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THE EVOLUTION OF SPACS:
A HISTORICAL ANALYSIS OF THEIR RISE AND DECLINE

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To my Parents

To my Aunt & Uncle

To my Family

To all my Friends

Table of contents:

I.INTRODUCTION

Special Purpose Acquisition Companies (SPACs), having raised billions of dollars in capital and revolutionized the conventional method of taking a company public throughout the past twenty years, have experienced tremendous growth and appeals. However, due to concerns about the safety of investors, conflicts of interest, and potential market inefficiencies, SPACs have also come under scrutiny. Through a historical and regulatory lens, this thesis aims to provide an in-depth analysis of the rise and subsequent decline of SPACs.

The earliest types of SPACs were "blank check companies" used for fraudulent stock schemes in the 1980s. SPAC activity was substantially lowered by rigorous rules established into effect at the beginning of the 1990s until a comeback in the mid-2000s. Modern SPACs are a popular alternative to traditional initial public offerings thanks to a number of significant Improvements such as enhanced investor protections and structured deal processes. Between 2017 and 2021, the "golden age" of SPACs saw valuations and dealmaking activity that were never seen before, thanks to increased support from venture capital firms and retail investor engagement. However, worries over dilution, overvaluations, and favoritism of sponsors prompted regulatory attention, and many post-merger SPACs saw falls and this, combined with the current SEC's 2022 Proposal, represents an issue that attempts to align SPACs with IPOs.Since then, the market has performed poorly as a whole and this has increased spac investors' uncertainty and concern.

My analysis includes the structure, history, accomplishments, and drawbacks of SPACs. I investigate the function of sponsors, projections, PIPE transactions, and warrant dynamics. I look into recent SEC recommendations for stricter regulations on SPACs and their possible effects on the industry's future. In order to win back investors' trust, I offer suggestions for risk reduction and subsequent SPAC model optimization. The results of my research illustrate that while SPACs have advantages, but a significant number of adjustments are necessary to make sure they continue offering value in the long run. SPACs have the potential to be an important supplement to the standard IPO as a different route to the public markets for high-growth firms with adequate security and realignment of interests.

From the beginning through their current position in the financial landscape, the present paper conducts an exhaustive examination of the events of Special Purpose Acquisition Companies. The fourth chapter, "Criticisms and Problems of SPACs", examines the issues and debates surrounding SPACs. Key concerns are fully investigated, including dilution risks, unrealistic financial projections, conflicts of interest, and challenges with fairness assessment. This chapter expands on the complex legal problems that the SPAC framework presents.

I examine the genesis of SPACs in the second chapter, "SPACs Rise: History and Notion," tracing its beginnings to the controversial blank check companies of the 1980s that participated in many fraudulent operations. I'll go into great detail about how SPACs changed as a result of changes in legislation and market conditions leading to their comeback in the 2000s. The basic structure of SPACs, their financial resources like PIPES, and the many stakeholders' roles in their operations are also covered in this part. The "golden age" of SPACs, which covers 2017 to 2021, is discussed in detail in Chapter 3, "SPAC Golden Age: Cases of Success." This section describes the elements that, despite SPACs' overall poor long-term performance, contributed to their success during this period of time. I assess the role of deals structuring, target selection, and sponsor experience in the success of these ventures using a variety of instances. The fourth chapter, "Criticisms and Problems of SPACs", examines the issues and debates surrounding SPACs. Key concerns are fully investigated, including dilution risks, unrealistic financial projections, conflicts of interest, and challenges with fairness assessment. This chapter expands on the complex legal problems that the SPAC framework presents. The last chapter, "Recent SEC Proposal and Future of SPACs", evaluates potential for SPACs in light of recent changes in regulation. The potential effects of the SEC's proposal, which aims to bring SPAC regulations closer to traditional IPO standards, on the SPAC ecosystem are examined, and as a consequence I evaluate alternative approaches ao improve SPAC performance and matching incentives between sponsors and investors. An evaluation of SPACs' most recent performance finishes this section and it is concluded with a lucid prediction for the future. The goal in writing the thesis is to give readers an in-depth understanding of the SPAC phenomena, including its benefits, drawbacks, and prospects for the future. I aim to add to the present debate on this interesting financial innovation by navigating through history, achievements, criticisms, and future plans.

II. SPACs RISE: HISTORY AND NOTION

A. History of blank check offerings pre-2003

In the last 20 years, Special Purpose Acquisition Companies (SPACs) have gained huge attention in the world of financial markets. These investment vehicles are formed with the only purpose of acquiring an existing operating company, taking it public, and bypassing the traditional initial public offering (IPO) process. While SPACs have become more and more popular recently, they have also been subject to scrutiny from regulators. This scrutiny comes from the historical association of SPACs with "blank check" companies of the 1980s. These companies operated in a penny stocks market that was full of fraudulent and manipulative trading practices, often managed by penny stock scammers through the promotion of public shell corporations, also known as "blank check" companies. These entities had no previous operating history, few employees, few or no audible assets, and a low possibility of future success. As a result, investors had limited access to relevant information to evaluate their investiment, as the SPAC only objective was to merge with an undisclosed private operating company.[1]

According to the Security Exchenge Commision (SEC), the impact of "blank check" offerings in the 90's was significant. The number of broker-dealer complaints involving penny stock firms rose from 12.5% in the fiscal year 1988 to 22% in 1989, despite the fact that penny stock brokers were less than half of all registered broker-dealers in the whole country. These brokers often engaged in not recorded, OTC (over-the-counter) penny stock transactions that were not traded on national securities exchanges and sometimes even utilized marketing tactics like cold-calling to uninformed clients. The strategy was to sell stocks at inflated prices and profit from the difference between the mark-up and the actual trading price, this business strategy was significantly different from normal brokerage activities where commissions were the primary source of income. In 1989, the North American Securities Administrators Association (NASAA) concluded that "penny stock

[1] Tim Castelli, Not Guilty by Association: *Why the Taint of Their "Blank Check" Predecessors Should Not Stunt the Growth of Modern Special Purpose Acquisition Companies*, 50 B.C.L. Rev. 237 (2009), http://lawdigitalcommons.bc.edu/bclr/vol50/iss1/6

swindles were . . . the No. 1 threat of fraud and abuse facing small investors in the United States." where public investors lost more than $2 billion.[2]

However, it is important to notice that the government heavily regulates this process. The regulations in place are so strict that they have effectively prevented the infamous "pump and dump" schemes of the 1980s. Furthermore, they have discouraged also other legitimate forms of capital raising from considering blank check offerings as a possible option. The first important federal regulation, the PSRA (Penny Stock Reform Act of 1990), first added the 15 U.S. Code § 77g to the Securities Act of 1933, and defined "blank check company" as follows:

> "The term "blank check company" means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title) and that-
> (A) has no specific business plan or purpose;
> or (B) has indicated that its business plan is to merge with an unidentified company or companies"[3]

Section 77g (b),1 of the Securities Act also direct that the SEC have to establish "special rules pertaining to registration statements filed by any issuer that is a blank check company." This particular statute was the impulse for the creation of SEC Rule 419, which will be discussed further. Given that a blank check company lacks tangible assets and a concrete business plan at the time of its offering, aside from a possible industry or geographical region for its purchase, investors are essentially relying on the competency of the company's management team- in other

[2] H.R. Rep. No. 101-617, at 8 (1990), reprinted in 1990 U.S.C.C.A.N. 1408, 1410; NASAA Report, supra note 6, at 1, reprinted in Penny Stock Hearings, supra note 6, at 150 (acknowledging that while there was a significant amount of fraud in the penny stock market, not all penny stock offerings were fraudulent). Frank Birgfeld of the NASD asserted that "a penny stock by itself is not per se wrong," but also recognized the serious issues in the industry, claiming that one would have to be "deaf, dumb, blind and terminally naïve" to not see them. Penny Stock Hearings, supra note 6, at 82–83 (statement of Frank Birgfeld, Director, District III, National Association of Securities Dealers).

[3] 15 U.S.C. § 77g(b)(3) (2006).

words, they are "betting on the jockey."[4] Interestingly, these management teams often comprise prominent individuals who are likely to draw investor attention[5].

The objective of the Penny Stock Reform Act was to safeguard investors engaged in penny stock trading activities and to supervise the use of blank check companies that had been used for defrauding investors. PSRA necessitated the creation of an automathic quotation mechanism to eliminate penny stocks from being easily altered by sheet listings. The Act added “section b” to section 7 of the Securities Act of 1933, outlining the definition of blank check companies and establishing a structure for their regulationand, in particular, the law required timely disclosure of information about the company being purchased and how the offering's funds would be used, with additional information to prevent fraud. Investor protection rules placed limits on how the funds could be used and when securities could be distributed until the disclosures were made. Beyond that, the first main financial innovation was the fact that shareholders of those securities were granted the right of rescission.[6]

According to the Securities Exchange Act of 1934, penny stocks are outlined in Section 3(a)(51). While they are often seen as risky by the SEC and national exchanges, however there is an exception that can prevent a security from being classified as a penny stock. To qualify for this exclusion, the stock must have a minimum price of $5.00 or higher, or the issuing company must have net tangible assets exceeding $5 million.[7]

The PSRA's blank check offering regulation was implemented and boosted by SEC Rule 419, which primary objective   was to impose binding regulations on the utilization of the profits from the blank check offering and also provide investors with an opportunity to rearrange their investment after the full knowledge of the company's target relevant details. The rule contains six main provisions: (1) IPO proceeds must be kept in an escrow account until the purchase is approved; (2) a post-effective revision is required to be submitted when a probable acquisition target is identified; (3) another post-effective revision must be filed when the acquisition agreement is executed; (4) investors have rescission rights if they choose not to stay invested; (5)

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[4] 15 U.S.C. § 77g(b)(1) (2006).
[5] Karen Richardson & Peter Lattman, *Financiers Now Say 'Trust Us': Like the Blank-Check Offerings of Yore,* SPAC Investors are Asked to Buy in on Faith, Wall St. J., Feb. 1, 2007, at C1, https://www.wsj.com/articles/SB117029862200094571.
[6] From Blank Check to SPAC: The Regulator's Response to the Market, and the Market's Response to the Regulation, 2 Entrepreneurial Bus. L.J. 531 (2007), http://hdl.handle.net/1811/78301.
[7] 15 U.S.C. § 78c(a)(51)(A) (2006). The actual implementing regulations, which were updated in 2005, are at 17 C.F.R. § 240.3a51-1 (2007).

the securities sold in a blank check offering are considered to be continuously offered and sold; and (6) the offering must be registered on Form 10.[8]

An important distinction has to be done with a blind pool offering, because he two have something in common but also are very different, because, cording to SEC Rule 419, blind pools have a more specific business plan that allows them to fall outside the rule's requirements. Blind pools are typically limited partnerships or direct participation programs that have a specific plan, for example a real estate project partnership, formed to invest in pre-selected apartment buildings.[9] On the other hand, the blank check company is a public company with less specificity in its business plan, and so, it is subject to stricter requirements for investor safeguard.

In 1992, David Nussbaum, a prominent attorney from Long Island and the Chief Executive Officer of GKN Securities, developed a new type of blank-check corporation, integrating advanced investor protectionsand also he formulated the definition "special purpose acquisition company" (SPAC). During the 1990s, GKN Securities promoted 13 blank-check operations but faced regulatory obstacles with the National Association of Securities Dealers, which issued a $725,000 fine to the firm and imposed a $1.4 million indemnity for excessively charging over 1,300 investors. Although GKN ceased operations in 2001, Nussbaum reappeared in 2003, managing EarlyBirdCapital, a reputable SPAC underwriter. The appeal of SPACs diminished during the dot-com bubble when conventional IPOs experienced substantial growth, but it wasn't until the early 2000s when bull market revived interest in SPACs, and the transactions grew in scale. Before the 2008 financial crysis, prominent dealmakers Nussbaum, Nelson Peltz and Martin Franklin employed SPACs for capital raising, earning hundreds of millions of dollars each.[10]

Analyzing the reported numbers, the SEC reported that approximately 2,700 blank check offerings were made during its combined fiscal years of 1987-1990, but this number reduced to less than fifteen in the early 1990s due to increased regulation.[11]The recently developed SPACs that included sufficient investor protections to gain the approval of the SEC, faded into obscurity in the early 2000s for to favorable market conditions for traditional Initial Public Offerings. It was

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[8] 17 C.F.R. § 230.419 (2007).
[9] Blank Check Offerings, Securities Act Release No. 33-6932, 51 SEC Docket 284 (Apr. 13, 1992), https://www.sec.gov/Archives/edgar/data/1760319/000176031919000008/filename1.htm.
[10] M.H. Bazerman & P. Patel, *SPACs: What You Need to Kno*w, Harv. Bus. Rev., July-Aug. 2021, https://hbr.org/2021/07/spacs-what-you-need-to-know.
[11] William M. Prifti, 24 Sec. Pub. & Priv. Offerings § 7:48 (2006).

not until 2003 that SPAC activity began to pick up again. As the number of traditional IPOs declined in the mid-2000s, SPACs experienced a clear growth trend. In 2004, there were twelve issues raising $0.44 billion dollars, while in 2005, there were twenty-nine issues raising $2.06 billion. In 2006, the number of SPAC issues increased to thirty-seven, raising almost $2.7 billion.[12] The popularity of SPACs continued to grow in the following years, with increasing numbers of companies choosing this alternative route to going public.[13]

B. Life cycle of modern SPACs

The rigid guidelines governing blank check companies under Rule 419 created barriers for potential investors to participate in such deals despite many types of protections in place. To solve this problem, SPACs were crafted to avoid the demanding mechanism of Rule 419 while still satisfying its instructions, making them an effective mechanism for raising capital. Unlike Rule 419, SPACs are not subjected to equivalent regulations while serving the identical scope. This because, though the SEC may occasionally states concerns relating to SPACs, their prestige has considerably improved due to support from well-known investment companies and guidance from experienced professionals from the finance world.

To prevent penny stock placement and to increase the investor protection objective of the blank check regulations, the SEC eliminated the possibility of pricing IPO shares above $5. However, companies with net tangible assets exceeding $2 million, operating continuously for over three years, or $5 million for less than three years, were still exempt from the rule. The SPAC was structured precisely to exploit this exception by structuring the offering in a way that would result in the company holding net tangible assets in excess of $5 million following the IPO.[14]

The SPAC is, after all, an entity precisely created to circumvent regulation of Rule 419 and even though in the last few years there is a heated discussion going on in the world of corporate law, the SPAC structure is permitted to continue because it is designed to offer adequate investor

[12] Yung Kim, *US Companies Find Alternate Route to Public Market*, Reuters News, Dec. 21, 2006.
[13] Another significant alteration in the features of SPACs took place in 2010 when Nasdaq introduced listings specifically for SPACs. This was later adopted by NYSE Amex in January 2011. Among other modifications, these changes encompassed reduced sponsor incentives and decreased maximum limits for redemptions. Additionally, the time frame for identifying appropriate targets was lengthened from 18 to 36 months.
[14] Penny Stock Definition for Purposes of Blank Check Rule, Securities Act Release No. 33-7024, 55 SEC Docket 722 (Oct. 25, 1993), 17 C.F.R. § 240 (2007).

safeguards so that the goal of Rule 419 is fulfilled even while the SPAC itself remains outside the sphere of the rule.

By operating around Rule 419 demands an requirements, the shares and warrants of a SPAC can be traded independently for three months after the prospectus date,[15] and along that, the SPAC has a longer timeframe to find and to complete the merger with a target than the 18-month limit set for a Rule 419 blank check company. Additionally, the SPAC calculates the minimum purchase price of the target as 80 percent of its net assets at the time of the acquisition, including investment income and working capital, which is a more sensible way to measure the price than the 419 regulation's approach.[16]

Moreover, other points make SPACs even more safe than blank-check companies under the Rule 419: firstly, SPACs usually invest their net offering proceeds in short-term U.S. government securities maturing within 180 days, unlike Rule 419, which allows investment in any type of government securities or a money market fund. Beside this, the SPAC deposits more than the required 90% of its proceeds into an escrow account, which is managed by a third party[17]/ This money is held until the transaction is finalized (in the case of a SPAC, the initial business combination) or the SPAC is liquidated. Another difference is about the merger voting process, where in the case of SPACs, no more than 20% of investors can vote against the merger, and exercising the objector's conversion right is essential for pro rata share return. In contrast, under Rule 419, if the investors do not approve the transaction within 45 days, their pro rata share is automatically returned, as a consequence of the fact thatSPACs are addressed to more sophisticated and institutional investors.[18]

The life-cycle of a SPAC usually starts with a management team, or sponsor, with a minimal investment, commonly referred to as founder shares. SPAC IPOs differ from traditional IPOs in which issuers do not raise capital by selling new common shares of stock to investors; instead, they are issued in units. A unit combines one common share and a fraction of a warrant. These units typically comprise of one Class A common share and a smaller fraction (often in 1/2, 1/3, or

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[15] Bruce Rader & Shane de Burca, SPACs: *A Sound Investment or Blind Leap of Faith?* 20 INSIGHTs No. 1 (2006), at 2,5

[16] *Id.*

[17] U.S. Securities and Exchange Commission. (2021). *What You Need to Know About SPACs* – SEC Updated Investor Bulletin. Retrieved from https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin

[18] Bruce Rader & Shane de Burca, SPACs: *A Sound Investment or Blind Leap of Faith?* 20 INSIGHTs No. 1 (2006),

1/4 increments), SPACs are usually priced at a nominal $10 per unit.[19] Warrants are contracts that give the holder the right to buy a pre-determined number of shares of common stock from the company at a fixed price, often higher than the current stock price at the time the warrant is delivered.

The terms of warrants can vary greatly between different SPACs, them are indicated in the prospectus of the particular operation and they indicate the number shares the investor has the right to buy, the price and period at the time which shares may be bought, the conditions under which the SPAC may be able to redeem the warrants, and when the warrants will expire. Warrant redemptions are another important factor to consider. A SPAC can redeem warrants in accordance with their terms.

SPAC warrants are redeemable by the issuer intwo circumstances: intrinsic redemption and make-whole redemption. Intrinsic redemption allows issuers to redeem warrants for a nominal value if the stock trades above $18.00 for 20 out of 30 trading days, with 30 days notice at a price of $11.5 per share. Most warrants allow the issuer to force a "cashless" exercise, resulting in a net-share settlement. The stock price is based on the average closing prices for a 5- or 10-trading day period before the issuer sends the notice of redemption.[20]

Make-whole redemption, similar to convertible bonds, is designed to approximate the market value of the warrants, including the time factor of the option and allows issuers to redeem warrants if the stock price exceeds $10.00, and investors can exchange their warrants into a fractional number of shares specified in a table. The warrant make-whole tables are fixed at the time of SPAC IPO and have extremely standardized numerical values. An algorithmic review of SEC filings since 2017 identified 566 companies with warrants with redemption make-whole tables, of which 551 (97.3%) have identical or nearly identical table values. These tables are fixed at the time of SPAC IPO and computed with a 40% volatility assumption.[21]

Founder shares and public shares usually have comparable voting rights, with the exception that founder shares usually have the exclusive ability to elect SPAC directors. Warrant holders typically do not have voting rights and only complete warrants are exercisable.

[19] *Id.*
[20] J. Kramer, Post-SPAC Warrant Redemption Features (2021)
[21] *Id.*

The SPAC then issues units in an initial public offering, resulting in around 80% of the shares being owned by public shareholders and 20% of the shares being held by the founders.[22] The IPO proceeds are held in a trust account that earns interest while the SPAC conducts its search for a target company. Securities issued by the SPAC in its IPO are registered on a Form S-1, where it includes information about the company's business, its officers and directors, and the securities being offered and are subject to the SEC staff review process. Beside this, the SPAC usually file a current report on Form 8-K, with an audited balance sheet reflecting the receipt of proceeds and issue a press release to inform investors when separate trading may start. People who buy SPAC securities after the IPO on the open market should be aware of whether they are buying units, common stock or warrants.[23]

The SPAC must follow the same rules as other companies when filing reports with the SEC (e.g., Form 10-Qs and Form 10-Ks). The SPAC does not have much business activity, so its financial statements mainly include cash, money spent on the offering, and expenses related to becoming a public company and searching for a target. [24]

Under the rules of the SPAC and the trust, the money in the trust can only be used for (a) buying a company, (b) putting money into the company formed by the SPAC's merger, (c) giving it to shareholders if the SPAC can't complete a merger, or (d) redeeming shares. The SPAC's charter usually gives it from 18 to 24 months to find a merger target and finish the merger, then, if the SPAC fail to merge within the designated timeframe (or secure an extension of a few months through a shareholder vote), it must dissolve and allocate the trust's assets to its public stockholders and the sponsor loses their investment.[25]

Considering the SPACs' structure, the share price should not fall below the trust value per public share, excluding transaction and liquidity costs. Likewise, the price should not be significantly higher than the trust value since no details about the deal are known until the public announcement of a letter of intent or agreement. Therefore, without information leaks, the SPAC share price should closely follow the trust value between the first trading day post-IPO and the

[22] PwC, *SPAC Overview and Lifecy*cle (2021), https://www.pwc.com/us/en/services/deals/spac-overview-and-lifecycle.html.
[23] *Id.*
[24] *Id.*
[25] M.D. Klausner, M. Ohlrogge & E. Ruan, *A Sober Look at SPACs*, 39 Yale J. on Reg. (2022), https://ssrn.com/abstract=3720919 or http://dx.doi.org/10.2139/ssrn.3720919.

announcement date. From the perspective of public shareholders, SPACs resemble government bonds until the announcement date. [26]

Once the SPAC has identified a potential business merger opportunity, its shareholders have the chance to redeem their shares and, in many instances, vote on the initial merger transaction. Each SPAC shareholder can either continue as a shareholder of the company after the initial merger or redeem their shares and receive their proportional share of the funds held in the trust account.

