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Accounting and SEC Reporting Considerations for SPAC Transactions

This publication was updated on February 10, 2021, to reflect additional interpretive guidance on financial statement presentation for reverse recapitalizations, classifying share-settleable earn-out arrangements, and the availability of nonpublic review for registration statements on Form S-4. It also includes considerations related to CF Disclosure Guidance Topic 11 as well as recently adopted amendments to Regulation S-K. Text that has been added or amended since this publication's initial issuance has been marked with a ***boldface italic date*** in brackets.

Introduction

On the heels of a record-breaking year in 2020, special-purpose acquisition company (SPAC) initial public offerings (IPOs) set a new record in January 2021 by raising nearly \$26 billion in proceeds in a single month.¹ Given the continuing success of SPAC transactions, many private operating companies have been merging with SPACs to raise capital rather than using traditional IPOs or other financing activities (see Deloitte's *Private-Company CFO Considerations for SPAC Transactions* for further discussion of the growth and lifecycle of SPACs). After a SPAC merges with a private operating company (the "target"), the target's financial statements become those of the combined public company (the "combined company"). Therefore, a target will need to devote a considerable amount of time and resources to technical accounting and reporting matters.

¹ Source: <https://www.bloomberg.com/news/articles/2021-01-29/spac-listing-boom-drives-record-63-billion-january-for-ipos>.

Background

A SPAC is a newly formed company that raises cash in an IPO and uses that cash or the equity of the SPAC, or both, to fund the acquisition of a target. After a SPAC IPO, the SPAC's management looks to complete an acquisition of a target (the "transaction") within the period specified in its governing documents (e.g., 24 months). In many cases, the SPAC and target may need to secure additional financing to facilitate the transaction. For example, they may consider funding through a private investment in public equity (PIPE), which will generally close contemporaneously with the consummation of the transaction. If an acquisition cannot be completed within the required time frame, the cash raised by the SPAC in the IPO must be returned to the investors and the SPAC is dissolved (unless the SPAC extends its timeline via a proxy process).

Before completing an acquisition, SPACs hold no material assets other than cash; therefore, they are nonoperating public "shell companies," as defined by the SEC (see [paragraph 1160.2](#) of the SEC's Financial Reporting Manual (FRM)). Since a SPAC does not have substantive operations before an acquisition has been completed, the target becomes the predecessor of the SPAC upon the close of the transaction, and the operations of the target become those of a public company. As a result, the target must be able to meet all the public-company reporting requirements that apply to the combined company. Many of the requirements discussed in this publication are related to the fact that the target is considered the predecessor to an SEC registrant (i.e., the SPAC).

Since a SPAC's shareholders are required to vote on the transaction, the SPAC may file either (1) a proxy statement on Schedule 14A or (2) a combined proxy and registration statement on Form S-4 (note that (1) and (2) are collectively referred to herein as a "proxy/registration statement"). These documents must include the target's financial statements, which are expected to comply with public-company GAAP disclosure requirements as well as SEC rules and requirements. For annual periods, the financial statements are expected to be audited in accordance with PCAOB standards.

Once the SPAC's shareholders approve the transaction, the acquisition will close, and the combined company has four business days to file a special Form 8-K ("Super 8-K") that includes all the information that would have been required if the target were filing an initial registration statement on Form 10. Accordingly, the SPAC and the target should take care to ensure that the acquisition is not closed until all the financial information required for the Super 8-K, including financial statements that comply with the SEC's age requirements, is available and audited in accordance with the standards of the PCAOB.

The financial statement requirements and related SEC review process for a SPAC transaction are largely consistent with the requirements for a traditional IPO. At the 2020 AICPA Conference on Current SEC and PCAOB Developments, staff of the SEC's Division of Corporation Finance (the "Division") noted the significant increase in the amount of proceeds raised in SPAC IPOs in recent months as well as the increased attention given to such transactions from various market participants. Craig Olinger, senior advisor to the Division chief accountant, stated that the SEC staff's review process for both the IPO registration statement of a SPAC and its subsequent merger proxy or registration statement is consistent with the review process for a traditional IPO. **[Paragraph added February 10, 2021]**

[CF Disclosure Guidance Topic 11](#) (DG Topic 11), issued on December 22, 2020, outlines disclosure considerations for both SPAC IPOs and the subsequent transaction. The guidance includes a series of questions that companies should consider when evaluating disclosures about (1) the financing necessary to complete the transaction, (2) interests and incentives of the SPAC sponsor and board of directors that may conflict with SPAC shareholders, and (3) interests of any underwriters involved in the transaction. **[Paragraph added February 10, 2021]**

When planning for SPAC transactions, entities should also be mindful of the following unique considerations:

- The SEC's draft registration review process may be available for SPAC transactions in certain circumstances and only for the initial submission.
- The SPAC and the target must work through the accounting for the transaction to determine (1) whether the SPAC or the target is the acquirer for accounting purposes (the "accounting acquirer") and then (2) whether the nature of the transaction is an acquisition or recapitalization (as discussed in the [Identifying the Accounting Acquirer](#) section).
- Pro forma financial information must be presented to reflect the accounting for the transaction.
- While the SEC review process for a SPAC is as thorough and rigorous as that for a traditional IPO, after the SEC has completed its review of a SPAC's proxy/registration statement, there is generally a period (e.g., 20 days) during which SPAC shareholders decide whether to approve the transaction. Separately, investors must also decide whether they wish to participate in the combined company or redeem their shares in the SPAC.
- In addition to the SEC requirements discussed below, the target's management may have other reporting considerations related to its support of the transaction, such as assisting in the marketing of PIPE financing and securing additional funding for the transaction.

Key Provisions for a SPAC Transaction

When conducting a SPAC transaction, the target should assess the following technical accounting and SEC reporting considerations, which are discussed in this publication:

- [SEC Filing Requirements.](#)
- [Proxy/Registration Statement Requirements:](#)
 - [Financial Statement Requirements.](#)
 - [Age of Financial Statements.](#)
 - [Pro Forma Financial Information.](#)
 - [Other Financial and Nonfinancial Information.](#)
- [Identifying the Accounting Acquirer.](#)
- [Financial Statement Presentation for Reverse Recapitalizations.](#)
- [Classifying Share-Settleable Earn-Out Arrangements.](#)
- [Proxy/Registration Statement Filing and Review Process:](#)
 - [SEC Review Process.](#)
 - [Availability of Nonpublic Review.](#)
- [Super 8-K Requirements.](#)
- [Ongoing Reporting Requirements.](#)
- [Internal Control Over Financial Reporting and Disclosure Controls and Procedures.](#)

The discussion herein applies to SPAC transactions in which (1) a domestic SPAC merges with a domestic target and (2) the SPAC has identified only one target for the transaction. SPAC transactions that involve foreign entities or multiple targets generate additional complexity, and we recommend further consultation with accounting and legal advisers. Further, views on the accounting and reporting requirements for SPAC transactions continue to evolve. While

the discussion below reflects our understanding as of the date of this publication, because of the complexity involved in SPAC transactions and evolving views, we recommend regular consultation with accounting and legal advisers. This publication may be updated in the future as views evolve.

SEC Filing Requirements

As discussed above, before consummating a transaction, a SPAC will be required to file one of the following:

- *Proxy statement on Schedule 14A* — Generally required for the SPAC to solicit votes from its shareholders to consummate the transaction.
- *Combined proxy and registration statement on Form S-4* — Generally required if the SPAC is registering additional securities as part of the transaction.

The reporting requirements for the proxy statement on Schedule 14A and the combined proxy and registration statement on Form S-4 are substantially the same and are addressed in the Proxy/Registration Statement Requirements section below.

A Super 8-K must be filed within four business days of the consummation of a transaction, and the target will thereafter fulfill the combined company's ongoing reporting obligations. See the [Super 8-K Requirements, Ongoing Reporting Requirements, and Internal Control Over Financial Reporting and Disclosure Controls and Procedures](#) sections for further information.

