

# SEC updates rules for SPAC filings

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(Updated February 28, 2024)

This *In brief* was updated in February 2024 to reflect the effective dates of the new rules.

## At a glance

*The SEC adopted rules related to filing and disclosure requirements for SPAC IPOs and de-SPAC transactions. The rules aim to enhance investor protection by requiring additional disclosure and aligning reporting requirements with traditional IPOs.*

"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."

- SEC Chair Gary Gensler

## What happened?

On January 24, the SEC [adopted](#) new and amended rules and guidance that will impact special purpose acquisition company (SPAC) initial public offerings (IPOs) as well as the subsequent merger between a SPAC and private operating company (de-SPAC). The new rules are largely unchanged from those proposed in March 2022 and include amendments that generally apply to both domestic filers and foreign private issuers.

## Initial public offerings by SPACs

The final rules require additional disclosure in SPAC IPOs related to the SPAC sponsors, affiliates, and promoters, including compensation that has been or will be awarded on completion of a de-SPAC transaction, terms of lock-up agreements, conflicts of interest, and potential sources of dilution.

The SEC did not adopt a proposed safe harbor from the definition of an investment company for certain SPACs. However, the adopting release includes guidance to assist a SPAC in analysing its status as an investment company, including considerations regarding the nature of its assets and income, its management activities, the operations of an identified target, as well as the duration of time it takes to identify a target.

## De-SPAC transactions

Similar to the SPAC IPO requirements, the final rules require disclosures in filings for the de-SPAC transaction (e.g., Forms S-4 or F-4 or Schedule 14A) including the compensation received or to be received by the SPAC sponsor, its affiliates, and promoters; tabular presentation of the nature and amounts of each source of potential dilution; and conflicts of interest. The final rules also require a statement from the SPAC about whether it reasonably believes that the de-SPAC transaction and any related financing transactions are fair or unfair to unaffiliated security holders as well as if any outside party prepared a report on the fairness of the transactions.

The final rules also:

- provide guidance on the use of projections to address concerns about their overall reliability (see [Use of projections](#) for further details);
- deem the private operating company (or companies) to be a "co-registrant" on Forms S-4 and F-4, which would subject the private operating company (or companies) and any signing persons to Securities Act Section 11 liability (e.g., for misrepresentation or omission of material information) as well as create a reporting obligation for each of the co-registrants from the date of effectiveness of the registration statement;

- provide guidance with respect to when a financial intermediary would be considered a statutory underwriter in connection with the de-SPAC merger and, consequently, be subject to liability under the Securities Act (e.g., Section 11);
- clarify and change certain financial statement requirements for the private operating company (see [Financial statement impacts](#) for further details);
- mandate a minimum 20-day dissemination period (except when prohibited by law) for prospectuses, proxy statements, and other materials prior to the meeting of security holders; and
- require additional disclosure with respect to the target company pursuant to Regulation S-K (or equivalent for foreign private issuers), including description of business (Item 101), description of property (102), legal proceedings (Item 103), and changes in and disagreements with accountants on accounting and financial disclosure (Item 304).

### Financial statement impacts

The final rules introduce new Article 15 of Regulation S-X, which aims to more closely align the financial statement requirements for the de-SPAC transaction with those of a traditional IPO. As a result, only two years of audited financial statements of the private operating company would be required in the de-SPAC transaction filing and the subsequent Form 8-K filing if it would qualify as an emerging growth company (EGC) and/or smaller reporting company (SRC). The age of the financial statements of the private operating company in these filings would mirror the traditional IPO requirements, and the financial statements of the private operating company that is determined to be the predecessor would be required to be audited using PCAOB standards.

Other provisions relating to the financial statements for the de-SPAC transaction include the following:

- For purposes of determining financial statement requirements for any closed or probable acquired businesses, significance would be calculated by comparison to the financial information of the private operating company.
- SPAC financial statements (and related pro forma financial statements) can be omitted from filings made after the registrant files its first periodic report that reflects the business combination in the historical financial statements.

### Use of projections

The final rules expand and update existing rules regarding the use of projections in all filings and adopted additional disclosure requirements to accompany any projections disclosed in de-SPAC transaction filings. New de-SPAC projections disclosures include the purpose and material basis for the projections, the party that prepared them, any material assumptions (including any material factors that may affect those assumptions), and whether or not the projections reflect the view of the SPAC and private operating company management about future performance. The final rules also provide that the safe harbor for forward-looking information would not be available to the SPAC, including with respect to projections of a private operating company in a de-SPAC transaction.

Other new requirements for projections include the following:

- Projections that are not based on historical financial results or operational history (e.g., a private operating company that has no operations) must be clearly distinguished from those that are.
- Projections based on historical information must be presented with equal or greater prominence.

- Non-GAAP measures included in projections must include a clear definition or explanation of the measure, a description of the GAAP financial measure to which it is most closely related, and an explanation as to why the non-GAAP financial measure was used instead of a GAAP measure.

#### SRC re-determination

Following consummation of the de-SPAC transaction, the combined entity must re-determine its smaller reporting company status using public float measured within four business days after consummation. The impacts of a change in status (i.e., incremental disclosure requirements applicable to non-SRCs) are required to be reflected in all filings made beginning 45 days after consummation of the de-SPAC transaction.

#### What's next?

The final rules will become effective on July 1, 2024. Any filings made on or after the effective date must comply with the final rules. In addition, certain information must be tagged using inline XBRL in filings made on or after June 30, 2025.

#### To have a deeper discussion, contact:

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