Pertaining to proposed rule S7-13-22 Special Purpose Acquisition Companies, Shell Companies, and Projections

Chairman Gensler, in his statement on the proposal for SPACs stated: *"I am pleased to support this proposal because, if adopted, it would strengthen disclosure, marketing standards, and gatekeeper and issuer obligations by market participants in SPACs, helping ensure that investors in these vehicles get protections **similar to those when investing in traditional initial public offerings (IPOs)**."*

Except, as many have pointed out, investors in a traditional IPO are not "equally" protected. In fact, the traditional IPO process favors the investors with the most money that can buy favored information from the bank underwriting the deal.

It's quite common for a company that is going through the traditional IPO process to talk to a bank's research analyst, discuss their forward earnings, at which point, the analyst then models out the company into the future and then… ONLY distributes that information to the bank's key and favored clients (which usually pay the bank a lot of money in trading fees). This is a far less democratic and equitable process to the investing public, and in particular, retail investors.

Only the richest institutions (that pay the banks) will have access to additional information.

This is in contrast to the SPAC process in which all investors get a free look at projections by filing them publicly, not just the wealthiest investors. The ability for SPACs to file projections is thanks to the Private Securities Litigation Reform Act (PSLRA) Safe Harbor, which protects against excessive litigation.

Nonetheless, in the same statement Chairman Gensler further references Artistotle's maxim, "Treat like cases alike," as a way of accounting for the proposal changes and why SPACs should be treated like traditional IPOs. But the maxim appears to stop at the product itself and he does not apply it to investors, the very people that the SEC are supposed to protect. That is because, again, not all traditional IPO investors are treated alike. And yet, SPACs do. SPACs disclose all information to investors equally and publicly. So why is the traditional IPO method preferred?

However, I would encourage the SEC to think of what may improve BOTH the traditional IPO and the SPAC products, rather than forcing only one model of going public onto companies. This is an opportunity to invigorate the capital markets by taking the best of both vehicles (IPO and SPAC) to spur capital formation.

For example, as we've seen all investors like projections.In fact, even Delaware law requires projections in an acquisition so that a board has adequate information to make a decision. Companies coming out of bankruptcy provide projections to their creditors. Traditional IPOs are already using projections, just in a way that the SEC can't monitor. SPACs are using projections, but are publicly filing them for all to see and be reviewed by the SEC. All of those use cases point to the fact that projections are useful and investors want them, and use them. So wouldn't it be better to wrap traditional IPOs into the current Safe Harbor statement so that they can use projections (and the SEC can review them) rather than remove Safe Harbor for SPACs? That seems a better application of "treating like cases alike". Plus, that maxim of Aristotle can be applied to both IPO products as well as to investors,whereas in the current SEC proposal you can't.

The bigger issue, however, is the unintended consequences of this proposal as currently written. It is intended to improve SPACs and to protect investors and, most notably, retail investors. Except, the proposal has already had an impact on the SPAC market since it was first published on March 30th. And since that time we have had a preview of its effects. If the goal of the proposal was to elevate the product, it has had the opposite effect. It has made it notably worse for investors.