Proxy/Registration Statement Requirements

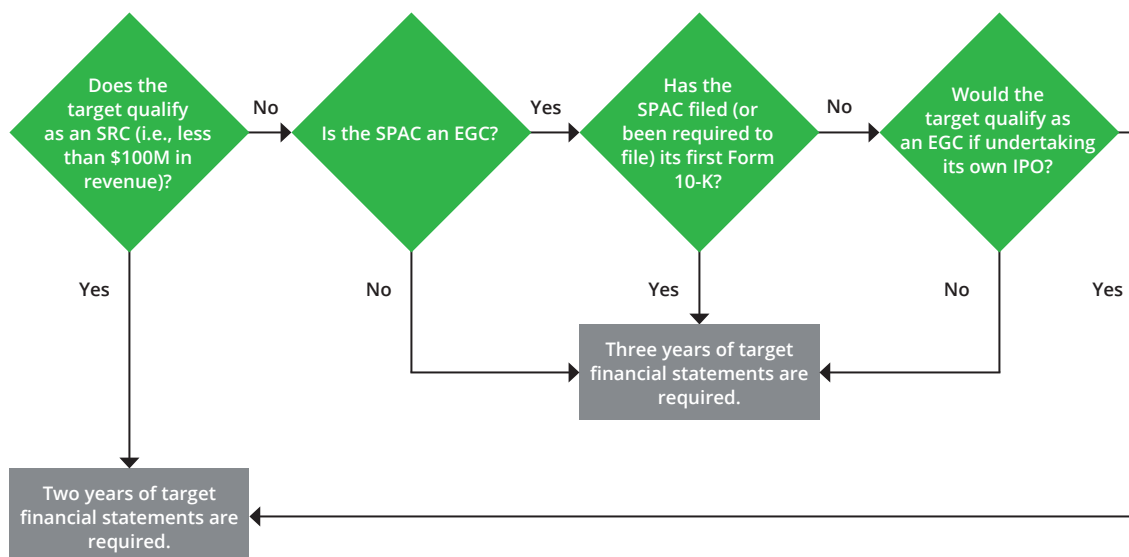
The SPAC's shareholders are required to vote on the transaction in which the SPAC merges with the target. Therefore, the proxy/registration statement must include the following information related to the target:

Financial Statement Requirements

The proxy/registration statement must include the target's (1) annual financial statements audited in accordance with PCAOB standards and (2) unaudited interim financial statements, depending on the timing of the transaction. Generally, the target must include annual audited financial statements for **three** years. However, there are two scenarios in which the financial statement requirements may be reduced from three years to two years:

- *Smaller reporting companies (SRCs)* — In a manner consistent with [paragraph 1140.3](#) of the FRM, a target may provide **two** years of audited financial statements rather than three years if the target (1) is not an SEC reporting company **and** (2) would otherwise meet the definition of an SRC (i.e., it reported less than \$100 million in annual revenues in its most recent fiscal year for which financial statements are available).
- *Emerging growth companies (EGCs)* — In a manner consistent with [paragraph 10220.7](#) of the FRM, a target may provide **two** years of audited financial statements rather than three years if all of the following apply: (1) the SPAC is an EGC, (2) the SPAC has not yet filed or been required to file its first Form 10-K, and (3) the target would qualify as an EGC if it were conducting its own IPO of common equity securities. A private company target would generally qualify as an EGC in its own IPO if it has total annual gross revenues of less than \$1.07 billion during its most recently completed fiscal year and has not issued more than \$1 billion of nonconvertible debt over the past three years. The fact that an EGC SPAC has filed its first Form 10-K only affects the number of years of financial statements required and does not affect other EGC accommodations available to the combined company if it continues to qualify as an EGC after the transaction. **[Paragraph amended February 10, 2021]**

The decision tree below summarizes how entities can determine the number of annual audited years to include in the proxy/registration statement. That determination, as well as the determination of the age of the financial statements, must be reassessed (1) each time an amendment to the proxy/registration statement is filed and (2) when the Super 8-K is filed or amended.



The audited annual financial statements must include (1) balance sheets as of the end of the two most recent fiscal years and (2) statements of comprehensive income, cash flows, and changes in shareholders' equity for the two or three most recent fiscal years (see decision tree above). Depending on the timing of the transaction, unaudited interim financial statements may be required. When needed, interim financial statements must include (1) an interim balance sheet as of the end of the most recent interim period after the latest fiscal year-end (see the [Age of Financial Statements](#) section) and (2) statements of comprehensive income, cash flows, and changes in shareholders' equity for the year-to-date period from the latest fiscal year-end to the interim balance sheet date and the corresponding period in the prior fiscal year.

Financial Statement Presentation and Disclosure Requirements

The target's financial statements must comply with SEC rules and regulations, including SEC Regulation S-X and SEC Staff Accounting Bulletins, both of which govern presentation and disclosures in the financial statements. For example, in accordance with Regulation S-X, Rule 5-03(b), a target is generally required to state separately, on the face of the income statement, revenues (and the associated costs of revenues) related to (1) product sales, (2) rentals, (3) services, and (4) other revenue activities. In addition, Regulation S-X, Rule 4-08(h), requires footnote disclosure of an income tax rate reconciliation, and Regulation S-X, Article 12, requires certain financial statement schedules that should also be considered. However, targets that would qualify as an SRC may instead apply the scaled disclosure requirements for SRCs set forth in Regulation S-X, Article 8. SRCs are generally not required to apply the disclosure provisions of Regulation S-X in their entirety unless Article 8 specifically indicates otherwise.

Regulation S-X, Article 10, outlines the financial statement requirements for interim reporting. The interim financial statements and related footnotes may be presented on a condensed basis in a level of detail allowed by Article 10 but will always need to contain disclosure of any material matters that were not disclosed in the most recent annual financial statements.



Connecting the Dots

Because targets may not have historically prepared interim financial statements, they should ensure that they have established proper controls and procedures for accurately preparing such information on a timely basis.

The target's financial statements must also comply with public-company GAAP, which may trigger additional presentation and disclosure requirements. Such requirements include, for example, mezzanine equity classification (ASC 480²), segment- and entity-wide disclosures (ASC 280), earnings per share (ASC 260), disaggregation of revenues (ASC 606), and incremental business combination disclosures (ASC 805). For further discussion, see [Chapter 5](#) of Deloitte's *A Roadmap to Initial Public Offerings*.

In addition, the target's financial statements cannot reflect Private Company Council accounting alternatives. Therefore, if a target has elected such alternatives, such as amortizing goodwill, the effects of these elections must be unwound before the financial statements are included in the proxy/registration statement.

The target's financial statements generally must reflect the adoption of new accounting standards on the basis of the dates required for public companies. However, it is our understanding that the SEC staff will not object if a target uses private-company (non-public-business-entity) adoption dates if (1) the SPAC is an EGC that has elected to defer the adoption of accounting standards by applying private-company adoption dates, (2) the target would qualify as an EGC if it were conducting its own IPO of common equity securities, and (3) the combined company will qualify as an EGC after the transaction (see [paragraph 10120.2](#) of the FRM for a discussion of assessing EGC eligibility after the transaction).

Financial Statements of Acquired or to Be Acquired Businesses

Under Regulation S-X, Rule 3-05, the target may be required to provide separate audited preacquisition financial statements for its significant acquired or to be acquired businesses (acquirees) in the proxy/registration statement. Note that the definition of a "business" for SEC reporting purposes, which differs from the definition under ASC 805 for U.S. GAAP purposes, focuses primarily on the continuity of revenue-producing activities. The target must perform the significance tests in Regulation S-X, Rule 1-02(w) (i.e., the investment, asset, and income tests). If the acquiree is determined to be significant (i.e., the significance level exceeds 20 percent on any of the three tests), separate audited preacquisition financial statements of the acquiree may be required.



