

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street ME
Washington, DC 20549-1090

June 3, 2022

RE: S7-13-22 Special Purpose Acquisition Companies, Shell Companies, and Projections

Dear Vanessa,

This comment letter on the SEC's proposed changes to disclosure regulations is submitted jointly by me, [Michael Dambra](#) (University at Buffalo, SUNY), and my two co-authors, [Omri Even-Tov](#) (University of California, Berkeley), and [Kimberlyn George](#) (University of California, Berkeley). We have extensively studied forward looking statements (FLS) in the de-SPAC setting and are thus well prepared to respond to the SEC's request for comments.

Our expertise derives from research conducted for our recent [working paper](#) on the informativeness of revenue forecasts to investors in de-SPAC transactions.¹ Specifically, our recommendation to the SEC stems from our analysis of 353 de-SPAC transaction between January 1, 2010 and December 31, 2021. Overall, our results affirm the SEC's concerns about the attractiveness of SPAC firms' aggressive revenue projections to retail investors and the insufficient presentation of historical financial information in SPAC transactions. To briefly summarize our results: We find a positive association between the compound annual growth rate (CAGR) in projected revenue forecasts and abnormal returns, retail trading, and Reddit discussion in the five-day window surrounding the merger announcement. In contrast, we find weak evidence that investors and social media respond to historical financial performance measures upon the announcement. Further, we find that firms with higher projected revenue have fewer share redemptions. While our initial tests suggest that revenue forecasts appear useful to SPAC investors, we also find that higher SPAC revenue forecasts predict post-merger stock and accounting *underperformance*. Although revenue forecasts often lose their predictive ability when we simultaneously account for historical revenue information, retail investors and Reddit discussants appear to overlook these measures at the merger announcement. Last, we observe that high CAGR revenue forecasts positively predict future class action litigation.

Specifically, we respond to the following SEC requests for comments (numerated similar to the SEC proposal [S7-13-22](#)):

43. *Should we require disclosure regarding reports, opinions, or appraisals from an outside party, as proposed? Is there any additional or alternative information that we should require with respect to these reports, opinions, or appraisals? Is there any proposed information that should not be required?*

¹ Dambra, M., K. George, and O. Even-Tov. 2022. Are SPAC Revenue Forecasts Informative? *Working Paper*.

We believe that such information should be provided to investors. While the academic literature has scrutinized the usefulness of fairness opinions,² more recent academic studies conclude that target firm valuations are informative.³ The stock market reactions to merger announcements and the public disclosure of target fairness opinions are positively related to the difference between the target firm valuations contained in the fairness opinion and the merger offer price.

76. *Would the proposed amendments improve the quality of projections in connection with de-SPAC transactions by clarifying that the safe harbor under the PSLRA is unavailable? Would the proposed amendment discourage some SPACs from disclosing projections in connection with these transactions or affect the ability of SPACs or target companies to comply with their obligations under the laws of their jurisdiction of incorporation or organization to disclose projections used by the board of directors or the companies' fairness opinion advisers?*

We disagree that the PSLRA's safe harbor exemption should be formally removed for private firms that go public via a SPAC acquisition. There is a tradeoff here that we would like the agency to consider between protecting investors from misleading disclosure versus limiting investors' investment opportunities in non-traditional IPO firms.

First, recent regulatory changes have attempted to reverse the decades-long decline in the number of firms going public. The Jumpstart our Business Startups Act was intended to increase the number of IPOs in domestic markets, as academic research has suggested that IPOs elevate job growth in a local economy.⁴ In 2020 and 2021, SPACs outpaced traditional IPOs. Our paper, among others, shows that de-SPAC targets have little historical revenue and high projected growth.⁵ Such firms may need financial projections to tell their story in order to go public.⁶ It is our expectation that removing safe harbor protections would reduce the number of non-traditional firms entering public markets via SPAC acquisitions.

Second, our study finds that de-SPAC targets with more aggressive revenue growth are more likely to be subject to class action litigation. While SPAC firms and their targets have used public offerings to provide FLS (and communicate their story), the capital markets have sanctioned firms for issuing misleading disclosures in this setting. In other words, the capital market thus far has sanctioned firms

² Kisgen, D. J., & Song, W. 2009. Are fairness opinions fair? The case of mergers and acquisitions. *Journal of Financial Economics*. 91 (2) 179-207.

³ Cain, M. D., and D. J. Denis. 2013. Information Production by Investment Banks: Evidence from Fairness Opinions. *The Journal of Law and Economics* 56 (1): 245-80.

⁴ Dambra, M., L. C. Field, and M. T. Gustafson. 2015. The JOBS Act and IPO Volume: Evidence That Disclosure Costs Affect the IPO Decision. *Journal of Financial Economics* 116 (1): 121-43.