This is a crucial consideration for investors as the SPAC transitions from being primarily a trust account to an operating company. In fact, a notable characteristic of SPACs is that when a merger is suggested, shareholders can redeem their shares at a price equal to the $10.00 IPO, price of the SPAC's units, along with any accrued interest in the trust. However, the warrants and rights that come with the units still exist and are traded independently. As a result, IPO investors in a SPAC can redeem their shares while retaining their warrants and rights at no extra cost. These warrants and rights serve as a reward for investors who permit their funds to be used for establishing the SPAC as a publicly traded company.

Even when a SPAC is left with little cash after shareholders redeem their shares, it can still complete a merger and take a target public. In this scenario, the remaining SPAC shareholders end up owning a small portion of the combined company, while the target company receives limited cash proceeds. Target companies will often push for closing conditions that require a minimum amount of cash to remain in the SPAC after redemptions. In some cases, the SPAC sponsors or target company shareholders may contribute additional funds to get the deal done.[27]

Furthermore, the management teams of the SPAC and target company actively promote the proposed merger to potential investors through "SPAC roadshows." These roadshows have two key goals: generate interest and demand among public market investors, and convince IPO investors to sell their shares and not to redeem them, so that more of the cash stays within the

[26] T. Jenkinson & M. Sousa, *Why SPAC Investors Should Listen to the Market*, 21 J. Applied Fin. (2011), https://ssrn.com/abstract=2691586.
[27] *Id. Supra note 25.*

SPAC to fund the merger. Sometimes, SPAC sponsors will even make undisclosed side deals with investors who commit not to redeem their shares.[28]

In scenarios where a SPAC must obtain shareholder approval for a initial business merger, shareholders will receive a proxy statement prior to the vote. In situations where shareholder approval is not necessary because sponsors and affiliated parties hold adequate votes, an information statement will be furnished instead. The proxy statement or information statement will contain relevant specifics about the target company, including financial statements, the interests of involved groups, and the terms of the proposed merger, such as the capital structure of the combined enterprise, it could also include Amendments to the SPAC's articles of incorporation, informations about the election of directors and the re-domiciling of the SPAC. If the merger deal involves issuing new securities, the SPAC will submit a combined proxy statement and SEC registration on form S-4, that is a document submitted to the U.S. Securities and Exchange Commission in connection with a business merger or exchange offer instead of just a proxy statement. If the transaction closes and shareholders choose not to remain invested, they may redeem their shares for a proportionate share of the total funds in the trust account by following the procedures described in the proxy or information statement. On the contrary, when a SPAC is not required to issue shareholders a proxy or information statement, they will receive a tender offer statement with details about the target company and their redemption rights.[29]

Within the proxy or Form S-4/proxy statement, the SPAC and the target company will need to consider the requirements for Emerging Growth Companies (EGCs) and Smaller Reporting Companies (SRCs). If the SPAC is an EGC and the target company would qualify as an EGC, only two years of annual audited financial statements would be required. For a target that is a private company to qualify as an EGC, its total annual gross revenues need to be less than $1.235 billion for the most recent fiscal year and it can not have issued more than $1.0 billion of nonconvertible debt over the past three years. If the target does not qualify as an EGC, but does

[28] C. Weekes, *SPACs Now Part of Conversation with Most Companies Seeking Public Listing: SPAC Roundtable Series*, Cowen Insights (Feb. 26, 2020), https://www.cowen.com/insights/spacs-now-part-of-conversation-withmost-companies-seeking-public-listing/.
[29] PwC, SPAC Overview and Lifecycle (2021), https://www.pwc.com/us/en/services/deals/spac-overview-and-lifecycle.html.

qualify as an SRC, two years of annual audited financial statements would be required. Otherwise, three years of audited financial statements of the target are required.[30]

After a letter of intent or agreement is announced, public shareholders can evaluate the proposed deal and choose to either stay invested, sell their shares, or wait for the shareholder meeting to vote against the deal and get their money back. The SPAC share price between the announcement and decision dates will indicate investor assessments of the deal's value. During this time, the share price should consider three factors: it should not be much lower than the trust value, it should increase if the deal creates value, and there might be a negative dilution effect from exercisable warrants and founder shares. Public shareholders control the outcome, and an acquisition can only proceed if a majority of public shares approve the deal, and no more than 20% vote against and exercise their right to convert stock into a share of the trust fund. If these conditions aren't met, the SPAC is liquidated and proceeds are distributed to public shareholders. Investing in a SPAC until the decision date is essentially risk-free with potential upside if a good deal is found.

At the decision date, the SPAC share price should reflect the market's evaluation of the proposed deal and should not be far below the trust value. If the share price is equal to or slightly below the trust value, the market sees the proposed deal as value-destroying, and the SPAC should be liquidated. If the share price is higher than the trust value, the deal is expected to create value, and the acquisition should be approved[31], this offers a simple decision rule for investors. However, actual decisions often don't follow this rule, with many acquisitions approved despite creating no value. "Good" and "bad" SPAC portfolios are constructed based on this decision rule, and bad SPACs result in significant losses for public shareholders.

When a SPAC successfully completes a commercial merger process known as "de-SPAC," the SPAC distributes ownership shares to the owners of the private entity being acquired, and occasionally to additional investors. This distribution of ownership shares allows the target company's owners and other investors to become shareholders in the newly merged public company. The SEC review process for the merger follows a similar path to a typical IPO, involving review, comment letters, and possible multiple rounds of feedback. Once the merger is completed,

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[30] EY, 2022 SEC Annual Reports — Form 10-K (2022), https://ey.com/en_us/assurance/accountinglink.
[31] Tim Jenkinson & Miguel Sousa, *Why SPAC Investors Should Listen to the Market*, 21 J. Applied Fin. (Formerly Fin. Prac. & Educ.) 2 (2011), https://ssrn.com/abstract=269158.

a current report on Form 8-K must be filed within four business days, including historical financial statements and associated pro forma data. This report, known as a "Super 8-K," contains the information required for a Form 10 registration statement,that is is typically filed by companies that are not conducting an initial public offering (IPO) but still need to register their securities to comply with federal securities laws.[32]

C. Private investments in public equity (PIPEs)

SPACs may require further financing to support a merger or address shareholder redemptions of common stock, and they can obtain the necessary funds through various methods, such as private investment in public equity (PIPE) transactions, offering more common stock to the public, obtaining preferred equity investments, or acquiring debt financing. PIPEs involve private investors, often hedge funds or private equity firms, acquiring equity in a SPAC at a discount to the market price. SPACs may gauge interest from potential PIPE investors before initiating a formal fundraising process, referred to as a “pre-PIPE.” This helps determine if a viable level of interest exists to warrant the time and expense of a full PIPE transaction.Some SPACs also pursue “PIPE upsizing,” in which existing PIPE investors contribute extra capital after a merger announcement once the SPAC has assessed shareholder redemptions. The more urgently a SPAC needs to complete an acquisition, the more favorable terms it may have to offer PIPE investors to secure their investment.[33]Equity infusions like PIPEs often happen alongside the merger, and SPACs might secure PIPE investors during their IPOs, but sometimes they usually search for more PIPE investments later. Sponsors may support PIPE investments by transferring their shares or warrants to the investor.[34]

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[32] PwC, Domestic SPAC Mergers: Financial Statement Filing Considerations (2021), https://viewpoint.pwc.com/dt/us/en/pwc/in_depths/2021/domestic_spac_mergers/domesticspacmergers/financialstatementfiling.html.

[33]Christopher Barlow et al., *Choppy Market for SPACs and PIPEs*, Competition for Targets Spurs Deal Innovations, Skadden Insights (Jan. 19, 2022), available at: https://www.skadden.com/insights/publications/2022/01/2022-insights/corporate/choppymarket-for-spacs-and-pipes.

34 Frank Fagan & Saul Levmore, *SPACs, PIPEs, and Common Investors*, 25 J. Bus. L. 103 (2023), available at: https://scholarship.law.upenn.edu/jbl/vol25/iss1/4.

PIPEs offer SPACs a quicker, more certain means of raising funds compared to secondary equity offerings or issuing convertible securities, which can take substantial time and money to complete. If a SPAC only needs a modest amount of additional investment for an acquisition, a PIPE allows them to raise capital in a targeted manner without the expense of another public offering. PIPEs also provide security for SPACs by ensuring there are funds available for a deal even if many public shareholders decide to redeem their shares. On average, a SPAC IPO raises around $220 million, but typically, 73% of the proceeds are returned to shareholders via redemptions. During a merger, SPAC shareholders typically provide the majority of capital, about 64% on median, while PIPEs supply 25%. Third-party PIPE investors typically buy shares at a median discount, and in some cases, the discount is 10% or more. [35]This discount compensates PIPE investors for the risk of investing in the newly merged company. Sponsors of the SPAC may also provide additional benefits to PIPEs like transferring some portion of their shares or warrants to the investors. So, PIPEs do not replace most shareholder funding but instead supplement it.

After a merger, SPAC shareholders, including the sponsor, maintain a median of 35% ownership in the newly public firm, with the sponsor holding 12%. As a result, SPACs don't fully acquire companies but instead merge with private businesses in deals that generally leave previous SPAC shareholders and sponsors owning minority interests in the merged organization.[36]

While crucial for facilitating many SPAC acquisitions, PIPEs do introduce some complications. Retail investors in the SPAC face dilution of their shares from the discounted equity provided to PIPEs. If a large portion of public shares are redeemed, PIPEs end up with an outsized influence over the merged company relative to their investment. However, without PIPEs many SPACs would struggle to complete mergers at all due to inadequate funding from shareholder capital alone. So, PIPEs reflect a trade-off in the SPAC model between enabling acquisitions and potential detrimental impacts on retail investors or corporate governance. Moreover, Conflicts of interest may arise when a close connection exists between the PIPE investor and the SPAC sponsor, which can lead to misaligned interests among stakeholders. Recognizing the unique risks and complexities of PIPE investments in SPACs, a reassessment of the current regulatory landscape may be necessary.

[35] *Id.*
[36] *Id.*

Regulations aim to balance these effects and provide proper transparency and several strategies can be employed to address these issues. Regulatory bodies could enforce more stringent disclosure requirements for PIPE investors, such as revealing any special rights or favorable terms granted. This increased transparency would empower public shareholders to make better-informed decisions and evaluate the fairness of the transaction. Additionally, regulators could explore limiting the voting rights of PIPE investors in situations where their interests conflict with those of public shareholders, ensuring fair representation for all parties involved. Lastly, promoting best practices in PIPE transaction negotiations and structures could involve adopting standardized terms and provisions to reduce the likelihood of preferential treatment for specific investors.[37]

Regulatory frameworks, such as those enforced by the SEC in the U.S. and the UK Takeover Panel, aim to provide transparency and balance in PIPE transactions. In the U.S., the SEC mandates that SPACs disclose detailed information about PIPEs in their merger proxies. The UK Takeover Panel oversees PIPEs under its substantial shareholding disclosure regime and takeover rules, requiring mandatory takeover offers when PIPEs own 30% or more of a company's voting shares. Additionally, PIPEs must disclose their holdings when crossing ownership thresholds of 3% and each subsequent 1% increment. These regulations serve to inform the public and maintain shareholder protections, even when substantial private investments are involved.[38]

The pros and cons of PIPEs reflect some of the trade-offs inherent to SPACs. They provide an alternative path to the public markets that appeals to many private companies and investors. But aspects of their structure, like the potential reliance on PIPEs, can disproportionately benefit large institutional shareholders over retail investors. Overall, PIPEs play an integral role in the SPAC model, for better and for worse. SPACs and regulators continue to explore ways to balance these trade-offs and reduce frictions for all parties involved.

III. SPACs GOLDEN AGE: CASES OF SUCCESS

A.Analysis of successful SPACs

[37] Allen & Overy, *The Role of Private Investment in Public Equity (PIPE) in Financing SPACs' Business Combinations* (2021), available at: https://www.allenovery.com/en-gb/global/news-and-insights/publications/the-role-of-private-investment-in-public-equity-pipe-in-financing-spacs-business-combinations.
[38] *Id.*

The rise and decline of SPACs have been a topic of significant interest in recent years, and understanding the factors that contributed to their success is crucial in the analysis of this phenomenon. One key aspect to consider is the golden age of SPACs, during which several successful mergers and acquisitions took place, leading to substantial growth for the companies involved. This chapter aims to provide an in-depth analysis of these successful SPACs, focusing on the factors that contributed to their achievements and the implications for the broader market.

The golden age of SPACs was marked by a surge in popularity, with 613 SPACs being floated in the market in 2021 alone, raising over $162.53 billion.[39] This period saw a number of high-profile names dominating the SPAC market, which contributed to its credibility and success. One of the reasons for this growth was the increasing involvement of the U.S. Securities Exchange Commission (SEC), with the Rule 419 Blank Check Offering Terms in 2003.[40]

A closer look at some of the successful SPACs during this period reveals interesting insights into the factors that led to their accomplishments. One notable example is the merger between Churchill III, a SPAC led by veteran dealmaker Michael Klein, and healthcare services firm MultiPlan Corporation, which ended in an $11 billion deal. Klein and his team received $275 million worth of stock for merging the two companies, having invested just $25,000 initially. They also invested $23 million separately to receive warrants in the company (SPAC Analytics).[41]

Another success story is that of Chamath Palihapitiya, a prolific SPAC sponsor who invested $25,000 of his own capital in a $3.7 billion merger with U.S. insurance startup Clover Health. This investment resulted in a stock payout worth $207 million on paper. Palihapitiya also invested an additional $16.4 million to receive warrants in the combined company.[42] However, it is worth to underling that there are also few others SPACs in the select group that have achieved success by bringing together a distinct combination of elements, such as exceptional leadership teams, industries with significant growth potential, and unique business strategies. Companies that have stood out with remarkable growth and performance include Adapthealth , Betterware de

[39] M.H. Bazerman & P. Patel, *SPACs: What You Need to Know*, Harvard Business Review, July–August 2021,July–August 2021, https://hbr.org/2021/07/spacs-what-you-need-to-know.
[40] R. Haniffa, M. Hudaib & T. Nawaz, *The Value of Social Capital for the Success of SPAC IPOs*, 10 Int'l J. Fin. Stud. 31 (2022), https://doi.org/10.3390/ijfs10020031.
[41] J. Franklin & J. DiNapoli, *Analysis: Investors push back on blank-check company insiders' payout bonanza*, Reuters (Dec. 9, 2020),https://www.reuters.com/article/spac-compensation-analysis-idINKBN28J1JX
[42] *Id.*

Mexico , Draftkings , Opendoor , Open Lending , Repay and Skillz. These SPACs have distinguished themselves by effectively creating shareholder value, capitalizing on these critical factors and seizing the unique opportunities presented during their individual merger processes, setting them apart from others in the market.[43]

Several other companies have experienced significant growth as a result of successful SPAC mergers. For instance, the electric vehicle startup Fisker went public through a merger with Spartan Energy Acquisition Corp, which resulted in a valuation of $2.9 billion.[44] Another example is Vertiv Holdings, a provider of essentail digital infrastructure and continuity solutions, which merged with a SPAC in February 2020 at a $5.3 billion enterprise value. Vertiv's stock price has increased over 120% since then, raising its market cap to $12 billion. The company's revenue grew in the high single digits in 2020 despite the pandemic. Lemonade, a digital insurance platform, completed a SPAC merger in July 2020 at a $1.6 billion valuation. Since then, its stock price has jumped over 250%, propelling its market cap to $6.7 billion. The company doubled its revenue in 2020 as it expanded into new insurance categories such as pet insurance and life insurance.[45]

Luminar Technologies, a driverless car startup, went public in August 2020 through a $3.4 billion merger with the SPAC Gores Metropoulos Inc. Following the merger, Luminar's stock price jumped over 250%, increasing the company's market capitalization to $6.7 billion. The semiconductor company Adesto Technologies Corporation merged with a SPAC called Tower Semiconductor Ltd. in October 2020 at an enterprise value of $500 million. Since the merger, Adesto's stock price has increased over 40%. Moreover, the 3D printing company Proto Labs merged with a SPAC called Desktop Metal in November 2020 at an enterprise value of $1.9 billion and revenue grew over despite the pandemic. Chinook Therapeutics, a biopharmaceutical company, went public in November 2019 through a merger with a SPAC called Versartis Inc. at an enterprise value of $225 million. After the merger, Chinook's stock price has increased over 170% in one year as the company reported positive results from clinical trials.[46]

Virgin Galactic, a space tourism company, merged with a SPAC called Social Capital Hedosophia in October 2019, and its stock price has increased over 250% since the merger, only

[43] T. Gecgil, *7 of the Most Successful SPACs of the Past Year*, InvestorPlace (May 6, 2021),https://investorplace.com/2021/05/seven-most-successful-spacs-past-year/
[44] I. Naumovska, *The SPAC Bubble Is About to Burst*, Harvard Business Review (Feb. 18, 2021),https://hbr.org/2021/02/the-spac-bubble-is-about-to-burst
[45] *Id.*
[46] M. Bellin, *Why Companies Are Joining the SPAC Boom*, PwC (Sept. 22, 2020),https://www.pwc.com/us/en/services/consulting/deals/library/spac-boom.html

dropping below merger's price levels in 2022. Beside these, DraftKings, a fantasy sports and sports betting company, merged with Diamond Eagle Acquisition Corp. in April 2020, raising $3.3 billion. Since the merger,DraftKings' stock price has climbed over 150% during the first year. Another successful example is Luminar, a technology company for autonomous vehicles, which merged with Gores Metropoulos Inc. in December 2020, raising $3.4 billion. Luminar's stock price has increased over 300% since the merger as more investors recognized its long-term potential.[47]

Although it is true that many of these companies are facing challenges in 2023 due to the Ukrainian-Russian war and the increase in interest rates, resulting in a decline in their share prices, it is still essential to understand the factors that contributed to their initial success. One of the key elements rontributing to the success of these SPACs is the involvement of operators in leadership roles after the initial mergers. Research has shown that operator-led SPACs, with leaders who have former C-suite operating experience, tend to outperform other SPACs by about 40 percent and their sectors by about 10 percent.[48] This is because operator-led SPACs specialize more productively and take expanded responsibility for the success of the combination.[49] Another key fact to consider is that even in the face of adversity, successful sponsors can steer their SPACs towards positive outcomes. Renowned billionaire investor Barry Sternlicht, who made his name in real estate and hospitality, launched five SPACs during the recent boom, attracting numerous high-profile investors, according to SPAC Research. Although several of these SPACs experienced challenges in finding suitable merger partners, Sternlicht's leadership and expertise have proven effective. In 2023, a $1 billion SPAC led by Sternlicht managed to secure the confidence of its shareholders, who granted it an extra year to identify a fitting merger candidate.[50]

Expanding upon prior points highlighting the critical role of an successful sponsor, it is clear that even amid the 2023 global challenges marked by growing inflation rates and worries about SPACs due to SEC proposals, competent sponsors can efficiently maneuver through the

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[47] D. Lamont, *The Pros, Cons and Incentives Behind the SPAC-Craze Sweeping Markets*, Revue Banque et Professions Financières (2021),https://www.professionsfinancieres.com/The-pros-cons-and-incentives-behind-the-SPAC-craze-sweeping-markets

[48] David Dr, Brian Panton, Adams, *What is a SPAC and Why are They Suddenly so Popular?*, Excelsior Capital (Oct. 2, 2020).

[49] K. Chauviere & T. Tan, *Earning the Premium: A Recipe for Long-Term SPAC Success*, McKinsey & Company (Sept. 2020), https://www.mckinsey.com/~/media/McKinsey/Industries/Private%20Equity%20and%20Principal%20Investors/Our%20Insights/Earning%20the%20premium%20A%20recipe%20for%20long%20term%20SPAC%20success/Earning-the-premium-A-recipe-for-long-term-SPAC-success.pdf

[50] M. Celarier, *A SPAC Empire Faces a Disastrous Market*, Institutional Investor (Feb. 2, 2023),https://www.institutionalinvestor.com/article/b8x8vvvsstjjt6/A-SPAC-Empire-Faces-a-Disastrous-Market

uncertain landscape and guide their SPACs to triumph. A notable illustration of this is Pono Capital Three Inc., which, under the direction of its skilled sponsor, has successfully attracted early investors by providing a guaranteed return on their investment, assigning $10.25 per unit to its trust account, and securing a 2.5% return.[51] This method has appealed to investors who place a premium on stable returns over high expectations for acquisition targets in the present market situation. In spite of the prevalent doubt in the SPAC market and the challenges connected to liquidations and identifying appropriate merger partners, a few sponsors are effectively creating inventive tactics to adjust and bring value to their investors. It is also noticeable the importance of marketing within SPACs, it is highlighted by the potential positive returns for board members and stakeholders in successful ventures. Famous personalities, including Serena Williams, Shaquille O'Neal, A-Rod and Jay-Z, support SPACs to promote capital investment and capture public interest. As a SPAC gains more attention, the value of its common stock value rising grows, providing advantages to shareholders at the time of the merger.[52]

Moreover, after discussing various overperforming companies that have gone public through SPACs, it is worth mentioning a few additional examples, emphasizing their technology-focused nature and the fact that these successful listings took place in 2021, prior to the SEC 2022 proposal. In fact, in 2021, notable tech companies such as Lucid Motors, Enovix, Matterport, and ChargePoint have experienced significant success in their listin. Notable tech companies such as Lucid Motors, Enovix, Matterport, and ChargePoint have experienced significant success in their listings. These examples serve to further underline the strong potential of technology companies to excel when going public via SPACs. These successful SPACs are known for their strong financial performance, showing the potential for big gains for sponsors and investors in private companies choosing this method.[53]

Another critical aspect contributing to successful SPACs is the social capital of the individuals involved. A case study illustrating this point is Pershing Square Tontine Holdings (PSTH), led by Bill Ackman, a seasoned hedge fund manager and billionaire. PSTH is an investment holding company focused on acquiring and holding significant positions in large

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[51] B. Lipschultz, "SPAC sponsors with $18 billion face deadline on what to do next," *Bloomberg*, March 6, 2023,https://www.bloomberg.com/news/articles/2023-03-06/spacs-face-an-18-billion-ticking-clock-with-deadlines-looming

[52] Z. Roberge, "Special purpose acquisition companies: The good, the bad, and the ugly," *The Blue and White*, April 20, 2021,. https://tbaw.ca/2021/04/20/special-purpose-acquisition-companies-the-good-the-bad-and-the-ugly/

[53] J. Glasner, "While SPAC deals commonly floundered, here are some that did better,". https://news.crunchbase.com/public/vc-backed-successful-startup-spac-deals-2021/

capitalization companies. Ackman's social capital, as the investment manager for PSH and CEO of Pershing Square Capital Management, plays a crucial role in the success and sustainability of the business. His strategic thinking, ability to minimize risk, and strong relationships within the industry contribute to the company's achievements.

