**Managed Funds Association**
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York | Brussels

June 13, 2022

**Via Electronic Mail:** rule-comments@sec.gov

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

**Re: Proposed Rules, Special Purpose Acquisition Companies, Shell Companies, and Projections; File No. S7-13-22**

Dear Ms. Countryman,

Managed Funds Association[1] ("**MFA**") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("**SEC**" or "**Commission**") on the above-captioned notice of proposed rulemaking related to special purpose acquisition companies ("**SPACs**") and business combination transactions involving shell companies (the "**Proposed Rules**").[2]

The Commission issued the Proposed Rules to enhance disclosure requirements and investor protections in initial public offerings ("**IPOs**") by SPACs and in subsequent business combination transactions between SPACs and private operating companies. We agree with the Commission's stated goal of increasing investor protections, but we believe that the implications of the Proposed Rules are significant and have the potential to materially weaken the viability of the SPAC model going forward. Indeed, since the Proposed Rules were announced, the volume of transactions in the SPAC market has plummeted by almost 80%. In addition to investor protection, the Commission also has the important goal of promoting access to capital for American companies and has been working to address unnecessary barriers to entering the public markets. The funds which our members manage are active investors in SPACs, and we believe that SPACs can provide an important option for firms looking to access the public markets and for investors of all types to invest in firms that would otherwise be privately held. Balancing investor protections while maintaining this important avenue to access the public markets for corporate issuers will be vital. We respectfully suggest that the Proposed Rules be revised based on the following comments and suggestions, with an eye towards flexibility and less prescriptive elements, in order to increase investor protections while still preserving the benefits of the SPAC model.

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[1] Managed Funds Association ("**MFA**") represents the global hedge fund and alternative asset management industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 member firms collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, Brussels, London, and Asia. www.managedfunds.org.

[2] *See* Securities and Exchange Commission, Proposed Rules, Special Purpose Acquisition Companies, Shell Companies, and Projections, Release No. 33-11048 (March 30, 2022), available at https://www.sec.gov/rules/proposed/2022/33-11048.pdf (the "**Proposing Release**").

## I. Executive Summary

The issues presented by the Proposed Rules are of great concern to us and our members, and we appreciate this opportunity to share our views. The following is a summary of our principal recommendations with respect to the Proposed Rules, which are explained more fully below.

1. In order to ensure a continued and vibrant SPAC market, we recommend narrowing the scope of proposed Rule 140a so that it applies solely to underwriters that chose to become actively involved in a de-SPAC transaction and specifically excludes other parties, including Private Investment in Public Equity ("**PIPE**") investors, that would not be considered underwriters in comparable mergers and acquisitions ("**M&A**") transactions.

2. To align de-SPAC transactions with other similar M&A transactions, we recommend that appropriate disclosures and qualifying language be required for the use of any forward-looking statements in connection with de-SPAC transactions, rather than eliminating the ability of issuers to rely on the safe harbor provided for such statements under the Private Securities Litigation Reform Act ("**PSLRA**").

3. In order to prevent unnecessary SPAC liquidations or the pursuit of less attractive transactions, we recommend revising proposed Rule 3a-10 to provide for a 36-month period in which to complete a business combination and eliminate the separate time period in which to enter into a definitive agreement with respect to such business combination.

4. Given the significant impact the Proposed Rules have already had on the SPAC market generally, we recommend that the Commission provide an exemption for any SPACs that have completed IPOs prior to the issuance of any final rules—and announce such an intention publicly as soon as possible—or alternatively include at least a 12-month period between adoption of such final rules and their respective implementation dates.

## II. Introduction

The passage of the Sarbanes-Oxley Act of 2002 has contributed to a dramatic shift in public markets over the past two decades, including reductions in IPO activity and the number of public companies generally; increases in the length of time companies remain private and the relative size of those companies; and higher costs of growth capital from private sources for innovative companies.[3] The average number of IPOs per year dropped from 310 between 1980 and 2000 to only 99 between 2001 and 2012.[4] The continued development of the SPAC model in recent years has unlocked an alternative path to going public, encouraging significantly more private companies to become publicly-traded and enjoy the benefits of lower capital costs while providing investors with greater transparency regarding their financial condition and operations. To that end, in both

[3] *See* Wall Street Journal Opinion, Whatever Happened to IPOs? (March 22, 2011), *available at* https://www.wsj.com/articles/SB10001424052748704662604576203002012714150.

[4] Gao, Xiaohui, Jay R. Ritter, and Zhongyan Zhu, Where Have All the IPOs Gone?, 48 J. Fin. & Quantitative Analysis 1663 (2013).

2020 and 2021, approximately 60% of all IPOs were conducted by SPACs, representing 248 of 413 IPOs conducted in 2020 and 613 of 951 IPOs conducted in 2021.[5]

The SPAC structure offers an efficient means for providing retail investors access to innovative venture capital- and private equity-backed companies, along with fast-growing early-stage companies, that otherwise would only be available to institutional and high-net worth individual investors. Given the increasing length of time that operating businesses tend to remain private, most companies that have conducted traditional IPOs recently are near full maturity, meaning that retail investors typically can only invest after such companies have experienced their largest period of growth. SPACs, however, provide an avenue for retail investors to gain access to earlier stage businesses, either through investing in the SPAC itself prior to a business combination or through open-market trades after the business combination has been completed. In short, by providing a pathway for earlier stage businesses to become public sooner, the SPAC model opens the door for retail investors to gain access to innovative and potentially rapidly growing operating companies at a much earlier point in their respective life cycles, allowing retail investors the opportunity to benefit from the continued growth of such businesses before they reach full maturity.