⁵ Blankespoor, Elizabeth, Bradley E. Hendricks, Gregory S. Miller, and Douglas R. Stockbridge. 2022. "A Hard Look at SPAC Projections." *Management Science*, Forthcoming.

⁶ See Damodaran, A. 2021. Disrupting the Disruptors? The 'Going Public Process' in Transition. *Working Paper*. See also Klausner, M., M. Ohlrogge, E. Ruan. 2022. A Sober Look at SPACs. *Yale Journal of Regulation*, Forthcoming.

for misleading disclosure in the SPAC setting without requiring a specific regulatory change. Our analysis contradicts existing arguments that SPAC regulatory loopholes permit a “license to lie.”⁷

Third, rather than barring such young growth firms from providing forward looking information, we feel that additional disclosure should be provided around these forecasts. The SEC has maintained that providing increased disclosure, e.g., FLS, benefits investors over time.⁸ More generally, academic research has found that voluntary disclosure can mitigate informational imperfections between insiders and prospective investors in the IPO setting.⁹

110. *Should we amend Item 10(b) of Regulation S-K, as proposed?*

- (1) *Any projected measures that are not based on historical financial results or operational history should be clearly distinguished from projected measures that are based on historical financial results or operational history;*
- (2) *It generally would be misleading to present projections that are based on historical financial results or operational history without presenting such historical measure or operational history with equal or greater prominence; and*
- (3) *the presentation of projections that include a non-GAAP financial measure should include a clear definition or explanation of the measure, a description of the GAAP financial measure to which it is most closely related, and an explanation why the non-GAAP financial measure was used instead of a GAAP measure.*

Is there additional or different guidance we should provide?

⁷ See Senate Report. 1995. The private securities litigation reform act of 1995. Available at: <https://www.govinfo.gov/content/pkg/CRPT-104srpt98/html/CRPT-104srpt98.htm>. See also Horwich, A. 2010. Cleaning the Murky Safe Harbor for Forward-Looking Statements: An Inquiry into Whether Actual Knowledge of Falsity Precludes the Meaningful Cautionary Statement Defense. *The Journal of Corporation Law* 35: 519-559; Olazábal, A. M. 2011. False Forward-Looking Statements and the PSLRA’s Safe Harbor. *Indiana Law Journal* 86: 595-644; Asay, H.S., and J. Hales. 2018. Disclaiming the Future: Investigating the Impact of Cautionary Disclaimers on Investor Judgments Before and After Experiencing Economic Loss. *The Accounting Review* 93 (4): 81–99.

⁸ See Securities and Exchange Commission (SEC). 1989. Management’s discussion and analysis of financial condition and results of operations; Certain investment company disclosures. Release No. 33–6835. Available at <https://www.sec.gov/rules/interp/33-6835.htm>. See also Securities and Exchange Commission (SEC). 2003. Commission guidance regarding management’s discussion and analysis of financial condition and results of operations. Release No. 33–8350. Available at <https://www.sec.gov/rules/interp/33-8350.htm>; Securities and Exchange Commission (SEC). 2020. Management’s discussion and analysis, selected financial data, and supplementary financial information. Release No. 33–10750. Available at <https://www.sec.gov/rules/proposed/2020/33-10750.pdf>; Levitt, A. 1996. Final thoughts on litigation reform. 23rd Annual securities regulation institute. San Diego, California. Available at: <https://digital.sandiego.edu/sdlr/vol33/iss3/3/>.

⁹ See Leone, A. J., S. Rock, and M. Willenborg. 2007. Disclosure of Intended Use of Proceeds and Underpricing in Initial Public Offerings. *Journal of Accounting Research* 45 (1): 111–53. See also Boone, A. L., I. V. Floros, and S. A. Johnson. 2016. Redacting Proprietary Information at the Initial Public Offering. *Journal of Financial Economics* 120 (1): 102-123.

We agree with these proposed changes. In our study, we show that high Revenue CAGR firms attract significantly more retail investor purchases and social media discussion and are negatively associated with share redemptions. At the same time, high Revenue CAGR positively predicts future underperformance and subsequent class action litigation. While market reactions, retail investor trading activity, and social media coverage appear to be more strongly related to FLS, we observe weak and inconsistent relations with *historical revenue information* (or the lack of its disclosure in the investor presentation). Yet, when we incorporate historical information into long-term performance models, the predictive power of revenue projections on subsequent performance abates, suggesting that historical financial information should be useful to SPAC investors. Thus, we support the SEC's suggestion that when firms provide projections, they should also furnish their historical equivalent. It appears that retail investors are not incorporating historical financial information into their investment decisions, perhaps because such information is not disclosed with equal prominence.

113. *Are there different ways of presenting financial projections that would be beneficial to investors? For example, should we require registrants to present some or all financial projections in a separately captioned section of a Commission filing?*

Similar to other regulatory settings, we believe that investors would benefit from a consistent approach to financial projection disclosure across firms along with their historical equivalents. We are opposed to mandating the disclosure of certain financial statement line items (e.g., revenue, EBITDA, etc.), but we believe that providing the means for investors to compare such forecasts across firms and within firms over time would be useful.

