BULLETPOINT.NETWORK

June 13, 2022

Re: Special Purpose Acquisition Companies, Shell Companies, and Projections
Release Nos. 33-11048; 34-94546; IC-34549; File No. S7-13-22

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

Dear Ms. Countryman:

I, Michael Ryan, CEO of Bullet Point Network LP, hereby submit this comment letter to the Securities and Exchange Commission ("SEC" or "Commission") in response to the rule proposal set forth in the above-captioned *Special Purpose Acquisition Companies, Shell Companies and Projections* (the "Proposing Release"). My experience as an investor, advisor, capital markets professional, and analyst at firms like Goldman Sachs, Credit Suisse, and the Harvard endowment, an advisor to several private investment funds, director of several private companies and board chair of the Alpha Partners Merger Technology Corporation as well as the work of BULLETPOINT.NETWORK informs my perspective on these important topics.

My primary goal in providing comments is to set forth my views on the substance of how the Commission can most effectively achieve its dual objectives of protecting investors and facilitating capital formation. Important points relating to the implementation of any new rules in the context of existing laws, market practices, and legal precedents are beyond the scope of this letter, but we ask the SEC to proceed thoughtfully in making changes to IPOs and mergers of all types (and their respective SEC forms S-1 and S-4), as both are deeply rooted in the foundation of the US capital markets, which is the broadest and deepest in the world.

Executive Summary

We applaud the SEC's sentiment to "treat like cases alike" and appreciate how important it is to protect investors from unscrupulous issuers or sponsors who seek to profit from misleading disclosures. We believe the SEC can serve the public interest with two steps that would level the playing field for all participants in traditional IPOs, SPAC business combinations and Direct Listings ("IPOs of all Types"), provide vital information about risk and uncertainty to protect investors, hold management and underwriters accountable with transparency, and preserve the integrity of the US capital markets to facilitate capital formation. The two steps are:

1. Provide a framework that encourages issuers to provide reasonable and properly diligenced management projections in IPOs of all Types – rather than effectively precluding management projections from the vast majority of public offerings and relegating this highly relevant information to an opaque game of "20 questions" only privileged investors get to play during the marketing period.

2. Create consistent requirements, disclosure documents, and liability standards for IPOs of all Types - giving investors the benefit of similar formats, and information content while creating similar liability profiles and transparent accountability for issuers, sponsors and gatekeepers.

We believe the SEC should utilize the authority expressly provided to it under current law and work with Congress to adopt new rules (as needed) that serve the public interest by providing a framework to encourage issuers to provide reasonable and well-vetted management projections in IPOs of all Types. We propose a practical framework for communicating management's view about the degree of uncertainty associated with their own projections using standardized methodology and format.

We believe the rationale for treating SPAC business combinations as IPOs should rightly center on the investor's cash redemption option and the shell company nature of the SPACs. Given the SEC's view that a SPAC business combination is a *de facto* IPO, requiring disclosures and standards typically found in a merger proxy S-4 for involving operating businesses that do not offer investors the cash redemption right seems inconsistent with the SEC's stated purpose.

The essence of our first proposal is that the Safe Harbor should be available for IPOs of all Types, but should <u>only</u> be available for projections that serve the public interest by clearly communicating the risk and uncertainty associated with the projections in a standardized format. Under current law, the "Commission may, by rule or regulation, provide exemptions…with respect to liability that is based on projections or other forward-looking information …if and to the extent that any such exemption is consistent with the public interest and the protection of investors…"[1]

Standardizing the format for projections used in IPOs of all Types is, in our view, clearly in the public interest. It will provide highly relevant information to investors on a level playing field and create real accountability for the projections on the part of the management and gatekeepers involved in the offering. While we support any consistent projections format the SEC feels is best, we believe the optimal way to serve the public interest is to encourage management to include a probability with each forecast provided, such as "*Management believes there is a 75% chance of meeting or exceeding $100M in EBITDA in 2023… or management believes there is an* ***80% chance:*** *that revenues will be between $400 and $450M in 2025"* along with an appropriate description of the underlying business, risk factors, and assumptions driving the projections.

Management can choose what financial measures and time periods to provide projections for, gatekeepers can perform due diligence on any numbers provided, investors can more easily understand the risk and uncertainty associated with the forecasts, and everyone can measure accuracy over time in ways that are impossible with a projection accompanied by intentionally verbose disclaimers and risk factors (or by effectively excluding management projections entirely).

[1] 15 U.S. Code § 77z–2(g).

