

# SEC Adopts Final Rules Regarding Special Purpose Acquisition Companies and De-SPAC Transactions

January 29, 2024

On January 24, 2024, the U.S. Securities and Exchange Commission (SEC or Commission) adopted, by a 3–2 vote, final rules (Final Rules) relating to special purpose acquisition companies (SPACs) and business combination transactions between SPACs and target companies (de-SPAC transactions), which will become effective 125 days after publication in the *Federal Register* (likely early June 2024). The Final Rules significantly rewrite the playbook for SPAC initial public offerings (IPOs) and de-SPAC transactions, requiring enhanced disclosures and increasing potential liability under the federal securities laws for de-SPAC participants by, among other things, eliminating the statutory safe harbor protections for forward-looking statements for SPACs.

Although the Final Rules substantially track the SEC’s March 2022 rule proposal (Proposed Rules), the SEC ultimately decided not to adopt (i) the proposal that would have deemed SPAC IPO underwriters’ participating in de-SPAC transactions to be liable as statutory “underwriters” under the Securities Act of 1933, as amended (the Securities Act) and (ii) the proposed new safe harbor for SPACs under the Investment Company Act of 1940 (Investment Company Act). Instead, the SEC opted to provide guidance regarding the particular facts and circumstances parties should consider in making the “underwriter” and “investment company” determinations.

Several aspects of the Final Rules have broad applicability beyond SPACs, including (i) enhanced disclosure requirements applicable to projections in all SEC filings, (ii) updated SEC guidance regarding who is an “underwriter,” what is a “distribution,” and what constitutes an “investment company,” and (iii) imposing Securities Act liability and financial reporting requirements in connection with business combinations of shell companies, regardless of whether the shell company is a SPAC. Since the Proposed Rules were introduced in March 2022, SPAC market practices evolved meaningfully to address the proposed additional disclosure requirements and potential expansion of liability for participants in de-SPAC transactions. As a result, we do not believe the Final Rules will have a significant impact on market conditions and expect a continuation of the status quo in de-SPAC transactions, including the delivery of negative assurance (or 10b-5) statements and auditor comfort letters in many deals.

## I. Overview of Final Rules

Chair Gary Gensler and Commissioners Caroline Crenshaw and Jaime Lizárraga, in voting in favor of the Final Rules, cited the need to “treat like cases like” and “ensure that the rules for SPACs are substantially aligned with those of traditional IPOs.”<sup>1</sup> They highlighted information asymmetries between SPAC sponsors and any private investment in public equity (PIPE) investors, on the one hand, and SPAC investors, on the other hand, and the need to expand issuer obligations and liability so that SPAC shareholders receive comparable protections from misleading statements and omissions as if the target company had pursued a traditional IPO.<sup>1</sup>

### A. Enhanced Disclosures

The Final Rules largely adopt as proposed in a new subpart 1600 of Regulation S-K enhanced and specialized disclosure requirements applicable to SPAC IPOs and de-SPAC transactions, and revisions

to Item 10(b) of Regulation S-K regarding the use of projections in all SEC filings — for both SPAC and non-SPAC issuers. Key new disclosure requirements and updates:

