



June 10, 2022

Ms. Vanessa A. Countryman, Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: File No. S7-13-22

Dear Ms. Countryman:

We appreciate the opportunity to provide input on the Securities and Exchange Commission's (the "Commission") proposed rule, *Special Purpose Acquisition Companies, Shell Companies, and Projections* (the "Proposal").

As discussed in the Proposal, 2020 and 2021 saw significant increases in the number of special purpose acquisition companies ("SPACs") seeking to raise capital through an initial public offering of equity securities and the subsequent business combinations involving SPACs and private operating companies. We commend the Commission for seeking to provide greater transparency and enhanced investor protections in connection with these types of transactions.

We support the Proposal's enhanced focus on the disclosures to be provided in connection with the investment, voting, and redemption decisions in SPAC-related transactions. We believe the proposed disclosure changes will lead to greater transparency and clarity in important areas (e.g., actual or potential conflicts/misalignments of interests or actual or potential sources of dilution). We also support the Commission's proposals to codify certain informal guidance previously provided by the Commission's staff and certain disclosure practices that have evolved over time as we believe codification will encourage more consistent disclosure.

While investors and issuers will be in the best position to comment on the benefits of the proposed disclosures and the associated costs, in the accompanying appendix we provide input and suggestions based on our experience as independent auditors for companies involved in these types of transactions.

We would be pleased to discuss our comments or answer any questions that the Commission or its staff may have. Please contact John May at 973-964-6052 or Shara Slattery at 312-520-6359 regarding our submission.

Sincerely,

A handwritten signature in black ink that reads "PricewaterhouseCoopers LLP". The signature is written in a cursive, flowing style.

PricewaterhouseCoopers LLP



Closer alignment of disclosure in de-SPAC transactions with traditional initial public offerings

The Commission states in the proposal that “[a] de-SPAC transaction marks the introduction of the private operating company to the U.S. public securities markets, and investors look to the business and prospects of the private operating company in evaluating an investment in the combined company.” In furtherance of this principle, the Commission has proposed a number of changes intended to more closely align the disclosures made with respect to private operating companies entering the public markets through a de-SPAC transaction with those that enter the public markets through a traditional initial public offering.

We support the Commission’s view that “the manner in which a company goes public should not generally result in substantially different financial statement disclosures being provided to investors.” Accordingly, we support the proposal as it would promote greater alignment between the disclosures relating to the private operating company in connection with a business combination involving a shell company and the disclosures made in connection with a traditional initial public offering. In particular, we support the proposals to:

- require the audit of the financial statements of a business that is or will be the predecessor to a shell company to be performed by an independent accountant in accordance with the standards of the PCAOB;
- align the number of fiscal years required to be included in the financial statements for a private company that will be the predecessor in a shell company combination with those that would be required for a traditional initial public offering;
- apply the age of financial statement requirements to a private operating company that would be the predecessor to a shell company in a manner similar to Rules 3-12 or 8-08 of Regulation S-X (as applicable); and
- align the requirements for reporting the acquisitions of businesses¹ by a shell company or its predecessor (that are not and will not be the predecessor) to the corresponding requirements applicable in a traditional initial public offering.

We believe making this information available in connection with a voting/redemption decision and before the post-business combination company’s securities begin trading would be beneficial. We note that certain of the proposed changes are consistent with guidance previously provided by the Commission’s staff. We support the codification of guidance as a means to foster greater consistency and transparency.

Similarly, we support the proposed amendments that would more closely align the non-financial disclosure requirements relating to the target company in a de-SPAC transaction with the disclosures required in connection with a traditional initial public offering. We note that much of the non-financial information would have otherwise been required to be disclosed shortly after the de-SPAC transaction is consummated (e.g., under Item 2.01(f) of Form 8-K). We believe it would be beneficial for this information to be available prior to a voting/redemption decision and before the post-combination company’s securities begin trading.

¹ We note that the text of the proposing release also refers to real estate operations and Rule 3-14 of Regulation S-X. However, we did not see references to this rule in proposed Rule 15-01(d).



