
Special Purpose Acquisition Companies

Division of Corporation Finance Securities and Exchange Commission

CF Disclosure Guidance: Topic No. 11

Date: December 22, 2020

Summary: This guidance provides the Division of Corporation Finance's views about certain disclosure considerations for special purpose acquisition companies, commonly referred to as SPACs, in connection with their initial public offerings and subsequent business combination transactions.

Supplemental Information: *The statements in this CF Disclosure Guidance represent the views of the Division of Corporation Finance. This guidance is not a rule, regulation, or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content. This guidance, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.*

Introduction

A SPAC is a company with no operations that offers securities for cash and places substantially all the offering proceeds into a trust or escrow account for future use in the acquisition of one or more private operating companies. Following its initial public offering, or IPO, the SPAC will identify acquisition candidates and attempt to complete one or more business combination transactions after which the company will continue the operations of the acquired company or companies ("combined company") as a public company.^[1]

The economic interests of the entity or management team that forms the SPAC ("sponsor(s)") and the directors, officers and affiliates of a SPAC often differ from the economic interests of public shareholders which may lead to conflicts of interests as they evaluate and decide whether to recommend business combination transactions to shareholders. Clear disclosure regarding these potential conflicts of interest and the nature of the sponsors', directors', officers' and affiliates' economic interests in the SPAC is particularly important because these parties are generally responsible for negotiating the SPAC's business combination transaction. Unlike the traditional IPO process where a private operating company sells its securities in a manner in which the company and its offered securities are valued through market-based price discovery, these individuals are solely responsible for deciding how to value the private operating company and how much the SPAC will pay for it.

A SPAC preparing to conduct an IPO or present a business combination transaction to shareholders should consider carefully its disclosure obligations under the federal securities laws as they relate to conflicts of interest, potentially differing economic interests of the SPAC sponsors, directors, officers and affiliates and the interests of other shareholders and other compensation-related matters.^[2]

Disclosure Considerations – Initial Public Offering

SPAC sponsors, directors and officers may not work exclusively on behalf of the SPAC to identify acquisition targets and they may have fiduciary or contractual obligations to other entities. These arrangements with, and obligations to, other entities may lead to conflicts of interest including conflicts involving entities that may compete with the SPAC for business combination opportunities.

- Have you clearly described the sponsors', directors' and officers' potential conflicts of interest? Have you described whether any conflicts relating to other business activities include fiduciary or contractual obligations to other entities; how these activities may affect the sponsors', directors' and officers' ability to evaluate and present a potential business combination opportunity to the SPAC and its shareholders; and how any potential conflicts will be addressed?
- Is it possible that you will pursue a business combination with a target in which your sponsors, directors, officers or their affiliates have an interest? If so, have you disclosed how you will consider potential conflicts of interest?

SPACs generally commit to find a target operating company and complete a business combination transaction within a specified timeframe. Under the typical terms of a SPAC's governing instruments, if the SPAC does not complete a business combination transaction within the specified timeframe, it must liquidate and make a pro rata distribution of the net offering proceeds held in trust to its public shareholders. As a SPAC nears the end of that timeframe, its options may narrow, giving acquisition targets significant leverage in negotiating the terms of a business combination transaction.

- Have you clearly described the financial incentives of SPAC sponsors, directors and officers to complete a business combination transaction? Have you disclosed how these incentives may differ from the interests of public shareholders? Have you quantified, to the extent practicable, information about the losses the sponsors, directors and officers could incur if the SPAC does not complete a business combination transaction?
- Have you disclosed the amount of control that SPAC sponsors, directors and officers and their affiliates will have over approval of a business combination transaction?
- Have you disclosed whether the SPAC may amend provisions in its governing instruments to facilitate the completion of a business combination transaction? Have you described how the SPAC may amend such provisions, whether shareholder approval is required, and, if so, the requisite voting standard for approval and whether the sponsors have sufficient voting power to approve it?
- Have you disclosed whether, and if so how, the SPAC may extend the time it has to complete a business combination transaction? If the SPAC may extend the time period, have you disclosed whether shareholders may redeem their shares in connection with any proposal to extend it?
- If the sponsors, directors, officers or their affiliates have prior SPAC experience, have you provided balanced disclosure about the prior experience and the outcome of presented and completed business combination transactions and liquidations?

The underwriter of the SPAC IPO may agree to defer its compensation until closing of the business combination transaction.

- If the underwriter of your IPO may provide additional services such as identifying potential targets, providing financial advisory services, acting as a placement agent in a private offering or underwriting or arranging debt financing, have you described those potential services and disclosed the fees you may pay for those services and whether you may pay those fees in other than cash? Will you condition payment for these additional services on the completion of a business combination transaction? Have you disclosed any conflict of interest the underwriter may have in providing such services given any deferred IPO underwriting compensation?

The economic terms of the investments made by a SPAC's sponsors, directors, officers and their affiliates usually differ from those of the public shareholders. Sponsors, directors, officers and their affiliates may have financial incentives that differ from public shareholders which may result from securities ownership, compensation arrangements or relationships with affiliated entities that may lead to conflicts of interest when evaluating potential business combination opportunities.