From a corporate finance perspective, before COVID-19, SPACs in the US mainly succeeded because they catered to short-term investors seeking quick gains. Between 2010 and 2019, 216 companies merged through SPACs, attracting major investors like financial firms, mutual funds, and hedge funds. While many investors sold shares, others bought more for long-term strategies.[54] Successful SPACs were transparent, had skilled sponsors, and gained backing from investors who saw the target's potential.

PIPEs, private stock placements, helped successful SPACs raise money and lower risk. SPACs with PIPEs saw 46% median gains a month after merging versus 21% without. Looking at 322 deals from 2010 to 2020, over 50% targeted tech, industrial, financial, and healthcare companies. Their share rose from 44% pre-pandemic to 68% after. Recent big SPAC successes include DraftKings, Virgin Galactic, and Opendoor. With the right elements, SPACs can generate substantial returns.[55]

While, successful SPACs were marked by skilled leadership, social connections, SEC oversight, and raising substantial capital quickly, the golden age of SPACs was marked by several successful mergers and acquisitions that led to substantial growth for the companies involved. The involvement of operators in leadership roles, social capital, and the increased regulation by the SEC were some of the key factors that contributed to their success. These factors, combined with the ability to raise significant amounts of capital quickly, provided a favorable environment for the growth and expansion of the SPAC market.

B. Factors contributing to success

[54]R. Haniffa, M. Hudaib, & T. Nawaz, *The Value of Social Capital for the Success of SPAC IPOs*, International Journal of Financial Studies, vol. 10, no. 2, 2022, p. 31,. https://doi.org/10.3390/ijfs10020031

[55] M.L. Passador, *In Vogue Again: The Re-Rise of SPACs in the IPO market*, Brooklyn Journal of Corporate, Financial & Commercial Law, vol. 16, 2022, pp. 105-162,https://ssrn.com/abstract=3820957 or http://dx.doi.org/10.2139/ssrn.3820957

The prosperous era of Special Purpose Acquisition Companies has been characterized by many triumphant tales, which can be credited to several vital influences. Thriving SPACs are defined by their transparent configuration, veteran sponsors, and a well-defined emphasis on particular sectors or regions. In turn, the success of a SPAC relies on its transparency, regulatory compliance, and the ability of its sponsors to locate and acquire high-potential private firms, ultimately providing value to investors. SPACs' flexibility to acquire globally incorporated firms also contributed to their success.

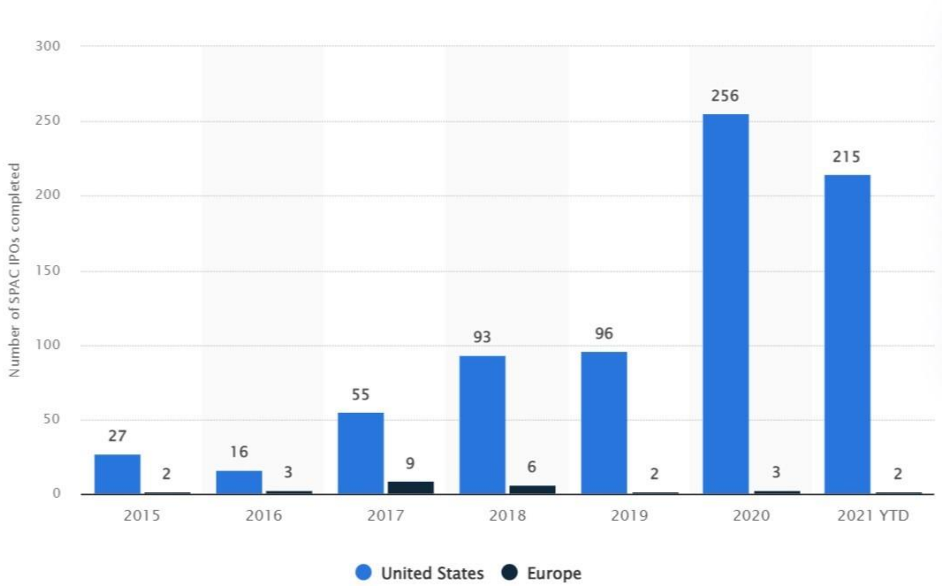
Compared to traditional IPOs, SPAC acquisitions offer several advantages. First, SPACs are less susceptible to market volatility since they already have liquidity at the time of acquisition, appealing to firms seeking to go public during turbulent conditions. Second, SPACs can provide existing shareholders more immediate and significant cash payouts than IPOs, offering an attractive exit strategy, in particular, while the timing advantage is not the primary point of comparison it is important to notice that it took about three to four weeks for the initial SPAC offerings to be approved and finalized, whereas C-IPOs filed in 2020 and early 2021 required approximately twice as long.. Third, smaller firms may prefer SPAC acquisitions as they can struggle to find high-quality underwriters and generate investor interest for an IPO. Finally, while Venture Capital involvement may favor IPOs for prestige and signaling, SPACs' ready liquidity can appeal to VCs and private equity firms seeking faster cash outs. Key to their success was providing an alternative path for companies to go public. In 2007, SPAC IPOs were 22% of all US IPOs; in 2008, 36% of firms went public through SPACs.[56] In 2021, the popularity of special purpose acquisition companies (SPACs) surged, with 613 SPAC listings raising a total of $145 billion, a 91% increase from 2020. SPACs played a large role in hitting the IPO record, accounting for over 59% of total new listings (53% in 2020). The typical SPAC raising remained consistent at around $200 million for the past six years.

While most SPACs that went public during Covid are still searching for deals, some have found acquisition targets quickly, with the median SPAC from 2021 completing an acquisition in just over 7.5 months. SPAC trading patterns change over their lifespan, with low volatility at IPO, increased volume upon target identification, and continued volatility after business combination completion.

[56] J. Kolb & T. Tykvová, *Going Public via Special Purpose Acquisition Companies: Frogs Do Not Turn into Princes*, Business Journal of Corporate Finance https://www.semanticscholar.org/paper/Going-Public-via-Special-Purpose-Acquisition-Frogs-Kolb-Tykvov%C3%A1/b7ab8e193277229b6e52c9366b5b8927d2fde685.

The performance of SPACs has shown to be inconsistent over time, with average returns being high at over 40%, though median returns tend to be closer to flat even post-completion. Pre-completion, the majority of SPACs have slightly positive performance, but after announcing a merger, the range of performance widens significantly.[57] It is important for investors to take into account how the trading patterns of SPACs change during their lifespan and to be mindful of the possible range of performance outcomes. The SPAC market has grown rapidly in the U.S. from 2015 to 2021, while such specialized investment vehicles have remained rather limited during the same period in Europe, peaking at completed IPOs only in 2017.

Although special purpose acquisition companies have gained popularity as an investment strategy in recent years, their use remains mainly concentrated in the United States. In Europe, SPACs have continued to play a relatively marginal role as a means of accessing public equity markets.[58]



Source: Statista Research Department, Jan 11, 2022

[57] H. Mackintosh, *A Record Pace for SPACs in 2021*, Nasdaq (Jan. 6, 2022), https://www.nasdaq.com/articles/a-record-pace-for-spacs-in-2021.
[58] Statista Research Department, *Comparison between SPAC activity in the U.S. and Europe 2015-2021*, Statista (Jan. 11, 2022), https://www.statista.com/statistics/1222250/number-spac-ipo-usa-europe.

Beside that, assessing and categorizing potential industries for SPAC acquisitions is complicated due to the prevalence of technology in today's market. However, industries such as "tech", "biotech", and "fintech" are commonly included in a SPAC's acquisition strategy. In H2 2020, tech companies made up 31.25% of SPAC IPOs, increasing to 46.78% in Q1 2021. Other common industries include ones that have a direct impact on people through technology, such as "Consumer, Consumer Goods", "Energy", and "ESG". The third largest category refers to SPACs with a very general acquisition strategy. The remaining sectors have a small share of 2% or less.[59] However, sometimes the hype surrounding SPACs has led to exaggerations in target company valuations, making it difficult for them to deliver accordingly once taken public through a SPAC merger.

As a conseguence of the hight numer of tech companies acquired by SPACs, venture capitalist involvement in SPACs is useful and the reputable VC and private equity firms' involvement in successful SPACs provide the necessary credibility and expertise, leading to favorable outcomes. Additionally, these SPACs portray higher cash-out ratios and more extended resolution periods, implying that target companies could gain more from cash transactions while permitting thorough due diligence and seamless transitions.[60] However not only promising firms become public with SPACs merger, in fact, under unstable market conditions when standard IPOs may be challenging to execute, SPACs can present a practical alternative for companies seeking access to the public markets. As a consequence, firms opting for SPAC acquisitions over IPOs are typically of a smaller size and possess limited growth potential, along with high leverage characteristics. Furthermore, they usually lack support from venture capital or private equity firms. Using SPACs can benefit companies by allowing shareholders to cash out quickly and by providing a way to enter the public markets during uncertain times. However, some companies might not want to associate themselves with lower quality businesses and will avoid working with SPACs.[61]

Other than the presence of a successful sponsorship and a promising target company and espite the fluctuating performances, anther reason of the success is that investments are liquid and

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[59] SPAC Consultants, *SPAC Acquisition Target Industries,* 2020-2021, https://spacconsultants.com/spac-acquisition-industries-and-sectors-2020-2021/.
[60] A.P. Groh, J. Proelss, A. Sannajust, & D. Schweizer, *Leave no Money on the Table: Venture Capitalists' SPAC Exits,* (Dec. 3, 2022), https://ssrn.com/abstract=4182131 or http://dx.doi.org/10.2139/ssrn.4182131.
[61] J. Kolb & T. Tykvová, *Going Public via Special Purpose Acquisition Companies: Frogs Do Not Turn into Princes,* Journal of Corporate Finance, vol. 40, 2016, pp. 80-96https://doi.org/10.1016/j.jcorpfin.2016.07.006.

shares are sold in the initial IPO market, this is much preferred to private equity investments that are not very liquid.[62] Successful SPACs can be attributed to factors such as the ease of cashing out for existing shareholders, longer expected time to resolution, and regulatory changes like the "tender offer regulation." These factors make SPACs more attractive, particularly to venture capitalists.

To recap the examples mentioned earlier, Luminar Technologies, Adesto Technologies Corporation, Proto Labs, and Chinook Therapeutics are all successful private companies that have merged with SPACs to go public. Thanks to their SPAC mergers, these companies gained greater liquidity and capital, which would have been hard to achieve through traditional IPOs. In particular, Luminar Technologies merged with Gores Metropoulos Inc. to access liquidity, while Adesto Technologies Corporation joined forces with Tower Semiconductor Ltd. to raise capital for R&D and expansion. Proto Labs gleamed capital from Desktop Metal's investors, leading to continuous revenue growth despite the pandemic. Finally, Chinook Therapeutics merged with Versartis Inc. to earn funding for its pipeline of treatments for rare kidney diseases, resulting in the success of their clinical trials. Notable successes include Virgin Galactic, which raised $800 million for commercial spaceflight operations, DraftKings, which expanded into new markets following sports betting legalization, and Luminar Technologies, which secured capital to advance their position in the automated vehicle technology market. These examples lead to other important advantages of a SPAC merger is that it can be a quicker process than a traditional initial public offering (IPO). This is because the SPAC has already gone through the process of raising capital through an IPO, so the merger with the target company can happen more quickly.[63]

In addition to being a quicker process, SPAC mergers also offer more flexibility than traditional IPOs. This is because the terms of the merger can be negotiated between the SPAC and the target company, whereas in a traditional IPO, the terms are typically set by the underwriters. This can allow for more customized deals that better meet the needs of both parties.

The accomplishments of entities like SPACs depend heavily on leveraging connections and relationships to unlock opportunities, known as social capital. SPACs draw on social capital which comes from long-lasting networks and bonds. By using their networks and reputations, sponsors can obtain higher valuations than typical IPOs. There are three aspects of social capital: structural,

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[62] M&C Partners, *Modalità speciali di acquisizione: le SPAC*, https://mecpartners.it/it/modalita-speciali-acquisizione/.
[63] Id. supra note 60.

relational, and cognitive. The structural dimension refers to the overall layout of networks and connections. The relational dimension means the assets that emerge from personal relationships and ties, like trust and loyalty. Lastly, the cognitive dimension refers to shared norms, values, and understandings.[64] For instance, Bill Ackman, the CEO of Pershing Square Capital Management, exhibits these factors through a board of directors with highly proficient individuals and a governance framework promoting organizational success. Pershing Square Holdings has consistently surpassed the S&P 500, with Ackman's ability to rebound from failures and tactical use of the media contributing to his investment success. However finding the right rager it could be quite difficult because, Bill Ackman is winding up his SPAC and returning $4 billion to investors. This marks a rare move by one of the most high-profile investors who failed to consummate a deal large enough with the funds raised. Although Ackman plans to raise another SPAC, this unprecedented decision has further highlighted the recent trend of investors returning unconsumed funds.[65]

Even in similar cases, SPACs are still a safe bet for investors due to their advanced investor protection measures, in fact, these consist of multiple safeguards to avoid fraud or other problems during the merger process, such as mandating shareholder consent for all transactions and granting investors the right to vote on board appointments. Additionally, the incorporation of warrants in SPACs defends investors against dilution and guarantees their returns if share prices rise.[66] Overall, compared to traditional IPOs, modern SPACs provide an extra level of safety through their robust investor protection measures, which is attracting more investors towards the SPAC market.

It is important to acknowledge that a portion of the popularity of SPACs in the last few years, can also be attributed to their fashionable status. The growing interest in SPACs has, in part, been driven by their trendiness and widespread attention in the financial world. But the triumph of SPACs and their associated target firms can primarily be ascribed to the significant engagement and enduring investment approaches of institutional investors. Possessing the resources and vision to recognize emerging opportunities like SPACs, these investors offer support through economic

[64] J. Nahapiet & S. Ghoshal, *Social Capital, Intellectual Capital, and the Organizational Advantage*, The Academy of Management Review, vol. 23, no. 2, 1998, pp. 242–266, https://doi.org/10.2307/259373.
[65] J. Kollewe, *Bill Ackman to wind up SPAC and return $4bn to investors,* The Guardian, July 12, 2022,https://www.theguardian.com/business/2022/jul/12/bill-ackman-to-wind-up-spac-investment-vehicle.
[66] S.S. Somal & L. Lehot, *Spotlight on SPACs: More Risk Than Opportunity*?, CFA Institute Blog, January 31, 2022,. https://blogs.cfainstitute.org/investor/2022/01/31/spotlight-on-spacs-more-risk-than-opportunity/.

ups and downs. They supply the necessary funding and lend credibility for SPACs to finalize mergers, subsequently assisting newly public enterprises in prospering. Although retail investors partake in SPACs, it is the institutions that prove most vital to their success and the target companies' growth. Successful SPACs owe their accomplishments to institutional investors who establish long-term strategies, exhibit patience, and contribute stability. Their involvement highlights the high potential of SPACs and target firms and facilitates the transition of private companies into thriving public entities.

C. Exploring SPACs' Strategies beyond Federal Disclosure Law

SPACs incorporate a variety of techniques to optimize their acquisition strategies; these include leveraging industry expertise to find positive market trends, establishing early-stage relationships with potential targets, and reviewing comprehensive financial and operational data. As I wrote before, appointing experienced and knowledgeable board members, sponsors, and advisors is also critical for a successful SPAC, with the ability to accurately assess acquisition targets and establish value creation plans that are enticing to investors. The effective implementation of these methods can result in higher returns, differentiation, and a competitive edge in the SPAC ecosystem.[67]

The initial step to ensuring a successful SPAC is to acquire sufficient funds. The ability to secure substantial funding is advantageous as it enhances the SPAC's competitive edge in the market, and can lead to the acquisition of the best targets. Raising funds can be accomplished through modern structuring and solid sponsorship, alongside a good track record of consistent returns and an steady media presence. Aiming for effective capital raising ought to be a crucial objective for any blank check company striving to excel in the market and establish enduring value for their investors.[68] As previously discussed, the success of a SPAC relies heavily on strong sponsorship. However, it is important to note that even the most successful SPACs may face some challenges that require them to return money back to investors. As I illustrated before, the previously cited venture by Bill Ackman, in spite of its achievements, was liquidated and the

[67] K. Chauviere, A. Green, & T. Tan, *Earning the premium: A recipe for long-term SPAC success*, McKinsey & Company (Sept. 23, 2020), https://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/earning-the-premium-a-recipe-for-long-term-spac-success.
[68] R. Haniffa, M. Hudaib, & T. Nawaz, *The Value of Social Capital for the Success of SPAC IPOs*, Int. J. Financial Stud., vol. 10, no. 2, 2022, p. 31,https://doi.org/10.3390/ijfs10020031.

money returned to investors due to the inability to find a suitable acquisition target. Therefore, it is crucial to not only focus on successful fundraising but also on effective methods of identifying and acquiring suitable targets to ensure that the SPAC is successful in its intended purpose.

Investors should perform intensive evaluation of SPACs and give considerable attention to the management's experience and prior accomplishments. Commitment from a dedicated management team that has developed strong business models or worked in promising industries are indicative of fruitful SPACs. Although these stocks may exhibit high valuations, optimism from investors derives from their faith in the SPACs to generate robust growth and deliver shareholder value over time. Institutional investors are key to the success of SPACs, accounting for the majority of the shareholders in 216 SPACs from 2010 to 2019. These SPACs had an average of 18.33 investors, with different classifications, such as financial firms, mutual/pension funds, banks, among others. Non-institutional investors display more significant fluctuations, likely due to reacting to market trends and facilitating wealth transfer from other investors to institutions. One reason for the unique approach of institutional investors is the emphasis on short-term strategies that reallocate capital to more profitable opportunities. Moreover, SPACs encounter difficulties with Directors and Officers insurance, and the absence of customized policies that cater to SPAC-specific needs. D&O (Directors and Officers) insurance is meant to safeguard executives against legal liabilities arising from infractions of securities laws, shareholder class actions, and derivative cases. The policy covers the costs of defense, settlements, and other liabilities in line with the policy's provisions. Furthermore, it provides coverage when individuals are not compensated by their companies, thus acting as a last defense line to protect personal assets.

In the formation of a SPAC, founders need to factor in D&O coverage to insure against potential liabilities arising from violations of securities laws. Unlike private entities going through the traditional IPO, D&O insurance is typically nonexistent during the S-1 filing since a SPAC lacks an operational entity. While D&O insurance isn't usually activated until the SPAC prices its offering, the coverage should include other prior activities undertaken during the SPAC's formation phase. The cost of D&O insurance for SPACs could be quite elevated and the market is subject to important fluctuations. D&O underwriters assess the risk of a SPAC offering based on several factors, such as the expertise of the SPAC sponsor and management team, the target acquisition industry, and the overall market conditions. Because of the unique nature of SPACs and their potential exposure to litigation, premiums can be substantially higher compared to traditional IPOs. To optimize costs and ensure adequate protection, SPAC sponsors should work closely with insurance advisors and legal counsel to tailor D&O policies to their specific needs.[69] This includes determining the appropriate coverage limits, duration of coverage, retentions, and any necessary exclusions. By carefully evaluating these factors and negotiating the best terms with underwriters, SPACs can obtain the most suitable coverage at a reasonable cost.

Industries like healthcare and technology are currently showing increased interest in SPACs because of their capital requirements for enabling mergers and acquisitions. Consequently, it is essential for SPACs to take into account market demand and adapt to remain appealing to investors.[70] By comprehending these dynamics and addressing the needs of investors, SPACs can prosper as a valuable investment alternative.

The importance of due diligence in special purpose acquisition companies cannot be overstated, as they raised a staggering $122.2 billion in 2021 alone. In a SPAC, a high-profile sponsor identifies an early-stage target company, negotiates a valuation, and guides it through the process of becoming a public entity.[71] To mitigate regulatory risk, it is crucial to reassess due diligence procedures and consider supplementing them. Customary financial diligence may focus on quality of earnings and adjustments for extraordinary activity, but these forward-looking approaches may not adequately address the regulatory risk associated with a target company's current and historical spending and processes. Emerging practices, such as integrity due diligence, employ forensic procedures to analyze the target's financial statements at the transaction level, detecting patterns and trends that could indicate improper transactions or internal control problems.

Integrating integrity due diligence into the customary financial and legal diligence process does not cause delays and offers valuable insights for both sponsors and targets as they work towards a successful public company business combination. Once a SPAC merger takes a company public, the newly formed entity should think about conducting frequent audits and an assessment of the compliance program. The effectiveness of newly set up compliance functions is

[69] N. V. Shah, J. M. Orr, J. Gartrell, H. Marshall, R. Hermenze, & S. Williams, *SPAC sponsors: Why D&O Coverage is critical* - ABCs of SPACs, Part III, Willis Towers Watson (Apr. 21, 2021), https://www.wtwco.com/en-CA/Insights/2021/03/SPAC-sponsors-Why-D-O-Coverage-is-critical
[70] M. L. Passador, *In Vogue Again: The Re-Rise of SPACs in the IPO market*, Brooklyn Journal of Corporate, Financial & Commercial Law, vol. 16, 2022, pp. 105-162, Bocconi Legal Studies Research Paper No. 3820957; University of Luxembourg Law Working Paper No. 2021-005,https://ssrn.com/abstract=3820957 or http://dx.doi.org/10.2139/ssrn.3820957
[71] SPAC research, https://www.spacresearch.com/

assessed through these evaluations, which also serve to compare the present program to the DOJ's "Evaluation of Corporate Compliance Programs."[72]

The post-close stage of a SPAC merger is a critical phase in this process is the post-close phase, and it is essential to have experienced and reputable operators in leadership roles to oversee the combination's value-creation strategy. Such leaders should collaborate with management and engage in active governance to ensure SPACs combine the best elements of private and public ownership.[73] By doing so, SPACs can achieve better performance and differentiation while mitigating regulatory risks.

