

SEC STAFF ANNOUNCES GUIDANCE FOR SPACS

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Last week the Staff of the Division of Corporation Finance issued a statement addressing a variety of accounting, financial reporting and governance issues that a private operating company should consider before undertaking a business combination with a special purpose acquisition company (a “SPAC”), shortly followed by one by the Acting Chief Accountant addressing financial reporting and auditing considerations for companies considering merging with SPACs.

The Corporation Finance statement addressed:

- Ineligibility for
 - The 71-day extension for target company financials, which must be filed on Form 8-K within four business days of closing the de-SPAC transaction
 - Incorporation of 1934 Act filings on Form S-1 until three years after closing
 - Use of Form S-8 to register equity plans until 60 days after filing the “Super 8-K” containing required “Form 10 information”
 - WKSJ status, use of free writing prospectuses and certain other less strict requirements for public offerings
- Public company reporting requirements applicable to the SPAC before, and the combined company after, closing including
 - Books and records requirements
 - SEC reporting and disclosure requirements
 - The Staff noted that in the limited circumstances described in S-K CDI 215.02, it would not object if the combined company were to exclude management’s assessment of internal control over financial reporting in the Form 10-K covering the fiscal year in which the transaction was consummated
 - New accounting requirements

- Stock exchange listing standards, including quantitative as well as corporate governance and other qualitative requirements

The Acting Chief Accountant addressed:

- Public company readiness considerations in light of market and timing implications
- Common financial reporting challenges
- Internal control over financial reporting and disclosure controls and procedures
- Corporate governance and audit committee considerations
- PCAOB requirements and acceptance and continuance procedures for the target company's auditor

These statements follow a recent investor alert regarding celebrity SPACs, indicating that the SEC is watching the SPAC boom closely.

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