- Have you clearly disclosed the securities owned by sponsors, directors, officers and their affiliates including the price paid for the securities? Have you included a discussion of any concurrent offering of securities to the sponsors and their affiliates, the amount of those securities and the price to be paid? How does the price of securities previously sold and currently offered to sponsors, directors, officers and their affiliates compare to the public offering price in the IPO?
- Do you clearly describe the conflicts of interest that result from sponsors', directors', officers' or their affiliates' securities ownership, compensation arrangements or relationships with affiliated entities that may create financial incentives to complete a business combination transaction even if the transaction may not be in the best interest of other shareholders? For example, do you clearly disclose that if the SPAC fails to complete a business combination transaction, some or all of the sponsors', directors', 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?

- Have you disclosed whether and how you may compensate your sponsors, directors, officers and their affiliates for services to the SPAC? Will any payments be contingent on the completion of the business combination transaction? Have you quantified known amounts?

When a SPAC issues securities to its sponsors, the terms of those securities often differ from securities it issues to public shareholders and typically result in the sponsors having substantial control over the SPAC. A SPAC also may increase its capital by selling securities in private offerings, resulting in negotiated terms for those securities that may differ from the shares sold in the IPO.

- Have you clearly disclosed the terms of securities held by sponsors, directors, officers, and their affiliates and discussed how the rights of those classes of securities compare to and differ from the rights and terms of securities offered in the IPO, as well as the resulting risks to public shareholders? If the sponsors, directors, officers, and their affiliates hold convertible debt, have you disclosed the material terms for conversion, such as when the debt is convertible, the maximum number of securities they may acquire through conversion and any contingencies on conversion?
- Have you disclosed whether you plan to seek, or have obtained, additional funding and how the terms of securities issued or to be issued in private offerings compare to the terms of securities offered in the IPO? Have you disclosed whether the sponsors, directors, officers or their affiliates may participate in or have an interest with respect to such financing?
- If the SPAC enters into a forward purchase agreement allowing the purchaser to invest in the SPAC at the time of a business combination transaction, have you clearly described the terms of the agreement and any potential dilutive impact on other shareholders? Is it clear whether the forward purchaser's commitment to purchase the securities is irrevocable?

Disclosure Considerations – Business Combination Transaction

As a SPAC negotiates a business combination transaction, its financing needs become more apparent and it may seek additional financing.

- Do you disclose clearly any additional financing necessary to complete the business combination transaction and how the terms of such financing may impact public shareholders? If the terms of additional financing involve the issuance of securities, have you described how the price and terms of those securities compare to and differ from the price and terms of the securities sold in the IPO? Are sponsors, directors, officers, or affiliates participating in additional financing?
- If you will issue convertible securities, do you describe the material terms for conversion and any material impact on the beneficial ownership of the combined company?

The SPAC sponsors, directors and officers may have evaluated a number of potential acquisition candidates before presenting a business combination transaction to shareholders and they may have interests and incentives that conflict with the interests of public shareholders.

- Have you provided detailed information about how you evaluated and decided to propose the identified transaction? Have you explained how and why you selected the target company? Who initiated contact? Why did you select this target over other alternative candidates? Have you explained the material terms of the transaction? How did you determine the nature and amount of consideration the SPAC will pay to acquire the private operating company? Have you clearly described the negotiations regarding the nature and amount of consideration?
- What material factors did the board of directors consider in its determination to approve the identified transaction? How did the board of directors evaluate the interests of sponsors, directors, officers and affiliates?
- Have you clearly described any conflicts of interest of the sponsors, directors, officers and their affiliates in presenting this opportunity to the SPAC and how the SPAC addressed these conflicts of interest? If the SPAC had a policy to address conflicts of interest and waived any provisions of that policy, have you disclosed the waiver and the reasons therefor? Have you described any interest the sponsors, directors, officers or their affiliates have in the target operating company, including, if material, the approximate dollar value of the interest, when the interest was acquired and the price paid?

- Have you provided detailed information on how the sponsors, directors, officers or their affiliates will benefit from this transaction? Have you quantified any material payments that they will receive as compensation, the return they will receive on their initial investment and any continuing relationship they will have with the combined company?
- Have you disclosed the total percentage ownership interest the SPAC sponsors, directors, officers and affiliates may hold in the combined company, including through the exercise of warrants and conversion of convertible debt?

The underwriter of the SPAC's IPO may have provided services in addition to those associated with the underwriting of the IPO and may have deferred a portion of its underwriting compensation until the closing of the SPAC's initial business combination transaction.

- Have you disclosed the fees that the underwriter of your IPO will receive upon completion of the business combination transaction, including the amount of fees that is contingent upon completion of a business combination transaction?
- Have you clearly described any additional services the underwriter provided, the cost of those services and how you compensated the underwriter and/or its affiliates for those services? Were those services conditioned on the completion of the business combination transaction? Have you disclosed any conflict of interest the underwriter may have had in providing such services given any deferred IPO underwriting compensation?

[1] For additional background information on SPACs, see What You Need to Know About SPACs – Investor Bulletin (Dec. 10, 2020), available at <https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin>.

[2] SPACs should consider the questions outlined in this document in the context of their disclosure obligations pursuant to Regulation S-K, and the requirements of Form S-4, Form F-4, Schedule 14A, Schedule 14C and Schedule TO, as applicable.

Modified: Dec. 22, 2020