Moreover, deal size can significantly impact the success of a transaction. Historically, larger transactions have generally outperformed smaller ones.[74] When identifying suitable target companies, SPACs tend to seek targets that are a three to five times of the size of their trust account to help minimize the dilution of founder shares, such as the sponsor.[75] Evaluating deal size can be done through metrics like the Enterprise Value/Trust Multiple, which measures the acquired business's size relative to the SPAC's trust account. While a high EV/Trust Multiple does not guarantee success, it has been observed that successful SPAC deals tend to have higher EV/Trust Multiples. In general, larger deals, as represented by a higher EV/Trust Multiple, have been associated with higher stock prices at the time of closing.

In addition, effective transactions exhibit improved alignment between sponsor and investor motivations, PACs are a cost-effective way to go public, but at the expense of SPAC investors. The "promote," which is ordinarily 20% of the shares granted to the Sponsor for a modest charge, is where the problem resides. The Sponsor receives the "promote" regardless of the stock's subsequent performance and also receives warrants that offer significant upside if the deal is successful and to obtain adequate funding for the merger, Sponsors may need to give up a portion of their remuneration to entice "PIPE" investors.[76] Studies indicate that transactions in

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[72] Amanda Massucci & Katie Kyle, *How due diligence reduces the regulatory risk for SPAC transactions*, EY (Feb. 3, 2022), https://www.ey.com/en_us/forensic-integrity-services/due-diligence-reduces-the-regulatory-risk-for-spac-transactions.

[73] K. Chauviere, A. Green, & T. Tan, *Earning the premium: A recipe for long-term SPAC success*, McKinsey & Company (Sept. 23, 2020), https://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/earning-the-premium-a-recipe-for-long-term-spac-success.

[74] SPAC Research, SPAC Newsletter (July 27, 2020), https://www.spacresearch.com/newsletter?date=2020-07-27

[75] SPAC Research, SPAC Newsletter (Jan. 4, 2021), SPAC Newsletter. Retrieved from https://www.spacresearch.com/newsletter?date=2021-01-04.

[76] Sia Partners, *SPACs: Which Factors Lead To Merger Success?* (Mar. 19, 2021),https://www.sia-partners.com/en/insights/publications/spacs-which-factors-lead-merger-success.

which the Sponsor has been amenable to relinquishing a portion of their promote have exhibited superior trading outcomes compared to deals in which the Sponsor retained the entire share.[77]

IV. CRITICISMS AND PROBLEMS OF SPACs

A. SPAC Law Overview

While SPACs offer attractive benefits as an alternative IPO path, their regulatory environment is fraught with complexity, In this paragraph, the focus will be on the legal landscape pre-SEC proposal and pre-2022/3 debate. SPACs must simultaneously comply with securities laws for public operating companies, shell company rules, derivatives regulations, and M&A statutes — collectively forming a maze of governance requirements mismatched to their unique structure as transitory shell vehicles seeking an operating business to merge with. Since the beginning of the cycle, with the the significant role played by warrants, SPACs possess a more intricate capital structure and must adhere to more complex accounting standards compared to companies undergoing a conventional C-IPO. In the SPAC formation process, there are two distinct types of warrants: those acquired by the sponsor, known as private warrants, purchased by the sponsor, in a private placement that precedes the initial offering, and those obtained by the initial investors, referred to as public warrants. These warrants contribute to the intricacy of the SPAC's capital structure.

The first part of the SPACs law, are the GAAP-compliant financial statements audited by an independent audit firm under PCAOB oversight. Initial SPACs are relatively simple to audit since they have no operating businesses. One SPAC-specific accounting question involves classifying securities as equity or debt. SPACs issue redeemable shares, which are considered temporary[78] equity if redeemable at the option of the holder or upon an event not solely within the control of the issuer.[79]

[77] SPAC Research. Weekly newsletter, (Feb. 17, 2020), Weekly newsletter, https://www.spacresearch.com/newsletter?date=2020-02-17.
[78] FASB, ASC 480: Distinguishing Liabilities from Equity,https://asc.fasb.org/topic&trid=2155823
[79] Deloitte, A Roadmap to Accounting for Contracts on an Entity's Own Equity (2020)

Some SPACs classify a portion of shares as permanent equity based on a $5 million limit on redeemability, but this has been challenged due to the fact that shares remain potentially redeemable under conditions beyond the issuer's control.[80] Warrants, another prominent SPAC feature, also raise accounting questions. They are not straightforwardly accounted for as common equity, and their treatment under GAAP depends on their specific terms. Warrants shouldbe accounted for as equity if they are "indexed" to equity, implying that the sum of their settlement is the difference between the fair value of a specified number of equity shares and a fixed price, like the intrinsic redemption ones. However, applying these conditions can be complex, as determining when an event is within an issuer's control and estimating the "fair value" of an option isn't always clear.

For standard SPACs, warrants may not always provide for cash settlement only if equity holders are paid cash, and they often settle differently depending on the holder's identity. This differential treatment takes them out of equity treatment, and they must be accounted for as liabilities. Similarly, a "tender offer" clause in a typical SPAC public warrant agreement may push SPAC warrants outside of an exception, requiring them to be accounted for as liabilities. SPACs with such provisions have typically restated their financial statements to account for them as liabilities following SEC guidelines.

Both SPACs and C-IPOs are subject to the same governing law, namely the Securities Act of 1933, and necessitate the submission of a registration statement to the SEC along with audited financial reports.But since SPACs initially lack a specific business to report on, their financial documentation, often, these disclosures can be adapted from earlier SPAC filings, however, as the legal framework governing Special Purpose Acquisition Companies can an overwhelming task to comprehend.

Since essential SPAC agreements need to be filed publicly, they can be effortlessly replicated and it is common that many SPAC contracts contain considerable amounts of standard language that closely resembles other SPACs. Common provisions include specifics like the extent of SPAC expenses that sponsors agree to cover and the nominal subscription price paid by sponsors for their initial shares. However, key terms in SPAC contracts can differ from one SPAC to another and evolve, for example the size of the sponsor's incentive, the SPAC duration, and warrant

[80] Edward Hackert, *Assessing the Classification of Redeemable Shares in a SPAC IPO* (Oct. 19, 2021), https://tinyurl.com/wxdrdyb7

exercise prices, as well as more legal aspects like voting rights, redemption right triggers, restrictions or conditions on warrant redemptions, and representations and warranties could change. This results in considerable legal uncertainty surrounding the overall SPAC structure.[81] The "contractual" facets of SPACs also encompass the quasi-regulatory listing standards set forth by stock exchanges, which contain numerous qualitative and discretionary elements. The ambiguity of SPAC law contrasts with another essential characteristic of a typical SPAC— the economic necessity to maintain minimal startup costs to maximize expected returns, particularly for sponsors. This need is most critical for sponsors targeting smaller companies, as they face the possibility of SPAC liquidation without successfully completing a de-SPAC transaction, resulting in a loss for the sponsor, as a consequence the complexity of SPAC law likely contributed to some of the legal errors, misunderstandings, as did the gap between this complexity and SPAC sponsors' attempts to reduce expenses.

Furthermore, SPAC law encompasses background statutes— including Delaware's corporate statute, the requirement for audited financial statements, the Public Securities Litigation Reform Act (PSLRA) and corresponding regulations and regulatory guidance documents. SPAC law is so vast that it is only possible to resume it in three components: securities law disclosure liability risk, corporate law fiduciary duty risk, and investment company law risk. Firstly, every public company, including any SPAC, bears liability risk for materially misleading statements or omissions in their communications, such as SEC filings. This liability may arise under several regulations and statutory sections, including Rule 10b-5, Section 11 or 12 of the Securities Act of 1933, or Section 14 of the Securities Exchange Act of 1934. [82] The securities laws in the United States hold issuers accountable for any material wrong statements or omissions in the registration under Section 11 of the Securities Act of 1933. However, underwriters and directors have a legal possibility of defense called "due diligence" available to them under the same Act. Moreover, negligent misleading statements in proxy solicitations can create liability, while Rule 10b-5 and other liability rules require a higher level of scienter. Since SPACs encounter these liability rules throughout their usual process, it's essential for sponsors and those speaking for SPACs to exercise

[81] Legal uncertainty also arises in direct listings and regular M&A deals. However, in regular M&A transactions, the issuer is typically already an SEC-registered company, which results in lower risks for underwriters, as seen in secondary offerings. Direct listings carry similar risks to C-IPOs.

[82] In conformity with Rule 10b 5 of the Securities Exchange Act of 1934, engaging in any deceitful or false activities or omissions concerning securities transactions is prohibited. Furthermore, Sections 11 and 12 of the Securities Act of 1933 establish liability for substantial inaccuracies or omissions in registration filings and prospectuses or verbal communications, respectively. Additionally, Section 14 of the Securities Exchange Act of 1934 bars any fraudulent or manipulative practices linked to securities transactions.

caution to dodge potential liability. This entails presenting precise, comprehensive, and non-deceptive information to the public. Worried that existing liability rules encouraged unnecessary private lawsuits[83], Congress enacted the PSLRA in 1995, despite President Clinton's opposition. The act introduced a "safe harbor" that protected certain companies from specific liability risks associated with forward-looking statements in disclosures if certain conditions were fulfilled. It's important to note that the safe harbor only applies to private lawsuits[84] and doesn't hinder the SEC from implementing federal securities laws, including actions against SPACs that include misleading forward-looking statements in their SEC filings. The provision of the safe harbor defends companies from liability for particular forward-looking statements accompanied by significant cautionary statements, as long as the statements are made in good faith and are not misleading. Mixed statements, which include both current and future-oriented information, and statements about present value or operations are not protected by the safe harbor. For example, CFO talks about the company's current situation and future earnings in the same statement, only the future earnings part is protected by the safe harbor.[85] To get full protection, companies need to include "meaningful cautionary statements" that explain possible reasons why actual results might be different from the forward-looking statements. [86] Vague assertions that future-oriented statements may not be precise forecasts are inadequate; detailed information on potential inaccuracies is necessary, and plaintiffs have to to identify any allegations of fraud. In fact, the safe harbor lacks clear protection against knowingly deceitful statements, because the safe harbor indicates that the required level of intent for claims related to forward-looking statements, even if not paired with meaningful cautionary language, is "actual knowledge".[87] As a result, SPAC sponsors and representatives might be considered to have "actual knowledge" of false statements or missing details even if they don't. For example, a company that shares only optimistic forecasts while keeping back equally believable pessimistic ones is taking a risk, even in private legal cases under the PSLRA.

Despite this, the PSLRA could give SPACs an edge over C-IPOs since "initial public offerings" are explicitly not covered by the safe harbor. Although not defined in the law or SEC rules, it seems that C-IPOs and initial SPAC offerings are excluded. SPACs that issue "penny

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[83] *Id.*
[84] *Id.*
[85] United States Congress. (1995). H.R.1058 - Private Securities Litigation Reform Act of 1995. 104th Congress (1995-1996). https://www.congress.gov/bill/104th-congress/house-bill/1058/text.
[86] 15 U.S.C.A. § 77z-2(c)(1)(B). (n.d.). Available at: https://www.law.cornell.edu/uscode/text/15/77z-2.
[87] *Id.*

stocks" are also not covered for different reasons. Moreover, securities legislation not only poses liability challenges for corporations but also for underwriters – banks that acquire shares and resell them in a C-IPO or participate in securities distribution. One potential benefit of the SPAC's dual-stage framework is that it divides the initial offering, which involves standard underwriters, from the de-SPAC process, where no official underwriters are engaged. This distinction might minimize the overall legal vulnerability for investment banks involved in these transactions, potentially reducing the expenses, time, and possible deal-modifying impacts of due diligence and disclosure document formulation. These factors are often influenced by underwriters and their attorneys, who are apprehensive about potential liabilities under the Securities Act of 1933. Nevertheless, this "benefit" could lead to a compensating rise in fraud risk for investors, resulting in public unease about SPACs and, as a result, the SEC put forth a proposal in 2022 to implement and enforce regulations aimed at eliminating this "advantage".[88]

Even with the suggested changes to the current security laws may not definitely give the advantage that was mentioned. In the de-SPAC stage, investment banks that usually underwrite a C-IPO serve as "financial advisors," adopting a role similar to M&A bankers in a typical M&A deal. These advisors offer guidance and earn compensation for aiding the SPAC, target, and sometimes PIPE investors in negotiating and finalizing the de-SPAC transaction. So, if financial advisors, sponsors, and PIPE investors may be considered "underwriters" in the offering that is included in the de-SPAC, making them susceptible to legal risks for any incorrect statements or omissions in the de-SPAC documents, depends on he success of the de-SPAC,[89] because the sponsor, who buys from the target for distribution purposes and carries some underwriter liability risk, is actively involved in the process. PIPE investors may also be viewed as participants in the de-SPAC if their investments assist in the process and they receive a significant discount on their shares.

SPACs present intricate challenges in corporate law and fiduciary duty risk, in addition to securities law involving both duty of care and loyalty. The two-stage structure, which divides a C-IPO into an initial offering and an M&A-like deal without formal underwriters, could potentially be a form of regulatory arbitrage. However, this approach might generate legal risks under corporate law due to conflicts of interest between sponsors, the target, PIPE investors, and public

[88] Coates, John C., SPAC Law and Myths (February 11, 2022). Available at SSRN: https://ssrn.com/abstract=4022809 or http://dx.doi.org/10.2139/ssrn.4022809.
[89] *Id.*

shareholders.[90] The strict enforcement of fiduciary duties under the "entire fairness" question remains uncertain, as it depends on whether SPAC sponsors are deemed to be control shareholders. If entire fairness does apply, numerous legal uncertainties arise, including potential recoveries from sponsors and their affiliates for investment losses, as well as the possibility that undisclosed aspects of transactions leading up to or concurrent with a de-SPAC may result in additional disclosures, deal delays, or damage awards. Indeed, if private equity sponsors face losses resulting from a merger, they might try to recover them by enforcing indemnity provisions on the target firm or its stockholders. Since sponsors are expected to behave in the company's and all of its investors' best interests, this could create a conflict of interest. Furthermore, given the sponsors' involvement in the merger discussions, they may be held liable for any significant lapses, causing legal and financial ambiguity.

Another important framework to consider is the Investment Company Act (ICA)[91] that imposes strict regulations on investment companies, even though most SPAC sponsors claim they are not investment companies to avoid ICA restrictions.[92] The ICA categorizes investment companies using a qualitative and a quantitative test. Under the quantitative test, SPACs could be considered investment companies as they hold securities and aim to acquire investment securities using a majority of their assets. Nevertheless, SEC's Rule 3a-1 provides an exemption for

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[90] The sponsor usually holds a minority percentage of shares in the company, often less than 50%. Nonetheless, as per SEC Rule 405, control might be considered present even if the shareholder possesses under 50% of the stock, provided they exert substantial influence over the corporation's business activities[1]. This could elevate the corporate law standard when state courts examine potential conflicts of interest. As an example we can look at the *In re Tesla Motors, Inc. Shareholder Litig.*, No. 12711-VCS, 2018 WL 1560293 (Del. Ch. Mar. 28, 2018) available at: https://law.justia.com/cases/delaware/court-of-chancery/2018/ca-12711-vcs.html In this case, the assertion that Musk had control over Tesla was not dismissed, despite his ownership of merely 22% of the voting power, due to his "actual domination and control".

[91] The ICA of 1940, 15 U.S.C. §§ 80a-1 to 80a-64, is a U.S. federal legislation that governs various investment entities such as mutual funds and unit investment trusts. The objective of this law is to safeguard investors who contribute their funds to these organizations by mandating adherence to specific rules and regulations. These guidelines encompass aspects like diversifying investments, restricting borrowing, and retaining a certain level of assets. Investment firms are also required to reveal particular information to their investors and provide reports to the SEC. The intention of the law is to promote transparency, defend investors, and uphold fair competition within the investment sector.

[92] In this article, Rubinstein, J. L., Rochwarger, J. P., Smith, E. M., & Nussen, D. (2021, August 24). SPACs are Not Investment Companies. Alert. Retrieved from. https://www.mintz.com/insights-center/viewpoints/2226/2021-08-spacs-are-not-investment-companies it is highlited why SPACs are not considered investment companies under the scope of Section 3(a)(1)(A) of the Investment Company Act. This is so that they can carry out a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or other similar business combination with one or more enterprises as their major business goal. They do not primarily invest, reinvest, or trade in securities. The funds stored in a SPAC's trust account are also not regarded as "investment securities" by the Investment Company Act. Additionally, since 2003, approximately 1,000 SPACs have successfully completed their initial public offerings, through SEC examination, and operated without being registered under the Investment Company Act.

companies whose assets or income from holding securities, excluding government securities, exceed 45%. Since SPACs predominantly invest in government securities, they can use this rule to avoid the quantitative test. Regrettably, Rule 3a-1 does not grant exemption from the qualitative test, which emphasizes the primary activities of investing or trading in securities. The SEC's regulations lack clear instructions for determining a company's primary activity, leading to ambiguity regarding the applicability of the ICA to SPACs, which contrasts with the position presented in the paper's notes, where SPACs are not considered investment companies. In Chapter 5, specifically in paragraph 2, I will provide a detailed analysis of the impact of the ICA on the SPACs and I will also explore the SEC's proposed Safe Harbor Proposal under the Investment Company Acton chapter 4 paragraph B.

In examining prosperous SPACs and their capacity to accumulate funds, we have already taken into account the intriguing instance of the *In re Multiplan Shareholder Litigation*. This intricate legal conflict offers essential perspectives on the complexities linked to SPAC deals and the possible hazards confronting investors. In this case, a motion to dismiss was brought before the court concerning a SPAC called Churchill Capital Corp. III, which planned to merge with Polaris Parent Corp., the parent company of Multiplan, that is a company speicalized in data analytics and cost management solutions in the healthcare sector. The SPAC's sponsor, Churchill Sponsor III, LLC, was managed by Michael Klein, a seasoned businessman and SPAC sponsor. Klein had control over the SPAC's board of directors, most of whom had prior connections with him.[93]

Churchill raised $1.1 billion in its IPO, selling 110 million units at $10 each. Churchill's 2020 IPO offered units, each comprising one share of Class A common stock and a fractional warrant. The SPAC's board and the Sponsor received Class B founder shares. If a deal was reached within 24 months, public shareholders could redeem their units for Class A shares and keep their warrants, including the plaintiff. Class B shares would convert to Class A common stock at a one-to-one ratio. Without a deal, Class A shareholders would receive their pro-rata share of the IPO amount plus interest, while Class B shares would expire as worthless. The raised funds were held in a trust while the SPAC sought a target. Eventually, the board announced and approved a merger with Multiplan. To finance the merger, the board recruited PIPE investors to purchase Churchill shares and warrants, many of which were affiliated with the board. During the voting process for the merger, the board disclosed information about Multiplan's prospective earnings and cash flow in

[93] *In re Multiplan Corp. Stockholders Litigation*, Consolidated C.A. No. 2021-0300-LWW. In the Court of Chancery of the State of Delaware, https://law.justia.com/cases/delaware/court-of-chancery/2022/c-a-no-2021-0300-lww.html.

a proxy statement. However, they did not mention that a significant client, making up more than a third of Multiplan's revenues, planned to sever ties with the company and become a competitor. This information was not assessed by an independent third party or a fairness opinion. Churchill shareholders approved the merger, but less than two months later, an analyst report revealed the client's plans. [94]This led to a significant drop in Multiplan's stock price, in fact, Multiplan's shares today trade at less than $5.[95]

Two shareholders filed class action lawsuits against the SPAC's directors, officers, and Klein, as majority shareholder, alleging breaches of fiduciary responsibility for failing to disclose that information. In January 2022, the Delaware Court of Chancery released an eagerly anticipated decision that applied conventional fiduciary principles to a de-SPAC merger. The allegations stem from a merger of Churchill Capital and MultiPlan Inc. Churchill was one of several SPACs founded by Klein, who was accused of having sole control over the selection of the SPAC's board of directors and the sole shareholder of the sponsor entity.[96]The court dismissed three key arguments in the case and decided that the entire fairness standard applied. Plaintiffs' claims were found to be direct, and the duty to disclose information came from directors' fiduciary duties. The board's conflict was due to differences between Class A and Class B shares, and directors' lack of independence. Applying entire fairness[97], the court concluded that the deal involved neither a fair price nor a fair process, as directors didn't disclose all material information about M.P.'s largest customer's competitive plans.[98]To sum up, reviewing SPACs law, including ICA, PSRLA, and the Multiplan case, shows the difficulties and challenges in dealing with legal frameworks in a fast-changing financial world. The Multiplan case itself may mark the start of a decline in how SPACs are viewed, as it uncovers possible conflicts and management problems related to their setup.[99]

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[94] *Id.*
[95] Inda, Sujeet. *"A court battle that has raised concerns about Spacs"* The Financial Times. https://www.ft.com/content/fd4547e3-2079-4e8f-a862-5ef84999cab9
[96] *Id supra note 94.*
[97] Chancery Court Allows deSPAC Litigation to Proceed. Posted by John R. Ablan, Philip O. Brandes, and Brian J. Massengill, Mayer Brown LLP, on Sunday, January 30, 2022.Available at: https://corpgov.law.harvard.edu/2022/01/30/chancery-court-allows-despac-litigation-to-proceed/.
[98] In re MultiPlan: De-SPAC transaction warrants entire fairness review - Corporate / M&A Decisions update series. Available at: https://www.jdsupra.com/legalnews/in-re-multiplan-de-spac-transaction-9384899/.
[99] Corbin, Travis, *Not So Fast, SPACs: Disloyalty, Emerging Delaware Corporate Law, and How to Protect SPAC Management and Shareholders Alike* (June 29, 2022). Arizona State University Corporate & Business Law Journal, Available at SSRN: https://ssrn.com/abstract=4199682 or http://dx.doi.org/10.2139/ssrn.4199682.

