

UT Law CLE 17th Annual Mergers and Acquisitions Institute

SPAC-tacular...or Not?

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Agenda

- **Trends in Documentation of DeSpac Transactions**
- **SEC Developments Affecting SPACs**
- **Financing the deSPAC – PIPE Transactions**
- **deSPAC Considerations – Litigation, Fiduciary Duties and Conflicts of Interest**



Trends in Documentation of DeSpac Transactions

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Current Trends

- The first quarter of 2021 alone saw a record 298 SPACs formed, raising \$83B — up from 135 deals and \$36B the quarter prior (CB Insights)
- However, an SEC statement in April 2021 — which stipulated new accounting rules for SPACs — roiled the SPAC boom as companies scrambled to double-check their financial statements for errors
- New SPAC filings plummeted to just 61 in Q2 2021 (CB Insights)
- The SEC statement by the Acting Director of Corporate Finance and Acting Chief Accountant, set forth their views on the accounting treatment of warrants that are issued by SPACs
 - Typically, SPACs have classified warrants on their balance sheets as equity
 - The recent statement has suggested that the SEC staff believes the warrants issued by SPACs with certain features should be properly classified as liabilities

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Current Trends

Continued

- This classification would require SPACs to periodically account for changes in the warrants' value.
- For those SPACs that completed their IPO and made an error in the classification of the warrants, this announcement required those companies to review their previously-filed financial statements and assess whether the error was material, such that a restatement of the previously-filed financial statements would be required. In addition to a restatement, a company also had to assess prior disclosures relating to its internal control over financial reporting. This process also applied to those SPACs with pending or completed deals
- SPACs that were in the registration process needed to determine whether any changes to their regulatory filings and accounting methods were required before they could get through the SEC review process, as the SEC staff indicated that they would not allow registration statements to go effective if the accounting issue had not been considered and, where necessary, corrected

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Current Trends

Continued

- As a result of the surge in the number of new SPACs, competition for SPAC mergers is intensifying
 - At June 2, 260 companies with \$87 billion in trust were facing deadlines within the first three months of 2023. (Market Insider)
 - SPAC-offs have become common
 - Next year may be good year for sellers as deadline pressures increase
- Use of Earn-Outs to Avoid Over-Valuation of De-SPAC Targets – *see EdTechX Holdings Acquisition Corp. (issuance of additional shares to target based on future stock price performance)*

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