng, Michael Coco, Jennifer Zepralka, Grace Baer, Deanna Virginio, Emma O'Hara, and Jeb Byrne in the Division of Corporation Finance;
- Megan Barbero, Bryant Morris, Meridith Mitchell, Peggy Kim, Dorothy McCuaig, Natalie Shioji, Evan Jacobson, Ken Alcé, Cynthia Bien, Hillary Holman, Emily Parise, Robert Bagnall, and Monica Lilly in the Office of the General Counsel;
- William Birdthistle, Thoreau Bartmann, Lisa Reid Ragen, Rochelle Plesset, Seth Davis, and Taylor Evenson in the Division of Investment Management;
- Paul Munter, Natasha Guinan, Jonathan Wiggins, Shaz Niazi, Gaurav Hiranandani, Anita Doutt, Erin Nelson, Rachel Mincin, Jeanne Riggs, Mai-Khoi Nguyen-Thanh, Steven Kenney, Dana Cretu, and Aleksandra Zimmerman in the Office of the Chief Accountant;
- David Shillman, Sharon Lawson, and Sarah Schandler in the Division of Trading and Markets;
- William Connolly, Andrew Dean, Brook Jackling DeVeas, Amy Friedman, Beth Groves, Anne Hancock, Brian Higgins, Melissa Hodgman, Howard Kaplan, Laura Josephs, Sarah Mallett, Oreste McClung, Brianna Ripa, Anne Romero, Rebecca Schendel Norris, Corey Schuster, Kathleen Sweeney, Samuel Waldon, Carolyn Welshhans, and Ryan Wolfe in the Division of Enforcement; and
- Jessica Wachter, Albert Sheen, Maclean Gaulin, Erin Smith, Charles Woodworth, PJ Hamidi, Julie Marlowe, Samantha Croffie, Michael Pessin, Lakin Brown, and Navin Jayaram in the Division of Economic and Risk Analysis.

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[1] As detailed in the adopting release, the amendments removing safe harbor protections also will apply to certain non-SPAC blank check companies.

[2] As detailed in the adopting release, the final rules include an exception if the business combination involves a business combination related shell company.