- *SPAC Sponsors, Their Affiliates, and Promoters.* The Final Rules require additional disclosure about the SPAC sponsor,<sup>2</sup> its affiliates, and any promoters, including the experience, material roles and responsibilities, and the nature and amount of all compensation of these parties; the circumstances or arrangements under which the SPAC sponsor, its affiliates, and promoters have or could transfer ownership of any of the SPAC's securities; the controlling persons of the SPAC sponsor and any persons who have direct or indirect material interests in the SPAC sponsor and the material terms of any "lock-up" arrangements for the SPAC sponsor and its affiliates.
- *Expanded Conflicts of Interest Disclosure.* In both the SPAC IPO and de-SPAC prospectuses, SPACs are required to include a description of any actual or potential material conflicts of interest between the SPAC sponsor, its affiliates, the SPAC's directors and officers, or the target company's officers and directors, on the one hand, and the unaffiliated securityholders of the SPAC on the other. Note that these new conflict of interest disclosures apply broadly to all officers of SPACs and target companies, not just to their "executive officers."
- *Dilution.* The Final Rules require detailed disclosure regarding material potential sources of additional dilution that nonredeeming SPAC shareholders may experience at different phases of the SPAC lifecycle, including the potential dilutive impact of the securities-based compensation and securities issued to the SPAC sponsor, its affiliates, and promoters, any material financing transactions after the SPAC's IPO or that will occur in connection with the de-SPAC transaction closing, and redemptions by other SPAC shareholders.
- *Prospectus Cover Page and Prospectus Summary Disclosures.* The Final Rules require that the cover pages of prospectuses used in SPAC IPOs and in de-SPAC transactions include certain standard disclosures, such as a SPAC's timeframe to complete a de-SPAC transaction, redemption rights, the SPAC sponsor's compensation, conflicts of interest, and dilution (including simplified tabular disclosure incorporating a range of potential redemption levels). Similarly, the Final Rules require certain standardized disclosures in the prospectus summary sections of such registration statements, most of which information is already generally disclosed based on market practice.
- *Business Combination Background.* The Final Rules require detailed disclosure about the background of the de-SPAC transaction, the reasons that the boards of directors of the SPAC and target company approved the de-SPAC transaction, whether the nonemployee directors of the SPAC approved the de-SPAC transaction, and the identity of any SPAC director who votes against or abstains from voting on the proposed de-SPAC transaction.
- *Enhanced Nonfinancial Target Company Disclosures.* The Final Rules require additional information about a target company, including a description of its business, properties, and legal proceedings; changes in and disagreements with accountants; security ownership of certain beneficial owners and management, and recent sales of unregistered securities. In practice, this additional information is typically included in de-SPAC transaction registration statements and proxy statements, as it is required to be included in the "super" Form 8-K following the consummation of the de-SPAC transaction.<sup>3</sup>
- *Item 10(b) of Regulation S-K and the Projections Disclosure Guidelines for all SEC Filings.* The revisions to Item 10(b) of Regulation S-K of the Final Rules apply to the use of projected financial information in all SEC filings (by both SPAC and non-SPAC issuers). Revised Item 10(b) retains

the requirement that management present any projected performance in good faith and have a reasonable basis for such projections and adds the following requirements:

- Any of the projected financial information must clearly delineate between projections based on historical financial results or operational history and those that are not.
- Projections based on historical financial results or operational history should present the historical financial results or operational history with equal or greater prominence.
- Any non-GAAP (U.S. generally accepted accounting principles) projected financial measures should include an explanation as to why the most directly comparable GAAP financial measure was not used.

***Registrants expecting to include projections in upcoming SEC filings, such as in public company merger-and-acquisition (M&A) proxy statements, should proactively consider whether the planned disclosure needs to be supplemented or modified in light of revised Item 10(b).***

- ***Additional Disclosure Guidelines for Projections Used in De-SPAC Transactions.*** The Final Rules require additional specific disclosures in a de-SPAC transaction with respect to projected financial information, including disclosure of the party that prepared the projections, the purpose for which they were prepared, all material bases and assumptions underlying the projections, any material factors that may affect such assumptions, and whether the target company's management has affirmed the projections to the SPAC as of the most recent practicable date prior to the date of the disclosure document required to be disseminated to securityholders.
  - Target companies should carefully review projected financial information to be provided in connection with a potential de-SPAC transaction and supplement as needed, including robust disclosure of all material bases and assumptions underlying the projections, and any factors that may affect such assumptions, in order to best align disclosure duties under corporate laws and federal securities laws. To the extent the parties were not contemplating using the target company's projections for marketing purposes, if a fairness opinion is not otherwise required, more SPACs may opt to not obtain fairness opinions to avoid disclosure of, and resulting potential liability for, the target company's projections.
  - *To the extent a target company already has provided projected financial information to a SPAC, the target company should consider modifying the presentation of its projected financial information to align with the proposed SEC disclosure requirements.* Such target companies also should confirm with management that the existing projections continue to reflect management's view and, if not, proactively prepare updated projections with an explanation and quantification of the updated underlying assumptions.
- ***Fairness Determinations and Fairness Opinions.*** The Proposed Rules would have required a SPAC to state whether it reasonably believes a de-SPAC transaction was fair or unfair to unaffiliated securityholders of the SPAC, which some commenters noted created an apparent "back-door" requirement for a fairness opinion. Instead, the Final Rules require disclosure if the SPAC's board of directors is required by law to determine whether the de-SPAC transaction is advisable and in the best interest of the SPAC and its securityholders, along with the material factors the board considers in making any such determination. However, if a SPAC elects to obtain a fairness opinion, it must disclose it in a de-SPAC registration statement and file it as an exhibit. ***Following the issuance of the Proposed Rules, fairness opinions have become more common in de-SPAC transactions. Given the scaled-back rule, SPACs should consult with their advisers to assess whether it remains prudent to obtain a fairness opinion for a particular de-SPAC transaction.***