114. *Should we adopt Item 1609 as proposed?¹⁰ Are there additional disclosures that we should require in de-SPAC transaction filings related to financial projections?*

We agree that SPACs and their targets should be *encouraged*, but not required, to provide supplementary data to support their projections. Source data for projected industry growth and macroeconomic assumptions would enhance the credibility of such disclosures and might also require firms to expend more effort into creating these projections. In fact, prior academic research finds that when management provides good news forecasts, they also share supplementary information that is deemed more credible by investors.¹¹

¹⁰ Proposed Item 1609 would require a registrant to provide the following disclosures: (1) With respect to any projections disclosed by the registrant, the purpose for which the projections were prepared and the party that prepared the projections; (2) All material bases of the disclosed projections and all material assumptions underlying the projections, and any factors that may materially impact such assumptions (including a discussion of any factors that may cause the assumptions to be no longer reasonable, material growth rates or discount multiples used in preparing the projections, and the reasons for selecting such growth rates or discount multiples); (3) Whether the disclosed projections still reflect view of the board or management of the SPAC or target company, as applicable, as of the date of the filing; if not, then discussion of the purpose of disclosing the projections and the reasons for any continued reliance by the management or board on the projections.

¹¹ Hutton, A. P., Miller, G. S., & Skinner, D. J. 2003. The role of supplementary statements with management earnings forecasts. *Journal of Accounting Research*, 41(5), 867–890.

We also feel that including risk factor disclosures would be useful to prospective investors.¹² Many academic papers provide convincing evidence that SPACs underperform in terms of stock returns and projected accounting performance.¹³ The evidence in our manuscript largely suggests that investors, particularly retail investors, respond to more aggressive revenue projections, and historical disclosure measures elicit a weaker market response. We feel that more emphasis should be placed on providing historical and forward looking disclosures with equal prominence as well as cautionary information on the uncertainty of FLS realization.

150. *We note that the announcement of a prospective de-SPAC transaction often results in an immediate and substantial increase in the trading volume of the securities of the SPAC, based on the terms of the transaction that have been disclosed and the limited information publicly available on the private operating company at the time of the announcement, which is far less extensive than that of a newly public company after a traditional initial public offering. Should we consider requiring additional disclosures, such as more disclosure on the private operating company or risk factor disclosure, in a Form 8-K filed pursuant to Item 1.01 of the form disclosing that the parties have entered into a business combination agreement? If so, what additional disclosure should we require? Should we amend Item 1.01 of Form 8-K to require the filing of the business combination agreement as an exhibit to the Form 8-K filing (as opposed to allowing the agreement to be filed as an exhibit to a subsequent periodic report)? What other amendments should we consider in this regard?*

Our analysis and that of others suggests that the market response to a de-SPAC transaction and financial projections occur at the time of the merger announcement.¹⁴ Based on our understanding, one limitation of the existing regulatory proposals is that they tie into regulatory information disclosed in the S-4 or other prospectus-based financial reports that are issued by SPACs attempting to complete a de-SPAC transaction. Some of the proposals regarding Item 10(b) of Regulation S-K and Item 1609 as discussed above should also extend to the investor presentations disclosed as an attachment to the Form 8-K.

Thank you for soliciting feedback as part of your regulatory process. Please let us know if you have any additional questions regarding our responses.

¹² Campbell, J. L., Chen, H., Dhaliwal, D. S., Lu, H.-M., & Steele, L. B. 2014. The information content of mandatory risk factor disclosures in corporate filings. *Review of Accounting Studies*, 19(1), 396–455.

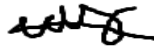
¹³ See Dambra, M., K. George, and O. Even-Tov. 2022. Are SPAC Revenue Forecasts Informative? *Working Paper*. See also Blankespoor, Elizabeth, Bradley E. Hendricks, Gregory S. Miller, and Douglas R. Stockbridge. 2022. “A Hard Look at SPAC Projections.” *Management Science*, Forthcoming; Dimitrova, L. 2017. Perverse Incentives of Special Purpose Acquisition Companies, the Poor Man’s Private Equity Funds. *Journal of Accounting and Economics* 63 (1): 99–120; Klausner, M., M. Ohlrogge, E. Ruan. 2022. A Sober Look at SPACs. *Yale Journal of Regulation*, Forthcoming.

¹⁴ See Dambra, M., K. George, and O. Even-Tov. 2022. Are SPAC Revenue Forecasts Informative? *Working Paper*. See also Chapman, K, R. M. Frankel, and X. Martin. 2021. SPACs and Forward-Looking Disclosure: Hype or Information? *Working Paper*.

Respectfully,



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