



March 31, 2022

SEC Proposes New Rules to Enhance SPAC Disclosure and Investor Protection

On March 30, 2022, in a long-awaited move, the U.S. Securities and Exchange Commission (SEC) proposed new rules to regulate the Special Purpose Acquisition Company (SPAC) market to enhance disclosure requirements and investor protection. A copy of the proposed rules can be found [here](#).

As discussed in our "SPACs: An IPO and Private Equity Alternative: Deal Points," available for download at [Kurtin PLLC Whitepapers and Advisories](#), SPACs consist of a two-step transaction: first forming a new shell company, the SPAC itself, and taking it public in an initial public offering (IPO); and then concluding a reverse merger with a target, usually private, company, not identified at the time of the IPO, in a transaction called a "business combination" or "de-SPACing," with the target company the surviving entity and succeeding to the SPAC's public company status and IPO shareholders. For many years, SPACs and reverse mergers were a fringe part of the U.S. capital markets landscape, but burst into mainstream popularity in 2020 and continue

to occupy a significant place in the palette of financing options. However, SPACs have been criticized for lacking many of the disclosure requirements of traditional IPOs, in particular since, almost uniquely among companies going public, they rely in their registration statements on forward-looking projections, having by definition no financial or operational history to disclose to investors.

The new proposed SEC rule aims to remedy some of those concerns, and may bolster, rather than suppress, the SPAC market by doing so. Among the proposed rule's requirements are:

- Require additional disclosures about SPAC sponsors, conflicts of interest and sources of dilution;
- Require additional disclosures about projections by amendments to Item 10(b) of Reg. S-K of the Securities Exchange Act of 1934;
- Require additional disclosures about SPAC business combination transactions, including disclosures about proposed business transaction fairness and related to the private target business transaction company;
- Deem by rule that the SPAC business combination constitutes a sale of securities to the SPAC shareholders for purposes of the Securities Act of 1933;
- Under certain circumstances, deem the SPAC IPO underwriters to be the SPAC business combination underwriters; and
- Regulate SPAC and business combination forward-looking statement projections, including by amending the definition of "blank check company" to make the Private Securities Litigation Reform Act of 1995 safe harbor for forward-looking statements unavailable for SPAC and other blank check company filings.

The overall effect of the proposed rules, if adopted, would be to more closely align SPAC IPO disclosures with those of traditional IPOs.

Finally, the proposed rules contain a new rule addressing the status of SPACs under the Investment Company Act of 1940, until now a murky topic. The proposed rule provides that SPACs that meet conditions to

limit their stated duration, business purpose, asset composition and activities would not be required to register under the Investment Company Act of 1940, a material cost- and time-saving and, likely, investor attractiveness, advantage for SPACs complying with the new rule. Among the conditions to be met to be Investment Company Act-exempt: maintaining as assets only cash, government securities and certain money market funds; entering into a business combination agreement within 18 months of IPO and completing the business combination within 24 months; and a business combination in which the surviving company carries on the predecessor private target's business.

Perhaps what is most critical is what the SEC proposed rules do **NOT** do: they do **not** attempt to suppress the SPAC market generally, but instead regulate it in a way still moderate compared to traditional IPOs. In doing so, as stated above, the proposed rules can be seen as a potential positive for the SPAC market and an attempt to bolster it through improved investor confidence, with a clear signal that the SEC is not trying to eliminate the SPAC market.

The proposed rules are open for public comment for 60 days from yesterday's publication on the SEC website or 30 days from publication in the Federal Register, whichever is longer. For additional information, please contact us at info@kurtinlaw.com.

Owen D. Kurtin

Kurtin PLLC, a New York City-based law firm, focuses on corporate, commercial and regulatory representation in the [Biotechnology & Life Sciences](#), [Communications & Media](#), [Information Technologies & Internet](#), [Satellites & Space](#) and [Venture Capital & Private Equity](#) sectors. Since our founding in 2008, we have represented clients in over forty countries on six continents and across the United States on transactional and dispute resolution matters. Among our key values, none rank higher than creative and individualized solutions to business issues, absolute client discretion and unsurpassed responsiveness.

Kurtin PLLC Website

The materials contained in this message and website pages, whitepapers, advisories and other items directly linked to it have been prepared for general informational purposes only and should not be construed or relied upon as legal advice or a legal opinion on any specific facts and circumstances. The publication and dissemination, including on-line, of these materials and receipt, review, response to or other use of them does not create or constitute an attorney-client relationship.

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

These materials may contain attorney advertising. Prior results do not guarantee a similar outcome.

Copyright © Kurtin PLLC 2022. All Rights Reserved.

Kurtin PLLC | [Website](#)



Kurtin PLLC | One Rockefeller Plaza, Floor 11, New York, NY 10020

[Unsubscribe {recipient's email}](#)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by okurtin@kurtinlaw.com powered by



Try email marketing for free today!