## B. Expanded Potential Liability

Three provisions of the Final Rules expand the potential liability for SPACs, target companies, and the directors and officers of SPACs and target companies. Each is discussed in turn below.

- *Excluding De-SPAC Transactions From the PSLRA Safe Harbor Protections.* The Private Securities Litigation Reform Act of 1995 (PSLRA) provides a safe harbor for forward-looking statements under certain conditions, and de-SPAC transactions have historically received the protections of the PSLRA safe harbor. This safe harbor, however, is unavailable either to “blank check companies” or in an IPO. The Final Rules amended the definition of “blank check company” to eliminate the PSLRA safe harbor for forward-looking statements in all de-SPAC transactions. SPACs and target companies should carefully consider the use of projections and other forward-looking statements in de-SPAC transactions and related SEC filings. The removal of the PSLRA safe harbor for these disclosures raises the potential for liability for any financial projections and other forward-looking statements in de-SPAC transactions made following the effective date of the Final Rules. While the use of projections in de-SPAC transactions has scaled back since the Proposed Rules first were released, the ability to use projections to market de-SPAC transactions, especially for early-stage target companies that may have no or limited revenue and profitability history, such as many high-growth, emerging technology and early-stage life sciences companies, has long been considered a competitive advantage relative to going public via a traditional IPO process. The removal of the PSLRA safe harbor protection in de-SPAC transactions likely will result in the continued scaling back of projections and possibly even the curtailment of this practice.
- *Target Company as a Co-Registrant.* The Final Rules deem a target company of a de-SPAC transaction to be an “issuer” for federal securities law purposes and require it to be a co-registrant with the SPAC, which requires the target company, its principal executive officer, principal financial officer, and controller/principal accounting officer, along with a majority of its board of directors, to sign the de-SPAC transaction registration statement. The target company and such individuals would become subject to potential heightened liability under Section 11 and Section 12 of the Securities Act for material misstatements or omissions in the registration statement. ***One significant practical implication is that the target company will become subject to reporting requirements under Section 15(d) of the Securities Exchange Act of 1934, as amended (Exchange Act), following the effectiveness of a de-SPAC transaction registration statement.<sup>4</sup> Additionally, target companies should review the scope of their existing directors and officers insurance coverage in light of this increased liability at an earlier stage of the de-SPAC process than is currently the case to ensure there is coverage at the time the registration statement is declared effective.***
- *Deemed Sale of Securities Under New Rule 145a.* New Rule 145a under the Securities Act deems business combinations between target companies and reporting shell companies to be a sale of the target company’s securities to the reporting shell companies’ securityholders “because the interests the former reporting shell company shareholders owned have been exchanged for something entirely different — interests in an operating company in the course of a transaction whereby the former reporting shell company provides the operating company with access to the public markets.”<sup>5</sup> As the SEC’s release adopting the Final Rules (Adopting Release) explained, Rule 145a applies whether or not the shell companies’ securityholders actually exchange their shares or are issued new securities and no matter the specific business combination structure.<sup>6</sup> ***Rule 145a, which was adopted as proposed, subjects business combinations with shell companies, including de-SPAC transactions, to significant new disclosure obligations and liability, which include requiring registration of such transactions in a broader set of situations and transaction structures, expanding liability for signatories of a registration***

***statement, adding potential underwriter liability, and adding expert liability, including for auditors and for anyone who prepares a fairness opinion.***

### **C. Timing Considerations and Financial Statement Requirements**

Additional aspects of the Final Rules will affect the timing and effect of a de-SPAC transaction and the financial statements required for business combinations involving “shell companies.”