Changing Lanes

On May 20, 2020, the SEC issued a [final rule](#)³ that amends the financial statement requirements for acquisitions and dispositions of businesses, including real estate operations, and related pro forma financial information. The final rule applies to fiscal years beginning after December 31, 2020; however, early application is permitted. The final rule offers significant relief for targets that are undertaking a transaction since, among other changes, they will no longer be required to evaluate acquisitions that occurred before the most recent full fiscal year included in the proxy/registration statement. The example below takes into account the amendments in the final rule.

² For titles of FASB Accounting Standards Codification (ASC) references, see Deloitte's ["Titles of Topics and Subtopics in the FASB Accounting Standards Codification."](#)

³ SEC Final Rule Release No. 33-10786, *Amendments to Financial Disclosures About Acquired and Disposed Businesses*.

Example 1

Company A, a calendar-year-end company, is a target in a SPAC transaction. The proxy/registration statement includes its historical (1) audited annual financial statements as of December 31, 20X9, and December 31, 20Y0, and for the three years ended December 31, 20Y0, and (2) unaudited interim financial statements as of September 30, 20Y1, and for the interim periods ended September 30, 20Y1, and September 30, 20Y0.

Company A acquired Company B, which also has a calendar year-end, in June 20X9. Because the acquisition of B occurred before the most recent full fiscal year presented by A, B's preacquisition financial statements are not required. However, if B had been acquired in June 20Y0, A must evaluate the significance of the acquisition of B. After performing the three significance tests, A determines that the highest level of significance was 41 percent. Therefore, the proxy/registration statement would need to include B's audited annual financial statements as of and for the years ended December 31, 20X9, and December 31, 20X8, and as of March 31, 20Y0, and for the three months ended March 31, 20Y0, and March 31, 20X9. This is because B would not have been included in A's audited results for a complete fiscal year.

For additional information, see [Section 2.4](#) of Deloitte's *A Roadmap to Initial Public Offerings*.

Financial Statements and Summarized Financial Information for Equity Method Investments

Targets with investments that are accounted for under the equity method (equity method investees or "EMIs") should consider the reporting and disclosure requirements in Regulation S-X, Rules 3-09, 4-08(g), and 10-01(b).

In accordance with Rule 3-09, if the target holds an interest in an EMI that is considered significant, the investee's separate financial statements must be included in the proxy/registration statement. An interest in an EMI is considered significant if the result of either the investment test or the income test exceeds 20 percent for any annual period presented in the target's financial statements. If the EMI's financial statements are required in the proxy/registration statement, such financial statements should be (1) as of the same dates and for the same periods as those of the audited consolidated financial statements that the target is required to file (if the EMI and the registrant have the same year-end; otherwise, the separate financial statements may be as of the EMI's year-end) and (2) audited for each year for which the result of either significance test exceeds 20 percent. The EMI's comparative financial statements for any years for which significance did not exceed 20 percent on the basis of either test must still be presented, but they may be unaudited.

A target is not required to include separate interim financial statements for significant EMIs. However, if the individual significance of any EMI is greater than 20 percent, the registrant must disclose summarized income statement information under Rule 10-01(b) in its interim financial statements.

In accordance with Rule 4-08(g), a target must disclose summarized financial information in the footnotes to its annual financial statements for all EMIs whose significance, individually or in the aggregate, exceeds 10 percent in accordance with the asset, income, or investment test.

For additional information on the application of significance tests and their relationship to transactions, see [Section 2.6](#) of Deloitte's *A Roadmap to Initial Public Offerings*.

Auditing and Review Standards

Audits for a private company are typically subject to the auditing standards issued by the AICPA's Auditing Standards Board (i.e., U.S. generally accepted auditing standards (U.S. GAAS)); however, for a SPAC transaction, the audit of the target that becomes the predecessor of the SPAC must be performed in accordance with the standards of the PCAOB. Therefore, even

if the target has previously been audited, the target's auditor will generally need to perform additional procedures and issue an auditor's report, which will be included in the proxy/registration statement, that states that the audit was performed in accordance with both (1) U.S. GAAS and (2) the standards of the PCAOB. In addition, interim financial statements are generally reviewed by the target's auditors.

For audits of fiscal years ending on or after December 15, 2020, critical audit matters (CAMs) must be included in auditors' reports that refer to PCAOB standards, except when the registrant qualifies as an EGC. Although the target is not a registrant, we believe that it would be appropriate to omit CAMs from the auditor's report on the financial statements of a target in the proxy/registration statement if (1) the SPAC is an EGC, (2) the target would qualify as an EGC if it were conducting its own IPO of common equity securities, and (3) the combined company will qualify as an EGC after the transaction. **[Paragraph added February 10, 2021]**

In addition, the registered accounting firm must also meet the independence requirements in Regulation S-X, Article 2. Because the SEC's and PCAOB's independence rules are generally more restrictive than those of the AICPA, both the auditor and those charged with governance need to determine (1) whether there is possible noncompliance with the SEC's and PCAOB's independence rules, (2) whether there are any conflicts of interest before the entity undertakes the transaction, or (3) both. For example, because certain nonattest services that the auditor is permitted to provide under AICPA rules may be prohibited under SEC independence rules, the auditor and those charged with governance need to evaluate whether the nonattest services provided during the financial statement periods to be included in the proxy/registration statement are permitted under the SEC's and PCAOB's independence rules. In certain cases, the target may be required to change its independent auditor to move forward with the transaction. This could be the case because, for example, the audit firm is not registered with the PCAOB or is not in compliance with the SEC's independence rules for its audits of the years for which SEC independence is required.



Changing Lanes

[Added February 10, 2021]

On October 16, 2020, the SEC issued a [final rule](#)⁴ that amends certain auditor independence requirements. Among other changes, the amendments generally reduce the look-back period for which the target's auditor must be independent in accordance with SEC rules. Companies are encouraged to consult with their auditor on the appropriate application of these requirements.

Age of Financial Statements

Audited Annual Financial Statements

If the filing date, the effective date of a registration statement, or the mailing date of the proxy statement (hereafter "the filing or effective/mailing date") is on or before the 45th day after the target's fiscal year-end, Regulation S-X, Rules 3-01 and 3-12, permit the SPAC to include audited financial statements of the target for the fiscal year preceding the target's most recently completed fiscal year. In such cases, the target must also provide interim financial information through the third quarter of the most recently completed fiscal year. However, if the audited financial statements for the most recently completed fiscal year are available or become available before the filing or effective/mailing date, the filing should be updated to include them.

⁴ SEC Final Rule Release No. 33-10876, *Qualifications of Accountants*.

Example 2

SPAC A, a nonaccelerated filer, enters into an agreement to acquire Target B. Both A and B have calendar year-ends. On March 1, 20Y0 (i.e., more than 45 days after the year-end), A files its proxy/registration statement, which must include B's audited annual financial statements for the two or three fiscal years ended December 31, 20X9 (see the [Financial Statement Requirements](#) section). No interim financial statements would be required.

Unaudited Interim Financial Statements

If the audited year-end balance sheet is as of a date that is no more than 134 days from the filing or effective/mailing date, the target's interim financial information is not required. If, however, the year-end balance sheet is as of a date that is 135 days or more from the filing or effective/mailing date, a registrant must provide the target's financial information as of an interim date that is no more than 134 days from the filing or effective/mailing date in addition to the audited year-end financial statements.

Example 3

SPAC A, a nonaccelerated filer, enters into an agreement to acquire Target B. Both A and B have calendar year-ends. SPAC A files its proxy/registration statement on September 1, 20Y0 (i.e., more than 134 days after year-end). To meet the age of financial statement requirements, the proxy/registration statement must include B's (1) annual audited financial statements for the two or three fiscal years ended December 31, 20X9 (see the [Financial Statement Requirements](#) section), and (2) interim financial statements as of June 30, 20Y0, and for the six months ended June 30, 20Y0, and June 30, 20X9.