Private operating company as co-registrant in Forms S-4 and F-4

The Commission has proposed to amend Forms S-4 and F-4 to require the target company to be treated as a co-registrant together with the SPAC. In doing so, the Commission has interpreted Section 6(a) of the Securities Act “to encompass the target company, in addition to the SPAC, as an issuer for purposes of Section 6(a) and the signature requirements of Form S-4 or Form F-4.” We believe it would be helpful to also clarify whether, at the time the Form S-4 or F-4 is filed, the target would be considered an issuer under section 2(a)(7) of the Sarbanes-Oxley Act and PCAOB Rule 1001(i)(iii). These definitions drive a number of matters including whether a Form AP would be required to be submitted to the PCAOB by the target company’s auditor in connection with the initial filing of a Form S-4 or F-4 and whether the audit report relating to the target’s financial statements included in the Form S-4 or F-4 is required to be audited under both PCAOB and AICPA auditing standards.

In addition, as the Commission noted in footnote 141 of the Proposal, “as a co-registrant of the Form S-4 or Form F-4, the private operating company would have an Exchange Act reporting obligation pursuant to Section 15(d) of the Exchange Act following the effectiveness of the registration statement”. We believe it would be helpful to provide examples of how Exchange Act reporting would work during the period after effectiveness, including the determination of the various filer statuses and the filing requirements for periodic reports for periods ending prior to the completion of the de-SPAC transaction, including those which would not be due until after the filing of the Form 8-K or 20-F reporting the completion of the business combination. We also recommend that the Commission address the interaction between proposed Rule 15-01(d)(2) of Regulation S-X and the company’s reporting requirements under Section 15(d) as it relates to recently acquired businesses (or real estate operations) which are excluded from a registration or proxy or information statement prepared in connection with the de-SPAC transaction.

Reporting on internal control over financial reporting

In Release 34-54942, *Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies*, the Commission adopted transition provisions for “newly public companies” such that a registrant is not required to comply with Items 308(a) or (b) of Regulation S-K until it either had been required to file or had filed an annual report for the prior fiscal year.

The Commission's staff has provided interpretive guidance relating to internal control reporting requirements following a reverse merger.² That guidance indicates that “the surviving issuer in a reverse acquisition is not a “newly public company” as that term is used in Exchange Act Release No. 54942 (Dec. 15, 2006).” However, the staff did indicate that under certain circumstances it “would not object if the surviving issuer were to exclude management's assessment of internal control over financial reporting in the Form 10-K covering the fiscal year in which the transaction was consummated.” That guidance refers to mergers in which the legal acquirer is a non-operating public shell company and notes that similar conclusions may also be reached in connection with transactions involving SPACs.

We recommend that the Commission consider whether the circumstances which led to the adoption of the transition provisions in Release 34-54942, including the articulated benefits to investors, would also apply in the case of a de-SPAC transaction.³ In any event, we believe it would be helpful for the

² See Division of Corporation Finance Regulation S-K Compliance & Disclosure Interpretation 215.02.

³ Release 34-54942 states: “We stated our belief in the Proposing Release that providing additional time for a newly public company to conduct its first assessment of internal control over financial reporting would benefit investors by making implementation of the internal control reporting requirements more effective and efficient and reducing the costs that a company faces in its first year as a public company. We also expressed a belief that the proposed transition period would limit any interference by our rules with a company’s business decision regarding the timing and use of resources relating to its initial U.S. listing or public offering.”



Commission to directly address and codify how the requirements of Items 308(a) and (b) of Regulation S-K would apply to periodic reports filed after the completion of a de-SPAC transaction. We also recommend addressing and codifying how those requirements would apply in any annual reports required to be filed by the private operating company under Section 15(d) of the Exchange Act.

Determination of various filer statuses

The Commission has proposed to require a re-determination of smaller reporting company status following the consummation of a de-SPAC transaction. The Commission is also seeking input on whether it should require a re-determination of other filer statuses, including emerging growth company status,⁴ accelerated filer status, large accelerated filer status, and foreign private issuer status.

We believe that the underlying policy objectives associated with each type of filer status should be evaluated to determine whether the goals would be furthered by re-determination, especially in light of the Commission's proposals in many other areas to align the requirements associated with de-SPAC transactions with traditional initial public offerings.