- ***20-Day Minimum Dissemination Period.*** The Final Rules require a prospectus, proxy statement, or information statement filed in connection with a de-SPAC transaction to be distributed to the SPAC’s shareholders a minimum of 20 calendar days in advance of a shareholder meeting or earliest date of an action by written consent. Currently, depending on the transaction structure of the de-SPAC transaction, this period can be as short as 10 calendar days.
- ***Retesting of a Registrant’s “Smaller Reporting Company” Status.*** Under existing rules, a SPAC’s “smaller reporting company” status is tested on the last business day of its second fiscal quarter. The Final Rules require an interim retesting of the SPAC’s “smaller reporting company” status following the consummation of a de-SPAC transaction. The public float would be determined four days after the consummation of the de-SPAC transaction, and the revenue test would look at the revenue of the target company. If the registrant determines that it no longer qualifies as a “smaller reporting company,” then it must reflect this redetermination in filings made with the SEC beginning 45 days after the consummation of the de-SPAC transaction.<sup>7</sup> One key benefit to this 45-day window is that it would afford the registrant the benefit of smaller reporting company status for a resale registration statement filed in such window.<sup>8</sup>
- ***Financial Statements Required for Target Companies in De-SPACs Aligned With Traditional IPO Requirements.*** New Article 15 of Regulation S-X and related amendments revise the financial statement disclosure requirements for target companies engaging in a business combination with a shell company. The proposed modifications to Regulation S-X are designed to harmonize the required financial information of private target companies involved with business combinations with shell companies (including SPACs) with traditional IPOs, including with respect to the number of years of financial statements required,<sup>9</sup> the age of the financial statements, inclusion of financial statements of other significant businesses recently acquired or likely to be acquired, audit requirements, and the use of such financial statements as the sole historical financial statements of the combined company.

## **II. Key Changes From Proposed Rules**

There were two significant aspects of the Proposed Rules that were not included in the Final Rules: proposed Rule 140a under the Securities Act and proposed Rule 3a-10 under the Investment Company Act. In both instances, the SEC opted instead to provide guidance that relies heavily on “facts and circumstances” analyses and reflects the SEC’s broad interpretation of both the definitions of “underwriter” and “investment company.” This introduces significant ambiguity about the status of potential underwriters in de-SPAC transactions and requires issuers and counsel to continue analyzing the circumstances in which a SPAC would be considered an “investment company” under the Investment Company Act on a case-by-case, fact-sensitive basis.

### **A. Underwriter Status and Liability in De-SPAC Transactions**

Following receipt of a significant number of comments expressing concerns with proposed Rule 140a, the SEC decided not to adopt proposed Rule 140a, which would have made any underwriter in a SPAC IPO also a statutory underwriter in connection with a de-SPAC transaction if such SPAC IPO underwriter participated in a distribution associated with a de-SPAC transaction by taking steps to facilitate such transaction, or any related financing transaction, or otherwise participates (directly or indirectly) in the de-

SPAC transaction. Instead, the SEC issued guidance around when a market participant might be an underwriter in a de-SPAC transaction while noting, “[T]his guidance does not implement proposed Rule 140a.”<sup>10</sup> The Adopting Release did not, however, eliminate the possibility of SPAC IPO underwriters and other parties involved with de-SPAC transactions from being deemed statutory underwriters in a de-SPAC transaction. The SEC noted that the definition of a statutory underwriter in Section 2(a)(11) of the Securities Act is “broad” and relies on the facts and circumstances of the particular transaction.<sup>11</sup> Additionally, the SEC emphasized its position that the definitions of “sale” and “distribution” are very broad and “can encompass situations in which there is no actual exchange of securities.”<sup>12</sup> As a result, the SEC concluded, “it is insufficient to conclude that a person is not an underwriter solely because he did not purchase securities from an issuer with a view to their distribution.”<sup>13</sup> Instead, “in a de-SPAC distribution, there would be an underwriter present where someone is selling for the issuer or participating in the distribution of securities in the combined company to the SPAC’s investors and the broader public.”<sup>14</sup>

