



Ernst & Young LLP
5 Times Square
New York, NY 10036

Tel: +1 212 773 3000
ey.com

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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Re: Request for Comment on Special Purpose Acquisition Companies, Shell Companies, and Projections (Release Nos. 33-11048; 34-94546; IC-34549; File No. S7-13-22)

Dear Ms. Countryman:

Ernst & Young LLP is pleased to respond to the Securities and Exchange Commission (SEC or Commission) request for comment on its proposed rules, *Special Purpose Acquisition Companies, Shell Companies, and Projections*.

We support the Commission's overall objective of enhancing investor protection in an initial public offering (IPO) by a special purpose acquisition company (SPAC) and in a subsequent business combination transaction between a SPAC and a private operating company (de-SPAC transaction). Further, we support the Commission's efforts to ensure that information provided to investors is useful and clear so that they can be better-informed when they decide whether to purchase securities in a SPAC IPO, whether to purchase or sell SPAC securities in secondary markets, whether to vote for a de-SPAC transaction and whether to redeem their shares.

We offer the following observations and recommendations on the proposal for consideration by the Commission in achieving its objective.

Aligning de-SPAC transactions with IPOs

Through our involvement with de-SPAC transactions, we have observed inconsistencies in reporting between de-SPAC transactions and traditional IPOs and note that the SEC staff has had to provide interpretations of certain financial statement and other requirements to bridge some of those gaps. We believe that codifying these interpretations in the final rules would be useful. We also support the proposed rules and amendments to existing rules that would align the treatment of private operating companies entering the public markets through de-SPAC transactions more closely with companies conducting traditional IPOs. In addition, there are several other areas where we believe the SEC should consider further aligning the requirements for these transactions to support capital formation as well as investor protection, as described below.

Matters related to financial reporting

The Commission has proposed aligning the number of fiscal years required to be included in the financial statements of a private company that will be the predecessor(s) in a shell company combination with the financial statements required to be included in a Securities Act of 1933 (Securities Act) registration statement for an initial public offering of equity securities in proposed Rule 15-01(b) of Regulation S-X. We strongly support permitting a shell company, including a SPAC, to include two years of financial statements of a private operating company that would qualify as an emerging growth company (EGC) in a registration statement or proxy statement even if the shell company has filed or was already required to file its annual report. This would align the reporting requirements for the private operating company with the requirements for a private operating company conducting a traditional IPO.

Also, to further align de-SPAC transactions with IPOs, we recommend that the SEC staff permit (separate from the rule amendments) a shell company conducting a de-SPAC transaction to voluntarily submit draft registration statements for nonpublic review consistent with the confidential review process that is available for drafts of initial Securities Act registrations, including IPOs.

Redetermination of smaller reporting company status

As proposed, smaller reporting company (SRC) status would be redetermined based on public float measured as of a date within four business days after the consummation of the de-SPAC transaction and the annual revenues of the private operating company as of the most recently completed fiscal year for which audited financial statements are available. While we understand the SEC's objectives, we believe such a redetermination immediately after the de-SPAC transaction is inconsistent with the Commission's objective of aligning the requirements with those of IPOs. That's because it could often result in companies being required to provide additional information in a follow-on registration statement as soon as four days after the de-SPAC transaction that goes beyond the information on which investors made a voting decision for the purposes of the de-SPAC transaction.

For example, the proposed redetermination timing could result in a post-business combination company losing its SRC status and having to provide an additional year of audited financial statements (i.e., for the year preceding the earliest period included in the Form S-4/proxy) in a follow-on registration statement filed before the first annual report due after the merger transaction.

An alternative approach would be for a company, upon completion of a de-SPAC transaction, to transition into or out of SRC status in conjunction with the annual report to be filed for the year of the transaction based upon the public float as of the later of four business days after the merger transactions or the end of the second fiscal quarter. Such a revision could still result in an SRC merging with a public shell exiting SRC status more quickly than under current rules while mitigating the burden and inconsistency of providing incremental information not previously required for companies accessing the public market shortly after the de-SPAC transaction.