In many cases, SPACs can also provide greater certainty regarding deal completion compared to a traditional IPO, while still providing similar access to new capital for target businesses. For example, the SPAC model, with its shareholder approval process for most proposed business combinations, typically requires only a majority vote to approve a proposed business combination and is less susceptible to the impact of market fluctuations when compared to a traditional IPO process. The shareholder approval process also tends to discourage the use of cash for purely financial restructurings or "cash-out" recapitalizations. Rather, the proposed use of such cash is regularly focused on growth and expansion of the proposed target businesses. SPAC business combinations will also often involve a concurrent infusion of additional capital from institutional investors, made possible by the publicly traded nature of the company post-business combination. As a result, SPACs provide operating businesses with a clearer path to becoming public than a traditional IPO, while still providing access to growth capital for those businesses.

In part due to the benefits inherent in its structure, SPACs have been used frequently by operating businesses within the environmental, social and governance ("**ESG**") space to both become publicly traded and to gain access to additional growth capital. In particular, of the 292 SPAC business combinations announced between January 1, 2020 and August 27, 2021, 65 had ESG-related themes, representing approximately 22% of all SPAC business combinations during

[5] *See* Caroline Crenshaw, SEC Speech, Remarks at Virtual Roundtable on the Future of Going Public and Expanding Investor Opportunities: A Comparative Discussion on IPOs and the Rise of SPACs (April 28, 2022), available at https://www.sec.gov/news/speech/crenshaw-remarks-spac-symposium-042822; Statista Research Department, Number of IPOs in the U.S. 1999-2021, (April 13, 2022) *available at* https://www.statista.com/statistics/270290/number-of-ipos-in-the-us-since-1999/; Statista Research Department, Number of SPAC IPOs in the U.S. 2003-2022, (April 26, 2022) *available at* *https://www.statista.com/statistics/1178249/spac-ipo-usa/*.

that period.[6] Further, the average return on completed ESG-themed SPAC mergers during that timeframe was about 18 times that of non-ESG SPAC mergers.[7] Many of these ESG-related SPAC target businesses were focused on technologies relating to climate change, including renewable energy companies and electric vehicle and battery makers.[8] As a result, ESG-focused SPACs have helped to accelerate business innovation and advance societal sustainability goals by providing growth capital to ESG-related operating companies. In addition, unlike traditional IPOs, SPAC business combinations can presently utilize future projections, making them an attractive option for operating businesses that primarily focus on environmental and social change. Given the greater uncertainty of the traditional IPO process, many of these ESG-focused businesses likely would have foregone going public if not for the alternative path provided by SPACs, foreclosing the availability of public capital that encourages faster growth in businesses that provide important long-term benefits to the economy and society.

Given the benefits that SPACs provide to the public markets generally, we believe that the Commission's focus should be on ensuring fair regulation that continues to foster a vibrant SPAC market, rather than imposing detailed prescriptive rules that drastically shift the operational functionality of SPACs to the point that they function virtually the same as a traditional IPO. The proposed regulation of the SPAC market runs the risk of effectively eliminating the viability of the SPAC model going forward by: (i) eradicating the benefits provided by the SPAC model that have acted as a welcome counterweight to the reduction in the number of public companies over the past two decades; (ii) causing higher costs of growth capital for later stage innovative companies, forcing them to remain private and thus generally stifling innovation of products and services; (iii) forcing a slower pace of growth for potentially revolutionary ESG businesses, hindering their longer-term objectives beyond just economic growth; and (iv) foreclosing retail investors' access to investments typically only available to institutional and high-net worth individual investors. Further, rules for SPAC transactions should not disadvantage them relative to other similar M&A transactions.

Indeed, the chilling effect of the Proposed Rules on the SPAC market is already clear. The issuance of such vague and extensive new regulations has virtually halted new SPAC issuances, depriving private companies access to capital and investors access to these new growing companies. After the release of the Proposed Rules, both Citigroup and Goldman Sachs, among others, announced that they are halting their involvement in the SPAC business in response to the changing regulatory environment.[9] So far in 2022, there have only been 67 SPAC IPOs, which is

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[6] *See* KPMG, SPAC insights: ESG and SPACs (KPMG Insights, 2021).

Based on information sourced from public filings with the Commission, SPAC mergers have raised roughly $31.4 billion for the ESG space since 2019. As of May 2, 2022, there were 11 ESG-related SPAC mergers that were announced and pending close which represent roughly $6.3 billion of capital. *See* Appendix A.

[7] *Id.*

[8] *Id.*

[9] Yun Li, Goldman Sachs is shrinking its SPAC business amid regulatory crackdown and market turmoil, CNBC (May 9, 2022) *available at* https://www.cnbc.com/2022/05/09/goldman-sachs-is-shrinking-its-spac-business-amid-regulatory-crackdown-and-market-turmoil.html; Gillian Tan, Citi to Pause New SPAC Issuance as SEC Signals

a 78.52% decrease from the same time last year, where there had already been 312 SPAC IPOs.[10] As many of our members are active investors and participants at various stages of the SPAC lifecycle, the dampening impact of the Proposed Rules has generated significant concern on the part of our membership.