SPAC IPO underwriters, PIPE placement agents, investment banks, and other market participants who assist SPACs or target companies during a de-SPAC transaction should discuss with their advisers the facts and circumstances of the proposed de-SPAC transaction and whether they might be deemed statutory underwriters based on the SEC’s guidance, even for de-SPAC transactions that do not involve the issuance of new securities to a SPAC’s public shareholders. This is especially true in light of new Rule 145a, pursuant to which a de-SPAC transaction is deemed to involve a sale and distribution of a target company’s securities to the SPAC’s shareholders, which increases the likelihood that certain parties involved in a de-SPAC transaction may be statutory underwriters, as the test ultimately boils down to whether any such party “participated” in such distribution of securities. ***Given the remaining ambiguity around “underwriter” status in connection with a de-SPAC transaction, it is likely that the market practice (that arose after the issuance of the Proposed Rules) of delivering negative assurance (or 10b-5) statements and comfort letters from the SPAC’s and target company’s counsels and auditors, respectively, to banks involved with a de-SPAC transaction will continue.***

## **B. Investment Company Act Considerations**

The SEC also declined to adopt its proposed Rule 3a-10 that would have established a new safe harbor under the Investment Company Act. Instead, the SEC issued guidance on certain factors that may indicate that a SPAC meets the facts and circumstances definition of an “investment company” requiring registration under the Investment Company Act. Specifically, the SEC highlighted (i) the composition of a SPAC’s assets and income; (ii) the activities of a SPAC’s management team, including the efforts being expended to pursue a de-SPAC transaction and whether a considerable amount of time is spent managing the SPAC’s investment portfolio; (iii) the duration for which a SPAC operates prior to entering into a business combination agreement with a target company and completing its de-SPAC transaction;<sup>15</sup> and (iv) whether a SPAC holds itself out as an option through which investors could gain exposure to the SPAC’s underlying portfolio of securities prior to a de-SPAC transaction. Additionally, the SEC stated that a SPAC likely would satisfy the definition of an investment company if a SPAC proposes to engage in a de-SPAC transaction with a target company that is itself an investment company, such as a registered closed-end fund or business development company.

Existing SPACs and their advisers should continue to monitor whether the SPAC falls within the definition of an “investment company” under the Investment Company Act and/or requires an exception or exemption from such definition. Proposed Rule 3a-10 suggested that a SPAC might be deemed an investment company if it did not liquidate any government securities or money market funds if the SPAC has not entered into a business combination agreement by the 18-month mark or completed a de-SPAC transaction after 24 months. The Commission’s continued discussion of 12-<sup>16</sup> and 18-month periods as potentially significant should be reviewed carefully in the context of each SPAC’s overall circumstances. ***For example, SPACs should discuss with their advisers the general treatment of SPAC assets and***

***income under the Investment Company Act and specifically whether it may be appropriate to hold all trust account funds in cash following the 12-month anniversary of the SPAC IPO.***<sup>17</sup>

### III. Key Points of Dissent

The Proposed Rules received significant and widespread feedback. 115 comments letters were submitted to the SEC, with authors ranging from significant organizations such as the Securities Industry and Financial Markets Association, a committee of the American Bar Association, the National Venture Capital Association, and prominent national law and accounting firms to U.S. Senators and Representatives to the SEC Small Business Capital Formation Advisory Committee to individual investors and academics.

Commissioners Hester Peirce and Mark Uyeda opposed the Final Rules and suggested that a lighter, more tailored regulatory approach would have balanced additional investor protections while preserving the unique characteristics and advantages of SPACs.<sup>18</sup> Importantly, both Commissioners advocated for retaining differences between SPACs and traditional IPOs to provide target companies with greater alternatives when determining the optimal path to become a public company. Finally, both Commissioners Peirce and Uyeda voiced concern that the Final Rules could severely cripple or even kill the SPAC market.<sup>19</sup> Ultimately, this could result in fewer public companies accessing the public markets and fewer investment options for public investors.

In his dissent, Commissioner Uyeda lamented that the Final Rules, in his view, did not actually seek to put SPACs on equal footing with other transactions.<sup>20</sup> He identified several areas, such as the requirements (i) to reaffirm management's projections, (ii) to identify by name any director who votes against or abstains from a SPAC vote approving a de-SPAC transaction, and (iii) to disclose all contacts (not just "material contacts") between a SPAC and a target company, "where the Adopting Release will impose more stringent disclosure requirements on SPAC filings than comparable filings not involving SPACs."<sup>21</sup> Additionally, Commissioner Uyeda considered the Investment Company Act section of the Adopting Release to be another example of the de facto merit regulation because even though the Adopting Release abandons a "problematic" safe harbor, "don't be fooled.... Over the course of ten pages of 'guidance,' the Commission misapplies existing rules to raise concerns about SPACs that operate beyond arbitrary 12 or 18 month timeframes prior to completing a business combination."<sup>22</sup>

### IV. Effective Date

The Final Rules will become effective 125 days after publication in the *Federal Register*, and registrants will be required to comply with the new structured data, or XBRL "tagging," requirements 490 days after publication of the Final Rules in the *Federal Register*.