"Updating" Requirements for Proxy/Registration Statements

The financial statements in the proxy/registration statement must meet the requirements for the age of financial statements on both (1) the filing date and (2) either the effective date of the registration statement or the mailing date of a proxy statement. Because the effective or mailing date may be months after the initial filing date, financial statements that met the requirements for the age of financial statements as of the initial filing date may no longer meet those requirements when a subsequent amendment is filed or immediately before the effective/mailing date. In such cases, the financial statements are sometimes described as "stale," and Regulation S-X, Rule 3-12, requires the SPAC to "update" the financial statements that were included in the initial filing (i.e., by providing financial statements of the target as of a more recent date) before (1) an amendment is filed, (2) a registration statement is declared effective, or (3) a proxy statement is mailed. Typically, a SPAC will need to file an amendment to the proxy/registration statement that provides more current financial statements of the target that meet the requirements for the age of financial statements.

Pro Forma Financial Information

The proxy/registration statement must include pro forma financial information that reflects the close of the transaction. Pro forma financial information, which is unaudited, typically includes an introductory paragraph, a pro forma balance sheet, a pro forma income statement (or statements), and accompanying explanatory notes. The introductory paragraph briefly describes the transaction(s), the companies involved, the periods for which the pro forma financial information is presented, and any other information that may help readers understand the content of the pro forma information. Ordinarily, the pro forma balance sheet and income statement(s) are presented in a columnar format that shows (1) historical financial information of the SPAC, (2) historical financial information of the target, (3) pro forma adjustments, and (4) pro forma totals. Further, each pro forma adjustment should include a reference to an explanatory note that clearly discusses the assumptions involved and how the adjustments were derived or calculated.

A pro forma balance sheet is required as of the same date as the SPAC's most recent balance sheet included in the proxy/registration statement (i.e., one pro forma balance sheet as of the end of the fiscal year or the subsequent interim period, whichever is later). In the computation of pro forma balance sheet adjustments, it is assumed that the transaction was consummated on the balance sheet date. Pro forma income statements are required for both (1) the SPAC's most recent fiscal year and (2) any subsequent year-to-date interim period included in the proxy/registration statement. In the computation of pro forma income statement adjustments, it is assumed that the transaction was consummated at the beginning of the most recently completed fiscal year (and carried forward to the interim period, if presented).

The preparation of the pro forma financial information will depend on the determination of the accounting acquirer. As discussed in the [Identifying the Accounting Acquirer](#) section, if the target is identified as the accounting acquirer, the transaction may be a reverse recapitalization (i.e., the SPAC, which is a shell company, is the legal acquirer but not the accounting acquirer). However, in other instances, the SPAC may be identified as the accounting acquirer, and the transaction may be an acquisition of either (1) a business or (2) a group of assets (if the target does not meet the U.S. GAAP definition of a business).

For a reverse recapitalization, the pro forma adjustments would give effect to the issuance of the target's equity interests in exchange for the net assets of the SPAC and subsequent recapitalization. For an acquisition in which the SPAC is determined to be the accounting acquirer, the pro forma adjustments would reflect the consideration transferred and the target's assets and liabilities, including goodwill (if applicable), measured in accordance with ASC 805. In either circumstance, additional adjustments may be necessary to reflect (1) the target's acquisition of a significant acquiree (or significant acquirees) or (2) other financing transactions that will occur on or before the close of the transaction. Note that the above list of pro forma adjustments is not exhaustive, and SPACs and targets should carefully analyze the structure of the transaction to appropriately reflect the pro forma results.



Connecting the Dots

Because the pro forma financial information will reflect the accounting for the transaction and any related financing, the target must preliminarily determine the appropriate accounting before the close of the transaction. See the [Identifying the Accounting Acquirer](#), [Financial Statement Presentation for Reverse Recapitalizations](#), and [Classifying Share-Settleable Earn-Out Arrangements](#) sections, as applicable, for further information.

In addition, the SPAC's public shareholders typically have redemption rights through which they may elect to redeem their shares in the SPAC for their initial investment before the close of the transaction. As a result, the amount of cash the SPAC will have at the closing is unknown at the time the proxy/registration statement is filed. In accordance with Regulation S-X, Rule 11-02(a)(10), the SPAC will need to present multiple pro forma scenarios to reflect a range of possible results (e.g., assuming no redemptions and assuming maximum redemptions) because the outcome of the redemption scenario may vary. In some cases, the level of redemptions may influence the identification of the accounting acquirer and, thus, the accounting treatment of the transaction. In these circumstances, the pro forma financial information may need to reflect the SPAC as the accounting acquirer in one scenario and the target as the accounting acquirer in another scenario.

Irrespective of the accounting for the transaction, the SPAC and the target should carefully consider any income tax impacts and related pro forma adjustments associated with the transaction. These adjustments will largely depend on the structure of the transaction and the planned corporate structure of the combined company. Special consideration should be given to "UP-C" structures since these can result in additional tax complexities. See Section 11.7.4.1 of Deloitte's [A Roadmap to Accounting for Income Taxes](#) for additional information on UP-C structure-related income tax considerations.



Changing Lanes

As discussed in the [Financial Statements of Acquired or to Be Acquired Businesses](#) section, in May 2020, the SEC issued a final rule that amends the requirements for pro forma financial information. For calendar-year-end companies, the amendments apply for all filings on or after January 1, 2021. Among other changes, the amendments eliminate the previous requirement that adjustments to the pro forma income statement must be expected to have a continuing (or recurring) impact on the registrant. The amendments do not distinguish between adjustments that are deemed recurring and adjustments that are deemed nonrecurring by management; however, they include a requirement to disclose items that will not recur in the explanatory notes to the pro forma financial information. For additional information, see [Section 4.4](#) of Deloitte's *A Roadmap to Initial Public Offerings*. **[Paragraph amended February 10, 2021]**

Other Financial and Nonfinancial Information

In addition to the financial statements discussed above, the proxy/registration statement must also include the following disclosures related to the target:

- Management's discussion and analysis (MD&A) of financial condition and results of operations (see SEC Regulation S-K, Item 303). Typically includes an overview section about the company and its business, an analysis of the results of operations that addresses period-to-period changes in income statement line items, a discussion of liquidity and capital resources that focuses on the company's financial position and cash flows, and a summary of the company's critical accounting policies that highlights financial statement items for which significant management estimates and judgment are required. In addition to the discussion and analysis of historical information, MD&A requires companies to disclose any known trends, events, or uncertainties that are reasonably likely to have a material effect on their future liquidity, capital resources, or results of operations.
- Selected financial data (see Regulation S-K, Item 301). Reflects net sales or operating revenues, income (loss) from continuing operations, income (loss) from continuing operations per common share, total assets, long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock), and cash dividends declared per common share of the target for the five most recent fiscal years (required unless the target would qualify as an SRC).



Changing Lanes

[Added February 10, 2021]

On November 19, 2020, the SEC issued a [final rule](#)⁵ that modernizes and simplifies MD&A and certain financial disclosure requirements in SEC Regulation S-K. Among other changes, the final rule:

- Eliminates the requirement for selected financial data (see Regulation S-K, Item 301).
- Simplifies the requirement for supplementary financial information (see Regulation S-K, Item 302).
- Amends certain aspects of MD&A, including critical accounting estimates (see Regulation S-K, Item 303).

⁵ SEC Final Rule Release No. 33-10890, *Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information*.

Early adoption on an item-by-item basis is permitted for filings on or after February 10, 2021. The final rule must be applied in a registrant's first fiscal year ending on or after August 9, 2021. See Deloitte's November 24, 2020, [Heads Up](#) for more information.