**III. In order to ensure a continued and vibrant SPAC market, we recommend narrowing the scope of proposed Rule 140a so that it applies solely to underwriters that chose to become actively involved in a de-SPAC transaction and specifically excludes other parties, including PIPE investors, that would not be considered underwriters in comparable M&A transactions.**

Proposed Rule 140a provides that underwriters who participate in a SPAC IPO or related financing are also deemed to be engaged as underwriters in the distribution of the securities of the surviving public entity in a subsequent de-SPAC transaction.[11] This proposed change in the applicability of underwriter liability will clearly discourage both new SPAC formation and institutional capital raising concurrent with SPAC business combinations. This significant expansion of liability for SPAC underwriters to include the subsequent business combination process will also significantly dampen demand among investment banks to underwrite new SPAC IPOs. As mentioned above, both Citigroup and Goldman Sachs, the first- and second-largest SPAC underwriters, have halted their involvement in the SPAC business largely due to the Proposed Rules.[12] This proposed rule will decrease the level and relative size of SPAC IPOs, severely curtailing the benefits presently provided by the SPAC market generally. SPAC underwriters do not have the visibility or deep involvement necessary to undertake the same level of diligence with respect to a proposed target business as they do when vetting an IPO and, as a result, they would face heightened liability without the diligence safeguards to which they would typically have access in connection with a public offering.

Underwriters would also be subject to increased liability risks with respect to SPAC business combinations that they do not face in connection with other similar public company M&A transactions. Because de-SPAC transactions are structured as M&A transactions, Regulation M-A and the principal anti-fraud provisions of the federal securities laws require financial projections provided to a SPAC's board to be included in its de-SPAC registration statement. Under this proposed rule, underwriter liability will extend to the financial projections included in a de-SPAC registration statement. At the same time, the Commission is seeking to remove the safe harbor

Crackdown, Bloomberg (April 4, 2022), *available at* https://www.bloomberg.com/news/articles/2022-04-04/citi-said-to-pause-new-spac-issuance-as-sec-signals-crackdown.

[10] Stock Analysis, All 2022 IPOs (May 25, 2022), *available at* https://stockanalysis.com/ipos/2022/ and Stock Analysis, All 2021 IPOs (May 25, 2022), *available at* https://stockanalysis.com/ipos/2021/.

[11] Proposing Release at 96.

[12] Sridhar Natarajan and Ruth David, Goldman Is Pulling Out of Most SPACs Over Threat of Liability, Bloomberg (May 9, 2022), *available at* https://www.bloomberg.com/news/articles/2022-05-09/goldman-is-pulling-out-of-most-spacs-over-threat-of-liability; Gillian Tan, Citi to Pause New SPAC Issuance as SEC Signals Crackdown, Bloomberg, (April 4, 2022), *available at* https://www.bloomberg.com/news/articles/2022-04-04/citi-said-to-pause-new-spac-issuance-as-sec-signals-crackdown.

protections under the PLSRA for financial projections included in a de-SPAC registration statement (as discussed further in Part IV). Taken together, the scope of information for which an underwriter may be liable will be significantly expanded. In contrast, in traditional IPOs, issuers do not include financial projections in their registration statements, and the underwriters in those transactions are not exposed to similar liability risks.

The increased and asymmetrical liability imposed on SPAC underwriters will result in these entities having to perform significantly more diligence in connection with their role in SPAC transactions, resulting in the de-SPAC process being slower and more expensive. Rather than being subject to greater expense and increased liability risks, we would expect more large, institutional SPAC underwriters to withdraw from the SPAC market altogether (as has already been the case). The likely result of this withdrawal will be a "cottage industry" of boutique SPAC underwriters, which are less experienced and less concerned about exposure to liability and reputational harm. We would therefore recommend that the Commission limit the applicability of Rule 140a only to underwriters that have been directly engaged by a SPAC specifically in connection with a proposed business combination, where such underwriters will have clear visibility on a potential target business and will be in a position to perform the necessary due diligence on such target business commensurate with the additional liability risk they may face.

Any broad structural changes in underwriter liability risk around business combinations will also likely dampen the market for institutional private placements that can occur concurrent with business combinations, likely raising the likelihood of "failed" de-SPAC transactions and ultimately having a chilling effect on new SPAC formations generally. Specifically, the Proposed Rules further suggest that other parties who participate in de-SPAC transactions, including even PIPE investors, may be deemed statutory underwriters due to "perform[ing] activities necessary to the successful completion" of a de-SPAC transaction.[13] In addition, underwriter status for de-SPAC PIPE investors would radically alter their legal risk by exposing them to potential liability under the Securities Act of 1933 ("**Securities Act**") for misstatements or omissions in the Form S-4 or F-4 registration statements over which they have no control or input presently. If PIPE investors were deemed to have underwriter status, they would need to engage in a strenuous investigation of the registration statement's contents, and it is unclear how they would be able to do so. As a result, we would expect institutional investors to be unwilling to participate in SPAC PIPE transactions going forward, to the extent Rule 140a is expressly expanded to include them within its scope. Further, deeming PIPE investors in de-SPAC transactions to be underwriters is contrary to the treatment of PIPE investors in other M&A transactions. Accordingly, as regular investors in the capital raises concurrent with SPAC business combinations, we recommend that the Commission not only refrain from including PIPE investors within the scope of Rule 140a, but also clarify in its adopting release that PIPE investors should not face liability as statutory underwriters in connection with de-SPAC transactions absent some clear prior affiliation with either the SPAC or the target business.

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[13] Proposing Release at 98.

