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Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Office of the Secretary:

We appreciate the opportunity to provide our observations on the proposed rules as an auditor of SPACs and private companies that merge with SPACs (i.e., de-SPAC transactions). The increased activity in SPAC IPOs and de-SPAC transactions has driven the need for the SEC and staff to issue multiple statements and guidance so that companies and gatekeepers understand the staff's views and expectations about the related reporting requirements. We commend the Commission's efforts to codify much of this previously issued guidance into the SEC's rules to provide clarity and overall standardization to the process. Accordingly, we believe the codifying amendments to Regulation S-X and Regulation S-K will be helpful to those involved in the transactions. We have provided feedback on several aspects of the amendments below, which the Commission may wish to consider when drafting the final amendments.

Aligning De-SPAC Transactions with IPOs

We support the Commission's proposal to align the financial reporting requirements for a private operating company in a de-SPAC transaction with those applicable to a traditional initial public offering. We also believe that the completion of the de-SPAC transaction is similar in many respects to the IPO of the target. Consequently, the Commission may wish to consider whether other reporting accommodations available in IPO transactions should be made available in de-SPAC transactions that would result in further alignment of the requirements for the private company that is going public. For example:

Further aligning the determination of filer status following the de-SPAC transaction

Following a traditional IPO, a registrant is considered a non-accelerated filer until it has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months and has filed at least one annual report under Section 13(a) or 15(d) of the Exchange Act¹ (among other quantitative criteria). However, in a traditional de-SPAC transaction,² a target will

¹ Regulation 12b-2(1)(ii) and (iii)

² We refer to a "traditional de-SPAC transaction" as one that does not involve the use of a "newco" registrant (as is the case with a transaction commonly referred to as "double dummy structure").



retain the filer status of the SPAC until the next determination date (notwithstanding the proposed amendments to re-determine SRC status following consummation of the merger). As a result, these companies may become accelerated filers, or large accelerated filers (and lose EGC status) in the year of the de-SPAC transaction. In either case, management’s annual report on internal control over financial reporting would be required in the first annual report following the merger, and in the latter case, an attestation report on ICFR from the registered public accounting firm. As the target in a traditional de-SPAC transaction is considered a “co-registrant” under the proposed amendments, we wonder whether they should be afforded the same on-ramp to accelerated or large accelerated filer status as companies that complete traditional IPOs or de-SPAC transactions through the use of a newco registrant. While many registrants apply the staff’s guidance³ to omit management’s assessment of ICFR (and therefore, an attestation report, if applicable) in the first Form 10-K following the merger, others may not due to the timing of the merger. Moreover, the loss of non-accelerated filer status in the year of the merger may affect the ability of a company to retain EGC status (due to public float measurement) and require the use of accelerated timeframes for the first Form 10-K following the merger. If a de-SPAC transaction is considered the equivalent of an IPO, it is not clear why the post-merger filer status would be treated differently for a company that chooses one going-public transaction over the other. If these alignments to the determination of filer status are considered, we also recommend codifying the existing view that a SPAC’s need to file an amended Form 8-K to update the target’s financial statements for its most recent year-end is the equivalent to the first annual report.

Conforming the due date of the first Form 10-Q

In a traditional IPO, the first quarterly report on Form 10-Q of the registrant is due the later of “45 days after the effective date of the registration statement or the date on which such report would have been required to be filed if the issuer has been required to file reports on Form 10-Q as of its last fiscal quarter”.⁴ Conversely, following a de-SPAC transaction, the due date of the private operating company’s most recently completed interim period financial statements prior to the merger is based on the SPAC’s filing status.⁵ For example, assuming the registration statement for a de-SPAC transaction was declared effective on October 14, 2022 and the transaction was consummated on November 7, 2022, a calendar year-end private operating company’s interim financial statements for the period ended September 30, 2022 would be due on November 14, 2022, whereas, in a traditional IPO, the interim financial statements would be due November 28, 2022. We believe the Commission should consider whether an exception to the age requirements for de-SPAC transactions in the Form 8-K with Form 10-equivalent information should be provided to further align the financial reporting requirements following the ‘go public’ transaction.