- Quantitative and qualitative disclosures about market risks (see Regulation S-K, Item 305). Generally describes the impact that certain market risks, such as interest rate risk, may have on the target (required unless the target would qualify as an SRC).
- Comparative per share information (see Item 14(b)(10) of Schedule 14A, "Information Required in Proxy Statement," and Form S-4, Item 3(f)).
- A description of the target's business (see Regulation S-K, Item 101), properties (see Regulation S-K, Item 102), legal proceedings (see Regulation S-K, Item 103), and directors and officers (including their compensation) (see Regulation S-K, Items 401, 402, and 404).
- Risk factors related to the target (see Regulation S-K, Item 105).



Changing Lanes

On August 26, 2020, the SEC issued a [final rule](#)⁶ to amend Regulation S-K, Items 101, 103, and 105, to simplify compliance and improve the readability of the disclosures. The amendments are effective for filings made on or after November 9, 2020. For more information about the new rule, see Deloitte's September 3, 2020, [Heads Up](#).

For additional details regarding the requirements related to this information, see [Chapter 4](#) of Deloitte's [A Roadmap to Initial Public Offerings](#).

Identifying the Accounting Acquirer

In each acquisition, one of the combining entities must be identified as the acquirer. The ASC master glossary defines an acquirer as follows:

The entity that obtains control of the acquiree. However, in a business combination in which a variable interest entity (VIE) is acquired, the primary beneficiary of that entity always is the acquirer.

Accordingly, if the acquiree is a VIE, the primary beneficiary of the VIE is considered the acquirer.

In an acquisition effected primarily by transferring cash or other assets or by incurring liabilities, the acquirer usually is the entity that transfers the cash or other assets or incurs the liabilities. In an acquisition effected primarily by exchanging equity shares, the entity that issues its equity interests to effect the transaction (the "legal acquirer") is usually the accounting acquirer. However, in some transactions, the legal acquirer is determined to be the accounting acquiree, while the entity whose equity interests are acquired (the "legal acquiree") is for accounting purposes the accounting acquirer. Such transactions are commonly called reverse acquisitions. ASC 805-40-05-2 provides the following example of a reverse acquisition:

As one example of a reverse acquisition, a private operating entity may want to become a public entity but not want to register its equity shares. To become a public entity, the private entity will arrange for a public entity to acquire its equity interests in exchange for the equity interests of the public entity. In this situation, the public entity is the legal acquirer because it issued its equity interests, and the private entity is the legal acquiree because its equity interests were acquired. However, application of the guidance in paragraphs 805-10-55-11 through 55-15 results in identifying:

- a. The public entity as the acquiree for accounting purposes (the accounting acquiree)
- b. The private entity as the acquirer for accounting purposes (the accounting acquirer).

⁶ SEC Final Rule Release No. 33-10825, *Modernization of Regulation S-K Items 101, 103, and 105*.

Entities should consider the following factors in ASC 805-10-55-12 and 55-13 when identifying the accounting acquirer in business combinations effected primarily by exchanging equity shares:

- “The relative voting rights in the combined entity after the business combination.”
- “The existence of a large minority voting interest in the combined entity.”
- “The composition of the governing body of the combined entity.”
- “The composition of the senior management of the combined entity.”
- “The terms of the exchange of equity interests.”
- The “relative size (measured in, for example, assets, revenues, or earnings)” of the combining entities.

While an evaluation of the pertinent facts and circumstances often results in the clear identification of one of the combining entities as the acquirer, in some transactions the determination of the acquirer may be less straight-forward (i.e., some indicators point to one entity and others point to the other). Since ASC 805 does not specify a hierarchy or the weight to place on each fact and circumstance associated with the assessment, an entity may sometimes need to use judgment. In such cases, the SEC staff typically expects the entity's disclosures to give financial statement users insight into how the accounting acquirer was determined (e.g., a description of the facts and circumstances deemed by the entity to be the most instructive in its identification of the accounting acquirer).

A transaction in which a SPAC acquires a target must be analyzed to determine whether the SPAC or the target is the accounting acquirer. Entities should consider all pertinent facts and circumstances in its evaluation. Considerations related to each potential outcome are as follows:

- *The SPAC is determined to be the accounting acquirer* — The entities must assess whether or not the target meets the definition of a business in accordance with U.S. GAAP. If it does, the transaction is accounted for as a business combination and the SPAC recognizes the target's assets and liabilities in accordance with the guidance in ASC 805-10, ASC 805-20, and ASC 805-30, generally at fair value. If the target is determined to be a group of assets that does not meet the definition of a business in accordance with U.S. GAAP, the transaction is accounted for as an asset acquisition and the SPAC recognizes the target's assets and liabilities in accordance with the guidance in ASC 805-50, generally at relative fair value.
- *The target is determined to be the accounting acquirer* — Typically, the SPAC's only precombination assets are cash and investments and the SPAC does not meet the definition of a business in accordance with U.S. GAAP. Therefore, the substance of the transaction is a recapitalization of the target (i.e., a reverse recapitalization) rather than a business combination or an asset acquisition. In such a situation, the transaction would be accounted for as though the target issued its equity for the net assets of the SPAC and, since a business combination has not occurred, no goodwill or intangible assets would be recorded.

See [Sections 3.1](#) and [6.8.8](#) of Deloitte's *A Roadmap to Accounting for Business Combinations* for additional information on identifying the acquirer and considerations for evaluating transactions involving SPACs.

Financial Statement Presentation for Reverse Recapitalizations

[Section added February 10, 2021]

Although U.S. GAAP does not provide direct guidance on the accounting for reverse recapitalizations, the guidance in ASC 805-40-45-1 and 45-2 on the presentation of financial

statements for reverse business combination acquisitions has been applied by analogy. Accordingly, in SPAC transactions accounted for as reverse recapitalizations, the financial statements of the combined company represent a continuation of the financial statements of the target. As a result, the assets and liabilities of the target are presented at their historical carrying values in the financial statements of the combined company, and the assets and liabilities of the SPAC are recognized on the acquisition date and measured on the basis of the net proceeds from the capital transaction.

The following table summarizes the measurement basis for the combined company's financial statements at the time of a reverse recapitalization with a SPAC:

Balance	Measurement Basis
Assets and liabilities	Sum of (1) the SPAC's net assets (net cash proceeds from capital raise) and (2) the target's assets and liabilities, measured at their carrying values.
Retained earnings and other equity balances	The target's pretransaction carrying amount, proportionately reduced by any preexisting noncontrolling interests in the target.
Issued equity	Sum of (1) the target's issued equity immediately before the reverse recapitalization, proportionately reduced by any preexisting noncontrolling interests in the target, and (2) the net proceeds received from the SPAC (i.e., the hypothetical consideration transferred). The equity structure (i.e., the number and type of equity interests issued) reflects the target's equity structure. However, the balance is adjusted to reflect the par value of the outstanding shares of the SPAC, including the number of shares issued in the reverse recapitalization. Any difference is recognized as an adjustment to the additional paid-in capital (APIC) account.
APIC	The historical APIC account of the target immediately before the reverse recapitalization is carried forward and increased to reflect the net proceeds received for the SPAC adjusted for any necessary changes in the par value of the shares and the ratio of shares held by preexisting target shareholders.
Noncontrolling interest	The noncontrolling interest's proportionate share of the target's pretransaction retained earnings and other equity balances.
Prior-period presentation of equity and earnings per share	For periods before the reverse recapitalization, the shareholders' equity of the combined company is presented on the basis of the historical equity of the target before the reverse recapitalization, retroactively recast to reflect the number of shares received in the acquisition.
Earnings per share	For periods before the reverse recapitalization, the earnings per share of the combined company is presented on the basis of the target's shares outstanding multiplied by the exchange ratio. Complexities may arise for targets with multiple-class share structures; consultation with accounting advisers is encouraged.
Transaction costs	SAB Topic 5.A states that "[s]pecific incremental costs directly attributable to a proposed or actual offering of securities may properly be deferred and charged against the gross proceeds of the offering." While a reverse recapitalization is legally structured as a merger or acquisition, the transaction is, in substance, a capital raise of the target. Therefore, we believe that specific incremental costs incurred by the target that directly result from the transaction may be offset against the proceeds raised. Management salaries or other general and administrative expenses typically are not considered incremental or directly attributable to the SPAC transaction, even though they may increase as a result of the transaction. Costs incurred by the SPAC would generally be expensed as incurred in the SPAC's pretransaction financial statements.