**IV. To align de-SPAC transactions with other similar M&A transactions, we recommend that appropriate disclosures and qualifying language be required for the use of any forward-looking statements in connection with de-SPAC transactions, rather than eliminating the ability of issuers to rely on the safe harbor provided for such statements under the PSLRA.**

The PSLRA provides a safe harbor under which a company is protected from liability for forward-looking statements in any private right of action under the Securities Act or Securities Exchange Act of 1934 when, among other things, the forward-looking statement is identified as such and is accompanied by meaningful cautionary statements.[14] The Proposed Rules seek to amend the definition of "blank check company" for purposes of the PSLRA, such that the safe harbor would not apply to forward-looking statements, like projections, made in connection with business combination transactions involving SPACs and certain other black check companies that are not penny stock issuers.[15] The removal of the PSLRA safe harbor for SPAC business combinations will necessarily lessen available information for existing SPAC investors and cause SPAC business combinations to deviate from the treatment of traditional public M&A transactions. Additionally, ordinary SPAC investors will have less information available to them, making their decision-making process more difficult, while institutional investors participating in any concurrent capital raise will likely still have such projections available to them, creating a mismatch of information between such institutional investors and ordinary SPAC investors.

If the proposed elimination of the PSLRA safe harbor is adopted, SPACs will likely limit disclosure of any forward-looking information or projections that may create fodder for plaintiffs' attorneys in the absence of the clarity that PSLRA would otherwise provide. Increasing headwinds in the business combination approval process will also likely discourage future SPAC IPOs. Rather than barring forward-looking projections entirely, we recommend that the Commission instead consider requiring any such projections to include appropriate qualifying language, including the background and assumptions underlying such projections, along with any downside case analysis that was done in preparation of such projections. As active investors and participants at various stages of the SPAC lifecycle, we believe that such an approach would be consistent with the disclosure-based approach the Commission has used in similar circumstances, including in the case of Regulation G with respect to the regulation of the use of financial measures that vary from those included within generally accepted accounting principles.

**V. In order to prevent unnecessary SPAC liquidations or the pursuit of less attractive transactions, we recommend revising proposed Rule 3a-10 to provide for a 36-month period in which to complete a business combination and eliminate the separate time period in which to enter into a definitive agreement with respect to such business combination.**

Proposed Rule 3a-10 would provide a safe harbor from the definition of "investment company" under Section 3(a)(1)(A) of the Investment Company Act of 1940 ("**1940 Act**") for SPACs that meet certain conditions relating to, among other things, asset composition, activities,

[14] *Id.* at 82.

[15] *Id.* at 84.

business purpose and duration.[16] Rather than creating greater certainty, though, we believe that the proposed 1940 Act exemptive rule will likely have the opposite effect, muddying the waters with respect to the applicability of the 1940 Act to the SPAC model and effectively forestalling any further innovation with respect to the structure.

With the exception of claims made in a single recent lawsuit, the status of SPACs under the 1940 Act has been well-settled for years.[17] In *Assad v. Pershing Square Tontine Holdings*, the plaintiffs asserted that SPACs were investment companies under the 1940 Act simply because proceeds from their IPOs are invested in short-term treasuries and qualifying money market funds, notwithstanding the fact that such instruments are not considered investment securities for purposes of the 1940 Act.[18] Notably, over 60 law firms issued a joint letter responding to this lawsuit and rebutting its primary assertion, noting that it has been well-established that a SPAC is not an investment company under the 1940 Act if it (i) follows its stated business plan of seeking to identify and engage in a business combination with one or more operating companies within a specified period of time and (ii) holds short-term treasuries and qualifying money market funds in its trust account pending completion of its initial business combination.[19] Proposed Rule 3a-10 would upend that well-established precedent, and potentially raise new questions with respect to SPAC structures that deviate even slightly from the extremely tight parameters included in the proposed rule.

In addition, the requirements of the proposed 1940 Act exemptive rule would deviate materially from recent SPAC structures by requiring that a SPAC file a report on Form 8-K announcing that it has entered into an agreement with a target company (or companies) to engage in a de-SPAC transaction within 18 months of its IPO and then complete its de-SPAC transaction within 24 months of such IPO.[20] In contrast, most recent SPACs have had 24 months to complete a business combination, with no set time frame by which they must announce a potential business combination. The proposed exemptive rule also provides that if a SPAC fails to meet either the 18-month or 24-month deadline, it would be required to either distribute the SPAC's assets in cash to investors or register as an investment company. Such a strict time requirement would effectively eliminate the ability of future SPACs to seek shareholder approval for short-term extensions in order to complete pending business combinations. Notably, such temporary short-term extensions have become commonplace, particularly when accounting, regulatory or other considerations may delay a pending business combination beyond the SPAC's original 24-month deadline. By

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[16] *Id.* at 137.

[17] *See* Assad v. Pershing Square Tontine Holdings, Ltd. et al, Docket No. 1:21-cv-06907 (S.D.N.Y. Aug 17, 2021) ("**Assad v. Pershing Square Tontine Holdings**").

[18] *See* Willkie Farr & Gallagher, Securities and Exchange Commission, No Action Letter, (Oct. 23, 2000) ("[The Staff] would not object if an issuer, in calculating the amount of its total assets and its adjusted investment securities for purposes of the asset and income tests in rule 3a-1, does not include the shares of a registered investment company that holds itself out as a money market fund and seeks to maintain a stable NAV of $1.00 per share").