Expanding the confidential submission process

Currently, a SPAC is permitted to submit one confidential registration statement on Form S-4 for nonpublic review if the registration statement is submitted less than one year after the SPAC’s initial public offering. Financial statements of the target may be omitted if the issuer reasonably believes

³ Compliance and Disclosure Interpretations, Question 215.02 of Regulation S-K

⁴ Exchange Act Rules 13a-13 and 15d-13

⁵ Financial Reporting Manual, Section 12220.1c



the omitted financial information will not be required at the time the registration statement is publicly filed. However, in a traditional IPO, issuers may submit confidential registration statements for non-public review if they confirm that they will publicly file the registration statement (including all drafts) at least 15 days prior to any roadshow or the requested effective date if there is not a roadshow. Emerging growth companies may omit financial statements from draft registration statements and publicly filed registration statements if they reasonably believe such financial statements will not be required at the time of the offering, while non-EGCs may omit financial statements from draft registration statements that they believe will not be required at the time of the first public filing.

In our experience, IPO companies often take advantage of these accommodations as there is incremental cost and effort associated with financial statements that will not be required at the time of offering (or effectiveness). We recognize that these accommodations are based largely on congressional acts⁶ and staff guidance. However, we highlight these differences as they still contribute to disparities in the reporting requirements between IPOs and de-SPAC transactions which the Commission is otherwise seeking to align with the amendments.

Aligning the due date of recently acquired business financial statements

We observe that proposed S-X Rule 15-01(d)(2) would require financial statements of a recently acquired business that is not a predecessor to be provided in the shell company's Form 8-K filed pursuant to Item 2.01(f). In lieu of requiring such financial statements in the Item 2.01(f) Form 8-K that must be filed within four business days of the consummation of the de-SPAC transaction, the Commission might consider whether a timeframe similar to the one set forth in S-X Rule 3-05(b)(4)(ii) for filing financial statements of a recently acquired business following an initial registration statement would be more appropriate. For example, financial statements of a recently acquired business that have been omitted from the previously filed registration statement could be required at the later of the filing of the Item 2.01(f) Form 8-K, or 75 days after consummation of the acquisition. As the financial statements of the recently acquired business were not needed by investors to make an investment decision for the de-SPAC transaction, it is not clear why these financial statements should be provided sooner than otherwise required following a traditional IPO.

Aligning the financial statement information required in Item 2.01(f) of Form 8-K

As noted in the proposing release, the disclosure requirements of Form 8-K following the de-SPAC transaction differ from those of the registration statement. As a result, proposed Item 2.01(f) of Form 8-K, which would require Form 10-equivalent information, may require a third audited annual period of financial statements for an EGC (non-SRC) private operating company that precedes the annual audited periods included in Form S-4. It is not clear to us why an earlier annual period would be required in the Form 8-K filed after consummation of the merger when such information was not considered necessary for an investment decision by the SPAC's shareholders. Consequently, we recommend that the Commission provide an exception to the Form 10-type information so that financial statements are not required for any period prior to the earliest audited annual period included in the registration statement.

⁶ The Jumpstart our Business Startups Act and Fixing America's Surface Transportation Act



Transition

We believe the SEC should provide explicit transition guidance in the adopting release for the following scenarios (in addition to an effective date):

- SPACs that have identified a target and entered into a merger agreement, but have not yet filed a registration statement,
- SPACs that have filed one or more registration statements related to a de-SPAC transaction but are not yet effective,
- SPACs that have an effective de-SPAC registration statement but have not yet consummated the merger, and
- Companies that have completed a de-SPAC transaction but have not yet redetermined their filer status following the merger (the inability to retain the SRC status of the SPAC through the next determination date may negatively impact their ability to file other Securities Act registration statements following the merger).

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Tim Kviz, National Assurance Managing Partner – SEC Services, at [REDACTED] or via e-mail at [REDACTED], or Phillip Austin, National Managing Partner – Professional Practice and Audit, at [REDACTED] or via e-mail at [REDACTED]

Very truly yours,

BDO USA, LLP

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