For instance, in proposing that the post-business combination company re-determine its smaller reporting company status shortly after consummating the de-SPAC transaction, the Commission appears to be forestalling a situation in which a company that would not have been eligible to use the scaled disclosures and other accommodations available to a smaller reporting company if it had become public through a traditional initial public offering would, nonetheless, be eligible to take advantage of those accommodations based on the smaller reporting company status of the pre-merger SPAC. We support the proposal to require timely re-determination in this circumstance.

We believe a similar analysis should be undertaken with respect to other statuses. For example, the Commission's definitions of the terms accelerated filer and large accelerated filer depend, in part, on the length of time that a company has been reporting under the Exchange Act. Although a pre-merger SPAC may have been reporting under the Exchange Act for a sufficient period of time to meet the definition of an accelerated/large accelerated filer, as noted in the Proposal, the consummation of the de-SPAC transaction marks the introduction of the private operating company into the U.S. public capital markets. Accordingly, we believe the Commission should consider whether the underlying flexibility afforded to companies that have not been subject to the reporting requirements of the Exchange Act for the requisite period of time may also be appropriate for a recently de-SPAC'd post-business combination company.

Structured data requirements

We support the proposal to require SPACs to tag information disclosed pursuant to Subpart 1600 of Regulation S-K using Inline XBRL. The provision of structured data will make this information more easily accessible for purposes of aggregation, comparison, filtering, and other analysis. We note, however, that issuers are currently not required to tag filings until after they have filed a periodic report on Form 10-Q, 20-F, or 40-F, and, accordingly, we recommend that the Commission evaluate responses from the issuer community regarding the costs of tagging this information.

Dilution

The Proposal would require additional disclosure about the potential for dilution in registration statements filed by SPACs and in de-SPAC transactions. As Commissioner Crenshaw noted in a recent

⁴ The Division of Corporation Finance has provided interpretive guidance in FAQ 47 (Example 2) of the Division's Jumpstart Our Business Startups Act Frequently Asked Questions document regarding the evaluation of emerging growth company disqualification triggers following a reverse merger. The Commission may wish to consider codifying that guidance and addressing the timing of when a determination is required to be made.



speech, “[c]alculating the potential for dilution is not straightforward and may be impacted by multiple considerations.”⁵ Given the importance of understanding the potential impact of dilution, especially on non-redeeming shareholders, we recommend that the Commission provides illustrative examples and calculations in order to foster robust, transparent, and consistent dilution disclosures.

Other matters

We support the proposed changes to Rules 3-01, 8-02, and 10-01(a)(1) of Regulation S-X to specifically refer to predecessor financial statements. We believe these changes are helpful clarifications that will codify existing practice.

We also support proposed Rule 15-01(e), which would permit a registrant to omit pre-combination financial statements of a SPAC under defined circumstances.

Additionally, we support the proposed changes to the definition of a significant subsidiary in Rule 1-02(w)(1) of Regulation S-X to require that the significance of the acquired business be assessed using the private operating company’s financial information as the denominator. We agree that this change will better implement the Commission’s sliding scale concept in measuring significance.

We also support the proposed clarification to Item 2.01(f) of Form 8-K to refer to the “acquired business” instead of the “registrant.” Additionally, the Commission noted that the requirements of Item 2.01(f) of Form 8-K may require a third fiscal year of financial statements for an acquired business that is the predecessor to a shell company even though proposed Rule 15-01(b) of Regulation S-X would only require two years. Given that the earlier year of financial statements was not required to be presented in connection with the voting/redemption decision in connection with the de-SPAC transaction, we believe it would be reasonable for the Commission to consider providing an exception to the required Form 10-type information so that the financial statements of the acquired business are not required to be presented for any period before the earliest audited period previously presented in connection with a registration, proxy, or information statement.

⁵ Crenshaw, Caroline: *Remarks at Virtual Roundtable on the Future of Going Public and Expanding Investor Opportunities: A Comparative Discussion on IPOs and the Rise of SPACs* (April 28, 2022)