June 13, 2022

VIA ELECTRONIC DELIVERY

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: **Proposed Rule: Special Purpose Acquisition Companies, Shell Companies, and Projections, Release Nos. 33-11048; 34-94546; IC-34549; File No. S7-13-22 (Mar. 30, 2022)**

Dear Ms. Countryman:

Virtu Financial, Inc.[1] ("Virtu") respectfully submits this letter in response to the above-referenced rule proposal issued by the Securities and Exchange Commission (the "SEC" or "Commission") on March 30, 2022 (the "Proposal").[2] Among other items, the Proposal calls for (i) "additional disclosures about SPAC sponsors, conflicts of interest, and sources of dilution," (ii) "additional disclosures regarding business combination transactions between SPACs and private operating companies, including disclosures relating to the fairness of these transactions," and (iii) changes to the rules governing "projections made by SPACs and their target companies, including the Private Securities Litigation Reform Act safe harbor for forward-looking statements and the use of projections in Commission filings and in business combination transactions."[3]

Virtu has long been a vocal proponent of smart, data-driven regulation that supports the goals of enhancing transparency, fostering robust competition among market participants, and ensuring the high quality of the retail investor experience. While we are supportive of the Commission's interest in ensuring that investors have access to full and fair disclosure concerning SPACs, we are concerned that the Proposal goes beyond transparency and instead represents

[1] Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu's market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. Virtu broadly supports innovation and enhancements to transparency and fairness that increase liquidity and promote competition to the benefit of all marketplace participants.

[2] U.S. Securities and Exchange Commission, Proposed Rule, *Special Purpose Acquisition Companies, Shell Companies, and Projections*, Release Nos. 33-11048; 34-94546; IC-34549; File No. S7-13-22 (Mar. 30, 2022), *available at* https://www.sec.gov/rules/proposed/2022/33-11048.pdf.

[3] U.S. Securities and Exchange Commission, Press Release, *SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies*, and Projections (Mar. 30, 2022), *available at* https://www.sec.gov/news/press-release/2022-56.

another attempt by the Commission to insert itself into the investment decision-making process of everyday retail investors by picking and choosing which routes companies use for capital formation are good or bad for investors.

Congress did not intend for the SEC to be a merit-based regulator. Instead, the securities laws vest the Commission with a responsibility to ensure that investors have access to information and data that allow them to make well-informed investment decisions. The Proposal goes well beyond that, in essence asserting that SPACS are "bad" and traditional IPOs are good and threatens to overregulate SPACs to such a degree that they will no longer be viable vehicles for companies to access the public markets. This is especially concerning because SPACs have proven to be a critical alternative route to capital formation in the face of a significant decline in the number of traditional IPOs and direct listings in the two decades since the adoption of the Sarbanes-Oxley Act, which imposed significant new costs and burdens on companies. For context, according to data from researchers at the University of Florida, the number of initial public offerings since 2001 decreased 61% to 2,569 from 6,519 in the prior 20 years.[4]

We strongly agree with Commissioner Peirce who eloquently observed in her dissenting statement:

> "Underlying this proposal may be a concern that the SPAC boom is producing public companies that are not good for investors. **It is not our place to decide that SPACs are good or bad**. By arming investors with enhanced disclosure, we empower them to decide whether a particular SPAC is a good investment. SPAC sponsors, under the light of enhanced disclosure, might decide they need to offer more favorable terms to investors. **In other words, we need to do the disclosure work and let the markets sort out whether and if substantive changes are needed in the SPAC and de-SPAC process**. Some of those changes already may be happening under the existing disclosure regime."[5] (emphasis added)

We also agree with Commissioner Peirce's observation that, as with other recent rule proposals, the SEC has not done an adequate job of evaluating the potential impact of the changes on the marketplace. Since 2019, SPACs have experienced unprecedented growth as a method for companies to access the public markets. In 2019, SPACs represented only six percent of public offerings. That percentage rose to 26 percent in 2020, and 63 percent in 2021.[6] Although the number of SPACs has leveled off in 2022, it is evident that the landscape of the IPO marketplace has changed dramatically in just a few short years. The Proposal, however, fails to adequately assess the impact that additional, burdensome regulations could have on SPACs, nor the

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[4] Professor Jay R. Ritter, College of Business, University of Florida, *Initial Public Offerings: Updated Statistics* at p. 3 (June 6, 2022), *available at* https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf.

[5] SEC Commissioner Hester Peirce, *Damning and Deeming: Dissenting Statement on Shell Companies, Projections, and SPACs Proposal* (Mar. 30, 2022), *available at* https://www.sec.gov/news/statement/peirce-statement-spac-proposal-033022.

[6] White & Case, *US De-SPAC & SPAC Data & Statistics Roundup* at p. 4 (Q1 2022), *available at* https://www.whitecase.com/sites/default/files/2022-05/us-spac-de-spac-data-statistics-round-up-web-v4.pdf.

corresponding impact it could have on traditional IPOs or direct listings. As Commissioner Peirce noted, the Proposal "**does not adequately account for the potential cost of damming up the SPAC river**."[7] (emphasis added)

We question whether the Commission has conducted a sufficient analysis of the impact that new and additional burdens could have on the ability of companies to access the public marketplace, and we respectfully submit that, instead of seeking to advance to a final rule, the Commission should undertake a much more thorough review of market structure considerations related to SPACs, IPOs, and direct listings. To that end, we recommend that the Commission convert the Proposal to a "concept release" (or at least treat it as such) that would assist the SEC in determining whether further rulemaking is warranted. Armed with the robust information and data that the Proposal's comment file is certain to generate, the Commission would be much better equipped to determine whether there is a market failure that needs to be addressed and, if so, to issue a new proposal that is narrowly tailored and targeted squarely to achieve the desired benefits necessary to address any specific market structure deficiencies under the existing framework.

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[7] *Supra* n. 5.

Virtu appreciates the opportunity to comment on the Proposal. While we support the Commission's interests in enhancing transparency, promoting competition, and protecting investors, regretfully the Commission has once again missed the mark in the Proposal and instead has chosen an overreaching path, inserting its own subjective judgment for that of investors. Instead of data-driven regulation, the Proposal represents another attempt by the Commission to decide what is good and what is bad for the investing public, and in the process presents serious risk of disrupting our existing, well-functioning market structure and impeding the ability of companies to access our capital markets.

Respectfully submitted,

Thomas M. Merritt
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison H. Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Ms. Renee Jones, Director of Division of Corporation Finance