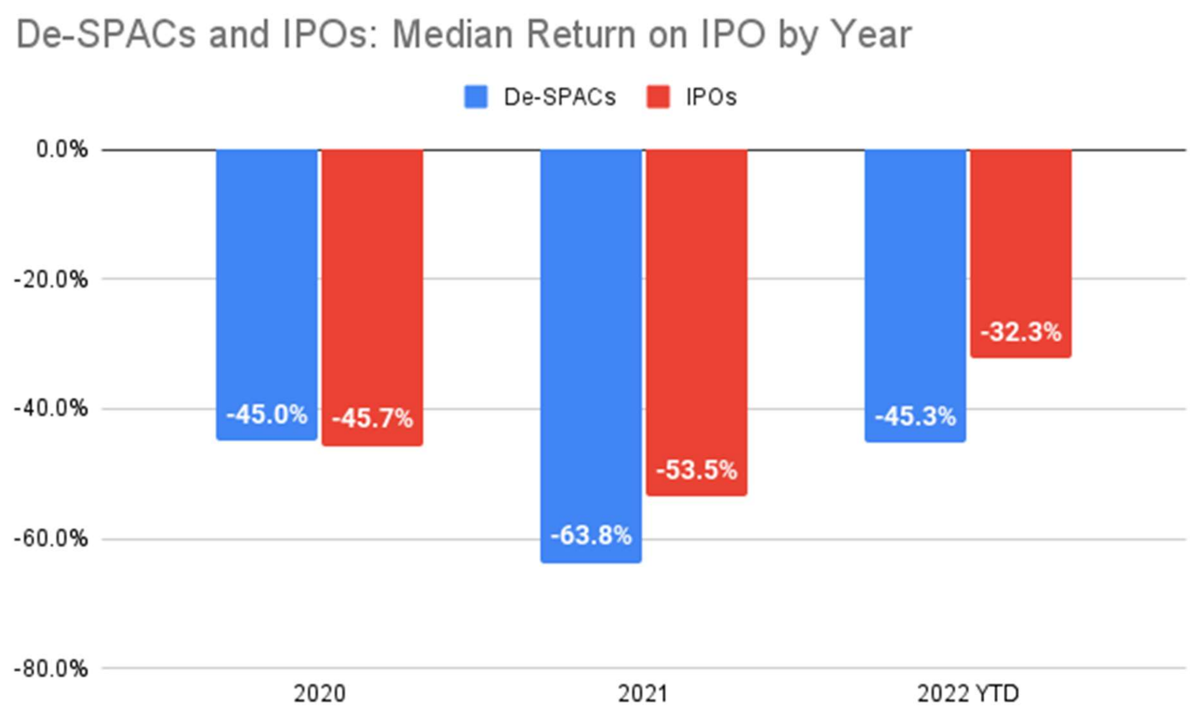
Now, the top tier banks, such as Goldman Sachs and BofA, have discontinued their SPAC issuance. Also absent, but without formal press statements, have been the other bulge bracket banks. These were the banks that were able to attract distinguished SPAC sponsors that would combine with notable and impressive operating companies. With these banks and sponsors now gone, instead we have the smaller, boutique banks filling the vacuum with less established and less well-known teams. These teams typically get lesser quality terms, which have an impact on their ability to complete a successful deal with better outcomes.

So, has the proposal improved the SPAC product? No, it has forced out the players it should be trying to keep in the game. If the SEC wants to protect retail, it should be actively looking for ways to keep the best sponsors, underwriters and companies participating.

Lastly, the SPAC is not a perfect product, but the traditional IPO product isn't perfect either.

If we look at the below graph, which represents all de-SPACs and IPOs that have come to market in each of 2020, 2021, and 2022 YTD, based on the close prices of the shares as of June 10, 2022, you'll see there isn't much difference in outcome depending on which path a company chooses. And it should be noted that the traditional IPO result for 2022, and somewhat in the 2021 figure, is not yet fully showing the results since many are not yet past their 180-day lock-up periods. Meaning, a traditional IPO enjoys a price bump for a few months after it prices. But once the marketing hype and news cycle dies down, and the IPO comes off lock-up, the price tends to degrade rapidly. And since we're only in the beginning of June, the majority of the 2022 traditional IPOs, and some of the 2021 IPOs that priced late in the year, are still enjoying their IPO price "bump". But, if we go back to 2020, where all companies that went public should have already moved past their lock-up dates, we see there is only a 0.7% difference in outcome.

As you can see, making a SPAC more traditional IPO-like is not going to make SPACs safer for retail investors. Also keep in mind that retail does not get to participate in the IPO offer price. Instead, they are buying it significantly above IPO offer price when hype is at its highest and therefore, the returns for retail are actually far worse than those shown below.



Source: SPACInsider and IPOInsider, all close prices as of June 10, 2022. De-SPACs include all components of the IPO unit.

For these reasons, and those of other commenters, this proposal as currently written will not improve the outcome of SPAC combinations and will not protect investors. Furthermore, it limits choice for companies wanting to go public. Instead, I would much rather see enhanced disclosures around the existing structure. If you shine a light in a dark corner, it's pretty hard to hide, so why not require more information around who is participating in at-risk capital, or prominently highlight economics and incentives so that it does not have to be a guessing game.

Again, I would ask the SEC to not lose sight of the opportunity at hand to improve the public offering vehicle in ALL of its forms. Just don't throw out the baby with the bathwater.