A. *Fairness of De-SPACs transactions*

SPACs are often referred to as "private equity for retail" since they target early-stage companies that are typically not accessible to public markets.[100] However, this comparison should not be taken letter by letter, as many differences exist between SPACs and private equity. SPACs are usually less diversified, since the fact that they invest in only one or a few companies, and they often miss a performance-related sponsor compensationechanisms. The.T he idea of SPACs as a cheaper version of private equity, offering retail investors the chance to participate in high returns usually reserved for institutional investors, can be appealing to policymakers. However, their structure often compromises the incentives of SPAC sponsors and directors, who are corporate fiduciaries, and can leave unaffiliated SPAC shareholders not enough information about the transaction risks. The primary focus of regulations is ensuring fairness for unaffiliated shareholders, which is distinct from fairness for affiliated shareholders or the SPAC itself.[101]In SPACs, unaffiliated shareholders' interests differ from those of affiliated parties, such as sponsors and directors, so unaffiliated shareholders require safeguards to offset the uneven force of SPAC sponsors and trustees.

The conventional SPAC structure provides some safeguards for unaffiliated shareholders, allowing them to cash out their shares if a de-SPAC occurs, but can also cause conflicts of interest between SPAC sponsors, boards, and the same unaffiliated shareholders. The "promoter" or "founder shares" received by sponsors and directors s compensation at a very low cost represent a significant percentage of the SPAC, usually between 20% and 25%[102], so sponsors are incentivized to complete a de-SPAC, even if it reduces the value of the company.[103] Moreover these additional shares create dilution, resulting in a decreased percentage of ownership for existing investors. This dilution can occur during the IPO phase, the de-SPAC transaction, and when raising additional

[100] These distinctions have resulted in SPACs being considered a unique type of private equity, see: Davidoff, S. 'Black Market Capital', 2008, 1 CBLR 172, 225; D'Alvia, D. 'The international financial regulation of SPACs between legal standardized regulation and standardization of market practices', 2020, 21 J. Bank. Regul. 107, 119, Available at: https://www.spacsconsultancy.com/wp-content/uploads/2019/12/The_international_financial_regulation_o.pdf

[101] *Journal of Corporate Law Studies*, 2022, Vol. 22, No. 1, pp. 1-44. Available at: https://www.tandfonline.com/doi/full/10.1080/14735970.2022.2036413

[102] Second Corrected Consolidated Amended Complaint for Violations of the Federal Securities Laws at pp. 19-20, In re Alta Mesa Res., Inc. Sec. Litig., No. 4:19-cv-00957 (S.D. Tex. Apr. 6, 2020), which describes general terms of SPAC transactions. Also, see the "Life Cycle of SPACs" in Chapter 1, Paragraph 2 for further context

[103] Kirkland & Ellis, "Family Offices and SPACs Part I: SPAC Overview and the Current Market," p. 1, available at: https://www.kirkland.com/-/media/publications/pifo/pifo_family-offices-and-spacs-part-i.pdf

funds. In addition, subsequent to the procurement of a objective corporation and the merger, the merit of the SPAC may lessen due to diverse reasons, such as the presentation of the acquired company or market conditions. Nonetheless, sponsors might still make benefit by selling their establish shares at a cost higher than the initial outlay, even if the total merit of the SPAC has descended.[104]

In de-SPAC transactions, SPACs typically acquire third-party fairness assessments from financial advisors firms or investment banks to evaluate the fairness of the transaction's deliberation. However, financial advisors face many theoretical and practical difficulties when determining if the consideration is fair to unaffiliated SPAC shareholders. This because traditional practices mainly concentrate on evaluating the fairness for the parties directly involved in the transaction, not other groups, necessitating a different approach for evaluating unaffiliated SPAC shareholders, for example some indications of potential problems with the fairness of an acquisition may begin from the timing of the announcement, in fact studies have shown that the closer an acquisition announcement is made to the liquidation deadline, the lower the likelihood of the acquisition being successful.[105] This simple observation suggests that a more detailed evaluation of the transaction's fairness should take into account also the timing aspect, as it may impact the results for all parties involved. However, it's important to note that these signs do not necessarily indicate that the SPAC is performing poorly but, from this perspective alone, it is possible to appreciate the complexity of assessing the fairness of SPAC transactions. When evaluating the fairness of these deals, multiple factors should be considered, and the timing of the announcement is just one aspect among many others that can influence the outcome for all parties involved.

Even though most of the SPAC's capital comes from IPO investors, SPAC sponsors handle significant power but face minimal risks, pushing them to pursue de-SPAC terms that benefit themselves rather than unaffiliated shareholders. In order to protect their interests, unaffiliated

[104] The process of dilution may reduce the likelihood of increased value in a de-SPAC due to the diminishing interests of independent SPAC shareholders. Ropes & Gray provide a comprehensive introduction on this topic in their document *"Special Purpose Acquisition Companies (SPACs): An Introduction."* For more detailed understanding, please refer to pages 3 and 15 of the document available at https://www.ropesgray.com/-/media/Files/Brochures/SPACs-Overview-August2020.pdf?la=en&hash=FC656560FD9F790B342EB8D2FE48A438D7DECAAA.

[105] Dimitrova, Lora also elaborates on the perverse incentives of Special Purpose Acquisition Companies, deemed as the *'Poor Man's Private Equity Funds'*, in her article published in the Journal of Accounting & Economics, Vol. 63, No. 1, 2017. You may access her work via SSRN at https://ssrn.com/abstract=2139392 or http://dx.doi.org/10.2139/ssrn.2139392.

SPAC shareholders have two distinct alternatives to a unfair de-SPAC transaction: they can either redeem their shares at a known value or collect the liquidation proceeds. For a de-SPAC transaction to be financially fair to these shareholders, it must offer a value equal to or greater than this threshold. It is crucial to note that sponsors and directors risk losing their entire compensation and recovering any initial expenses unless a de-SPAC takes place.[106] This situation creates strong motivations for them to complete a de-SPAC, even if it diminishes the value of the company, particularly as the acquisition window nears its end. Moreover, since an high number of redemptions can threaten the success of a de-SPAC, fiduciaries are motivated to dissuade investors from adopting their redemption rights, which consequently weakens the protective purpose of these rights.

The concept of "fairness" is somewhat nebulous, but in the context of de-SPAC transactions, it should at least match the value that unaffiliated SPAC shareholders can obtain through share redemption. Nevertheless, determining if a de-SPAC transaction fulfills this benchmark presents some challenges. The valuation analyses employed in fairness assessments depend largely on projections and assumptions that may turn out to be wrong or inaccurate. Additionally, while a fairness assessment may allow a de-SPAC transaction fair at the time of the deal, the actual value received by unaffiliated shareholders actually depends on the post-merger value of the shares, which obviously the assessment does not and cannot address.

The need extra funding for an initial business combination, often offered from sponsors or PIPES further misalign sponsors' interests with other investors' ones. As I wrote before, additional sponsor funding is a way of diluting their stake in the combined entity or, alternatively, it cantake the form of a loan or security with different rights than their investment. Providing additional funding gives sponsors leverage that they can use to negotiate de-SPAC terms preferential to them, misaligning even more their interests from those of unaffiliated shareholders.

These conflicts of interest can make it less likely that unaffiliated shareholders will benefit from a de-SPAC that increases value. When dilution is significant, unaffiliated shareholders may prefer to redeem their shares rather than participate in the de-SPAC. Moreover, SPAC fiduciaries and sponsors who manage multiple SPACs and other investment entities can have competing

[106] Shares held by founders usually don't have redemption and liquidation rights. See: *Delman v. Gigacquisitions3,* LLC, C.A. No. 2021-0679-LWW, 2023 WL 29325, at *3 (Del. Ch. Jan. 4, 2023)

duties and obligations that exacerbate conflicts of interest.[107] SPAC mergers have often been underwhelming for unaffiliated investors, while sponsors have frequently earned disproportionately large returns even when SPAC mergers underperformed.[108] This indicates that the SPAC structure gives preference to SPAC executives over independent investors. It is anyway essential to acknowledge that the ultimate result of a de-SPAC operation relies on the terms agreed by the merging participants and whether the target entities factor in the dilutive consequences of founder shares and additional financial instruments.

Current financial advisor practices mainly consider transaction fairness for parties directly involved, without adequately addressing unaffiliated shareholders' perspectives. Requiring fairness opinions for de-SPACs to include unaffiliated shareholders would challenge existing practices, emphasizing the need for an approach that also considers their interests. To provide valuable insights on transaction fairness, financial advisors need to consider the impact of de-SPACs on unaffiliated shareholders.[109] The SEC sees the conflicts in going-private transactions and de-SPACs as comparable, justifying rules that emphasize fairness for unaffiliated shareholders. This huge concern stems from the inherent conflicts within the SPAC structure, where SPAC sponsors and their appointed directors are fiduciaries involved in conflicted transactions. Although neither the SEC, nor the Court of Chancery explicitly mandates the use of fairness opinions in de-SPACs, they are now widely accepted as a necessary component. Advisors interpret the SEC's proposal and recent Chancery Court decisions about *In Re: MultiPlan Corp. Stockholders Litigation*[110] as effectively requiring fairness opinions to address conflict of interest concernsand consequently, obtaining these opinions has become standard practice in de-SPACs due to their perceived importance and value. The SEC and Delaware courts recognize that de-SPACs warrant scrutiny due to the potential for abuse deriving from different incentives and

[107] Conflicts of interest involving SPAC sponsors closely resemble those encountered by investment advisers managing investment funds. In both scenarios, separate firms with different ownership groups externally manage investment vehicles, creating a parallel between SPAC sponsors and investment advisers, as well as between SPACs and investment funds. For additional insights, refer to Robert Jackson & John Morley's paper, "*SPACs as Investment Funds"* (July 2022) https://wifpr.wharton.upenn.edu/wp-content/uploads/2022/07/Jackson-Morley-SPACs-as-Investment-Funds-2022.07.14-2.pdf

[108] On average, sponsor returns reached 500 percent when assessed on a market-adjusted basis twelve months after the merger, see "*A Sober Look at SPACs"* by Michael Klausner (Stanford University), Michael Ohlrogge (NYU), and Emily Ruan (Stanford University), posted on Thursday, November 19, 2020. The article can be found at the following link: https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/

[109] AJ Harris, *SPAC The Deck: Why the Control Exerted by SPAC Sponsors Subjects De-SPAC Transactions to Entire Fairness Review*, 27 Fordham J. Corp. & Fin. L. 2, 2 (2022), https://ir.lawnet.fordham.edu/jcfl/vol27/iss2/6/

[110] Incorporating the previous discussion on SPACs, the standard for transactions in the context of SPACs law requires that a deal must be "completely fair to the corporation and its shareholders" See: *In re MultiPlan Corp. S'holders Litig*., 268 A.3d at 815, Del. Ch. 2022

conflicts of interest.[111] Nonetheless, proving the fairness of de-SPACs to unaffiliated SPAC shareholders via fairness opinions presents some important obstacles. In the context of de-SPACs, and from a financial point of view, fairness implies that the transaction offers a value of at least $10 per share to these shareholders, which is their clear redemption alternative.[112] However, determining whether a de-SPAC meets this standard in practice poses problems that fairness opinions cannot solve. While fairness opinions have become standard practice in de-SPACs, they alone do not guarantee that the interests of unaffiliated shareholders are adequately protected given the inherent difficulties of assessing transaction fairness. Any valuation analyses employed in fairness opinions depend heavily on projections and assumptions, which may turn out to be incorrect, so while a fairness opinion might conclude that a de-SPAC is fair at the time, as underlined before, the ultimate value received by unaffiliated shareholders is contingent upon the post-merger value of shares, which the fairness opinion does not and cannot evaluate. That opinions provide an assessment of fairness at a specific moment based on available information but offer no insight into a de-SPAC's fairness in its consequences.[113]

When advising on traditional mergers, financial institutions often compare the deal terms to estimates of what the target company is worth. If the deal value falls within the range of estimated target values, advisors usually consider the terms to be fair. However, this approach does not work for de-SPAC transactions.because de-SPAC deals lack a reliable measure of value before the merger because investors have redemption rights. These rights ensure investors can sell shares back to the SPAC for $10, so the SPAC's pre-merger share price remains at $10. As a result, the pre-merger price does not accurately reflect the value of the deal consideration, because even if independent shareholders think a de-SPAC deal is worth less than $10 per share, the SPAC's stock cannot drop below $10. Therefore, this strange mechanism makers the market price useless for determining the inputs needed to assess the value and because there is no dependable pre-merger

[111] In a hypothetical scenario contemplated in MultiPlan, after a value-decreasing merger transaction, the SPAC's public shareholders could be left with shares worth a fraction of the liquidation value, while sponsors and directors still benefit considerably due to large holdings and high redemption thresholds.For example, if after merging the shares were worth $5 each, "the directors holding the fewest amount of founder shares would still hold shares worth over half a million dollars post-merger," whereas "unaffiliated SPAC stockholders would be left with $5 per share rather than the $10.04 they would have received had [the SPAC] liquidated." In such a scenario, while the transaction may seem fair and beneficial for sponsors and directors, it fails to consider the interests of and is clearly unfair to unaffiliated public shareholders.

[112] *Id. Supra note 109.*

[113] The SEC has observed that SPACs will likely make greater use of fairness opinions when evaluating proposed rules, as these opinions can mitigate information risks and enhance communication between bidder boards of directors and their shareholders. In Multiplan, the courts emphasized the absence of fairness opinions and the value of obtaining third-party fairness opinions for assessing the fairness of transactions.

measure of value, de-SPAC deals typically assume a value of $10 per SPAC share.[114] While this assumes the SPAC's actual value could be higher or lower, it greatly overestimates the SPAC's net cash per share, which is a much more valid measure of its value. The net cash per share at the time of a de-SPAC transaction is a more accurate indicator of the value of SPAC shares, as it takes into account the dilution resulting from the SPAC structure. Due to factors like founder shares, warrants, and offering expenses, the net cash per share typically ranges from $4 to $7, significantly lower than the $10 often assumed.[115]

Considering dilution is crucial for two reasons. Firstly, it truly highlights even more the differing interests between independent SPAC shareholders, the SPAC itself, sponsors, and directors. Secondly, targets are likely to account for dilution during negotiations, making the net cash per share a relevant factor. They may inflate their valuation to compensate for the overvaluation of SPAC shares, unless the de-SPAC deal provides non-cash value. This phenomenon is supported by evidence that target companies mainly focus on net cash per share in de-SPAC transactions.[116]

From that, advisors face difficulties in providing fairness opinions for de-SPAC deals. While the assumed value of $10 per SPAC share may be conservative, it often overstates the actual value. A proper assessment would require considering also dilution from founder shares, warrants, redemptions, and more, with contingencies like PIPE deals and warrant exercises adding complexity.[117] A fairness opinion based on the $10 per SPAC share assumption does not guarantee fairness or a value of at least $10 per share for independent shareholders. Even if a fairness opinion concludes that the target is fairly valued at $10 per SPAC share, the dilution effects might not be offset. Evaluating the value for unaffiliated SPAC shareholders requires analyzing the post-merger entity's value and accounting for the dilutive aspects of the SPAC structure. However, this necessitates a pro forma analysis, as the de-SPAC deal has not yet occurred when the fairness opinion is written. While respected financial advisors might conduct these analyses and present them to a board committee, they may not provide a written opinion attesting to the fairness of consideration for unaffiliated shareholders. Assessing the fairness of de-SPAC deals for

[114] Holger Spamann & Hao Guo, *The SPAC Trap: How SPACs Disable Indirect Investor Protection*, Yale J. on Reg. (forthcoming 2022), https://ssrn.com/abstract=4135558 or http://dx.doi.org/10.2139/ssrn.4135558.
[115] Michael D. Klausner & Michael Ohlrogge, *Was the SPAC Crash Predictable?,* Yale J. on Reg. Bulletin (Feb. 18, 2023),: https://ssrn.com/abstract=4362831.
[116] *Id.*
[117] Andrew F. Tuch, Comments on Proposed Rules for Special Purpose Acquisition Companies, Shell Companies, and Projections, https://www.sec.gov/comments/s7-13-22/s71322-20131099-301134.pdf.

independent shareholders is a complicated process, as existing methods are not suitable and new strategies that properly consider shareholder value after the merger are required. Traditional fairness opinions often overlook post-redemption ownership and may misrepresent the value of SPAC shares because of dilution and the net cash per share, which takes dilution into account, is often significantly less than $10.[118]

Unreliable financial projections for de-SPAC targets undermine valuation methods such as discounted cash flow models and management-provided forecasts. Similarly, comparable company and transaction analyses face issues due to inflated deal prices. Conventional fairness assessment techniques are inadequate for de-SPACs, and more advanced analyses are necessary. Major investment banks could contribute to the development of improved valuation and fairness approaches. Prioritizing deal evaluations that protect shareholder interests is essential, and the creation of new standards specifically designed for de-SPACs may be needed. Addressing fears surrounding dilutive structures, ambiguous projections, and fairness opinion deficiency is very crucial for ensuring that independent shareholders receive accurate fairness analyses that truly represent the value at stake in these transactions, so focusing on shareholder fairness will bolster the credibility and long-term viability of de-SPAC deals.

C. Myths of SPACs:

During times of high transaction activity, particularly when involving new or complex financial products, legal shocks can occur, and these sudden shifts in how laws are understood, usually filled with many errors, take time to be fully accepted in the market and this goes against the common belief that pricing instantly changes. Legal myths are misconceptions about the law that may seem plausible, but are incorrect and these myths can emerge and spread, influencing market activity and asset prices. Moreover, myths can persist and shape capital market activity, often benefiting the professionals involved by amplifying the legal advantages of a particular financial product or evaluating the associated risks.[119] This myths are not new and have been observed not only in market misunderstandings of the law, but also in academic misunderstandings by financial economists and analysts and the subsequent huge impact on capital markets and asset

[118] *Id.*
[119] A. Badger, *SPAC: The New Frontier for Investment*, Silicon Valley Bank, https://www.svb.com/industry-insights/hardware-frontier-technology/spac-the-new-frontier-for-investment.

prices can also be used to influence lawmakers and lawmaking processes in favor of specific professional interests. The SPAC boom of 2021 saw the emergence of several such myths that contributed to the growth and eventual burst of the bubble in 2022.

SPACs myths were not only intended at unsophisticated retail investors but were also propagated among business journalists and of course sophisticated SPAC sponsors, directors and owner-managers of SPAC targets companies. There are mainly three misstatements, and exaggerations of law about SPACs , the first one is the idea that companies going through traditional IPOs cannot share financial projections with investors[120], while SPACs can, the second perception is that SPACs have lower legal exposure regarding financial forecasts compared to traditional IPOs, but legal risks exist in both cases and depend on the specific circumstances of each situation and so it is not accurate to say that SPACs always have lower legal risks. Lastly, it's wrong thinking that the securities registration process makes traditional IPOs slower than SPACs: this myth claims that traditional IPOs take more time to complete the registration process compared to SPACs. Although SPACs can be faster in many situations, stating that they are always faster than traditional IPOs is false because the time needed to complete the registration process depends on the specific circumstances and regulations that vary from time to time.We can say that these claims are myths because they are not based on any typo of scientific research that employs identification strategies or data analysis. [121]

Starting from the first listed myth that forecasts and projections are legally permitted in SPAC filings, whereas they are banned in traditional IPOs, that is a really easy tale to debunk, because the reality is that there is no law or regulation that prohibits the use of projections in C-IPOs, in fact, there are instances where C-IPOs include cash flow forecasts, especially in offerings of interests in master limited partnerships.[122] The reason for the apparent discrepancy between

[120] *Id.*
[121] John C. Coates, *SPAC Law and Myths* (Feb. 11, 2022), https://ssr*n.com*/abstract=4022809 or http://dx.doi.org/10.2139/ssrn.4022809.
[122] Then it comes to SEC regulations, there's a specific part called Item 10(b) of Regulation S-K that deals with projections. This part encourages companies to include their future predictions when they file under the Securities Exchange Act of 1934, but there are some basic requirements to keep in mind: Firstly the company's management needs to have a good reason for including these predictions, based on solid analysis. Companies also need to share the important assumptions they used to make these predictions, both in terms of quality (like the nature of the factors they considered) and quantity (like the specific numbers they relied on). Interestingly, Item 10(b) says that companies don't have to have a long history to include predictions in their filings. This means even newer companies or those in new industries can still share their forward-looking assessments. Overall, Item 10(b) aims to balance transparency and responsible practices, so investors can make smart decisions based on reliable information. See generally 17 C.F.R. § 229.10(b) (2023) (detailing the requirements for projections in filings under the Securities Exchange Act of 1934).

SPACs and C-IPOs in terms of projections lies in the different methods of communicating financial statements. For conventional IPOs, this information is expressed in two primary ways: through the preliminary prospectus filed with regulators, and through 'roadshow' presentations given to potential investors, the prospectus alone is typically not viewed as a core communication document by the issuing company in the same way a private placement memorandum might be, this because the roadshow serves as the primary sales and marketing effort.[123]

Even though, there's no legal rule against adding these forecasts and companies often don't ask for them to be included because they can share these financial predictions during the roadshow, which is an important part of the IPO process where companies present their plans to potential investors, and including them in the prospectus would be repetitive.[124] Additionally, if a prospectus doesn't have positive financial forecasts, it's unlikely to cause legal problems later on, because the stock price went down, the company would argue that leaving out the positive forecasts wasn't the reason for the drop, to have a shield towards potential future lawsuits. However it is worth to underline that if a company did want to include positive forecasts in a traditional IPO prospectus, the underwriters and their lawyers might not be in favor of it. This is because it could create more legal risks for them and it goes against the usual way of doing things in the IPOs industry. So, even though people might think that SPACs are allowed to have forecasts while traditional IPOs can't, the truth is more complicated, being that both types of offerings can share predictions about the future, but they usually do it in different ways.[125]

The second myth is that SPACs have a lower risk profile than traditiona IPOs has the origin in the fact that some people think this because they believe the PSLRA safe harbor rule, makes it harder for investors to win lawsuits claiming misleading projections, applies to SPACs but not to regular IPOs. However, it's not so clear if the PSLRA safe harbor really applies to SPACs, when they share target company projections with investors, and if not, it may discourage this kind of 'regulatory arbitrage.'[126] When a target company gets involved with a SPAC, it's different from

[123] The example of the SPAC roadshow used in this paper is taken from an investor presentation published Papay Topco, Inc. & Dragoneer Growth Opportunities Corp. II, Investor Presentation (Nov. 2021), https://s29.q4cdn.com/791052307/files/doc_presentation/2021/12/2021.11.28-Investor-Deck-SHORT-45-MIN-VERSION-(V4)-(1).pdf.