Because SPACs are shell companies with no operating business and SPAC investors have an unconditional right to redeem for the initial investment amount (typically $10/share), we support the SEC's stance that SPAC business combinations should be treated as *de facto* IPOs, but ask the SEC to harmonize the disclosures and liability standards between the two listing methods by creating an S-1 style disclosure document for SPAC business combinations (the s-1 DESPAC") . We believe the S-1 DESPAC style disclosure document for SPAC business combinations should closely resemble a traditional IPO S-1, rather than the traditional S-4 used for merger transactions.

Regardless of what the SEC ultimately determines is in the public interest regarding management projections, we believe consistent standards and comparable disclosure statements for IPOs of all Types are imperative for protecting investors and maintaining the integrity of the capital formation process, both of which are essential for the US capital markets to sustain our competitive advantage.

Background and Context

We are pleased that the SEC has proposed changes relating to SPACs. Strong regulation is one of the key factors that make the US market the deepest and broadest pool of capital in the world. We support the continuing push for clear disclosure of incentives and potential conflicts of interest, and we welcome the proposed change in law to attach liability for any false or misleading statements to issuers, sponsors, and deemed underwriters associated with the public listing related to a SPAC business combination similar to what exists for traditional IPOs. We continue to believe that enforcement action against bad actors who seek to mislead investors or manipulate markets is the best way to protect investors and ensure the integrity of the capital formation process.

For reasons we explore in more detail below, IPOs have been expressly excluded from the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 which allow for projections and forward-looking statements by company management (the "Safe Harbor") and Regulation FD, which prohibits selective disclosure to a subset of investors and is applicable to companies that are already public (i.e. not companies that are in the process of going public). We can understand the SEC's valid concerns about providing potentially misleading forecasts to investors but believe that by standardizing the format for providing management projections in order to qualify for the Safe Harbor, disclosure can provide valuable context regarding the uncertainty and risks associated with such projections and level the playing field by providing valuable insight to all investors equally.

We present our view on the ideal format for providing management projections to IPO and SPAC business combination investors in this letter, but as long as there is a reasonable basis and appropriate diligence around any projections provided, we believe that the SEC could best serve the public interest by mandating any consistent format that it feels provides clear information about management's outlook along with clarifying the uncertainties and risks associated with projections. We urge the SEC to improve the quality and usefulness of projections by standardizing the required information format and extending the Safe Harbor to IPOs of all Types that comply with those requirements.

Projections and management guidance regarding expectations for future growth and profitability are already an integral part of both traditional IPOs and SPACs, albeit with different transmission mechanisms in each case. Providing management projections in a consistent format based on SEC guidance would encourage issuers to be forthcoming, encourage continued participation from high-quality underwriters, whom the SEC's proposal identifies as valuable "gatekeepers" providing additional due diligence and quality control, and provide meaningful protection to investors of all types. Most importantly, it would establish a level playing field among all investors enabling more well-informed investment decisions.

Most public companies customarily and regularly provide projections, guidance and other forward-looking statements in their annual and quarterly investor meetings and at various sell-side and industry conferences throughout the year. They also publish slide decks or press releases that contain projections, guidance or forward-looking statements on their corporate websites. In the 1990s, a wave of shareholder litigation made companies reluctant to share forward-looking information with investors and the PLRSA was enacted to reduce the number of frivolous lawsuits and abuses of the discovery process.[2] In the adopting release itself, Congress clearly states its rationale that the Safe Harbor "establishes a safe harbor for forward-looking statements, to encourage issuers to disseminate relevant information to the market without fear of open-ended liability."[3]

The Safe Harbor, and subsequently Regulation FD, also had the desirable effect of leveling the playing field so that certain investors with access to management meetings and sell-side research analysts do not have an information advantage over less well-resourced retail investors with respect to quarterly earnings announcements, conference presentations, and other material investor communication. IPOs, however, are expressly excluded from the Safe Harbor and Regulation FD is only applicable to companies that are already public. As such, companies do not provide any projections or forward-looking statements in the S-1s relating to their IPOs but generally do hold private meetings with qualified institutional investors, often before an IPO registration statement is available to the general public.

Current Market Practices for Traditional IPOs and SPAC Business Combinations

Without the benefit of a Safe Harbor, issuers and their investment banks are disinclined to accept liability for forward-looking statements. Instead, an indirect, less regulated method of

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[2] H.R. CONF. REP. No. 104-369, at 32 (1995). https://www.congress.gov/104/crpt/hrpt369/CRPT-104hrpt369.pdf.

[3] *Id*. at 32.

communication has long been utilized in the context of traditional IPOs, creating an unlevel playing field whereby certain privileged investors end up with better information than the average retail investor. In an IPO, the largest investors typically have roadshow meetings with company management and separately meet with sell-side research analysts at the investment banks underwriting the IPO (who themselves have had multiple in-depth meetings with the company in order to develop their own sell-side projections). In an IPO, the sell-side research analysts effectively serve as a quasi-transmission mechanism for management's view of the company's future outlook, along with adding their own independent perspectives of the business, the sector and the proposed valuation.