Classifying Share-Settleable Earn-Out Arrangements

[Section added February 10, 2021]

As part of the merger negotiations, the SPAC and target may agree to enter into what is often referred to as an “earn-out” arrangement.⁷ Earn-out arrangements may be entered into with the target’s shareholders, the SPAC’s sponsors, or both. Generally, earn-out arrangements have the following characteristics:

- The combined company is required to issue additional shares of common stock if, during a specified period after the merger date, its stock price equals or exceeds a stated amount or amounts.
- Some or all of the shares not previously issued will become issuable upon the occurrence of a specific event (e.g., a change of control of the combined company).
- The settlement must occur in shares (i.e., the combined company or holder cannot elect cash settlement).

Example 4

As additional consideration for a SPAC transaction, 1 million common shares of the combined company will be issued to the target’s shareholders for each of the following share price levels achieved over the next five years:

- *Level 1* — (1) The volume-weighted average price of the combined company’s common stock over any 20 trading days in a 40-day trading period is equal to or greater than \$10 per share or (2) the combined company is acquired in a change of control at a price equal to or greater than \$10 per share.
- *Level 2* — (1) The volume-weighted average price of the combined company’s common stock over any 20 trading days in a 40-day trading period is equal to or greater than \$15 per share or (2) the combined company is acquired in a change of control at a price equal to or greater than \$15 per share.
- *Level 3* — (1) The volume-weighted average price of the combined company’s common stock over any 20 trading days in a 40-day trading period is equal to or greater than \$20 per share or (2) the combined company is acquired in a change of control at a price equal to or greater than \$20 per share.
- *Level 4* — (1) The volume-weighted average price of the combined company’s common stock over any 20 trading days in a 40-day trading period is equal to or greater than \$25 per share or (2) the combined company is acquired in a change of control at a price equal to or greater than \$25 per share.

If Level 4 is achieved, an aggregate of 4 million common shares of the combined company (i.e., 1 million shares for each level) will be issued on a pro rata basis to the target’s shareholders on the basis of their pretransaction ownership interests.

For earn-out arrangements such as in the example above, the accounting treatment for the shares awarded depends on the terms of the arrangement. In cases in which these types of earn-out arrangements are entered into with the SPAC’s sponsor, the shares are generally issued before the transaction; however, at the time of the SPAC transaction, they become subject to either transfer restrictions or forfeiture on the basis of one or more share price levels or the occurrence of a specific event (e.g., a change of control). Such shares may or may not be held in escrow. In either case, if the holder of the shares is subject to losing those shares (i.e., they would be forfeited if one or more conditions are not met), for accounting purposes, those arrangements are treated in the same manner as earn-out arrangements that involve the conditional issuance of shares (i.e., they are treated as equity-linked instruments as opposed to outstanding shares). If, however, the owner legally owns the shares and is subject only to transfer restrictions that lapse upon the earlier of (1) meeting one or

⁷ There may be other options or warrants on stock that were previously issued by the SPAC or target that remain outstanding after the merger. While many of the accounting considerations discussed in this section are relevant to these instruments, the discussion in this section is focused on earn-out arrangements.

more specific conditions or (2) a stated date, such shares are considered to be outstanding shares of stock subject to transferability restrictions rather than equity-linked instruments. In other words, earn-out arrangements that contain vesting-type conditions are treated as equity-linked instruments (regardless of whether the related shares have been issued), whereas earn-out arrangements that subject the holder only to transfer restrictions are treated as outstanding shares.

Earn-out arrangements that represent equity-linked instruments are classified as either liabilities or equity instruments on the basis of ASC 815-40 unless such arrangements are within the scope of ASC 718.⁸ Contracts that are classified in equity under ASC 815-40 are not remeasured. However, contracts classified as liabilities must be subsequently remeasured at fair value, with changes in fair value recognized in earnings.

To be classified as an equity instrument under ASC 815-40, an earn-out arrangement must meet two conditions:

- The instrument is indexed to the issuer's stock.
- The instrument meets several conditions for equity classification (i.e., the issuer controls the ability to settle the instrument in shares; note that these conditions are relevant even if the contract requires settlement in shares).

The application of ASC 815-40 to these arrangements can be very complex. Before beginning the analysis, entities must ensure that they have a complete understanding of all the relevant terms. For example, in some cases, the main provisions are included in a separate section of the merger agreement, but there could be other agreements or "side letters" that modify or expand upon such terms. In addition, the terms of such arrangements may be affected by definitions that are difficult to interpret. Entities may need to consult with their legal advisers to obtain an understanding of such definitions.

There are several considerations that are relevant to the application of ASC 815-40 to an equity-linked instrument such as an earn-out arrangement. Those considerations, which are discussed below, include determining the following:

- The unit of account.
- Whether the contract is indexed to the combined company's stock.
- Whether the contract satisfies certain additional conditions for equity classification.

Unit of Account

The evaluation of whether an earn-out arrangement can be classified in equity begins with a determination of the unit of account. The arrangement may be a single unit of account or it may contain multiple units of account, depending on whether (1) the arrangement as a whole represents a freestanding financial contract or (2) there are multiple freestanding financial contracts within the overall arrangement. For more information on the unit of account, see [Section 3.2](#) of Deloitte's *A Roadmap to Accounting for Contracts on an Entity's Own Equity*.

Indexation

For each unit of account, the entity then evaluates the indexation requirements in ASC 815-40-15 by using a two-step process for determining whether a contract is considered to be indexed to the combined company's stock. If the entity determines that the contract is not considered indexed to the combined company's stock, the contract must be classified as a liability (i.e., equity classification is never permitted). To determine that a contract is considered

⁸ Generally, an earn-out arrangement would be subject to ASC 718 if, in addition to meeting one or more share price levels or other conditions, the holder must provide service to the combined company after the merger date. Therefore, entities should consider whether the counterparty to the arrangement must provide services to the combined company to earn the award.

to be indexed to the combined company's stock, the entity must evaluate conditions that affect either of the following steps:

- *Step 1* — The exercise or settlement of the contract (“contingent exercise provisions”).
- *Step 2* — The monetary value of the settlement amount (i.e., factors that affect the settlement amount, or “settlement provisions”).

All earn-out arrangements contain contingent exercise provisions, and most of them also contain settlement provisions.⁹ In some cases, a provision reflects both a contingent exercise provision and a settlement provision. The determination of whether the term of an earn-out arrangement is a contingent exercise provision or a settlement provision can significantly affect whether the contract is indexed to the combined company's stock because the guidance on contingent exercise provisions is significantly different from the guidance on settlement conditions.

Example 5

An earn-out arrangement specifies that the combined company will issue an aggregate of 5 million shares of its common stock to the target's shareholders if either (1) the quoted price of the stock exceeds \$20 during a stated period or (2) there is a change of control. In this example, the combined company's stock price and the occurrence of a change of control affects only whether the holders will receive the 5 million shares. Both variables represent only contingent exercise provisions because the holders will receive either no shares or 5 million shares.

This scenario differs from that in [Example 4](#). In that example, the holders may receive no shares, 1 million shares, 2 million shares, 3 million shares, or 4 million shares, depending on the combined company's stock price or the price paid in a change of control. In both examples, the conditions are contingent exercise provisions. However, unlike in this example, the conditions in Example 4 are also settlement provisions.