[124] Usha Rodrigues & Michael A. Stegemoller, *Redeeming SPACs*, Univ. of Ga. Sch. of Law Legal Stud. Res. Paper No. 2021-09 (2021), https://ssrn.com/abstract=3906196 or http://dx.doi.org/10.2139/ssrn.3906196.

[125] Bruce A. Ericson et al., *The SPAC Explosion: Beware the Litigation and Enforcement Risk*, Harv. L. Sch. Forum on Corp. Gov. (2021),https://corpgov.law.harvard.edu/2021/01/14/the-spac-explosion-beware-the-litigation-and-enforcement-risk/.

[126] Amanda M. Rose, *SPAC Mergers, IPOs, and the PSLRA's Safe Harbor: Unpacking Claims of Regulatory Arbitrage* (2021), https://ssrn.com/abstract=3945975 or http://dx.doi.org/10.2139/ssrn.3945975.

the SPAC itself, and the information investors need to evaluate changes a lot during the process. An IPO brings a new company to the public, giving investors their first look at its business and financial details.[127] In conclusion, the final objective of de-SPACs transaction is quite similar of the nature of an IPO, so the PSLRA safe harbor shouldn't apply to any unknown private companies going public, no matter how they do it.[128] The PSLRA doesn't clearly define "initial public offering," which creates some uncertainty about whether SPACs should be covered by the safe harbor, but when the PSLRA was enacted, it specifically excluded "blank check companies" and "penny stocks," which were mainly associated with SPACs at that time. In conclusion, there are valid points from both sides. When reexamining existing rules as new situations arise, it's important to make thoughtful decisions, not rushed ones and generally, this matter underscores the need for regulations to keep up with evolving markets, but in a sensible and balanced way.

A third myth that was circulating is that going public through a SPAC is faster than a traditional IPO due to the SEC's registration process. It's true that many claims about the speed advantages of SPACs are more general, citing average times for SPACs versus traditional IPOs, and these claims might be accurate,[129] in fact SPAC mergers typically take 3-6 months on average, but IPOs often take 12-18 months. However, some argue that a legal requirement, the SEC review process, because some people think that the SEC review process can be delayed until after the SPAC has already bought a company and become a publicly traded company, but this belief may not be entirely accurate.

Contrary to these myths, there's no shortcut in the SEC review process for SPACs. As stated by former Division of Corporation Finance Director Bill Hinman, the review process and financial requirements are very similar to those in a traditional IPO.[130] The SEC staff also reviews de-SPAC transactions and expects thoughtful disclosures. The process of registering stock under the Securities Act of 1933 in a traditional IPO isn't slower than registering stock under the same act on Form S-4 and clearing a related proxy statement in a de-SPAC transaction. The SEC staff does generally review de-SPAC transactions because they understand that they are economically equivalent to a traditional IPO, and that the de-SPAC transaction is the first time the target

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[127] Varant Yegparian and Schiffer Hicks Johnson, *Are SPACs Going to Lose Their Safe Harbor?* (2021) https://www.jdsupra.com/legalnews/are-spacs-going-to-lose-their-safe-5692462/.
[128] *Id. Supra note 125.*
[129] *IPOs: The pros and cons of going public through a SPAC merger rather than an IPO*, KPMG (2021) https://advisory.kpmg.us/articles/2021/why-choosing-spac-over-ipo.html.
[130] Soyoung Ho, *SPACs are Hot but SEC is Watching*, Reuters (2020), https://tax.thomsonreuters.com/news/spacs-are-hot-but-sec-is-watching/.

company's financial statements and also the overall business description become available to public investors.[131]

However and contrary to the myth, such reviews cannot be "deferred" until after closing. A simple comparison of two traditional IPOs and two de-SPAC transactions shows that the SEC review process isn't materially longer for traditional IPOs than for de-SPACs. It's possible to delay the SEC's review of a SPAC until after the company has signed fianl agreements to merge with the targer company and this delay can give the ladder company some reassurance that the merger will likely happen, which may not be the case in a traditional IPO.[132] However, de-SPAC transactions are are dependent on mutable events or conditions, such as the level of redemptions after announcing the deal, and these can lead to an higher number of failed de-SPAC transactions and create the possibility of renegotiation of the merger terms. In reality, the main complication for both paths to a listing and public ownership is usually the need for a financial statement audit from a PCAOB-qualified auditor, which typically requires at least three to six months, but this process, is required for both SPAC targets and traditional IPO companies.

D. Short and Long Term performance of SPACs Securities

In order to analyze the overall performances of SPACs securities, it is fundamental to scrutinize their behavior around central announcement dates and long-term outcomes, and the agency conflicts that may arise during the M&A announcements. Research into the immediate impact of SPACs announcements reveals mixed results with some studies suggesting negative abnormal returns around de-SPACs mergers[133], while others propose positive returns around announcement dates. This difference in results prompts a reassessment of the correlation between announcement times and abnormal returns, especially considering the structural changes in SPACs. In the long term, studies consistently indicate a trend of SPACs underperforming compared to similar sized firms, the market, and IPOs, with an inverted U-shaped relationship

[131] Douglas Cumming et al., *The Fast Track IPO – Success Factors for Taking Firms Public with SPACs*, 47 J. of Banking & Fin. 198-213 (2014), https://www.sciencedirect.com/science/article/pii/S0378426614002489?ref=pdf_download&fr=RR-2&rr=7c5bb4680adbbabb.

[132] *Id. Supra note 122*.

[133] Many studies confirm the lack in performance of SPACs, as an example we can take : Milan Lakicevic & Milos Vulanovic, *A Story on SPACs* (Nov. 11, 2011), Managerial Finance, Vol.39, Issue 4, March 2013, https://ssrn.com/abstract=1958238 or http://dx.doi.org/10.2139/ssrn.1958238.

emerging between time to announcement and long-term performance.[134] A comparison of the performance of the US market overall with the SPAC IPO Index and the US IPO index over the past year shows a significant underperformance of the IPO indices post mid-February 2021, with the SPAC IPO index suffering a 28% loss from its peak.[135]

Potential agency conflicts also take center stage during merger and acquisition announcements, with some arguing that SPAC sponsors could exploit information asymmetry. These conflicts and the market's perception of business combination announcements warrant investigation, especially with the increased number of SPACs and previous negative experiences. In order to better analyze the performance in crytical timeframe, several studies have investigated the impact of SPACs in the short-term and long-term, yielding mixed results. Lakicevic and Vulanovic (2013) discovered negative abnormal returns around the completion of mergers, indicating poor performance. However, Howe and O'Brien (2012) found positive abnormal returns during the announcement of mergers, particularly for SPACs with more independent board directors. In a similar vein, Dimitrova (2017) found that the longer it took for a SPAC to announce an acquisition, the more positive the abnormal returns. Despite these short-term variations, overall findings suggest that SPACs tend to underperform companies of similar size and traditional IPOs in the long run. These findings highlight the complexity of SPAC performance and call for further examination of the relationship between announcement timing, completion dates, and abnormal returns, as well as the underlying agency conflicts and benefits associated with SPAC mergers.

The long-term performance analysis of SPACs reveals interesting insights into their market performance. The study[136] examines the results for different post-event periods (6, 12, 18, and 24 months) starting from the merger announcement date and the findings indicate that SPACs tend to underperform the market in the long run, with their performance deteriorating over time. Specifically, the study reports the average buy-and-hold abnormal returns (BHAR)[137] for each period. For the 6-month period, which largely covers the pre-merger phase, the average BHAR is positive at +3.57%. However, as the post-merger performance is incorporated, the BHAR turns

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[134] Dimitrova, Lora, *Perverse Incentives of Special Purpose Acquisition Companies, the 'Poor Man’s Private Equity Funds*' (October 12, 2016). Journal of Accounting & Economics (JAE), Vol. 63, No. 1, 2017 Forthcoming,: https://ssrn.com/abstract=2139392 or http://dx.doi.org/10.2139/ssrn.2139392.

[135] Please note that the analyses I have taken into account are from 2021, before the SEC proposal.

[136] I will examine the study by F. Kiesel et al., *SPAC merger announcement returns and subsequent performance* (2022) as it is the most comprehensive and up-to-date research available on this topic.

[137] Buy-and-hold abnormal returns (BHAR) are a measure used in finance to evaluate the performance of a stock over a specific time period, adjusted for the performance of a benchmark or the overall market. In other words, BHAR measures the difference between the actual returns of a stock and the returns one would expect given the stock's risk profile and market conditions.

statistically negative for the 12-month period (-14.10%), 18-month period (-20.18%), and 24-month period (-18.02%). These negative BHARs indicate that, on average, SPACs exhibit underperformance compared to the market during these time frames. The study also examines the factors that may contribute to the observed underperformance. One possible explanation is the involvement of reputable underwriters, it is clear that SPACs supported by reputable banks or investment firms tend to have better performance in the post-merger announcement period compared to those with support of lower tier firms.[138] Underwriters have evolved their approach to the SPAC market, collaborating with founders and initial sponsors, since the beginning of the process.A s a consequence, key players from the IPO market have joined the SPAC segment, setting a trend of charging 5.5% underwriting commissions, comprised of 2% upfront and 3.5% deferred fees, this just serving as advisors. Higher underwriter rank scores[139] have been linked to increased expected SPAC returns during announcement and merger events. However, there are limits to these increases since high-reputation underwriters tend to participate in larger deals, which obviously can lead to higher expected returns only up to a certain point. It is worth mentioning that the presence of multiple lead underwriters has a positive influence on annualized returns also during announcements; exploring additional variables and incorporating data from the last SPAC wave may enhance the comprehension of underwriters' contributions in this market.[140]

Another factor influencing long-term performance is the relative deal size, which is measured by the book value of target assets relative to the market value of the SPAC's public float, in other words, the value of the target company's assets is weighed against the value of the SPAC's outstanding shares to better understand the impact of the deal size on future performance .The findings show that SPACs with smaller relative deal sizes tend to exhibit significantly worse long-term performance compared to those with larger deal sizes, even though smaller companies or foreign companies, for example in the technological sector, that wish to list on a US exchange. This relationship aligns with previous research in the M&A field[141], indicating that smaller

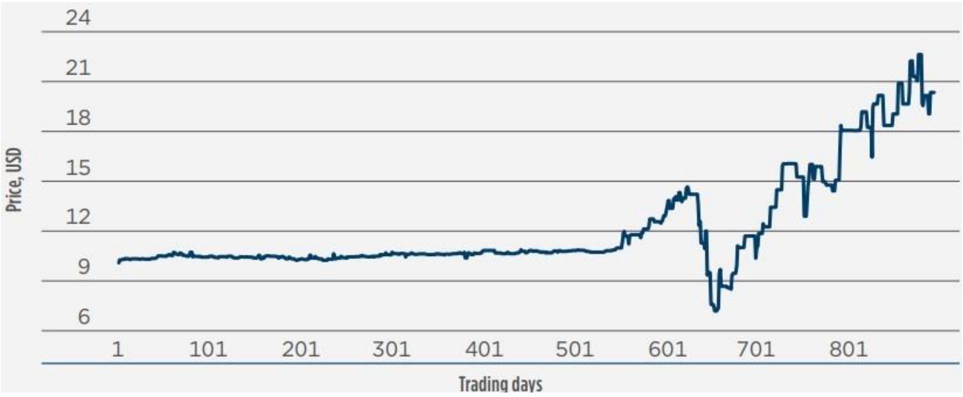
[138] J.P.R. Abreu et al., SPAC IPOs: *Underwriter Reputation and Investor Returns* (2021).
[139] Underwriter ranking assessments employ multiple metrics to gauge the repute and functioning of underwriters in capital conduits. These assessments incorporate considerations encompassing the underwriter's background, the quantity of arrangements they have fruitfully administered, and the whole financial execution of the entities they have assured. An elevated underwriter ranking assessment conventionally signifies that the underwriter is respected and has a chronology of triumphant maneuvers, which may prompt multiplied speculator certitude and potentially uppermost returns for the correlated budgetary mechanisms.
[140] *Id.*
[141] Marshall Lux & Jack Pead, *Hunting High and Low: The Decline of the Small IPO and What to Do About It,* Harv. Kennedy Sch., Mossavar-Rahmani Ctr. for Bus. & Gov't (2018), Available at: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working.papers/86_final.pdf.

acquirers tend to experience larger positive returns upon announcing their targets. The costs of overpaying for targets may impact the long-term performance of SPACs, particularly when acquiring smaller targets. The assertion in the M&A markets is that top executives of big companies often pay excessively for their targets of acquisition targetsand if it extends to SPACs, implies that shareholders substain some of the cost of this overpayment, especially if they maintain their stock ownership tthroughrger process. Additionally, another point is the time taken to announce the merger plays a role in long-term performance: SPACs that identify and announce their target companies earlier tend to have better long-term performance compared to those with longer durations between the IPO and merger announcement., so it means that shorter durations may reduce agency conflicts between sponsors and common shareholders, leading to improved performance.

It is worth noting that the study's findings show a less extreme underperformance compared to previous research in the 2003-2010 period, indicating a potential improvement in SPAC performance over time, in fact in 2021 and even the worst-performing SPAC provided a positive return of 0.5% per year, making 23.9% an attractive average return[142] and this could be attributed to increased market efficiency, but anyway, post-merger returns tend to be negative. This is based on the abilities of SPAC managers in identifying value-creating target companies, this has been helped also for the popularity gained in the last years that encuraged successful financial investors to move to become SPACs sponsor. In particular, improvements have been noted in SPAC performance post-mergers, particularly in larger mergers and those in healthcare and tech sectors. Notably, SPACs that completed their mergers in Q1 2021 showed a healthy return of 27%, outperforming both the IPO sector returns and the market return in general.[143] In conclusion, despite the criticisms and declining performance, there are signs of a maturing industry, and investors are advised to exercise caution, conduct due diligence, and consider redeeming before a merger if it's not valuable. The graph below illustrates a typical example of SPAC performance in the stock market:

Example of a SPACs price movement:

[142] Minmo Gahng et al., *SPACs* (Jan. 29, 2021), The Review of Financial Studies, forthcoming, https://ssrn.com/abstract=3775847 or http://dx.doi.org/10.2139/ssrn.3775847.
[143] Amundi Research Center, *SPACs: Beyond Exuberance*, Back to Reality, Inv. Insights Blue Paper (May 2021), https://research-center.amundi.com/article/spacs-beyond-exuberance-back-reality.



Source: Amundi on Bloomberg data

V. RECENT SEC PROPOSAL AND FUTURE OF SPACs

A. *Enhanced Projection Disclosure and General Overview*

As the evolving dynamics of the financial market continue to reshape the landscape of IPOs, the Securities and Exchange Commission has taken steps to match pace with these changes. On March 30, 2022, the SEC proposed a series of new rules and amendments with the intent of aid disclosure and investor protection measures related to SPACs , this proposal represents an extended effort to address some of the issues that Congress recognized decades ago: information asymmetries, misleading information, and conflicts of interest. Based on a recent announcement, it is anticipated that the rules will likely be fully finalized by the end of 2024, the initial set of rules may reach finalization in April, while the remaining rules are expected to follow in October.[144] The SEC has proposed new rules and regulations for SPACs, reflecting their belief that de-SPAC transactions are more similar to IPOs than traditional mergers or acquisitions. SEC Chair Gary Gensler divided the regulatory tools used in the traditional IPO process into three categories: disclosure, guidelines for marketing techniques, and gatekeeper and issuer obligations.[145] This new proposal seeks to ensure that these protective tools, originally designed for traditional IPOs, are

[144] Vigilant LLC, *SEC Plans to Finalize Multiple Proposed Rules for 2023* (2023), https://vigilantllc.com/sec-plans-to-finalize-multiple-proposed-rules-for-2023/.
[145] Press Release, U.S. Securities and Exchange Commission, *SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies, and Projections* (Mar. 30, 2022), https://www.sec.gov/news/press-release/2022-56.

adequately applied to the increasingly popular SPAC mechanism, which has emerged as a viable alternative to traditional IPOs.

Firstly, the proposed rules require de-SPAC registration or proxy statements to disclose whether the transaction and related financing transactions are fair or unfair to SPAC investors. SPACs are also required to provide detailed reasoning, including the weight assigned to each factor, to support their belief. This goal is toensures that investors have access to important information regarding the fairness of the transaction. Secondly, the proposed rules mandate comprehensive disclosures about the SPAC sponsor. This includes disclosing their experience, material roles, and responsibilities, as well as any agreements between the sponsor and SPAC. Additionally, details about the nature and amounts of compensation awarded to the sponsor must be disclosed. These requirements try to provide greater transparency regarding the involvement and compensation of sponsors and these rules address conflicts of interest by requiring more detailed and transparent disclosures, in particular, SPACs must disclose any potential conflicts of interest that may arise between the sponsor or insiders and public stockholders. This provision aims to mitigate many potential conflicts described before. The proposed rules also expand the potential liability under the Securities Act of 1933 for underwriters and target companies involved in de-SPAC transactions, this increases the scope of potential liability and encourages greater carefulness and accuracy in the due diligence process. Lastly, the rules clarify that the safe harbor protection provided by the PSLRA does not apply to projections used in de-SPAC transactions. This clarification potentially increases liability for material misstatements or omissions in projections, ensuring that projections are accurately presented to investors.[146] Besides that, the proposal addresses the analysis of projections made by SPACs and their target companies, touching on the safe harbor for forward-looking statements and the use of projections in filings. If adopted, the rules would align financial statement requirements for private companies in shell company transactions with those in IPO registration statements, ensuring an higher level of consistency and rigor in financial disclosure. [147]

One of the most significant aspects of the proposed rules is the requirement that a de-SPAC registration new rules for SPACs to Enhance Disclosure and Investor Protection, in particular the review of Item 10(b) of Regulation S-K, with a primary aim to spread out and changing its

[146] Erin Gordon et al., *M&A, Professional Perspective - SEC's Proposed SPAC Rules & Market Reaction*, Perkins Coie, (2022), Bloomberg Law, https://www.bloomberglaw.com/external/document/XADAEFPO000000/m-a-professional-perspective-sec-s-proposed-spac-rules-market-re.
[147] *Id. Supra note 146.*

perspective on utilizing financial projections. The central aspects of this proposed amendment is to address the manner in which financial forecasts are articulated by companies that do not have a history of operations. Additionally, the proposal wants to extend the applicability of the guidance contained within the item to include future economic performance predictions of entities other than the original registrant, for instance, a target firm in a merger transaction. [148] This is particularly applicable in light of the widespread utilization of projections in de-SPAC transactions. To this end, a new Item 1609 of Regulation S-K is also being proposed, which would be specifically designed for financial forecasts used in de-SPAC transactions and mandate additional disclosure requisites about the purpose, preparation, assumptions, and validity of these projections at the time of filing. If the predictions no longer fit the opinions of the board or management, it would be necessary to have a talk that explains why the predictions are being disclosed and why the board or management are still relying on them. This aims to provide investors with a deeper understanding of the motivations behind these projections, and assist them in assessing their ongoing reliability.

