

January 4, 2021

SEC Division of Corporation Finance Issues SPAC Disclosure Guidance

The Staff of the Division of Corporation Finance recently issued CF Disclosure Guidance: Topic 11 – Special Purpose Acquisition Companies (available [here](#)). This guidance highlights disclosure considerations for SPACs at both the IPO and business combination stages, with a focus on disclosures around conflicts of interest and the differing economic interests of SPAC sponsors, directors, officers and their affiliates (collectively, “SPAC Insiders”) as compared to the interests of the SPAC’s public shareholders.

IPO Disclosure Considerations

In an effort to elicit better disclosures when a SPAC goes public, the guidance poses questions for SPACs to address in the IPO registration statement on the following topics of concern to the Staff:

- *conflicts of interests* – especially on the part of the SPAC Insiders, with regard to fiduciary and contractual relationships they have with entities other than the SPAC and competition for business combination opportunities, and the potential for conflicts in the business combination transaction itself;
- *the limited time that a SPAC has to complete a business transaction and its impact* – including the financial incentives of the SPAC Insiders to complete a transaction, their influence over the approval of any transaction, the ability to amend governing documents to facilitate a transaction, the ability to extend the timeline to complete a transaction, and the prior SPAC-success track record of the sponsors, directors and officers;
- *the compensation and role of the underwriters* – including any deferral of underwriting compensation until completion of the business transaction, what additional services the underwriters may be providing, any conflict of interest the underwriters may have (especially if providing additional services given deferred IPO underwriting compensation), and the timing, conditionality and manner (*i.e.*, cash or other consideration) of the payment of compensation to the underwriters;
- *the economic terms of SPAC Insider investments* – including the securities ownership of SPAC Insiders and the prices at which they acquired those securities (and the terms, amount and impact of any concurrent offering in which they may be participating), and any conflicts of interest arising from their securities ownership, compensation arrangements and relationships with affiliated entities that may create a financial incentive to complete a business transaction even if not in the best interest of other

public shareholders — the Staff specifically asks SPACs to clearly disclose that “if the SPAC fails to complete a business combination transaction, some of all of the sponsors’, directors’, and officers’ and their affiliates’ securities would have no value and the sponsors, directors, officers and their affiliates may incur a substantial loss on their investment”; and

- *the terms of SPAC issuances to its sponsor and others in private financings* – including how, if applicable, the terms of different classes of securities compare to the rights, terms and risks of public securities offered in the IPO, the impact of any of these offerings (especially of convertible securities) on the SPAC’s capital structure, whether the SPAC will seek additional funding and how the price and terms of any securities the SPAC may issue in the future could compare to the securities offered to the public in the IPO and whether the SPAC Insiders may participate, or have an interest, in the financing, and the terms, and potential dilutive effect, of any forward purchase agreement (including whether the commitments are irrevocable).

Business Combination Disclosure Considerations

The guidance also poses specific questions for SPACS to address in the business combination context to elicit clearer disclosure in the business combination filing with the SEC on the following topics:

- *additional financing* – whether additional financing is necessary to complete the business combination, how the terms of any financing may impact public shareholders, and, if the additional financing involves the issuance of securities, the material terms of such securities, including how the pricing and terms compare to, and differ from, the IPO, the financing’s impact on the capital structure and if convertible securities are to be issued, the terms of conversion and the impact on beneficial ownership of the combined company, and whether the SPAC Insiders are participating in the financing;
- *interests of SPAC Insiders in evaluating the transaction and other opportunities* – including detailed information regarding the identification and evaluation of the proposed transaction, detailed information regarding the negotiations over the nature and amount of consideration, the material factors considered by the board in its approval of the transaction, how the board evaluated the interests of the SPAC Insiders, whether there are any conflicts of interest of the SPAC Insiders and how the SPAC addressed these conflicts, any interest the SPAC Insiders have in the target company (including the timing and acquisition cost thereof), detailed information on how the SPAC Insiders will benefit (including quantifying any compensation payments or investment returns), and the total percentage ownership interest the SPAC Insiders may hold after the combination (including after the exercise of warrants and conversion of convertible debt); and
- *underwriters services and fees* – including disclosure of all services and the timing, conditionality (*i.e.*, contingency) and manner (*i.e.*, cash or other consideration) of the payment of compensation to the

underwriters, and any conflict of interest the underwriters may have (especially if providing additional services given deferred IPO underwriting compensation).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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