In some cases, privileged investors may also speak with the investment bankers who have performed the due diligence, although, in my experience, these discussions are never explicitly about the management's projections. Investors with this privileged access have the resources to develop their own projections and often engage in a game of "20 questions" with company management and, in particular, with sell-side research analysts. This roundabout process enables privileged investors to hone in on what the company itself believes about its outlook for growth and profitability and develop their own projections. Since management projections are not published in the S-1, and because sell-side research reports are typically not published until at least 25 days after the IPO begins trading, the average retail investor either seeks out future projections published on the internet by other investors (who may or may not have second-hand information or insight from privileged investors) or is forced to reach an investment decision with less information than the privileged investors.

What about projections related to SPAC business combinations? Formal management projections are regularly provided in public merger proxy statements which use form S-4. This is because when projections have been shared with the company's board of directors in connection with their duty to approve and recommend the merger transaction to the company's unaffiliated shareholders, legal precedent requires those projections must also be provided to the public ahead of the shareholder vote to approve the merger.

In SPAC business combinations, shareholders have the right to approve the transaction or vote against it, typically relying, in part, on projections that give them quantified clarity about what company management believes it can achieve along with other qualitative information provided about the business. This includes the detailed business description, history of the merger process, terms of the transaction, management profiles, conflicts of interest and various other risk factors. In SPACs, of course, public investors not only have the right to vote on the proposed merger but also have the unconditional right to redeem their shares and receive their initial investment back (typically $10 per share). They redeem if they prefer $10 in cash instead of investing $10 for continued participation as an equity investor in the listed company following the merger.

Thus, the public S-4 filing has been one transmission mechanism by which SPACs have provided formal management projections to investors. In addition, SPACs often file an 8-K at the time the business combination agreement is signed and first disclosed (which tends to be about four months before the S-4 itself is filed and the shareholder vote to approve the merger is scheduled) which contains the slide deck including management projections shared in private meetings with qualified investors.

Comparison of Alternative Solutions to the Problems Associated with Projections

Qualitative business descriptions offer important information about the commercial opportunity, competitive dynamics and business outlook, while risk factors offer important categorical warnings, but these verbal sections are subject to interpretation and are laced with deliberately non-committal vocabulary and intentionally expansive and verbose risk factors. Accurate and audited historical financial statements are valuable to diligent investors trained in accounting and provide useful quantitative information about the historical performance of a business precisely because the information they convey has been standardized into understandable formats with clear underlying basis (and footnotes to further explain when needed). Providing investors with forward-looking projections in a clear, consistent and concise format, including disclosure of the underlying assumptions and a quantified representation of management's perspective on the potential upside and downside around any forecasts provided can greatly assist diligent investors in making prudent decisions.

One "problem" with any single forecast is that it will prove inaccurate with the benefit of hindsight. Predicting the future is inherently uncertain when there are multiple intrinsic and external factors at work - yet, assuming similar capital markets conditions, forecasting future growth and profitability is perhaps the most important element of deciding whether to invest in an equity security at a given price, whether in the context of an IPO or a SPAC business combination that results in a public listing.

One "solution" to the difficulty of accurate forecasting is to continue to effectively prohibit management projections from S-1 filings by excluding IPOs from the Safe Harbor. This relegates the topic to the game of "20 questions" privileged investors play. Asking the right questions in the right way allows these investors to get valuable information others don't get, while technically staying on the right side of the published rules. Issuers can essentially transmit projections by helping research analysts employed by their underwriters develop financial estimates, the substance of which are communicated verbally to privileged investors in private meetings ahead of an IPO. As Integrity Research noted in connection with the Facebook IPO, "these estimates are seen by institutional investors as having been reviewed by the company, and are therefore targets that management feels confident they will hit. These estimates are not published anywhere."[4]

[4] *Selective Disclosure in Facebook IPO?*, INTEGRITY RESEARCH (May 29, 2012) http://www.integrity-research.com/selective-disclosure-in-facebook-ipo/.

This is effectively the current SEC-mandated position surrounding IPOs today (because the Safe Harbor for projections used in a wide range of other contexts is explicitly excluded for IPOs) and because the rule against selective disclosure, Regulation FD, does not apply to primary initial public offerings. Based on limited available formal statements on the matter, the SEC's rationale for the effective prohibition on projections in an IPO appears to be that "the information asymmetries between a new investment opportunity and investors in the newly public company" are at their height during an initial public listing[5] potentially coupled with concerns that incentives to mislead investors with overly optimistic projections may be at their highest when the company is selling securities to raise cash proceeds. These serious concerns must be addressed if projections are provided to investors, and they can be addressed by establishing a consistent format that clarifies more explicitly what the projections represent.