As just illustred, he proposed alterations to Item 10(b) and the introduction of the new Item 1609 are fundamentally designed to alleviate concern associated with the use of projections in de-SPAC transactions and analogous situations. These proposed regulations may raise the level of caution and diligence used by businesses in the production of financial predictions by providing particular guidance to registrants and working on specific disclosures in de-SPAC transactions, impacting not just de-SPAC transaction filings but also all the other documents submitted to the Commission. Furthermore, these amendments would underscore the requirement that any projected financial data incorporated in filings under Item 10(b) must be based on solid bases. This is particularly important to address doubts that some companies might prioritize projections over actual historical results or include non-GAAP financial terms into their estimates without offering a definition or convincing rationale.[149] The adoption of these proposed changes would provide registrants with a structure to present their projections in an appropriate format and with the necessary context and this, would assist investors in evaluating these projections, assessing the

[148] Securities and Exchange Commission, Special Purpose Acquisition Companies, Shell Companies, and Projections, 87 Fed. Reg. 21048 (proposed 2022), https://www.sec.gov/rules/proposed/2022/33-11048.pdf.
[149] The proposal would require referring to the closest equivalent GAAP measure, as called for by the amended Item 10(b). However, providing a reconciliation to that equivalent GAAP measure would not be required in this reference. Regulation G and Item 10(e) of Regulation S-K, which restrict the use of non-GAAP financial metrics, would still apply to the requirement to provide a GAAP reconciliation, according to Release No. 33-8176 (Jan. 22, 2003), section II.B.2 [68 FR 4820 (Jan. 30, 2003)]. https://www.sec.gov/rules/final/33-8176.htm.

credibility and determining the level of belief to place on them when making investment or voting decisions.[150]

Lastly, under Item 10(b), forecasts about a company's future performance only apply to that specific company. However, in business acquisitions, it is common for the acquiring company to include the target company's predictions in their public statements, causing confusion on whether Item 10(b) still applies to the target company's predictions. To address this, the proposed amendment to Item 10(b) that clarifies its guidance applies to any future predictions of economic performance made by entities other than the company being registered, but included in the company's public filings.[151] This proposal arises from concerns about the use of financial projections in these transactions, which are often influenced by sponsors whose compensation is tied to the completion of the de-SPAC transaction, that, as illustred before, can result in overly aggressive financial projections to justify higher valuations of the companies involved.[152]

B. Safe harbour proposal under the Investment Company Act

The SEC has expressed apprehension that SPACs might overlook circumstances in which their activities raise investor protection concerns that the Investment Company Act was designed to address and suggested a provisional exemption from regulation under the Investment Company Act of 1940 for SPACs that meet certain requirements. The SEC has proposed Rule 3a-10, which would provide SPACs that fulfill certain circumstances with a safe harbor from the definition of "investment company" under Section 3(a)(1)(A) within the Investment Company Act. A SPAC conforming to the qualifications of proposed Rule 3a-10 would not qualify as an "investment company" and therefore would not be subject to oversight under the Investment Company Act. There are "Tonopah factors"[153] which refer to certain criteria that could potentially classify a SPAC

[150] Grant Thornton, *SEC Proposes Rules to Improve SPAC Disclosures* (Apr. 7, 2022), https://www.grantthornton.com/insights/articles/audit/2022/snapshot/april/sec-proposes-rules-to-improve-spac-disclosures.
[151] *Id. Supra Note 149.*
[152] Kimball Chapman et al., *SPACs and Forward-Looking Disclosure: Hype or Information?* (2021), https://ssrn.com/abstract=3920714 or http://dx.doi.org/10.2139/ssrn.3920714.
153 Way back when, the SEC first came up with a list s factors - called the “Tonopah factors” - to figure out a company’s main business under Section 3(b)(2) of the Investment Company Act of 1940. See In the Matter of Tonopah Mining Co., 26 S.E.C. 426 (Jul. 21, 1947), https://fingfx.thomsonreuters.com/gfx/legaldocs/jnpwewmqjpw/frankel-spac40Act--tonopah.pdf The Tonopah factors look at stuff like a company’s assets, how it makes money, its history, what it says about itself, and what its managers and employees do. Even though Tonopah was about Section 3(b)(2), the SEC said the way it figured out a

as an "investment company" under Section 3(a)(1)(A) of the Investment Company Act. These factors include the SPAC's assets, income sources, historical development, public representative, and the activities of its officers and directors. A proposed safe harbor rule focuses on conditions such as limiting a SPAC's duration, asset composition, business purpose, and activities to enhance investor protection. This rule would also provide SPACs with more certainty about their status under the Investment Company Act, which could advance capital formation and efficiency. The safe harbor mainly addresses the investment company status under Section 3(a)(1)(A) of the Investment Company Act, also known as the "subjective test"[154]. However, it doesn't address the status under the "objective test" outlined in Section 3(a)(1)(C) of the Investment Company Act.[155]

company's "primary thing" there works for Section 3(a)(1)(A) too. *See Certain Prima Facie Investment Companies*, Release No. IC-10937 (Nov. 13, 1979), n.24, available at https://casetext.com/regulation/code-of-federal-regulations/title-17-commodity-and-securities-exchanges/chapter-ii-securities-and-exchange-commission/part-270-rules-and-regulations-investment-company-act-of-1940/section-2703a-1-certain-prima-facie-investment-companies The SEC has used the Tonopah factors, in whole or in part, to decide if a company qualifies as an investment company under Section 3(a)(1)(A) of the *Investment Company Act. See SEC v. National Presto Industries*, Inc., 486 F.3d 305, 307 (7th Cir. 2007), Available at https://casetext.com/case/us-sec-v-national-presto-industries-2; Certain Prima Facie Investment Companies, Release No. IC-10937 (1979), n.24. Besides looking at what a company's top managers and directors do, the SEC also thinks about what the regular employees do to figure out a company's main thing. See, e.g., 17 C.F.R. § 270.3a-8 (2020); Snowflake Inc., Release No. IC-34049 (2020), Available at https://www.sec.gov/rules/ic/2020/ic-34049.pdf; Lyft Inc., Release No. IC-33399 (2019), Available at https://www.sec.gov/rules/ic/2019/ic-33399.pdf. Basically, the SEC uses a multi-factor test that started in the Tonopah case to decide if a company's main business is being an investment company under Section 3(a)(1)(A) of the Investment Company Act. As explained before, this test looks at a company's assets, how it gets paid, its history, what it says, and what its managers, directors and regular employees do. Even though this whole thing originally came from a different part of the Act, the SEC flat out said the way it figured out a company's "primary engagement" in Tonopah works for Section 3(a)(1)(A) too.

[154] The "subjective test" is one of the ways an issuer may be classified as an investment company under the Investment Company Act. Specifically, under Section 3(a)(1)(A) of the Act, the subjective test defines an "investment company" as any issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. This test is "subjective" because it depends on how the company presents itself and its primary business activities it is possible tomake an example, of a company is primarily engaged in investing in securities and presents itself as such to investors and the public, then it could be considered an investment company under the subjective test.

[155] The "objective test" serves as a quantitative metric stipulated by Section 3(a)(1)(C) of the Investment Company Act to establish whether an entity qualifies as an "investment company." And it is primarily concerned with the composition of the firm's assets. This test is commonly referred to as the 40% test, because the focus is on the proportion of a company's assets that are categorized as "investment securities."If the valuation of a firm's investment securities exceed 40% of its aggregate assets, discounting government securities and cash items, the entity is likely to be designated as an investment company as per the objective test. The test is a central tool in the regulatory framework because it provides an clear, numerical benchmark to classify entities as investment companies. This classification is not just about the firm's self-perception or how it presents itself to the public. So, even if an entity does not explicitly identify or operate as an investment company, it could be subject to the regulations and obligations enforced by the Investment Company Act, if it meet the criteria set by the objective test.

The first criterion that a SPAC must in order to rely on the proposed safe harbor is the evidence that a SPAC is only allowed to possess government securities[156], government money market funds[157], and cash items until the de-SPAC transaction is finished. In other words, all funds obtained by the SPAC, from offerings, sponsor contributions, or returns from the SPAC's assets, must be held in these forms. This is due to the SPAC's main purpose of obtaining assets to fund a de-SPAC transaction. This also forbids the SPAC from buying any other type of asset, like an operating company, before completing a de-SPAC transaction.[158]

The second criteria is about the usage of the assets and it stipulates that the SPAC's assets must not be traded with the primary intent of realizing gains or offsetting losses based on market value fluctuations. This condition ensures that the SPAC does not engage in investment activities akin to actively managing a portfolio, an attribute characteristic of investment companies, not SPACs.[159] Instead, SPACs are expected to manage their assets according to cash management practices, aligning with their operational intent. Moreover the forth limit is about the fact that the safe harbor to SPACs that aim to complete a single de-SPAC transaction, resulting in a surviving public entity that is primarily involved in the target company's business and not an investment company. The surviving company must also have at least one class of securities listed for trading on a national securities exchange. Furthermore, the SPAC can only rely on the safe harbor for a single de-SPAC transaction, even if it involves multiple target companies, these companies must be treated as part of a single de-SPAC transaction. Another criteria underlined by the SEC is about the control and mangement of the surviving company because The ladder should be primarily involved in the business of the target company or companies, rather than just searching for an investment opportunity.[160] "Primary control" definition means that the surviving company must have more control over such a company than any other person involved and this condition is

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[156] The expression "government security" has the same meaning that is given in Investment Company Act Section 2(a)(16), 15 U.S.C. 80a-2(a)(16).
[157] The term “Government money market fund” has the same meaning as defined in paragraph (a)(14) of Rule 2a-7 under the Investment Company Act. 17 CFR 270.2°.
[158] Proposed Rule 3a-10(a)(1).
[159] Clifford Chance, *SEC Proposes to Enhance Protections for SPAC Investors* (Apr. 2022), https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2022/04/SEC%20Proposes%20To%20Enhance%20Protections%20For%20SPAC%20Investors.pdf.
[160] The suggested definitions for "special purpose acquisition company" and "de-SPAC transaction" take into account that a SPAC might simultaneously participate in a de-SPAC transaction involving multiple target companies.

intended to separate a holding company structure for an operational company from an investment in operating company stocks.[161]

Another principle is the evidence of primary engagement, the suggested regulation would mandate that a SPAC aiming to utilize the safe harbor must predominantly focus on completing a de-SPAC transaction in the method and timeframe specified in the rule. This agreement should be demonstrated through the actions of its officers, directors, and employees, its publicly stated policies, and its historical progress.[162] For instance, the SPAC's officers, directors must primarily concentrate on activities related to identifying a target company to manage, rather than activities connected to managing its securities portfolio. These conditions include three of the Tonopah factors and, in conjunction with the other safe harbor conditions, ensure that a SPAC may only use the safe harbor if its main business does not involve investing or trading securities. These criteria are also comparable to those used to determine the primary involvement of a business in various contexts under the Investment Company Act.

For a SPAC to utilize the safe harbor, its board of directors must also adopt a suitable resolution, which confirms that the company is chiefly engaged in completing a single de-SPAC transaction as specified by the rule. This resolution should be recorded in the company's minute books or similar documents at the same time. The condition is similar to exclusionary provisions under the Investment Company Act, where an issuer can only depend on the safe harbor if the board of directors passes an appropriate resolution that demonstrates the company is principally focused on a non-investment business.[163] This action publicly documents management's intentions and helps to create a mutual understanding among shareholders about the issuer's business objectives. The last criteria are about the duration limitation, under this proposal SPACs need to file a report announcing that it has entered into an agreement to complete a de-SPAC transaction within 18 months of its initial public offering. Afterward, the SPAC must really complete the de-SPAC transaction within 24 months of its IPO and if it misses either date, it must reimburse

[161] See Section 2(a)(9) of the Investment Company Act for the definition of "control" (15 U.S.C. 80a-2(9)). Additionally, this definition provides insights on the regulatory framework governing control relationships within investment companies.

[162] Proposed Rule 3a-10(a)(5)(iv)

[163] The text refers to two rules under the Investment Company Act: Rule 3a-2 and Rule 3a-8. The full citation for Rule 3a-2 is 17 CFR 270.3a-2(2023), and Rule 3a-8 refers to 17 CFR 270.3a-8 (2023)

investors for their investment. After 18 months, the SPAC may reach agreements with additional target companies, but all deals must close simultaneously within 24 months.[164]

Additionally, a SPAC depending on the proposed regulation is not allowed to represent itself as being primarily involved in the business of acquiring, selling, or trading securities. A SPAC that depends on the rule must not claim or infer in any other way that it works similarly to certain investment organizations, for example money market funds, as SPACs invest in the same kinds of securities as these companies do. To conclude, it is crucial to note that reactions to the SEC's proposal will be discussed, and the subsequent chapter will delve into the scholarly responses on this matter. Nevertheless, the incorporation of SPACs within the ICA continues to spark significant debate. For example, a letter published on SPACInsider, signed by several law firms, highlighted a key distinction: the ICA defines an investment company as one that is principally involved in buying, selling, or trading securities, whereas SPACs are principally concerned with completing company mergers with other companies within a predetermined time limit. The letter argues that there is little factual and legal evidence to categorize SPACs as investment entities under the ICA. and it emphasizes that the SEC staff has reviewed over 1,000 SPAC IPOs during the past two decades without subjecting them to the 1940 Act.[165]

B. Analysis of Overall Market Performance Post-Proposal

The SEC's proposal seeking to transform SPACs into traditional IPOs may unintentionally reduce public company formation and capital access while failing to enhance investor protections. By strictly limiting the time SPACs have to identify and combine with target companies, pressuring SPACs to hastily execute deals rather than carefully vet opportunities, and restricting the sharing of financial projections that are commonly utilized to market SPAC transactions to retail investors, the proposed rules could lead to a significant decrease the quality of SPAC combinations and reduce transparency. Summarizing the last two paragraphs where we stated that the SEC's proposal discussed three main points: enhancing disclosure, scrutinizing the use of projections/underwriter liability, and the implications of the Investment Company Act of 1940.

[164] Carter Ledyard & Milburn LLP, *"SEC Proposes Major Changes to SPAC Rules"* (May 31, 2022),https://www.clm.com/sec-proposes-major-changes-to-spac-rules/#:~:text=Duration%20Limitations.,for%20its%20initial%20public%20offering.

[165] Paul, Weiss, Rifkind, Wharton & Garrison LLP, *"Paul Weiss Among 49 Firms to Sign Letter Denouncing ICA Litigation Against SPACs,"* (Aug. 27, 2021), https://www.paulweiss.com/about-the-firm/firm-news/paul-weiss-among-49-firms-to-sign-letter-denouncing-ica-litigation-against-spacs?id=40858. Accessed October 22, 2022.

The primary intent behind the meeting was to transform SPACs into something akin to traditional IPOs, much to the dismay of companies that opted for SPACs to avoid the dissatisfaction associated with conventional IPO methods. Regarding enhanced disclosures, the proposal covered aspects such as SPAC sponsors, conflicts of interest, and dilution. The SEC also wishes to redefine the term "blank check company" so that the Safe Harbor provision of the PSLRA is no longer available to SPACs. The intent is to ensure that SPACs only use projections when they are confident they won't incur liability when marketing their de-SPAC transactions. However, the main problem is that expanding the liability for underwriters and pushing for stringent disclosure requirements could potentially dissuade the use of any projections.[166]

Many experts have raised some criticisms of the SEC's proposed SPAC rules and in the following pages, I will illustrate these criticisms: starting form the projection part, they argue that projections often provide retail investors with more information than what's typically shared in traditional IPOs, thereby promoting a more democratic and equitable investment environment, while I already illustrated this statement is often debated, it is often argued that SPACs generally provide a good level of disclosure around financial projection.[167] Additionally, the SEC is proposing a new rule that would reclassify underwriters in a SPAC IPO as actual "underwriters", instead of "advisors", during the de-SPAC transaction.and this would call for a greater liability burden, which could potentially disrupt the whole SPAC ecosystem and the effects are already being seen from the $250 billion raised by SPACs in 2021, with a fallback of more than 90% in 2022. [168]

Another important objection about the proposal regard the 18 or 24 months timeframe limit as a deadline for completing a de-SPAC transaction, some academics highlight that given the need to finalize a de-SPAC deal within a 24-month period post-IPO and an 18-month span consequently, SPAC sponsors might be tempted to engage in more unsafe acquisitions to ensure the merger process is completed within this artificially defined timeframe[169] and this could potentially have

[166] As I discussed in Chapter V, paragraphs a and b: "Enhanced Projection Disclosure and General Overview; Safe Harbor Proposal under the Investment Company Act."
[167] *Id.*
[168] Ecosistema, *SPAC, il declino delle società che portano le scaleup in Borsa* (July 2022), https://www.startupbusiness.it/spac-il-declino-delle-societa-che-portano-le-scaleup-in-borsa/119349/.
[169] U.S. Securities and Exchange Commission, Small Business Capital Formation Advisory Committee, Comment to Proposed Rule: Facilitating shareholder engagement (May 17, 2022) (July 13, 2022)https://www.sec.gov/comments/s7-13-22/s71322-20134362-304097.pdf.

the opposite effect diminishing even more the quality of target company selection, and as a result in lower-quality merger, which doesn't necessarily increases investor protection.

Moreover, the proposed rules touch on the Investment Company Act of 1940, outlining conditions under which a SPAC would qualify as an Investment Company. If a SPAC fails to complete a de-SPAC transaction and liquidates, it could be classified as an "Investment Company" under these new criteria. This classification might unintentionally motivate SPACs to hasten deals rather than carefully vet targets or opt for liquidation to return funds to investors, creating potential risks. One of the implications of these changes would likely be a tilt of benefits towards institutional investors, who usually have access to IPO projections, at the expense of retail investors who typically rely more on public disclosures from SPACs.[170] In light of the poor performance of many recent traditional IPOs[171], there is concern that the proposed rules may not necessarily improve investor protection.[172] If the intention is to make SPACs "safer" by modeling them after traditional IPOs, it's unclear how this goal would be achieved given the current landscape.

These rules are seen as potentially transformative, shifting corporate priorities from shareholder returns to climate reputation. Critics contend that the rules go beyond the SEC's traditional authority, requiring companies to gather, create, and disclose excessive information., given the potential negative impact on regulated companies and so on all US investors.[173]

In my thesis, I already discussed the similarity between SPACs and VC firms and the following considerations from the National Venture Capital Association[174] are interesting and relevant to imagine the actual and real linke between the two realities, in fact the NVCA is

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[170] Kristi Marvin, *Breakdown of the SEC's Proposed SPAC Changes,* SPACInsider, (Mar. 30, 2022), https://www.spacinsider.com/news/spacinsider/sec-proposes-spac-change

[171] *Id.*

[172] *Id.*

[173] Austin Knudsen and 18 state attorneys general argue that the SEC's proposal to reopen comment periods for three rulemaking releases due to issues receiving certain comments during the initial period is unnecessary and potentially unlawful et al., Re: Reopening Comment Periods for Several Rulemaking Releases Due to Technological Error in Receiving Certain Comments (Oct. 24, 2022), comment on proposed rules regarding reopening comment periods for certain SEC rulemaking releases, https://www.sec.gov/comments/s7-32-10/s73210-20147444-313668.pdf.

[174] NVCA stands for National Venture Capital Association. It is the trade association that represents the U.S. venture capital industry. NVCA's mission is to foster growth of the venture capital community and help create and implement federal policies to stimulate private sector investment in startups and small businesses with high growth perspectives. NVCA represents over 400 venture capital firms in the U.S. that collectively manage over $180 billion in capital. See more info at : https://nvca.org/nvca-members/

concerned of increasing number of innovative young firms are choosing to remain private for longer due to the costs and complexity of a traditional IPO, and they see that SPACs have the ability to help businesses that would otherwise find it difficult to raise the money required for growth and expansion. The proposed SEC guidelines run the danger of making the SPAC model less viable for businesses looking for public investment, which might further restrict young, innovative enterprises' access to finance. The NVCA urges the SEC to take into account how its recommendations may affect SPACs' capacity to solve capital formation issues, particularly for growth-oriented businesses that have historically found it difficult to navigate the IPO process, while still guaranteeing adequate investor safeguards.[175]

While the SEC has been criticized for the stringency of some of its proposals, there have also been opposing criticisms that the agency has targeted the wrong issues in the SPAC market. A popular doubt about some scholars was that there are recent analysis suggesting that concurrent board membership on multiple SPACs does not serve investor interests, in a certain way, SPAC directors function much like partners at later-stage venture capital funds, so concurrent membership on SPAC boards is akin to overseeing dealmaking at competing VC funds. This shared directorship could result in conflicts akin to handling transactions in rival venture capital entities, potentially leading to avoidable investor losses.[176] It is suggested that the SEC contemplate a guideline limiting a SPAC director to participation in only one SPAC board concurrently. Implementing such a policy could eliminate conflicts, safeguard investor interests, optimize pairing of SPACs with potential acquisitions, decrease the likelihood of ineffective SPAC dissolutions, and put a stop to the rivalry among emerging SPACs to convince directors to distribute targets inefficiently.[177]

Another important consideration is that the proposed regulations could reduce the options available to companies seeking to go public, possibly limiting competition and capital formation. This seems at odds with the SEC's mandateand given the large number of SPAC transactions

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[175] The National Venture Capital Association (NVCA), Bobby Franklin, President & CEO, Special Purpose Acquisition Companies, Shell Companies, and Projections
(Release Nos. 33-11048, 34-94546, IC-34549, File No. S7-13-22), comment on proposed rules to facilitate shareholder engagement, specifically on special purpose acquisition companies (SPACs) and shell companies (June 10, 2022),
https://www.sec.gov/comments/s7-13-22/s71322-20131133-301325.pdf.
[176] Michael Gofman and Yuchi Yao, Re: File No. S7-13-22 - Special Purpose Acquisition Companies, Shell Companies, and Projections (July 19, 2022), comment on proposed rules to facilitate shareholder engagement, specifically on SPACs and shell companies (proposed June 10, 2022), https://www.sec.gov/comments/s7-13-22/s71322-20134397-304122.pdf.
[177] *Id.*

previously greenlit by the SEC, these changes may lead to a substantial increase in lawsuits against the SEC, a risk that must be acknowledged and that was likely unintended in the SEC's initial proposals.

D. The SPAC Bubble: When Investor Confidence Outweighs Market Reality

The years 2020 and 2021 supported an extraordinary growth in SPAC activity, with an incredible $79 billion raised through 613 IPOs[178] in the United States and also 2021 broke all previous records in SPAC M&A, as 199 completed de-SPAC business combinations took place, significantly surpassing the earlier record of 64 closed de-SPAC business combinations set in 2020, the also helped by the liquidity influx in response to the COVID-19 pandemic[179], in 2021 many with high-hype startups, including DraftKings, Grab, Lucid, Polestar, and WeWork, become public with a SPAC combination. However, to better evaluate overall SPAC performance, we should divide our analysis into two periods: the SPAC bubble of 2020-2021 and the effects of SPAC IPOs on markets post-SEC proposal, for the bubble period analysis, I relied mostly on the most recent comprehensive study, *"A Sober Look at SPACs"* drafted by *Klausner* from Stanford Law School . The analysis start from the beginning of 2020 through November 2021, where the stock prices of SPACs went through major changes. An overrating event was seen, with shares trading around $10.00.[180] This rose to $15.77 and $14.76 after merger news in the last quarter of 2020 and the first quarter of 2021. By the second quarter of 2021, prices went decrease to the leven they were before the bubble and SPACs that first seemed like good investments did worse, with their prices falling to $9.01 and $7.09.[181]

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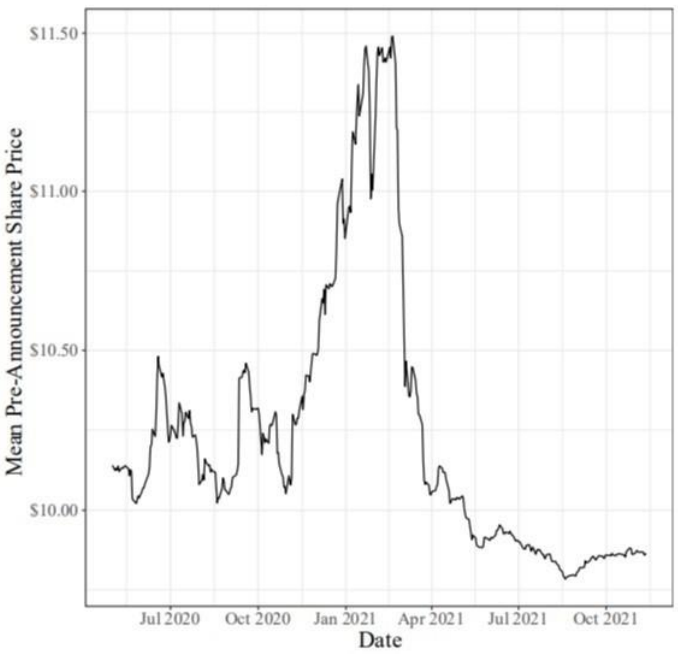
[178] Statista Research Department, Number of SPAC IPOs in the U.S. 2003-2023. Statista. (2023, April 18). https://www.statista.com/statistics/1178249/spac-ipo-usa/#:~:text=2020%20and%202021%20were%20a,IPOs%20in%20that%20year%20alone.
[179] Thomson Reuters De-SPAC debrief, (2022) https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/05/1015AM-Breakout-2_De-SPAC-Debrief_Freshfields_.pdf-
[180] See studies and analysis from p.78, Klausner, Michael D., Michael Ohlrogge, and Emily Ruan. "*A Sober Look at SPACs."*
[181] *Id.*



Source: A Sober Look at SPACs

During the financial bubble,SPAC promoters said that SPACs had changed and were no longer a bad investment. This view was based on four key differences seen during the bubble time: lower redemptions, fewer warrants, bigger private investments in public equity (PIPEs), and the involvement of higher quality sponsors.[182] However, even with these changes, SPACs have, so far, kept underperforming on average, keeping their reputation as a less good investment for shareholders not redeeming shares.