[19] *See* Joint Statement by Akin Gump et. al, Over 60 of the Nation's Leading Law Firms Respond to Investment Company Act Lawsuits Targeting the SPAC Industry (Sept. 2, 2021), *available at* https://www.freewritings.law/wp-content/uploads/sites/24/2021/09/FINAL-STATEMENT.pdf.

[20] Proposed Rules at 152-53.

effectively ending the use of such extensions, the Commission will be forcing the liquidation of at least some SPACs that would have otherwise completed successful business combinations if given an additional month or two to do so, thereby harming not only the SPAC but also its existing shareholders. While in theory a SPAC may deviate from the terms of the exemptive rule, very few will likely do so given the risk posed by plaintiffs' firms to the extent they do.

Accordingly, as regular investors in the SPAC space, we recommend that the Commission modify proposed Rule 3a-10 to extend the time period for a SPAC to complete a business combination to 36 months and eliminate the time period by which a SPAC must announce a proposed de-SPAC transaction. The Commission is keenly aware that "exchanges…require that within three years, for NYSE, or 36 months, for Nasdaq and NYSE American, of the effectiveness of its IPO registration statement…, the SPAC complete one or more business combinations…"[21] Such time period is universally accepted as the appropriate outside date for a SPAC to complete a business combination. The Commission hypothesizes, without further support, that a target business's bargaining power may increase during the additional 12-month period and lead to worse terms in a de-SPAC transaction for investors, which could reduce the number of operating companies being traded in the public markets. However, the Commission is equally aware (and able to support) that more than 96% of SPACs in its sample would have met a requirement to complete a business combination within 36 months of its IPO date, whereas only approximately 65% of SPACs in its sample would have met a requirement to complete a business combination within 24 months.[22] We submit that extending the time period for a SPAC to complete a business combination will unequivocally increase the number of operating companies being traded in the public markets. Doing so will relieve the time pressure that SPACs would face as a result of an artificially strict timeline, while granting sufficient time to address any accounting or regulatory considerations that may arise in connection with a proposed business combination. We believe that such a relaxation of the proposed timeline would promote the interests of investors and not hinder the SPAC process or unnecessarily prevent successful businesses combinations.

**VI. Given the significant impact the Proposed Rules have already had on the SPAC market generally, we recommend that the Commission provide an exemption for any SPACs that have completed IPOs prior to the issuance of any final rules—and announce such an intention publicly as soon as possible—or alternatively include at least a 12-month period between adoption of such final rules and their respective implementation dates.**

In its Proposing Release, the Commission did not expressly address whether the Proposed Rules should be applied only prospectively, to newly formed SPACs, or instead whether some or all of such Proposed Rules may be applied to existing SPACs that predate them. Given the extension of liability proposed in the Proposed Rules, as well as the fundamental changes to the SPAC structure that may ensue, we recommend that the Commission consider applying the Proposed Rules only to SPACs that conduct IPOs subsequent to the completion of the final rule-making process. Doing so would provide greater certainty to existing SPACs by removing the risk

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[21] *Id.* at 179-80; *see also id.* at 10 n.16, 204 n.453, 205, 273, 286.

[22] *Id.* at 207-08, 286.

that the Proposed Rules may impose on various market participants in connection with subsequent business combinations.

Notably, many existing SPACs will have structures that deviate slightly from the very prescriptive provisions included in the Proposed Rules – particularly with respect to the 1940 Act exemptive rule – raising questions with respect to their regulatory status when none existed before. Similarly, underwriters may find themselves facing new liabilities in connection with business combinations without the opportunity to negotiate rights and duties on the part of SPAC counterparties at the time of a SPAC's IPO. Given the dampening effect many of the rules would likely have on SPAC business combinations, including the heightened chance of forced SPAC liquidations, applying the rules retroactively may inadvertently harm investors in SPACs who acquired their shares on the basis of the then-current regulatory framework. Given that the typical lifespan of a SPAC is 24 months, we do not believe that exempting existing SPACs from implementation of the Proposed Rules, if adopted, would materially alter the intended effect of such rules on the SPAC marketplace. As an alternative, in the event the Commission opts not to exempt existing SPACs from implementation of the Proposed Rules, we would recommend that the Commission provide for at least a 12-month implementation period following adoption of any final rules before applying such final rules to the SPAC market generally. We believe that at least a one-year implementation period would allow market participants within the SPAC space to appropriately adjust to the significant impact of the Proposed Rules.

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We appreciate the opportunity to provide our comments to the Commission regarding the Proposed Rules, and we would be pleased to meet with the Commission or its staff to discuss our comments. If the staff has questions or comments, please do not hesitate to call Joseph Schwartz, Director and Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