Another "solution" is to allow companies to include a single case forecast and a litany of intentionally verbose risk factors, much like today's typical S-4 merger filing, without providing meaningful insight into the basis for the projections, clarification of management's view of the likelihood of meeting that forecast, any alternative cases or any sensitivity analysis about how the forecast would change under different business conditions and economic assumptions. In fact, the Safe Harbor specifically says that forward-looking statements must be "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement"[6] but we believe that verbose risk factors with intentionally equivocal language do not add sufficient investor clarity about risks and uncertainties.

We concur with court cases such as *Netsmart* and *Pure Resources* (see page 13 for details) and various academic studies which have affirmed that the availability of management projections benefits investors in their decision-making about merger votes and we believe projections in suitable format would also benefit IPO investors, provided the projections themselves are accompanied by disclosure about the underlying assumptions and risk factors associated with achieving these projections. In her 2021 paper about the PSLRA's Safe Harbor, Amanda Rose notes that "the safe harbor…reflects the belief that reasonable investors would rather suffer the occasional unremedied fraud by a bad actor than be denied access to valuable forward-looking information by all companies."[7] A superior solution, in our view, to either of the current approaches would be to establish the framework for communicating management's view about the degree of uncertainty associated with their own projections using standardized methodology and format. There are various methods of quantifying and communicating the uncertainty associated with future

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[5] Coates, John, Acting Director, Division of Corporate Finance, *SPACs, IPOs and Liability Risk under the Securities Laws*, (April 8, 2021) https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.

[6] 15 U.S. Code § 78u–5(c)(1)(A)(i).

[7] Rose, Amanda M., *SPAC Mergers, IPOs and the PSLRA's Safe Harbor: Unpacking Claims of Regulatory Arbitrage* (May 19, 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3945975.

projections but we believe providing “downside, base and upside” cases with a clear statement representing management’s view of the probability of achieving any forecast provided is the best approach.

Given that business models and external factors differ, and the difficulty of forecasting future results vary based on the sector, stage and competitive position of the company, most management teams do in fact consider alternative scenarios in the context of internal resource planning, budgeting and risk management. Management teams preparing for an initial public listing are exceptionally well equipped to provide projections to investors. They can also engage expert service providers, much as they do to prepare for an audit or pursue a merger transaction. Rather than expressly excluding IPOs from the existing Safe Harbor, we believe good public policy would encourage forecasts, but require companies wishing to provide projections to state explicitly what likelihood they believe attaches to achieving any particular forecast provided and to make clear the major assumptions that underlie all forecasts provided. Management projections could be as detailed as a full line item set of financials extending up to 10 years into the future or be as simple as providing a single number (or range) for revenue, EBITDA or EPS which the company expects to reach “in 2023” or “at scale in five years” or “at peak in fifteen years”.

Our Proposed Approach to Projections that deserve to Qualify for the Safe Harbor

In our view, a simple format should be required in order to qualify for the Safe Harbor. Specifically, we propose standardizing the presentation format to be explicit, transparent and easily evaluated for accuracy over time such as:

BASE CASE *- management believes there is a* ***75% chance*** *of meeting or exceeding:*

[add whatever projection or set of projections management chooses to provide (i.e revenue, EBITDA, full income statement down to EPS, etc for whatever years management wishes to include]

DOWNSIDE CASE *- management believes there is a* ***90% chance*** *of meeting or exceeding:*

[add whatever projection or set of downside projections management chooses to provide (i.e revenue, EBITDA, full income statement, etc for whatever years management wishes to include]

UPSIDE CASE *- management believes there is a* ***10% chance*** *of meeting or exceeding:*

[add whatever projection or set of upside projections management chooses to provide (i.e revenue, EBITDA, full income statement, etc for whatever years management wishes to include]

Alternatively, the ***DOWNSIDE to UPSIDE RANGE*** *could be provided instead - management believes there is an* ***80% chance****: [add whatever projection] will be between $X and $Y in [add time period]*

NOTE: Management may choose to provide whatever BASE CASE they prefer, and may provide multiple metrics, time horizons or financial measures at their discretion, provided that to qualify for the Safe Harbor they must clarify what they believe are the odds of achieving any forecasts provided. For example, a “90% chance of meeting or exceeding $590M of revenue in 2023 and a 75% chance of meeting or exceeding $230M EBITDA “at scale” in 5 years.

Including UPSIDE or DOWNSIDE CASES should be optional, again provided any forecasts provided include management’s assessment of the likelihood of achieving them. The width of the DOWNSIDE to UPSIDE RANGE provided along with the % probability confidence interval will provide investors with significantly more insight about how uncertain management believes its forecasts to be. Presumably, businesses with greater visibility and predictability would provide tighter ranges and vice versa. For example, even if two companies each project a base case EBITDA of $150M, one might add an “80% chance that EBITDA will be between $100M and $200M” and the other might add “80% chance that EBITDA will be between $140M and $160M” which would convey valuable information about risk and uncertainty.