As a result of the SPAC bubble, between Q4 2020 and Q1 2021, redemptions were notably low with mean and median rates at 22% and 0%, respectively. This decrease from the previous rates before the bubble resulted in less dilution and more net cash per share in mergers and as aconsequence, this could suggest greater post-merger returns for SPAC shareholders during the bubble, assuming other factors remain constant. The motivation behind these lower redemption trend was largely due to inflated pre-merger share prices during the bubble. However, this was temporary and, with the deflation of the bubble, redemption levels reverted back to the historical

[182] Michael Klausner, Michael Ohlrogge & Emily Ruan, *A Second Look at SPACs: Is This Time Different?* (Jan. 24, 2022), https://corpgov.law.harvard.edu/2022/01/24/a-second-look-at-spacs-is-this-time-different/.

norm, similar to the 55% and 66% mean and median rates experienced between July 1, 2021, and December 1, 2021.[183]

As warrants were examined between Q4 2020 and Q1 2021, at the height of the SPAC bubble, there was a decline in the average number of warrants included in SPAC units, which went from a mean of 0.5 per unit to 0.33. This was likely due to IPO investors anticipating a higher value for each warrant, hence accepting a lower number. However, as happend with remptions, this trend reversed as the bubble deflated, with the average number of warrants per unit returning to 0.5 in SPAC IPOs from July to November 2021, probably for the fact that the market continues to rely on offering free warrants to establish SPACs as public companies. The third point that the study takes into consideration are PIPEs, that increased significantly during the 2020-2021 timeframe, almost every combination had a [184], PIPEs were 85% of SPAC IPO funds during the bubble versus 30% before, possibly increasing shareholder returns if PIPE investors overpay. However, PIPEs rarely offer SPACs enough to give $10 per share to shareholders post-merger. Though PIPEs have declined since the bubble burst, their future role is unclear[185] SPACs also had much more cash per share during the bubble, averaging $6.60 versus under $10 later. This was partly due to bigger PIPEs, fewer share warrants, and fewer shareholders redeeming shares. However, $6.60 still falls far below the $10 per share that non-redeeming shareholders give [186]

The study confirmed the imporatance of sponsors and it has demonstrated what was written in the previous chapters regarding successful SPACs, showing that successful sponsors lead to better SPAC performance due to: reduced redemptions, obtaining larger PIPEs, and generating increased post-merger returns. Even so, theseresults do not imply that SPACs with top-notch sponsors are guaranteed to be excellent investments, but rather that they outperform SPACs with lower-quality sponsors.[187] Earnouts, generally applicable to about 30-40% of a sponsor's promote shares, do not notably affect sponsor incentives, anticipated returns, or net cash per share.[188] The primary reason for this is that earnout shares are a type of derivative security, with their value

[183] Klausner, *"A Sober Look at SPAC*s" et al.,op.cit., p.79.
[184] 95% of the SPACs M&A used a PIPE and the total PIPE amount averaged $316 million for completed mergers, with the median PIPE being around $210 million. Overall, the PIPE amounts essentially equaled the SPAC's initial trust size.
[185] Klausner, et al.,op.cit., p.81.
[186] Klausner, et al.,op.cit., p.80.
[187] *Id.*
[188] Sponsor earnouts in SPACs are a compensation arrangement where sponsors receive a portion of their equity based on the post-merger performance of the company with the aims to align the interests of the sponsors with the shareholders.

largely reliant on the fluctuations of the underlying shares and the length of the earnout period, but SPACs share price are very volatile following a merger and the extended duration of earnouts, these agreements have a limited effect on diminishing the value of sponsors' stakes in a merger or deterring sponsors from start mergers that may not serve the best interests of SPAC shareholders.

The *Klausner* study concluded SPAC mergers, even during the speculative bubble, have yielded generally unsatisfactory returns, although there is a slight improvement in negativity, so key issues with SPACs remain, despite some initial positive developments seen during the bubble and yet the current SPACs' larger PIPEs and possibly better sponsors, the net cash per share remains notably below the $10.00 shareholders forfeit by not redeeming their shares.[189]

After the 2022 proposal witch is designed to educe the advantages of SPACs over conventional IPOs, potential acquisition targets are in a stronger position to negotiate favorable terms because 350 SPACs have deadlines in 2023 and there is $96 billion available for allocation, SPACs are trying to find qualified targets faster, or they risk having to refund investment money. [190] As a consequence, target companies should carefully evaluate potential SPAC suitors and bargain in a much mure powerful position tahn ever before., and so they can minimize the negative effects of SPAC mergers and win fair terms for their public by understanding the mechanics of SPACs and the pressures they face. In 2022, the number of SPAC IPOs dropped to 86, a great contrast to the 610 recorded in 2021[191], beside taht almost 100 companies completed SPAC mergers in 2022, with the majority having enterprise values under $2 billion.[192] According to *Bloomberg data*, the 2022 de-SPAC class has experienced a median decline of 52% this year[193], so it created a craving of sponsors retracting deals in anticipation of an SEC stop with future data of around 700 SPACs face the challenge of finalizing mergers by late 2023, a hint of caution before an impending $183 billion wall of deadlines.[194]

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[189] Klausner, et al.,op.cit., p.83, 84.

[190] J. Kengelbach, L. Pot, O. Bennerholm, D. Degen & T. Endter, *The SPAC bust could be a boon for targets* (Jan. 31, 2023), https://www.bcg.com/publications/2023/blank-check-bust-could-benefit-spac-merger-targets.

[191] M. O'Connor & D. Nazir, *SPAC IPOs, deals fell in 2022*, S&P Global Market Intelligence (2023), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/spac-ipos-deals-fell-in-2022-73994241#:~:text=There%20were%2086%20SPAC%20IPOs,S%26P%20Global%20Market%20Intelligence%20data.

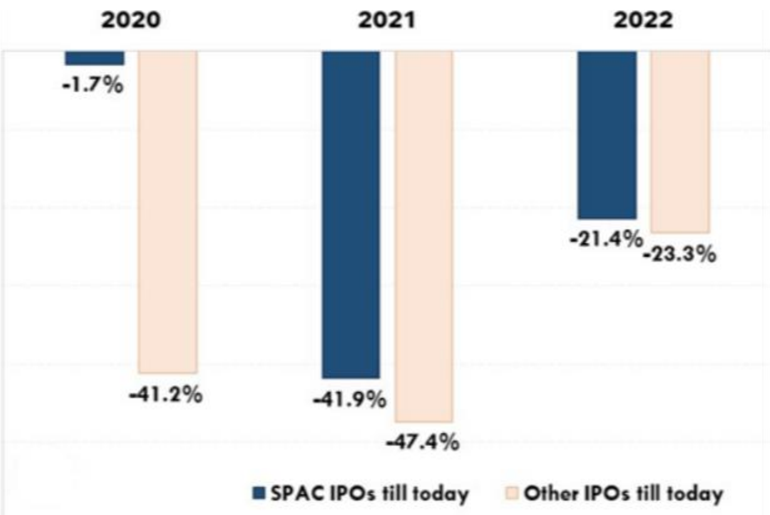
[192] S. A. Elberg & C. M. Dressel, *As SPAC boom subsides, some de-SPACed companies seek Chapter 11 protection* (Apr. 20, 2023), https://www.skadden.com/insights/publications/2023/04/quarterly-insights/as-spac-boom-subsides

[193] Bloomberg, The SPAC era comes to a whimpering end (June 24, 2022), https://www.bloomberg.com/news/articles/2022-06-24/spac-stock-prices-reflect-the-end-of-an-era#xj4y7vzkg.

[194] Lipschultz, B. (2022, June 29). *SPACs send warning before hitting $183 billion wall of deadlines*. Bloomberg. https://www.bloomberg.com/news/articles/2022-06-29/spacs-send-warning-before-hitting-183-billion-wall-of-deadlines#xj4y7vzkg.

With these premises, it seems that the outlook for 2023 and the future is not very optimistic,in fact, during the first quarter of 2023, only 10 SPAC IPOs were launched, amassing a total of $738 million, which represents a significant decline from the $9 billion raised by 55 SPAC IPOs in the same quarter of 2022.[195] Announced de-SPAC deals in Q1 2023 amounted to $22.5 billion, with an average of $479 million per deal, a decline from Q1 2022's figures of $41.8 billion total and an average of $1.23 billion per deal. Furthermore, the dissolution of SPACs was incredibly high in Q1 2023, with 71 dissolving, more than half of the total 145 dissolutions observed throughout all 2022.[196]

However, it is worth noticing that the reality of measuring SPACs performance is complex and the horrible performance of recently de-SPAC companies can be primarily attributed to many different market conditions rather than to an increased risks specifically associated with SPAC transactions. The following graph demonstrates that, when accounting for warrant returns, de-SPACed companies have exceeded the performance of comparable IPOs since 2019, and warrants have been a component in almost 94%[197] of SPACs since 2019. As a result, investors in de-SPACed companies have experienced higher returns compared to those investing in companies that went public through conventional IPOs.[198]



Source: SPAC research

[195] J. R. Ablan, R. H. Ferris & A. J. Noreuil, *Special Purpose Acquisition Companies Continue to Face Headwinds* (May 5, 2023), https://www.mayerbrown.com/en/perspectives-events/publications/2023/05/special-purpose-acquisition-companies-continue-to-face-headwinds.
[196] *Id.*
[197] SPAC analytics.
[198] I-Bankers Securities, Inc., Comment Letter to the Securities and Exchange Commission (June 24, 2022), https://www.sec.gov/comments/s7-13-22/s71322-20132947-303301.pdf.

E. Cost-Saving Strategies for Leveraging SPAC Benefits

Despite all the criticisms and troubles over the years, there are several ideas that could potentially improve the future of SPACs, various Sponsors and brokerage firms are proposing new structures in order to align the interests of investors and sponsors more effectively. A pioneering example is the innovative "SAIL" model, which stands for "Stock Appreciation Incentive Linked to Equity," is a compensation structure proposed by Morgan Stanley that ties the grant of promote shares to SPAC sponsors to the time-based appreciation of the merged company's stock.[199] Under this model, SPAC sponsors are incentivized to create long-term shareholder value, as their promote shares are tied to the performance of the merged entity's stock price over a certain period of time. This incentivizes SPAC sponsors to focus on the long-term growth of the company, rather than just completing a quick merger and cashing out. The SAIL model has already been successfully applied in various SPAC deals, such as CBRE Group Inc's SPAC, which raised over $400 million in December 2020.[200] In the Capital and Promote Structure(CAPS) by Evercore, SPAC sponsors are initially given a 5% promote, which is a portion of the equity in the merged entity that is granted to the sponsor at the time of the SPAC's initial public offering. The sponsor is then entitled to 20% of the volume-weighted average price of the stock's appreciation after the SPAC's initial public offering.[201]

Analyzing again the $4 billion Pershing Square Tontine Holdings SPAC, created by Bill Ackman and Pershing Square, has certain innovative elements that should be considered. For example, the structure includes non-detachable warrants, which are warrants that cannot be traded apart from the shares. In order to discourage short-term arbitrage investors from trading the warrants, this means that investors cannot buy or sell the warrants separately from the shares. Pershing Square is hoping that by doing this, it will be able to draw long-term investors who are interested in the potential upside of the SPAC's target acquisition rather than short-term traders who are only looking to profit from trading the warrants separately from the shares. In addition to non-

[199] Morgan Stanley, SPACs: An IPO Alternative? (2021), https://www.morganstanley.com/ideas/spacs-IPO-alternative.
[200] Renaissance Capital, CBRE Group's real estate SPAC CBRE Acquisition Holdings files for a $400 million IPO (Nov. 9, 2020), https://www.nasdaq.com/articles/cbre-groups-real-estate-spac-cbre-acquisition-holdings-files-for-a-$400-million-ipo-2020.
[201] S&P Global Market Intelligence, *Evercore looking to tweak SPAC model with 'CAPS' offerings* (Oct. 21, 2020), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/evercore-looking-to-tweak-spac-model-with-caps-offerings-60852424.

detachable warrants, PSTH invested $67.8 million for a 6.21% stake in the company through warrants, which can only be exercised at a 20% premium three years post-acquisition.[202] This approach has influenced other SPACs, such as Starboard Value Acquisition Corp[203], which offered investors one-sixth of a warrant and the opportunity for an additional one-sixth if they retained their position during a merger announcement. Ribbit Leap Ltd. has raised $350 million by offering founders 10% of post-merger shares and additional shares upon meeting performance benchmarks.[204] Executive Network Partnering Corp. offers sponsors 5% of shares and an opportunity to gain an additional 15% if the stock appreciates by 10% from IPO pricing post-merger. [205] All these strategies align sponsor and investor interests for long-term growth.

All of these methods, however, have been created before the SEC proposal and even though they would also lead to effective results even after the SEC proposal there are some more general points that the *Klausner* paper touches on that could further improve SPACs. In the anlysis are underlined two main problems in the SPAC structure, firstly Warrants, wich provided to IPO investors, serve as compensation for immobilizing their capital during the SPAC's acquisition search period, consequently diluting post-merger shareholders. [206] Secondly, the sponsor compensation, usually in the form of "promoted interests," averages around $54 million or a 433% return, a figure challenging to justify considering the sponsors' role. [207] The proposed modification include eliminating warrants and revising sponsor compensation to promote long-term value. As evidenced by Altimeter's $4 billion PIPE for Grab[208], adjustments could also be made to underwriter fees depending on not redeemed shares and to use large PIPES. An alternative would

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[202] Out of Bill Ackman's SPAC Woes Comes Innovation, The Economist (Aug. 28, 2021),. https://www.economist.com/finance-and-economics/out-of-bill-ackmans-spac-woes-comes-innovation/21803915

[203] Cyxtera Closes a $493 million Business Combination with Starboard Value Acquisition Corp. and Will Begin Trading on Nasdaq on July 30, 2021, Cyxtera (July 29, 2021),https://www.cyxtera.com/about-us/press-releases/cyxtera-closes-business-combination-with-starboard-value-acquisition-corp-and-will-begin-trading-on-nasdaq-on-july-30-2021.

[204] Ribbit Capital's Fintech SPAC Ribbit LEAP Prices $350 Million IPO at $10, Renaissance Capital (Sept. 11, 2020), https://www.renaissancecapital.com/IPO-Center/News/71057/Ribbit-Capitals-fintech-SPAC-Ribbit-LEAP-prices-$350-million-IPO-at-$10.

[205] Executive Network Partnering Corporation, U.S. Securities and Exchange Commission, https://www.sec.gov/Archives/edgar/data/1816261/000119312522257768/d336730ddefm14a.htm.

[206] Klausner, Michael D. *A Sober Look at SPACs*. p. 61.

[207] Klausner, Michael D. p. 62.

[208] Grab Holdings completed a $40 billion SPAC merger, the largest blank-check deal to date (Anuradha, 2022). The Southeast Asian company chose to list in the U.S. through a merger with Altimeter Growth Corp., attracted to the SPAC's experience and capital commitment. The SPAC deal allowed Grab to list at a $40 billion valuation, up 150% in a year. After a strong 2020, Grab pursued a public listing, opting for a SPAC merger over an IPO. Anuradha, S. (2022, February 18). *DeSPAC/PIPE Deal: Grab Holdings*' US$39.6bn deSPAC and US$4bn PIPE. IFR. https://www.ifre.com/story/3226733/despacpipe-deal-grab-holdings-us396bn-despac-and-us4bn-pipe-zglzf7cl9n.

be to include the beneficial aspects of SPACs within conventional IPOs and direct listings, resulting in a "sponsored IPO". In order to ensure deal certainty without incurring the costs of a SPAC, these alternatives could make use of a sponsor for identification and advisory reasons as well as a PIPE to confirm the valuation. This hybrid strategy could offer SPAC gains without the typical costs associated with them, such as warrants, underwriter fees on redeemed shares, and additional advisory fees.[209] However, there are still plenty of unsolved issues, such as the true worth of sponsors, whether or not businesses would bear the bill for SPAC expenses, and how greater disclosure will affect SPACs in comparison to other options.

VI. CONCLUSION

SPACs are an alternative method for companies to go public, with benefits, sometimes partially true, such as speed, flexibility, and lower costs. However, they include certain problems, such as the risk of diluting investor shares, conflicts of interest, and ambiguity over sponsor compensation and sustainability. Entrepreneurship, innovation, and investor need for access to new opportunities all have driven the growth in SPAC activity in recent years and ACs with successful and established sponsors who created value through their acquisition targets and management had the highest performance. Nevertheless, on average, SPACs have had difficulty duplicating or outperforming the success of conventional IPOs and related companies.

In the 2022 recent proposal, the SEC attempted to provide de-SPAC transactions protections structured after regular IPOs. While improving investor protections is the goal, some claim that the plans could unintentionally impede innovation and diminish access to funding for companies. In addition, it's debatable whether the rules would actually result in improved investment outcomes. Strategies that balance disclosure requirements and oversight from regulators while aligning the interests of sponsors, investors, and targets are needed to reinforce SPACs in a sustainable way. Using PIPE investments prudently, supplying sponsor compensation to long-term stock performance, and incorporating SPAC benefits into IPOs or direct listings are some possible solutions. The SEC's proposed SPAC restrictions may deter some businesses from going public in the United States and encourage them to pursue alternate listing destinations with

[209] Klausner, Michael D. p. 64.

less onerous standards. These businesses may decide to use smaller exchanges, like the UK, Europe, or Asia rather than adhere to the SEC's stricter disclosure and monitoring requirements and this could lead to an unanticipated increase of SPAC listings abroad. Facing extra compliance costs and obstacles, some sponsors and companies may find it simpler to take their SPACs public on foreign exchanges with more permissive SPAC frameworks already in place. The final effect might be a surge in SPAC listings on overseas exchanges, while U.S. activity slows down as a result of too much regulatory scrutiny. A "one-size-fits-all" strategy rarely succeeds in the financial markets and could have the unexpected consequence of driving certain SPACs completely out of the United States.

Therefore, it's critical to understand that, despite sharing a few similarities with traditional investment organizations, SPACs are distinct from them. They have carved out a special place of their own in the financial ecosystem, offering an appealing path for businesses that might not otherwise think about going public. SPACs democratize the public markets, giving a larger range of companies the chance to spur growth and innovation.

Despite it is known that SPAC financial returns are not mostly equivalent to those from conventional IPOs, an excessive emphasis on immediate profits can hide the wider advantages SPACs provide and despite recessions or market fluctuations, SPACs have continuously generated positive returns over the past 20 years, showing their sustainability and resilience. Additionally, SPACs with venture capital backing have outperformed rivals in terms of performance, and this strategy emphasizes long-term growth and corporate reinvention, connecting SPACs more with venture capital than with conventional public market investment strategies. SPACs can help change market segments, provide high-quality jobs, and help build long-lasting businesses by adopting this approach.

Importantly, when adequately set up, SPACs could work efficiently as a continuation of the venture capital model, providing businesses additional funding as well as guidance after they finish up all their traditional venture capital resources. They also give "Series B" companies, which might not generate as much interest in conventional public markets, a platform to acquire the capital and assistance they require to succeed. In my opinion, the public listing should not exclude or reduce the power of SPACs, which are subject to extensive examination; hence, the success or failure of these newly public firms will be determined by market forces, in order to break the myth that markets are only for already prospering companies. Indeed, many studies have begun investigating the impact of "green SPACs" and how to define them, which specifically target businesses focused on environmental sustainability, clean energy, and other eco-friendly solutions, and these SPACs may play a major part in accelerating the transition towards a greener and more sustainable global economy. SPACs tend to be linked with innovative markets and ground-breaking venturesand like all other SPAC sectors, the results can be positive when mergers are announced, but they frequently encounter negative outcomes later. Green SPACs so may not consistently add to the value of a firm the way they're performing presently.[210] Despite these limitations, the study of Green SPACs is extremely valuable, because it gives significant details about their economic traits and their importance in sustainable financing.

Looking forward, regulators, market players, and sponsors themselves are likely to need to experiment more. SPACs are an alternate source of a capital experiment that has highlighted both opportunities and limitations. However, it's critical to wait for developments following the SEC 2022 proposal, because it constitutes a substantial danger, but it also contains numerous significant provisions that cannot be disregarded and if the future will go in the right direction, SPACs have the ability to coexist with - and even supplement - traditional ways of accessing the public markets with proper oversight and a balance between competing interests.

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[210] Dimic, Nebojsa and Goodell, John W. and Piljak, Vanja and Vulanovic, Milos, *Green SPACs* (January 31, 2023), SSRN: https://ssrn.com/abstract=4343929 or http://dx.doi.org/10.2139/ssrn.4343929.

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15 U.S.C. § 78c(a)(51)(A) (2006). The actual implementing regulations, which were updated in 2005, are at 17 C.F.R. § 240.3a51-1 (2007).

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