---

<sup>1</sup> Chair Gary Gensler (SEC), "Statement on Final Rules Regarding Special Purpose Acquisition Companies (SPACs), Shell Companies, and Projections," Jan. 24, 2024, <https://www.sec.gov/news/statement/gensler-statement-final-rule-012424>. Commissioners Hester Peirce and Mark Uyeda both voted against the Final Rules on the basis that they were too aggressive and would negatively affect the SPAC market, as described in Section III (Key Points of Dissent) below.

<sup>2</sup> Under the Final Rules, the definition of "SPAC sponsor" extends beyond the traditional SPAC sponsor entity because it also includes "any entity and/or person primarily responsible for organizing, directing, or managing the business and affairs of a special purpose acquisition company, excluding, if an entity is a SPAC sponsor, officers and directors of the SPAC who are not affiliates of any such entity that is a SPAC sponsor."

<sup>3</sup> Item 2.01(f) of Form 8-K.

<sup>4</sup> The Adopting Release stated that an exemption from the Exchange Act's reporting requirements for target companies prior to the closing of a de-SPAC transaction would not be "necessary or appropriate in the public interest or consistent with the protection of investors because, during the pendency of the de-SPAC transaction, SPAC investors will benefit from receiving updated information about the target company." Adopting Release at 204.

<sup>5</sup> Adopting Release at 294.

<sup>6</sup> “The final rule also applies regardless of transaction structure or the form of business combination (e.g., statutory merger, share exchange, stock purchase, asset purchase, etc.).” Adopting Release at 295.

<sup>7</sup> The 45-day window is a new addition in the Final Rules. According to the Adopting Release, “We believe the final rule represents a reasonable compromise between the proposed rule’s transition period (until the next periodic report, which could be as soon as one day after the de-SPAC transaction) and a commenter’s recommended transition period (until filing of the next Form 10-K, which could be as long as nearly 15 months).” Adopting Release at 223-224.

<sup>8</sup> Adopting Release at 224.

<sup>9</sup> The Adopting Release expressly noted that Rule 15-01(b) permits a target company business to include only two years of statements of comprehensive income, changes in stockholders’ equity, and cash flows if such target company would qualify as an “emerging growth company” and/or “smaller reporting company” if it were doing its own IPO for equity securities. Adopting Release at 316.

<sup>10</sup> Adopting Release at 283.

<sup>11</sup> Adopting Release at 283.

<sup>12</sup> Adopting Release at 285.

<sup>13</sup> Adopting Release at 286.

<sup>14</sup> Adopting Release at 287.

<sup>15</sup> The SEC highlighted the 12-month safe harbor in Rule 3a-2 of the Investment Company Act and the 18-month limit on blank check companies imposed by Rule 419. The SEC noted, “A SPAC that operates beyond these timelines raises concerns that the SPAC may be an investment company, and these concerns increase as the departure from these timelines lengthens.” Adopting Release at 369. In his dissenting statement, however, Commissioner Uyeda rejected the 12- and 18-month analogies as inappropriate for SPACs, calling them “arbitrary.”

<sup>16</sup> Commissioner Caroline Crenshaw, “Ensuring Basic Protections: Special Purpose Acquisition Company Rule Adoption,” Jan. 24, 2024, <https://www.sec.gov/news/statement/crenshaw-statement-final-rule-012424>. Commissioner Crenshaw’s statement specifically notes that “each day a SPAC exists increases the likelihood that the SPAC is, in fact, an investment company, particularly once the SPAC exceeds the existing twelve-month grace period already afforded to ‘transient investment companies.’”

<sup>17</sup> The Adopting Release also notes that SPAC sponsors should carefully consider whether their activities would require them to register as “investment advisers” under the Investment Advisers Act of 1940: “Depending on the facts and circumstances, the management of a SPAC also could cause SPAC sponsors to come within the definition of “investment adviser” in Section 202(a)(11) of the Investment Advisers Act of 1940.” Adopting Release at 367.