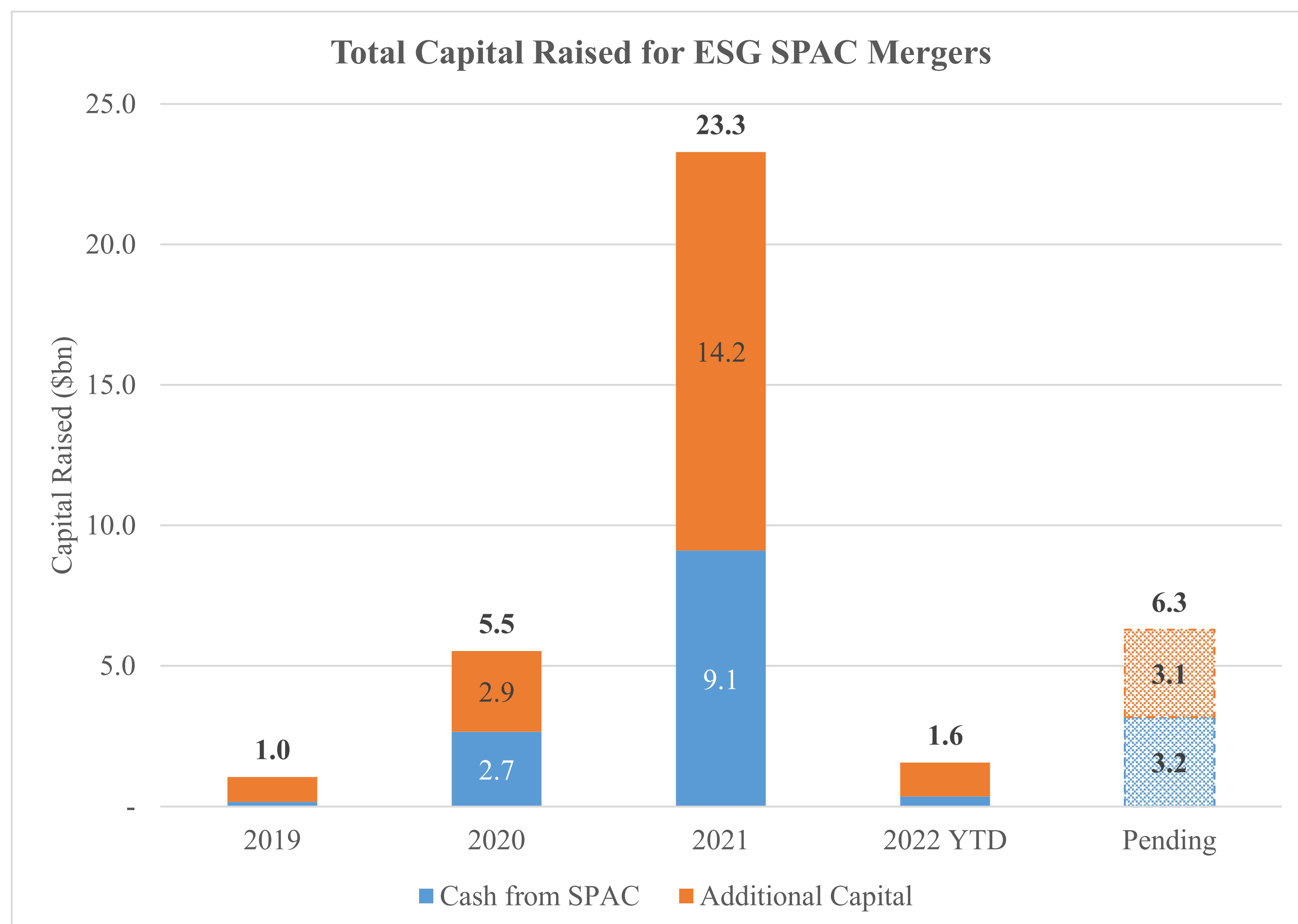
/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Regulatory Affairs
Managed Funds Association

cc: The Hon. Gary Gensler, SEC Chairman
The Hon. Hester M. Peirce, SEC Commissioner
The Hon. Allison Herren Lee, SEC Commissioner
The Hon. Caroline A. Crenshaw, SEC Commissioner
Ms. Renee Jones, Director, Division of Corporation Finance

## Appendix A: Total Capital Raised for ESG SPAC Mergers

**SUMMARY**




| | Capital Raised ($bn) | | |
|---|---|---|---|
| **Year** | **Cash from SPAC*** | **Additional Capital**** | **Total** |
| 2019 | 0.2 | 0.9 | 1.0 |
| 2020 | 2.7 | 2.9 | 5.5 |
| 2021 | 9.1 | 14.2 | 23.3 |
| 2022 YTD | 0.4 | 1.2 | 1.6 |
| Pending*** | 3.2 | 3.1 | 6.3 |
| **Total** | **15.5** | **22.3** | **37.7** |

*Cash from SPAC represents net cash from SPAC Trust adjusted for redemptions at merger close.
**Additional Capital represents capital from PIPEs, debt and other equity capital raised around the de-SPAC merger.
***For pending deals, Cash from SPAC represents cash in SPAC Trust.