In all cases, liability standards associated with public securities offerings and associated standards for due diligence performed by underwriters and financial sponsors, and oversight provided by boards of directors would increase the quality of the projections and disclosure provided. Issuers could still elect not to provide any management projections. Issuers would be free to provide one single case with a full line item income statement or one single number such as revenue or EBITDA or EPS. They could choose to utilize the BASE, DOWNSIDE and UPSIDE CASE format outlined above or include whatever number of cases they prefer, provided that in order to qualify for the Safe Harbor, whatever projections they chose to provide, must be accompanied by explicitly what they believe the forecast represents in simple terms such as “we believe we have a _% chance of meeting or exceeding” the particular forecast, range or single number estimate provided, along with clearly disclosing the major assumptions that are driving the projections.

We believe this standardized presentation format would be a major improvement over the current approach of either effectively precluding projections entirely (like current IPOs) or providing a detailed single forecast with no context regarding its likelihood (like current SPACs and other mergers). The mere existence of a range and/or multiple cases in addition to a base case would transmit a lot of information to investors about the degree of uncertainty management believes may exist in its future cash flows, and the process of preparing forecasts in this format would add to the rigor of the due diligence done by all parties involved.

Extending the Safe Harbor to disclosures in initial public offerings that comply with the SEC's preferred format should not limit the many sections of the Securities Act that prohibit deceit, misrepresentations, misstatements or omissions and should not limit the SEC's ability to bring enforcement action against any actors seeking to defraud investors or manipulate markets. We believe that enforcement action and the consequences of material fines or jail time for bad actors is the best way to protect investors and ensure the integrity of the capital formation process.

How Projections in this Format Levels the Playing Field for All Types of Investors

Reasonable and diligent investors certainly understand that they need to evaluate the credibility of management statements and projections and determine if the underlying assumptions that drive their forecasts are sound, but even the most diligent investors are handicapped without a consistent format for projections. They may consider factors including the historical results, comparable companies, the size of the market opportunity, the competitive dynamic and their confidence in management's ability to execute, among other factors and, if they have access to management or sell-side analysts, they seek to ask probing questions to ascertain how much variance management believes may exist in certain key assumptions and consider what a range of forward-looking projections might look like.

Less reasonable or less diligent investors may be more inclined to accept a single case projection without critical evaluation or may be more easily misled by a single set of largely unsubstantiated projections. This can be partially addressed by requiring clear disclosure regarding the assumptions driving any projection provided, but can be more fully addressed by requiring management to quantify its expectations regarding the likelihood of achieving the single projection or range of forecasts provided.

Hence, both reasonable and diligent as well as less reasonable and less diligent investors would be well served by requiring a consistent format for projections, ideally one where management explicitly states the likelihood it assigns to any forecast provided and is encouraged to provide upside and downside forecasts in the same format.

We feel any type of SEC-mandated format for management projections would vastly increase the likelihood of this highly useful information being available to all investors (not just partially available via roundabout communication with privileged investors who have access to management and sell-side research analysts) and believe that updating and extending the Safe Harbor to IPOs of all Types equally is the best way to facilitate this result.

The questions as to whether management projections should be encouraged, discouraged or effectively precluded by the SEC; whether projections ultimately appear in the public disclosure documents where due diligence is performed and liability standards apply; and whether management projections are clearly disclosed to all investors via public filing or selectively communicated in a roundabout process with privileged investors, remain important ones. As outlined in this letter, we believe that the answer is to establish a clear framework for providing projections and extending the Safe Harbor to companies who provide them in an SEC-mandated format.

Additional Elements the SEC Could Add as Requirements to Qualify for the Safe Harbor

The SEC may choose to require or encourage something akin to a fairness opinion from an independent provider whenever projections are used in either SPAC, IPO or Direct Listing context. We note that fairness opinions have never been part of traditional IPOs, and caution that if they are encouraged going forward in SPAC business combinations, the SEC should limit the scope to mean that any projections provided are reasonable and/or that the consideration offered to unaffiliated shareholders of the SPAC is fair in the context of the SPAC's business purpose and the $10 per share redemption price. The Commission's proposal of Item 1606(a) that would "require a statement from a SPAC as to whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to the SPAC's unaffiliated security holders, as well as a discussion of the bases for this statement,"[8] may not be feasible. Historically, fairness opinions have not opined on "related financing transactions" and any practical requirement to include this may make fairness opinions from reputable providers impossible to obtain. We are not in favor of a more expansive concept of "fairness" being used in SPAC business combinations than is currently used in merger transactions.