Redetermination of EGC, filer and foreign private issuer status

We recommend aligning the determination of EGC status, filer status and foreign private issuer status for the post-business combination company with the requirements that apply to a traditional IPO. We believe that, if the post-business combination company is not eligible to file a Form S-3 shelf registration statement, it would be consistent to disregard the SPAC's reporting history for purposes of determining filer status (i.e., a post-business combination company would generally be a non-accelerated filer). Such entities should also be permitted to "reset" the EGC clock of five years for considering their status as an EGC.

We have observed an evolution in the structuring of SPAC transactions (e.g., use of a double-dummy structure) that can achieve certain financial reporting results (e.g., filer status and foreign private issuer status). Therefore, we support aligning the redetermination requirements so that the transaction structure would not result in financial reporting differences.

Relevant use of Form 8-K and related matters

Item 2.01(f) of Form 8-K currently requires a shell company registrant to file, after an acquisition that causes it to cease being a shell company, the information that would be required if the registrant were filing a general form for the registration of securities on Form 10, commonly referred to as a "Super 8-K." We believe a Super 8-K may not be necessary or relevant.

We considered that the requirement to file the Super 8-K, adopted in 2005, was intended to protect investors from fraud and abuse by requiring the shell company to file the same type of information it would be required to file to register securities under the Securities Exchange Act of 1934 (Exchange Act). That is, the objective was to provide investors with adequate information to make informed investment decisions after the merger when private operating company information was not filed in advance of the merger. However, the same type of information is included when a SPAC files a registration/proxy statement for a de-SPAC transaction and, therefore, investors receive sufficient, timely information for investment decisions in connection with and after the de-SPAC transaction. Further, we have observed that Super 8-K filings typically do not provide new information unless there is a need for updated financial information which, absent a requirement to file a Super 8-K, would otherwise be captured through existing Exchange Act reporting requirements.

We believe removing the requirement to file a Super 8-K would simplify reporting and not result in the omission of critical disclosures and would further align the process to update financial and other material information with that of a traditional IPO following the filing of a Form S-1. That is, if additional financial statement periods were required to be reported, the registrant could provide these financial statements in a traditional Form 8-K (i.e., one that does not require including the information that would be required if the registrant were filing a general form for the registration of securities on Form 10).

As noted in the proposal, the Super 8-K may require a third fiscal year of certain financial statements for an acquired business that is the predecessor to a shell company, while Rule 15-01(b), as proposed, would only require two years if the predecessor qualifies as an emerging growth company. If the Commission does not eliminate the Super 8-K requirement, we believe the Commission should consider amending the Form 8-K requirement to provide an exception to the required Form 10-type information so the financial statements of the acquired business need not be presented for any period prior to the

earliest audited period previously presented in connection with a registration, proxy or information statement of the registrant. For the same reasons as discussed above, we do not believe that more information should be required shortly after the transaction than what was required to be disclosed for purposes of voting on the transaction.

We also note that the Commission has proposed to revise Item 2.01(f) of Form 8-K to refer to an “acquired business,” rather than “registrant,” in an effort to clarify that the information provided relates to the acquired business and for periods prior to consummation of the acquisition and not the shell company registrant. We believe the Commission should revise this item to refer to “predecessor,” rather than “acquired business.” This change would be consistent with the terminology in proposed Article 15. Absent this change, we believe that the revision to Item 2.01(f) could have the unintended consequence of requiring a non-predecessor acquired business in a SPAC merger to provide such Form 10-level information.