**DEAL LIST (CLOSED)**

| Name | Sector | Announce Date | De-SPAC Close Date | Capital Raised ($m) Cash from SPAC | Additional Capital | Total | SPAC Name |
|---|---|---|---|---|---|---|---|
| ***Closed*** | | | | | | | |
| Bioceres | AgTech | 11/08/2018 | 03/15/2019 | 1.2 | - | 1.2 | Union Acquisition Corp |
| Ranpak | Renewable Packaging | 12/12/2018 | 06/03/2019 | 151.3 | 883.6 | 1,034.9 | One Madison Corp |
| iSun | Solar | 02/26/2019 | 06/20/2019 | 0.6 | - | 0.6 | Jensyn Acquisition Corp |
| GreenLand Technologies | EV Mfg | 07/12/2019 | 10/24/2019 | 6.1 | 1.0 | 7.1 | Greenland Acquisition Corp |
| Nikola | EV Mfg | 03/02/2020 | 06/03/2020 | 238.8 | - | 238.8 | VectoIQ Acquisition Corp I |
| Hyliion | EV Mfg | 06/18/2020 | 10/02/2020 | 236.5 | 307.5 | 544.0 | Tortoise Acquisition Corp |
| Lordstown Motors | EV Mfg | 08/01/2020 | 10/26/2020 | 284.3 | 500.0 | 784.3 | Lordstown Motors Corp |
| Fisker | EV Mfg | 07/10/2020 | 10/29/2020 | 531.9 | 550.0 | 1,081.9 | Spartan Energy Acquisition |
| EOS Energy | EV Batteries | 09/07/2020 | 11/17/2020 | 111.7 | 40.0 | 151.7 | B Riley Principal Merger Co II |
| QuantumScape | EV Batteries | 09/03/2020 | 11/25/2020 | 230.1 | 500.0 | 730.1 | Kensington Capital Acquisition Corp |
| Fusion Fuel | Hydrogen | 06/06/2020 | 12/10/2020 | 53.5 | 25.1 | 78.6 | HL Acquisitions Corp |
| XL Fleet | EV Mfg | 09/17/2020 | 12/22/2020 | 232.1 | 258.1 | 490.2 | Pivotal Investment Corp II |
| Canoo | EV Mfg | 08/17/2020 | 12/22/2020 | 306.6 | 323.3 | 629.9 | Hennessy Capital Acquisition Corp IV |
| Romeo Power | EV Batteries | 10/05/2020 | 12/30/2020 | 233.9 | 160.0 | 393.9 | RMG Acquisition Corp |
| Danimer Scientific | Recyclers | 10/03/2020 | 12/30/2020 | 200.1 | 210.0 | 410.1 | Live Oak Acquisition Corp |
| AppHarvest | AgTech | 09/28/2020 | 02/01/2021 | 99.7 | 375.0 | 474.7 | Novus Capital Corp |
| Advent Technologies | Renewables | 10/15/2020 | 02/04/2021 | 90.6 | 65.0 | 155.6 | AMCI Acquisition Corp I |
| Chargepoint | EV Charging | 09/23/2020 | 02/26/2021 | 316.4 | 225.0 | 541.4 | Switchback Energy Acquisition Corp |
| PureCycle Technologies | Recyclers | 11/16/2020 | 03/17/2021 | 76.5 | 370.0 | 446.5 | Roth Ch Acquisition I Co |
| Nuvve | EV Charging | 11/11/2020 | 03/22/2021 | 57.6 | 18.3 | 75.9 | Newborn Acquisition Corp |
| Arrival | EV Mfg | 11/18/2020 | 03/24/2021 | 259.4 | - | 259.4 | CIIG Merger Corp |
| Stem | EV Batteries | 12/03/2020 | 04/29/2021 | 383.4 | 225.0 | 608.4 | Star Peak Energy Transition |
| Lion Electric | EV Mfg | 11/30/2020 | 05/06/2021 | 319.2 | 200.0 | 519.2 | Northern Genesis Acquisition |
| Lightning eMotors | EV Mfg | 12/10/2020 | 05/07/2021 | 143.3 | 125.0 | 268.3 | GigCapital3 Inc |
| Proterra | EV Mfg | 01/12/2021 | 06/15/2021 | 277.3 | - | 277.3 | Arclight Clean Transition Co |
| Origin Materials | Recyclers | 02/17/2021 | 06/25/2021 | 285.7 | 200.0 | 485.7 | Artius Acquisition Inc |
| Electric Last Mile | EV Mfg | 12/10/2020 | 06/25/2021 | 139.2 | 155.0 | 294.2 | Forum Merger III Corp |
| EVgo | EV Charging | 01/22/2021 | 07/02/2021 | 229.9 | 400.0 | 629.9 | Climate Change Crisis Real Impact I |
| Freyr | EV Batteries | 01/29/2021 | 07/09/2021 | 103.9 | 600.0 | 703.9 | Alussa Energy Acquisition Co |
| Enovix | EV Batteries | 02/22/2021 | 07/15/2021 | 230.0 | - | 230.0 | Rodgers Silicon Valley Acquisition |
| Hyzon Motors | EV Mfg | 02/09/2021 | 07/19/2021 | 204.8 | 400.0 | 604.8 | Decarbonization Plus Acquisition Corp |
| Microvast | EV Batteries | 02/01/2021 | 07/21/2021 | 281.5 | 540.0 | 821.5 | Tuscan Holdings Corp |
| REE Automotive | EV Mfg | 02/03/2021 | 07/22/2021 | 47.7 | 300.0 | 347.7 | 10X Capital Venture Acquisition |
| Faraday Future | EV Mfg | 01/28/2021 | 07/22/2021 | 229.6 | 795.0 | 1,024.6 | Property Solutions Acquisition |
| Lucid Motors | EV Mfg | 02/23/2021 | 07/26/2021 | 2,069.8 | 2,500.0 | 4,569.8 | Churchill Capital Corp IV |
| Li-Cycle | Recyclers | 02/16/2021 | 08/10/2021 | 266.2 | 315.0 | 581.2 | Peridot Acquisition Corp |
| Joby Aviation | eVTOL | 02/24/2021 | 08/11/2021 | 265.8 | 910.0 | 1,175.8 | Reinvent Technology Partners |
| Xos Trucks | EV Mfg | 02/22/2021 | 08/20/2021 | 76.1 | 216.0 | 292.1 | Nextgen Acquisition Corp |
| ReNew Power | Solar | 02/24/2021 | 08/23/2021 | 108.9 | 855.0 | 963.9 | Rmg Acquisition Corp II |
| Volta Industries | EV Charging | 02/08/2021 | 08/27/2021 | 102.8 | 300.0 | 402.8 | Tortoise Acquisition Corp II |
| Lilium | eVTOL | 03/30/2021 | 09/14/2021 | 134.3 | 450.0 | 584.3 | Qell Acquisition Corp |
| Ginkgo Bioworks | AgTech | 05/11/2021 | 09/15/2021 | 867.0 | 775.0 | 1,642.0 | Soaring Eagle Acquisition Co |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Archaea Energy | Renewable Natural Gas | 04/08/2021 | 09/15/2021 | 236.9 | 300.0 | 536.9 | Rice Acquisition Corp |
| Archer | eVTOL | 02/10/2021 | 09/16/2021 | 257.7 | 600.0 | 857.7 | Atlas Crest Investment Corp |
| Benson Hill | AgTech | 05/10/2021 | 09/30/2021 | 94.7 | 225.0 | 319.7 | Star Peak Corp II |
| Wall Box Chargers | EV Charging | 06/09/2021 | 10/01/2021 | 141.1 | 111.0 | 252.1 | Kensington Capital Acquisition Corp II |
| ESS Tech | EV Batteries | 05/07/2021 | 10/08/2021 | 42.2 | 250.0 | 292.2 | Acon S2 Acquisition Corp |
| Local Bounti | AgTech | 06/18/2021 | 11/22/2021 | 17.0 | 150.0 | 167.0 | Leo Holdings III Corp |
| Solid Power | EV Batteries | 06/15/2021 | 12/08/2021 | 347.9 | 195.0 | 542.9 | Decarbonization Plus III |
| Altus Power | Solar | 07/13/2021 | 12/09/2021 | 211.5 | 425.0 | 636.5 | CBRE Acquisition Holdings |
| Vertical Aerospace Group | eVTOL | 06/11/2021 | 12/16/2021 | 15.7 | 294.0 | 309.7 | Broadstone Acquisition Corp |
| ADS-TEC Energy | EV Batteries | 08/11/2021 | 12/23/2021 | 48.7 | 156.0 | 204.7 | European Sustainable Growth |
| Heliogen | Solar | 07/07/2021 | 12/31/2021 | 22.7 | 165.0 | 187.7 | Athena Technology Acquisition |
| Tritium | EV Charging | 05/26/2021 | 01/13/2022 | 53.2 | 60.0 | 113.2 | Decarbonization Plus II |
| SES Holdings | EV Batteries | 07/13/2021 | 02/03/2022 | 51.5 | 275.0 | 326.5 | Ivanhoe Capital Acquisition |
| Energy Vault | EV Batteries | 09/08/2021 | 02/11/2022 | 40.8 | 200.0 | 240.8 | Novus Capital Corp II |
| Allego | EV Charging | 07/28/2021 | 03/14/2022 | 11.1 | 150.0 | 161.1 | Spartan Acquisition Corp III |
| Gogoro | EV Charging | 09/16/2021 | 04/04/2022 | 49.9 | 284.8 | 334.8 | Poema Global Holdings Corp |
| NuScale Power | Renewables | 12/14/2021 | 05/02/2022 | 145.3 | 236.0 | 381.3 | Spring Valley Acquisition |
| **TOTAL CLOSED** | | | | **12,273.3** | **19,149.6** | **31,422.9** | |

