

# SPACs, Shell Companies, and Projections: Final Rules



On Jan. 24, 2024, the Securities and Exchange Commission adopted final rules to enhance disclosures and provide additional investor protections in initial public offerings (IPOs) by special purpose acquisition companies (SPACs) and in subsequent business combination transactions between SPACs and target companies (de-SPAC transactions). The Commission [proposed the amendments](#) on March 30, 2022. The public comment file is [available online](#). The final rules, among other things:

- Require additional disclosures about SPAC sponsor compensation, conflicts of interest, dilution, the target company, and other information that is important to investors in SPAC IPOs and de-SPAC transactions;
- Require, in certain situations, the target company in a de-SPAC transaction to be a co-registrant with the SPAC (or another shell company) and thus assume responsibility for the disclosures in the registration statement filed in connection with the de-SPAC transaction;
- Deem any business combination transaction involving a reporting shell company, including a SPAC, to be a sale of securities to the reporting shell company's shareholders; and
- Better align the regulatory treatment of projections in de-SPAC transactions with that in traditional IPOs under the Private Securities Litigation Reform Act of 1995 (PSLRA).

In addition, the Commission is providing guidance to assist SPACs in assessing when they may meet the definition of an investment company under the Investment Company Act of 1940 and regarding statutory underwriter status under the Securities Act of 1933 in connection with de-SPAC transactions.

## Why This Matters

SPAC IPOs and de-SPAC transactions can be used by private companies to enter the public markets. Given the complexity of these transactions, the Commission seeks to enhance investor protection in SPAC IPOs and de-SPAC transactions with respect to the adequacy of disclosure and the responsible use of projections. The final rules also address investor protection concerns more broadly with respect to shell companies and blank check companies, including SPACs.

## How the Rules Apply

### Enhancing Investor Protections in SPAC IPOs and De-SPAC Transactions

The final rules enhance SPAC-related disclosures and provide additional protections by:

- More closely aligning the required disclosures and the legal liabilities that may be incurred in de-SPAC transactions with those in traditional IPOs, including by deeming

the target company an issuer that must sign a Securities Act registration statement filed by a SPAC (or other shell company) in connection with a de-SPAC transaction;

- Requiring additional disclosures regarding, among other things, SPAC sponsors, SPAC sponsor compensation, conflicts of interest, dilution, and the target company;
- Requiring additional disclosures in de-SPAC transactions regarding any determination by a board of directors or similar body as to whether the de-SPAC transaction is advisable and in the best interests of the SPAC and its shareholders, if required by law, and any outside report, opinion, or appraisal received that materially relates to the de-SPAC transaction;
- Requiring a 20-calendar-day minimum dissemination period for prospectuses and proxy and information statements filed for de-SPAC transactions where consistent with local law; and
- Requiring a re-determination of smaller reporting company status following the consummation of a de-SPAC transaction and requiring such re-determination to be reflected in filings beginning 45 days after the de-SPAC transaction's consummation.

## **Enhancing Investor Protections in Shell Company Business Combinations**

To help ensure that investors receive Securities Act protections in business combinations involving shell companies (including de-SPAC transactions), the Commission adopted:

- Rule 145a, which provides that any direct or indirect business combination of a reporting shell company (that is not a business combination related shell company) involving another entity that is not a shell company, is deemed to involve an offer, offer to sell, offer for sale, or sale within the meaning of Section 2(a)(3) of the Securities Act; and
- Financial statement requirements applicable to transactions involving shell companies and private operating companies that will be better aligned with those in traditional IPOs.

## **Enhancing Projections Disclosure**

To better align the regulatory treatment of projections in business combinations involving certain blank check companies with that in traditional IPOs, the rules adopt a definition of “blank check company” under the PSLRA that make the safe harbor for forward-looking statements under the PSLRA unavailable for such blank check companies, including SPACs.

In connection with de-SPAC transactions, the final rules also include disclosure requirements related to projections, including disclosure of all material bases of the projections and all material assumptions underlying the projections.

Lastly, the final rules update and expand guidance on the use of projections in all SEC filings.

---

## **What's Next**

The final rules will become effective 125 days after publication in the Federal Register. Compliance with the structured data requirements (which require tagging of information disclosed pursuant to new subpart 1600 of Regulation S-K in Inline XBRL) will be required 490 days after publication of the final rules in the Federal Register.