For an exercise contingency to not prevent a contract from being indexed to the combined company's stock, it must meet the guidance in ASC 815-40-15-7A, which states, in part:

An exercise contingency shall not preclude an instrument (or embedded feature) from being considered indexed to an entity's own stock provided that it is not based on either of the following:

- a. An observable market, other than the market for the issuer's stock (if applicable)
- b. An observable index, other than an index calculated or measured solely by reference to the issuer's own operations (for example, sales revenue of the issuer; earnings before interest, taxes, depreciation, and amortization of the issuer; net income of the issuer; or total equity of the issuer).

The terms of earn-out arrangements that reflect contingent exercise provisions (e.g., the combined company's stock price or a change of control) generally do not prevent the contract from meeting the first step in ASC 815-40-15 to be considered indexed to the combined company's stock. However, terms that affect the settlement value of the contract (i.e., settlement provisions) may prevent it from being indexed to the combined company's stock under the second step in ASC 815-40-15. For an instrument to meet the conditions in the second step, any input that could affect the settlement amount must meet the condition discussed in ASC 815-40-15-7D, which states, in part:

[T]he instrument (or embedded feature) shall still be considered indexed to an entity's own stock if the only variables that could affect the settlement amount would be inputs to the fair value of a fixed-for-fixed forward or option on equity shares.

⁹ Contracts that contain only transfer restrictions that lapse upon the passage of time are considered outstanding shares and are not subject to this evaluation. As discussed above, those arrangements are accounted for as outstanding shares as opposed to equity-linked instruments.

Common terms included in these arrangements that affect the settlement amount but generally do not prevent the contract from meeting the requirement in step 2 of ASC 815-40-15 include:

- The combined company's stock price (i.e., the quoted price or a reasonable average of quoted prices).
- Standard antidilutive adjustments.
- Adjustments for dividends on the combined company's stock.
- Adjustments for lost time value upon an early settlement.

Common terms included in these arrangements that affect the settlement amount but that *would generally prevent* the contract from meeting the requirement in step 2 of ASC 815-40-15 include:

- All remaining shares would be issuable (or the forfeiture provisions would lapse) upon any change of control involving the combined company.
- All remaining shares would be issuable (or the forfeiture provisions would lapse) upon a bankruptcy or insolvency of the combined company.

For more information on the application of the indexation guidance, see [Chapter 4](#) of Deloitte's [A Roadmap to Accounting for Contracts on an Entity's Own Equity](#).

Equity Classification Conditions

Once a determination is made that an earn-out arrangement is considered indexed to the combined company's stock under ASC 815-40, the entity must evaluate whether it controls the ability to settle the contract in its shares. ASC 815-40-25 addresses the conditions that must be met. Only contracts for which the entity controls settlement in shares (i.e., that meet the conditions in ASC 815-40-25) may be classified in equity. See [Chapter 5](#) of Deloitte's [A Roadmap to Accounting for Contracts on an Entity's Own Equity](#) for further information on these classification conditions.

Also note that whether classified as equities or liability instruments, earn-out arrangements that give the holders nonforfeitable rights to dividends represent participating securities. This is the case regardless of whether the combined company actually declares or pays dividends. See Deloitte's [A Roadmap to the Presentation and Disclosure of Earnings per Share](#) for further information on participating securities and the two-class method of calculating earnings per share.

Proxy/Registration Statement Filing and Review Process

SEC Review Process

An entity can generally expect the SEC staff to complete its initial review of a proxy/registration statement and furnish the first set of comments within 30 calendar days. The entity would then respond to each of the SEC's comments and reflect requested edits, and include any other necessary updates, in an amended proxy/registration statement that the SEC would also review. After the initial filing, the SEC's review time can vary significantly but typically is within two weeks. An entity can experience several rounds of comment letters with follow-up questions on responses to original comments as well as additional comments on new information included in the amended registration statement.



Connecting the Dots

The financial statement requirements and review of a proxy/registration statement are largely consistent with the requirements and review for a traditional IPO. Thus, in addition to performing a detailed analysis of the financial statement and pro forma requirements for the proxy/registration statement, targets may want to understand the types of comments that the SEC staff frequently issues. For additional information on SEC comments, see Deloitte's [A Roadmap to SEC Comment Letter Considerations, Including Industry Insights](#).

Some of the SEC comments may focus on the 53 questions highlighted in DG Topic 11, including whether disclosures address: **[Paragraph added February 10, 2021]**

- Additional financing (e.g., PIPE financing) necessary to complete the transaction, whether the price and terms of the financing differ from those of the SPAC's IPO, and the impact of any conversion features.
- Material factors the SPAC considered in pursuing the transaction and the alternative options it evaluated.
- Any conflicts of interest that the SPAC's sponsors, directors, or officers may have, including detailed information about how they will benefit from the transaction and returns they may realize on their initial investments.
- The percentage ownership that the SPAC's sponsors, directors, or officers will hold in the combined company, including warrants and convertible instruments.
- The amount of compensation that underwriters will receive as a result of the transaction and whether such compensation represents a deferred payment from the SPAC IPO or compensation for other services provided.

Availability of Nonpublic Review

[Section added February 10, 2021]

In a traditional IPO, companies may submit draft registration statements to the SEC for nonpublic review. The ability to file nonpublicly is a significant benefit because it allows companies to confidentially respond to SEC comments and update their draft registration statement while continuing to assess market conditions throughout the IPO process. As a result, companies are able to delay or withdraw the IPO, if desired, without public scrutiny. In limited circumstances, as described below, nonpublic review of an initial draft registration statement may be available for SPAC transactions.

The SEC staff may agree to review an initial draft Form S-4 for a SPAC transaction if it is submitted within 12 months of the SPAC's IPO. Nonpublic reviews are generally not available for proxy statements that are not combined with a Form S-4. As noted in the [highlights](#) of the September 2017 CAQ SEC Regulations Committee joint meeting with the SEC staff, the staff encourages SPACs to contact their respective industry review office of the Division to assess whether a nonpublic review would be acceptable. Note that a nonpublic review may only be used for the initial submission and any responses to the staff comments or other amendments to the Form S-4 must be done in a public filing. The draft registration statement in a nonpublic review must be "substantially complete"¹⁰ and (1) contain a signed audit report from the company's independent registered public accounting firm and (2) meet all line item requirements applicable to the registration statement unless the company is using certain permitted accommodations for omitting otherwise required information (e.g., financial information [including financial statements] related to periods that are not reasonably expected to be required at the time the registration statement is filed publicly).

¹⁰ Source: <https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded>.

Super 8-K Requirements

The Super 8-K must be filed no later than four business days after the close of a transaction. The 71-day extension typically available for an acquired business does not apply to SPAC transactions. The Super 8-K must describe the completion of the transaction (Item 2.01 of Form 8-K), the change in the control of the SPAC, if applicable (Item 5.01 of Form 8-K), the change in the SPAC's shell company status (Item 5.06 of Form 8-K), and a change in the fiscal year-end, if applicable (Item 5.03 of Form 8-K). Because the target's auditor generally becomes the auditor of the combined entity after the transaction, the Super 8-K may describe a change in the certifying accountant as well (Item 4.01 of Form 8-K). In addition, the Super 8-K must include all the information that would be required if the target was filing an initial registration statement on Form 10 (Item 9.01 of Form 8-K).

The form and content of the financial information required in a Super 8-K are largely consistent with the information provided in a proxy/registration statement. However, certain disclosures must be updated to reflect information as of the Super 8-K filing date. For example, if material, the pro forma financial information generally needs to be updated to reflect the actual results of the transaction and any related financing, rather than the minimum and maximum scenarios that may have been presented. Further, entities should evaluate the number of annual periods and the age of the financial statements included in the Super 8-K because more current financial statements may be required. See the [Age of Financial Statements](#) section for more information.