**DEAL LIST (PENDING)**

| | | | | Capital Raised ($m) | | | |
|---|---|---|---|---|---|---|---|
| **Name** | **Sector** | **Announce Date** | **De-SPAC Close Date** | **Cash from SPAC** | **Additional Capital** | **Total** | **SPAC Name** |
| Aspiration | ESG Fintech | 08/18/2021 | TBD | 258.8 | 580.0 | 838.8 | Interprivate III Financial |
| Polestar | EV Mfg | 09/27/2021 | TBD | 800.0 | 913.2 | 1,713.2 | Gores Guggenheim Inc |
| eCombustible Energy | Renewable Natural Gas | 11/24/2021 | TBD | 107.0 | - | 107.0 | Benessere Capital Acquisition |
| Voltus | EV Charging | 12/01/2021 | TBD | 345.0 | 100.0 | 445.0 | Broadscale Acquisition Corp |
| OPAL Fuels | Renewable Natural Gas | 12/02/2021 | TBD | 311.2 | 225.0 | 536.2 | ArcLight Clean Transition II |
| LiveWire | EV Mfg | 12/13/2021 | TBD | 400.2 | 300.0 | 700.2 | AEA-Bridges Impact Corp |
| Rubicon | Recyclers | 12/16/2021 | TBD | 321.0 | 111.0 | 432.0 | Founder SPAC |
| Eve | eVTOL | 12/21/2021 | TBD | 236.9 | 357.3 | 594.2 | Zanite Acquisition Corp |
| LanzaTech | Renewable Natural Gas | 03/08/2022 | TBD | 150.0 | 125.0 | 275.0 | AMCI Acquisition Corp II |
| Westrock Coffee | Sustainable Coffee | 04/04/2022 | TBD | 250.0 | 400.0 | 650.0 | Riverview Acquisition Corp |
| CH-Auto | EV Mfg | 05/02/2022 | TBD | 57.5 | - | 57.5 | Mountain Crest Acquisition Corp IV |
| **TOTAL PENDING** | | | | **3,237.6** | **3,111.5** | **6,349.1** | |