<sup>18</sup> “The Commission could have developed a regulatory framework for SPACs that contained elements of its rules for IPOs and M&A transactions. In this framework, the Commission could have balanced the application of the two sets of rules to ensure that SPAC investors receive material information and have adequate recourse for fraudulent behavior and material misstatements or omissions, while at the same time ensuring that SPACs remain a viable method for private companies to become reporting companies and access our capital markets.” Commissioner Mark Uyeda, “Dissenting Statement on Final Rule on Special Purpose Acquisition Companies, Shell Companies, and Projections: The Commission Embraces Merit Regulation,” Jan. 24, 2024, <https://www.sec.gov/news/statement/uyeda-statement-final-rule-012424> (“Commissioner Uyeda’s Dissenting Statement”).

<sup>19</sup> “The regulatory reaper came for SPACs and seems to have won.” Commissioner Hester Peirce, “For the Birds: Statement on Adoption of Rule Regarding Special Purpose Acquisition Companies, Shell Companies, and Projections,” Jan. 24, 2024, <https://www.sec.gov/news/statement/peirce-statement-final-rule-012424> (“Commissioner Peirce’s Dissenting Statement”).

<sup>20</sup> The Final Rules are “aimed at significantly increasing the costs and decreasing the attractiveness of being associated with SPACs, to the extent that few rational actors would even attempt such an offering. Today’s recommendation effectively constitutes a form of de facto merit regulation” (Commissioner Uyeda’s Dissenting Statement).

<sup>21</sup> Commissioner Uyeda’s Dissenting Statement.

<sup>22</sup> Commissioner Uyeda’s Dissenting Statement. In addition, Commissioner Peirce shared this concern and noted that “the guidance may function like a backdoor rule” and implied a change in direction from the SEC’s well-established approach. “Over the last twenty years, our staff reviewed ‘more than 1,000 SPAC IPOs’ without deeming a SPAC to be an investment company. The Commission appears to want to forget that history. Risk averse SPAC sponsors may turn the references in the guidance to 12- and 18 month-time periods into ironclad

deadlines, despite their lack of legal grounding and inconsistency with industry practice” (Commissioner Peirce’s Dissenting Statement).

## CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

<b>Michael P. Heinz</b> , Partner	+1 212 839 5444, <a href="mailto:mheinz@sidley.com">mheinz@sidley.com</a>
<b>Joshua G. DuClos</b> , Partner	+1 310 595 9616, <a href="mailto:jduclos@sidley.com">jduclos@sidley.com</a>
<b>Sonia Gupta Barros</b> , Partner	+1 202 736 8387, <a href="mailto:sbarros@sidley.com">sbarros@sidley.com</a>
<b>W. Hardy Callcott</b> , Partner	+1 415 772 7402, <a href="mailto:hcallcott@sidley.com">hcallcott@sidley.com</a>
<b>Jim Ducayet</b> , Partner	+1 312 853 7621, <a href="mailto:jducayet@sidley.com">jducayet@sidley.com</a>
<b>Nathan J. Greene</b> , Partner	+1 212 839 8673, <a href="mailto:ngreene@sidley.com">ngreene@sidley.com</a>
<b>James Heyworth</b> , Partner	+1 212 839 6785, <a href="mailto:jheyworth@sidley.com">jheyworth@sidley.com</a>
<b>David Ni</b> , Partner	+1 212 839 5430, <a href="mailto:dni@sidley.com">dni@sidley.com</a>
<b>Jeffrey N. Smith</b> , Partner	+1 312 853 7312, <a href="mailto:jnsmith@sidley.com">jnsmith@sidley.com</a>
<b>Jeff Wysong</b> , Senior Managing Associate	+1 312 853 2039, <a href="mailto:jwysong@sidley.com">jwysong@sidley.com</a>

---

Sidley Austin LLP provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. In addition, this information was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any U.S. federal, state, or local tax penalties that may be imposed on such person.

Attorney Advertising — Sidley Austin LLP, One South Dearborn, Chicago, IL 60603. +1 312 853 7000. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships, as explained at [www.sidley.com/disclaimer](http://www.sidley.com/disclaimer).

© Sidley Austin LLP