Given the inherently uncertain nature of projections, having an independent, financially qualified provider evaluate any projections and the assumptions upon which they are based would provide an extra level of protection for all investors, particularly those investors who lack the relevant experience or financial acumen to assess these projections themselves. Of course, if the scope is properly defined, there are a number of well-qualified providers of fairness opinions, including investment banks, accounting firms, consultants and other firms specializing in due diligence and financial analysis, who have the rigor and independence to provide a statement to the effect that the projections and assumptions are reasonably presented, and/or that the transaction consideration is fair to unaffiliated shareholders of the SPAC.

To further increase alignment, the SEC could choose to require that whenever projections are used in connection with IPOs of all Types, to qualify for the Safe Harbor, the management, board members and other affiliates must agree to an extended lockup. These insiders would be restricted from selling shares until the company has released audited financial statements for the first full fiscal year following the offering. The underwriter would still be able to impose additional lockups, such as 6 months or 12 months, but the condition that investors have full-year audited financial statements prior to any insider selling shares could not be waived. A long-term lock-up of this type

[8] Proposing Release, at 52.

would be a strong disincentive for management providing "rosy" projections in the hopes of influencing less reasonable investors.

Long-term lock-ups (often six months or longer and sometimes linked to future stock price performance) have been typical of SPAC business combinations, ensuring economic alignment between insiders and unaffiliated investors. A six-month lock-up for management, directors and significant shareholders is also typically required by IPO underwriters (although it may be waived at the discretion of the underwriter, which is typically only done if the stock price increases). A formal lock-up requirement by the SEC in order to qualify for the Safe Harbor when using projections would not represent a meaningful *de facto* departure from current market practices for lock-ups, but we believe the additional requirement for audited financial statements to be available before the lock-up expires would benefit investors and mitigate the risk of overly optimistic management projections being included by promoters who stand to gain from future stock sales.

If the SEC wants to further increase accountability and provide additional information that investors may find useful over time, a standard format could also be established for measuring the actual results delivered by an individual company, or a financial sponsor or company CEO/CFO who has been involved with multiple companies, or by an underwriter across its entire portfolio of underwritings to effectively serve as a "track record" of past projections provided. This track record format could be as simple or complex as desired, and straightforward scores based on the accuracy and precision of the forecasts could be created for simplicity and comparability. Two basic measures would capture the essence, and could be made available in public filings if desired: a) a score based on % variation from the provided BASE CASE, and b) a score based on (i) whether actual results are within the range of DOWNSIDE and UPSIDE cases and (ii) the probability "width" between the provided DOWNSIDE and UPSIDE cases (i.e. a better score for being within a tighter range and a lower score for missing a wider range).

Requiring all issuers to provide projections in this format could become a formal requirement in public securities offerings (similar to the requirement for audited financials today), but we believe extending the Safe Harbor only to companies who utilize the SEC-approved format to be the best approach. This would allow companies to decide if they should include projections at all, to select the projections they wish to include, and would allow gatekeepers to perform diligence on those projections before agreeing to serve as underwriters or financial sponsors for the company. Investors could decide for themselves whether having management projections is a requirement for their investment participation or could discriminate over time between issuers and/or underwriters who provide clear projections accompanied by better explanations with more complete assumptions from those who do not.

Harmonizing the Disclosure Documents and Liability Standards Across IPOs and SPACs

We understand the SEC's perspective that traditional IPOs are "tried and true" in the US capital markets. While we believe it would be beneficial to the public interest to encourage the inclusion of management projections in IPOs provided they include quantified probability estimates that communicate uncertainty and increase accountability, the SEC may ultimately decide to reject our suggestion to update and extend the Safe Harbor to cover IPOs of all Types provided the issuer complies with a standardized format for delivering projections. If the SEC prefers to maintain the status quo for IPO disclosure, we believe management projections should also be excluded from SPAC business combination disclosures.

Regardless of which path is chosen, we would expect the SEC to follow its own stated goals and treat SPAC business combinations entirely as IPOs, creating a single new disclosure format substantially similar to the S-1 except that it fully describes the SPAC merger and any associated potential conflicts of interest as well as the target company and allows SPAC shareholders to vote for or against the proposed merger based on the disclosure provided in this new S-1 DeSPAC disclosure document (the "S-1 DeSPAC").

We propose that disclosure standards for this new S-1 DeSPAC resemble a traditional IPO S-1 as closely as possible (including the name of the form), describe the transaction fully, but differ from a traditional S-4 in one key respect: management projections should not be disclosed to public SPAC shareholders in the S-1 DeSPAC if they are not included in traditional S-1s, even if management projections have been reviewed by the SPAC board of directors in their role as shareholder fiduciaries.