Other considerations

Net tangible book value in dilution disclosures

As stated in the proposal, the Commission believes that enhanced disclosure regarding dilution could enable investors in a SPAC to better understand the potential impacts of various dilutive events over the lifespan of the SPAC. Specifically, proposed Item 1602(a)(4) would require disclosure of the estimated remaining pro forma net tangible book value per share at specified redemption levels consistent with the methodologies in Item 506 of Regulation S-K. However, Item 506 does not provide a definition for net tangible book value, and as a result, we have observed diversity in such calculations. We recommend that the Commission include a definition of net tangible book value in the final rule to enhance the usefulness and comparability of the dilution disclosures for investors in SPAC transactions and other registered securities offerings as applicable.

SPAC as a business and relevance of SPAC financial statements in certain scenarios

We do not support amending Rule 11-01(d) to specifically state that a SPAC is a business for the purpose of that rule. Such a conclusion for a SPAC appears contradictory to the underlying premise of the Rule 11-01(d) definition, which requires an evaluation of whether “there is sufficient continuity of the acquired entity’s operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations.” Consistent with this belief, we refer to the Commission’s view, included in the proposal as the basis for Rule 15-01(e), that “the financial statements of the SPAC, as a shell company, would generally no longer be relevant or meaningful to an investor after a de-SPAC transaction once the financial statements of the registrant include the period in which the de-SPAC transaction was consummated for any filing.”

We support proposed Rule 15-01(e) that would permit a registrant to exclude financial statements of a shell company for periods prior to the acquisition once certain conditions have been met. However, the acknowledgement of these financial statements as not “relevant or meaningful to an investor” appears inconsistent with the Commission’s statement indicating that the financial statements of the SPAC could be material to an investor (when an operating company is the legal acquiror of the SPAC) when discussing the proposed amendments to Rule 11-01(d). We note that the proposal asserts that “the financial statements of the SPAC could be material to an investor, particularly when they underpin adjustments to

pro forma financial information in a transaction when an operating company is the legal acquirer of a SPAC.” However, based on our experience with these transactions, the historical financial statements of the SPAC are not necessary for the purposes of the pro forma financial information. For example, the trust account amounts in the pro forma information significantly differ from actual amounts due to transaction costs and redemptions. Any private investment in public equity (PIPE) transaction is also not reflected in the historical SPAC financials, and much of the SPAC’s historical income statement activity is generally eliminated in the preparation of the pro forma financial statements.

Accordingly, we do not believe the financial statements of a shell company, including a SPAC, are necessary in filings made after the business combination because such financial statements do not provide material information to investors. We also believe that the potential costs to maintain SPAC financial statements, including any required audits, would be an unnecessary burden on the registrant.

Reports, opinions and appraisals in fairness determinations

Item 1607(c) of the proposal would require a SPAC receiving a report, opinion or appraisal from a third party in consideration of a fairness determination to file as exhibits (or include) all such reports, opinions or appraisals in the applicable registration statement (or schedule). This requirement would be in addition to the proposed summary disclosures of the report, opinion or appraisal required by proposed Item 1607(b). The significant details included in the summary provided to an investor about the fairness determination could limit any incremental benefit an investor would receive from the filing of lengthy reports, opinions or appraisals. The Commission may also want to consider whether the incremental cost and liabilities related to requiring such reports, opinions or appraisals to be filed would have the unintended consequence of discouraging SPACs from obtaining such reports, opinions or appraisals as these documents are not required to be obtained as a basis for the SPAC’s fairness determination under the proposal.

Transition provisions

We recommend that the Commission include transition provisions, including consideration of the use of grace periods where relevant, to allow SPACs, private operating companies, investors and other parties to prepare for the changes and understand the implications for any transactions that are in process. For example, with respect to proposed Rule 3a-10, we suggest that the Commission clarify how the duration limitation conditions would be determined if a SPAC’s initial registration statement effective date is before the effective date of the final rule. As another example, we believe the Commission should consider clarifying how the provisions of proposed Rule 140a and Rule 145a would be applied when Form S-4 or Form F-4 has been submitted to the Commission but not yet declared effective.

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We would be pleased to discuss our comments with the Commission or its staff at its convenience.

Yours sincerely,