In addition, to avoid a gap or lapse in the target's financial statement periods after a transaction, the combined company may need to amend its Super 8-K to provide updated financial statements of the target. For example, if the transaction closes soon after the target's fiscal quarter or year-end, the Super 8-K generally will not include the target's financial statements for the most recently completed period. In such a case, the combined company will need to amend its Super 8-K to provide the recently completed annual or interim period. The due date of the amendment depends on the reporting requirements of the SPAC (i.e., its filing status). For example, if the SPAC is a nonaccelerated filer, the Form 8-K amendment would be due within 45 days of the end of a quarter and within 90 days of the end of a fiscal year.

Example 6

SPAC A, a nonaccelerated filer, and a target both have a calendar year-end. The transaction closes on November 2, 20Y0.

SPAC A is required to file its Form 10-Q for the quarter ended September 30, 20Y0, on or before November 14, 20Y0. Since the transaction closed after September 30, 20Y0, the Form 10-Q will include A's historical financial statements, with the transaction disclosed as a subsequent event. The Form 10-Q will not reflect the target's financial statements.

Within four business days of the close of the transaction, A must file the Super 8-K with the target's (1) audited financial statements for the two or three years ended December 20X9 (see the [Financial Statement Requirements](#) section) and (2) unaudited financial statements for the interim periods ended June 30, 20Y0, and June 30, 20X9. On or before November 14, 20Y0, the Super 8-K must be amended to include unaudited financial statements for the interim periods ended September 30, 20Y0, and September 30, 20X9.

Example 7

Assume the same facts as in [Example 1](#), except that the transaction closes on February 2, 20Y1.

SPAC A is required to file its Form 10-K for the year ended December 31, 20Y0, on or before March 31, 20Y1. Since the transaction closed after December 31, 20Y0, the Form 10-K will include A's historical financial statements, with the transaction disclosed as a subsequent event. The Form 10-K will not reflect the target's financial statements.

Within four business days of the close of the transaction, A must file the Super 8-K with the target's (1) audited financial statements for the two or three years ended December 20X9 (see the [Financial Statement Requirements](#) section) and (2) unaudited financial statements for the interim periods ended September 30, 20Y0, and September 30, 20X9. On or before March 31, 20Y1, the Super 8-K must be amended to include audited financial statements for the two or three years ended December 31, 20Y0.



Connecting the Dots

Target companies must ensure that updated quarterly or annual financial statements are available in a timely fashion (1) during the proxy/registration statement process, (2) through the completion of the transaction, and (3) on an ongoing basis thereafter. The target, as a predecessor to the SPAC, may not "skip" a reporting period between the Super 8-K and the first periodic report on Form 10-Q or Form 10-K that reflects the transaction.

Ongoing Reporting Requirements

After a transaction, the historical financial statements of the target become those of the registrant. Therefore, the target's historical financial statements will replace those of the SPAC beginning with the filing of the financial statements that first include the transaction. For example, if the transaction closes on March 15, 20Y0, the financial statements for the interim period ended March 31, 20Y0, will first include the transaction. Therefore, the financial statements included in the March 31, 20Y0, Form 10-Q, and all future filings will represent those of the target and no longer the SPAC. If the SPAC is determined to be the accounting acquirer, there will be a lack of comparability between the predecessor and successor periods because of the new basis established for the target's assets and liabilities as a result of the acquisition. Therefore, the pre- and post-transaction periods must be separated, typically by a "black line," to emphasize the change in the basis of accounting in the post-transaction periods (i.e., in the fact pattern above, the Form 10-Q would reflect the operations and cash flows of the target for the predecessor period from January 1, 20Y0, through March 14, 20Y0, and the successor period from March 15, 20Y0, through March 31, 20Y0, as two distinct columns separated by a black line). For a transaction in which the target is identified as the accounting acquirer and reverse recapitalization accounting applies, no separation of the periods before and after the transaction is required since there is no change in basis of the target's assets and liabilities. See the [Financial Statement Presentation for Reverse Recapitalizations](#) section for more information.

The combined company is required to file Forms 10-K and 10-Q in accordance with specific deadlines that depend on the combined company's filing status:

Filer	SEC Form 10-K	SEC Form 10-Q
Large accelerated filer	60 days after end of fiscal year	40 days after end of fiscal quarter
Accelerated filer	75 days after end of fiscal year	40 days after end of fiscal quarter
Nonaccelerated filer	90 days after end of fiscal year	45 days after end of fiscal quarter

The combined company may file a new or amended registration statement after the transaction closes. For a reverse recapitalization, if the combined company files a new or amended registration statement after the filing of the first periodic report that reflects the transaction but before the filing of the first annual report reflecting the transaction, it must consider whether the historical annual financial statements need to be retroactively revised to reflect the recapitalization. Also, if a combined company that is not an SRC files a new or amended registration statement after the close of the transaction and reports a material retrospective change, it may need to disclose selected quarterly financial data for the affected quarters within (1) the two most recent fiscal years and (2) any subsequent interim periods for which financial statements are presented (see Regulation S-K, Item 302). See [Changing Lanes](#) for more information on SEC reporting requirements. **[Paragraph amended February 10, 2021]**

The combined company will typically be required to use long-form registration statements (i.e., Form S-1) rather than short-form statements (i.e., Form S-3) for a year after the transaction. [Question 115.18](#) of the SEC's Compliance and Disclosure Interpretations (C&DIs) on Securities Act Forms states that the combined company may meet the registrant requirements to use Form S-3 if it has at least 12 calendar months of Exchange Act reporting history after the transaction (not the IPO of the SPAC). Because of these and other matters that may arise, we recommend consultation with accounting and legal advisers.

In addition, as a public company, the combined company is also required to file current reports on Form 8-K that disclose various material events that may occur. Unless otherwise specified in the Form 8-K instructions, such events must generally be disclosed within four business days after they occur. Management should consider the controls and procedures in place to identify these events and report them in a timely manner. It is recommended that an entity consult with legal advisers regarding the Form 8-K reporting requirements. For additional information on such requirements, see [Section 7.3](#) of Deloitte's [A Roadmap to Initial Public Offerings](#).

Internal Control Over Financial Reporting and Disclosure Controls and Procedures

The combined company must consider the requirements that apply to public companies related to internal control over financial reporting (ICFR) and disclosure controls and procedures (DCPs). After the close of the transaction, the combined company must be prepared to (1) evaluate and disclose material changes to its ICFR on a quarterly basis, (2) provide quarterly disclosures and certifications from key executives that DCPs are effective, and (3) disclose to the auditor and audit committee all significant deficiencies and material weaknesses in ICFR and any fraud that involves management or other employees who have a significant role in ICFR. If the SPAC has previously filed its first Form 10-K, the combined company must be prepared to evaluate the effectiveness of ICFR on an annual basis (except in certain circumstances discussed in the following paragraph). In addition, depending on its filing status, the combined company may need to provide its auditor's attestation report on the combined company's ICFR on an annual basis. As long as the combined company remains an EGC or nonaccelerated filer, an auditor's attestation report on ICFR is not required.

In addition, the SEC may not object to the exclusion of management's report on ICFR in the first Form 10-K filed after the close of the transaction. As noted in [Section 215.02](#) of the C&DIs on Regulation S-K, it may not "always be possible to conduct an assessment of the [target's] internal control over financial reporting in the period between the consummation date of [the transaction] and the date of management's assessment of internal control over financial reporting required by Item 308(a) of Regulation S-K." In these circumstances, which may arise if the transaction closes late in the fiscal year, the combined company must also be prepared to disclose (1) why management's assessment has not been included, (2) the effect

of the transaction on management's ability to conduct an assessment, and (3) the scope of the assessment, if one had been conducted. However, if the transaction closes at the beginning of the fiscal year and the Form 8-K is amended to include the most recent annual period (see [Example 7](#) in the [Super 8-K Requirements](#) section), this guidance would not apply and the first Form 10-K that reflects the target's financial statements must include management's ICFR report. Because of the complexity involved in assessing these requirements, we recommend consultation with accounting and legal advisers.

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