FACT SHEET

SPACs, Shell Companies, and Projections: Proposed Rules

The Securities and Exchange Commission proposed rules and amendments regarding special purpose acquisition companies (SPACs), shell companies, and projections disclosure. The proposed new rules and amendments would, among other things:

- Enhance disclosures and provide additional investor protections in SPAC initial public offerings and in business combination transactions between SPACs and private operating companies (de-SPAC transactions);
- Address the treatment under the Securities Act of 1933 of business combination transactions involving a reporting shell company and amend the financial statement requirements applicable to transactions involving shell companies;
- Provide additional guidance on the use of projections in SEC filings to address concerns about their reliability; and
- Assist SPACs in assessing when they may be subject to regulation under the Investment Company Act of 1940.

Why This Matters

Over the past two years, the U.S. public securities markets have experienced an unprecedented surge in the number of initial public offerings by SPACs. The rapid increase has heightened investor protection concerns about various aspects of the SPAC structure and the increasing use of shell companies as mechanisms for private operating companies to become public companies. The surge in SPAC initial public offerings also has renewed concerns about the use of projections, particularly with respect to business combination transactions in which projections about private operating companies may lack a reasonable basis. As the SPAC market has grown, concerns also have arisen about whether some SPACs may be investment companies that are subject to the requirements of the Investment Company Act.

Enhancing Disclosure and Investor Protection

The proposed rules would require enhanced disclosure and provide additional investor protections in initial public offerings by SPACs and in de-SPAC transactions, including:

- Enhanced disclosures regarding, among other things, SPAC sponsors, conflicts of interest, and dilution;

- Additional disclosures on de-SPAC transactions, including with respect to the fairness of the transactions to the SPAC investors;
- A requirement that the private operating company would be a co-registrant when a SPAC files a registration statement on Form S-4 or Form F-4 for a de-SPAC transaction;
- A re-determination of smaller reporting company status within four days following the consummation of a de-SPAC transaction;
- An amended definition of "blank check company" to make the liability safe harbor in the Private Securities Litigation Reform Act of 1995 for forward-looking statements, such as projections, unavailable in filings by SPACs and certain other blank check companies; and
- A rule that deems underwriters in a SPAC initial public offering to be underwriters in a subsequent de-SPAC transaction when certain conditions are met.

Business Combinations Involving Shell Companies

The proposed rules applicable to business combination transactions involving shell companies, including SPACs, would:

- Deem by rule that a business combination transaction involving a reporting shell company and another entity that is not a shell company constitutes a sale of securities to the reporting shell company's shareholders for purposes of the Securities Act; and
- Better align the required financial statements of private operating companies in transactions involving shell companies with those required in registration statements for initial public offerings.

Projections Disclosure

The proposed amendments to Item 10(b) of Regulation S-K would expand and update the Commission's guidance on the presentation of projections of future economic performance in Commission filings to allow investors to better assess the reliability of the projections and whether they have a reasonable basis. The Commission proposed additional disclosure requirements to allow investors to better assess the basis of projections when they are used in SPAC business combination transactions.

Status of SPACs under the Investment Company Act of 1940

The proposed rule would address the status of SPACs as "investment companies" under the Investment Company Act. If the proposal is adopted, a SPAC that fully complies with the rule's conditions would not need to register as an investment company under the Investment Company Act.

The proposed conditions include, among other things, that a SPAC must:

- Maintain assets comprising only cash items, government securities, and certain money market funds;
- Seek to complete a de-SPAC transaction after which the surviving entity will be primarily engaged in the business of the target company; and
- Enter into an agreement with a target company to engage in a de-SPAC transaction within 18 months after its initial public offering and complete its de-SPAC transaction within 24 months of such offering.

While a SPAC would not be required to rely on the proposed rule, the proposed conditions are intended to align with the structures and practices that the Commission preliminarily believes would distinguish a SPAC that is likely to raise serious questions as to its status as an investment company from one that does not.

Additional Information:

The public comment period will remain open for 60 days following publication of the proposing release on the SEC's website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.