This approach would preclude projections from the disclosure relating to DeSPAC S-1 and from any other mergers which meet two conditions: 1) the merger involves a shell company that has no material business operations other than seeking to merge with a target who wants a public listing and 2) the transaction offers investors an unconditional cash redemption right to investors at or above the initial listing price per share. These two conditions are what make SPAC business combinations akin to an IPO.

We recognize that state law, federal law, as well as SEC-mandated forms for securities offering and mergers all play a part in this, but we believe the substance of a SPAC business combination as effectively being an IPO should be clearly established to ensure that "like cases are treated alike". In taking the view that projections provided to the board of directors should be shared with public investors in traditional mergers, the Delaware courts not only affirmed that public interest is advanced by providing this relevant information but also outlined the rationale for standardizing the format and including the assumptions for any projections provided. In Re Pure Resources, Inc. shareholders litigation, the court stated "the real informative value of the banker's work is not in its bottomline conclusion, but in the valuation analysis that buttresses that result…. Like a court would in making an after-the-fact fairness determination, a Pure minority stockholder engaging in the before-the-fact decision whether to tender would find it material to know the basic valuation exercises that First Boston and Petrie Parkman undertook, the key assumptions that they used in performing them, and the range of values that were thereby generated."[9] Five years later, the court in Re Netsmart Technologies, Inc. shareholders litigation concurred, stating "...when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion, as well as the key inputs and range of ultimate values generated by those analyses, must also be fairly disclosed."[10] Other cases have reached similar conclusions.

Particularly if the SEC ultimately concludes that management projections should not be provided to investors during initial public offerings of any kind (including those executed via SPAC business combinations), we believe the SPAC board should not be seen as recommending that investors choose an equity investment instead of redeeming for $10 in cash. The role of the SPAC board should be to determine that it is appropriate for the SPAC to offer this business combination as an alternative to $10 redemption for its shareholders, to confirm the disclosure about the underlying business of the target (including risk factors) is sufficient for investors to make an informed investment decision (as in an IPO), and to ensure that all relevant economic considerations, including differential consideration to the SPAC sponsor, other potential conflicts of interest, sensitivity analysis regarding proceeds and dilution across a range of redemption scenarios, and other risk factors are disclosed with sufficient detail and clarity. The investment/redemption decision, of course, is the investor's choice.

As noted by Nick Grabar and others in the November-December 2017 issue of Deal Lawyers, the Delaware Court "has never adopted a bright-line rule that forecasts are always required to be disclosed and has substantively deferred to the general standard of materiality, which takes account of the specific facts and circumstances."[11] The rationale for treating SPAC business combinations differently from other mergers with respect to the disclosure of projections is exactly that the SPAC is a shell company designed exclusively to merge with a private company seeking public listing and SPAC shareholders have an unconditional right to redeem for the initial price per share paid (typically $10 per share). These are clearly different facts and circumstances than a non-SPAC merger because the SPAC board is not making a decision about the benefits of changing its operating business model via merger but rather is offering its shareholders the alternative of investing in the deemed IPO if they prefer that to $10 in cash.

Harmonizing the disclosure statements between S-1s and a new "S-1 DeSPAC" would accomplish two important objectives while preserving the role and duty of the SPAC board: it would align SPAC disclosure with traditional IPO S-1 disclosure for the benefit of investors; and it would facilitate participation by underwriters who may otherwise be unwilling to serve as "gatekeepers"

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[9] *In re Pure Res. S'holders Litig.* - 808 A.2d 449 (Del. Ch. 2002).

[10] *In re Netsmart Techs., Inc. S'holders Litig.,* 924 A.2d 171, 204 (Del. Ch .2007).

[11] Grabar, et. al. *Setting the Record Straight: Regulation G Doesn't Apply to M&A Forecasts*, Deal Lawyers, Vol. 11., No. 6, November-December 2017.

and perform valuable due diligence because the inclusion of management projections without Safe Harbor availability creates a differential liability profile compared to typical S-1 IPOs. We would be in favor of allowing this change versus the traditional S-4 *only* for any merger transactions involving a shell company where public shareholders have an unconditional cash redemption right at or above the initial price per share paid (such as SPAC business combinations).

Our General View of the SEC's Proposing Release

The most important goal of the regulation (and enforcement) is to protect investors and maintain the integrity of the markets without unduly harming the capital formation process. Disclosure requirements, liability standards, any safe harbors and exemptions should be based on the principle of giving suitable investors the best available information at the time they are making an investment decision and holding people accountable for the disclosures they provide.

We support the SEC's continuing push for clear disclosure of incentives and potential conflicts of interests, including enhanced disclosure of potential sponsor compensation. We also welcome the proposed change in law to attach liability for any false or misleading statements to issuers, sponsors and deemed underwriters associated with the public listing related to a SPAC business combination similar to what exists for traditional IPOs. We also agree with the SEC's proposal to add sensitivity tables to show the dilution across a range of redemption scenarios and would suggest the SEC provide a format to standardize that disclosure. We agree with the SEC's proposal that given SPAC investors have an unconditional right to redeem for cash and the SPAC is a shell company with no operating business, the SPAC business combination is effectively the same as purchasing shares in a traditional IPO.

There are strong reasons for the SEC to maintain regulatory oversight (with enforcement powers) over the process of providing guidance, forward-looking statements or management projections in connection with the initial listing of a company, whether via traditional IPO or SPAC business combination. Company management (who seeks access to financing and often benefits from stock options that will increase in value with the future share price), financial sponsors (who own shares whose value depends entirely on the closing of a deal and the future stock price), and underwriters (who are paid fees contingent on the deal closing) all have a direct economic incentive to seek to present an optimistic set of projections.

We would like to see the SEC utilize its proposed regulations and any associated changes in law to level the playing field by extending the existing Safe Harbor to IPOs of all Types, while at the same time proposing a concise framework for companies to provide forecasts that are actually useful to investors in understanding the investment merits and risks and limit the ability of unscrupulous management, sponsors or underwriters to mislead investors.

While integrity and professional standards will compel most companies, SPAC sponsors, investors, underwriters and advisors to do the right thing, regulation and enforcement are needed to ensure all investors are adequately protected. We continue to believe that enforcement action against bad actors who seek to mislead investors or manipulate markets is the best way to protect investors and ensure the integrity of the capital formation process and we support the SEC's strong stance in this regard.

We feel that enforcement action is and should be available to dissuade (or punish) bad actors making intentionally false, decidedly misleading or wholly unsubstantiated projections in their filings, but feel it is in the public interest to provide a Safe Harbor if projections are provided in the format deemed most appropriate by the SEC.

Conclusion and Next Steps

We are confident that the SEC proposals, augmented by comment letters, consultation with market practitioners, the formal regulatory drafting and adoption process, and any necessary changes in law that Congress may eventually promulgate, will benefit investors in IPOs of all Types.

We are proposing a robust framework for explicitly communicating management projections in a format that would better inform and protect both reasonable and diligent investors and less reasonable and less diligent investors while improving the integrity of the public listing process for all participants by aligning the disclosure documents for traditional S-1 IPOs, SPAC business combinations and Direct Listings.

We believe that, with proper governance, SPAC business combinations provide a better mechanism for a certain segment of growth-stage companies to raise capital from a broader set of investors, and offer public investors a liquid, freely tradable opportunity for equity ownership interest in these companies that would otherwise not be available to retail and non-accredited institutional investors. We also see a clear role for traditional IPOs and welcome the recent changes to make Direct Listings a viable alternative for certain companies. Despite the fact that the Renaissance IPO ETF, a float-adjusted market capitalization-weighted fund[12], is down 46% year-to-date,and the SPAC ETF, an equal-weighted fund[13] is down 49%, access to capital for innovative companies remains a key competitive advantage of the US economy and sound regulation is a key part of that advantage.

We understand that many market participants will favor the current status quo as both S-1 IPO registration statements and as S-4 merger proxies have been in use for a long time, with well-established laws, regulations, market practices, and litigation precedents in place. We believe that with appropriate disclosures, these current formats are adequate and time-tested in their own right, but we are open to improving IPOs of all Types by implementing new rules that better protect investors.

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12 https://www.renaissancecapital.com/Docs/Renaissance-IPO-ETF-Report.pdf as of May 31, 2022.

13 http://deSPACetfs.com/wp-content/uploads/2022/04/DSPC-fact-sheet-3_31_22.pdf as of May 31, 2022.

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We appreciate the opportunity to provide our comments on these complex issues and would welcome any forum to discuss these important topics, and their implementation, with the Commission or participate in further discussions with regulators, academics, issuers, investors, underwriters, advisors, lawyers, accountants, and other experts. We believe that "measuring twice and cutting once" is appropriate given the profound potential impact these changes may have on investors, growth companies, and capital formation in the US market for years to come.

We strongly support the SEC's objective to "treat like cases alike" and appreciate the SEC's role in making the capital markets more fair, transparent, and well-regulated. We believe that there is an opportunity available to not only conform SPAC business combination and traditional IPO disclosure standards but also for the SEC to adopt the best aspects of both and improve upon them for the protection of investors, and facilitation of capital formation while ensuring the integrity of the US capital markets as a whole.

Sincerely,

Michael D Ryan

Michael D. Ryan
Chief Executive Officer
Bullet Point Network, LP