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March 12, 2024

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Special Purpose Acquisition Companies, Shell Companies, and Projections*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC or the Commission) entitled "Special Purpose Acquisition Companies, Shell Companies, and Projections" (RIN: 3235-AM90). We received the rule on February 5, 2024. It was published in the *Federal Register* as final rules and guidance on February 26, 2024. 89 Fed. Reg. 14158. The effective date is July 1, 2024.

The final rule, according to SEC, adopts rules and guidance intended to enhance investor protections in initial public offerings by special purpose acquisition companies (commonly known as SPACs) and in subsequent business combination transactions between SPACs and private operating companies (commonly known as de-SPAC transactions). The Commission stated that it is specifically adopting disclosure requirements with respect to, among other things, compensation paid to sponsors, conflicts of interest, dilution, and the determination, if any, of the board of directors (or similar governing body) of an SPAC regarding whether a de-SPAC transaction is advisable and in the best interests of the SPAC and its shareholders. SEC stated that it is adopting rules that require a minimum dissemination period for the distribution of security holder communication materials in connection with de-SPAC transactions. Additionally, SEC explained that it is adopting rules that require the re-determination of smaller reporting company status in connection with de-SPAC transactions. The Commission stated that it is also adopting rules that address the scope of the safe harbor for forward-looking statements under the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (Dec. 22, 1995). Furthermore, SEC stated that it is adopting a rule that would deem any business combination transaction involving a reporting shell company, including an SPAC, to be a sale of securities to the reporting shell company's shareholders and are adopting amendments to a number of financial statement requirements

applicable to transactions involving shell companies. In addition, the Commission explained that it is providing guidance on the status of potential underwriters in de-SPAC transactions and adopting updates to its guidance regarding the use of projections in Commission filings, as well as requiring additional disclosure regarding projections when used in connection with business combination transactions involving SPACs. Finally, SEC stated that it is providing guidance for SPACs to consider when analyzing their status under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-y 1 *et seq.*

Enclosed is our assessment of SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: J. Matthew DeLesDernier
Deputy Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“SPECIAL PURPOSE ACQUISITION COMPANIES,
SHELL COMPANIES, AND PROJECTIONS”
(RIN: 3235-AM90)

(i) Cost-benefit analysis

In this final rule, the Securities and Exchange Commission (SEC or the Commission) addressed the potential economic effects of the rule, including the likely benefits and costs, as well as the potential effects on efficiency, competition, and capital formation. SEC stated that it has analyzed the expected economic effects of the rule relative to the current baseline, which consists of the existing regulatory framework of disclosure requirements and liability provisions, current market practices, and the distribution of participants and their characteristics. The Commission’s analysis of the rule included discussions concerning (1) the baseline against which the rule’s costs, benefits, and effects on efficiency, competition, and capital formation are measured, (2) the benefits and costs of the rule, (3) the rule’s effects on efficiency, competition, and capital formation, and (4) reasonable alternatives to the rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

SEC prepared a Final Regulatory Flexibility Analysis. The analysis included (1) an explanation of the need for and objectives of this final rule, (2) a description of significant issues raised by public comments, (3) a description of the small entities subject to the rule, (4) projected reporting, recordkeeping, and other compliance requirements, (5) a discussion of duplicative, overlapping, or conflicting federal rules, and (6) a description of agency actions to minimize effects on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, SEC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the

OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also stated that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, SEC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On May 13, 2022, the Commission published a proposed rule. 87 Fed. Reg. 29458. SEC received numerous comments in response to the proposed rule. The Commission responded to many of these comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

SEC determined that this final rule contains information collection requirements under the Act. The Commission stated that the titles for the affected collections of information are: “Regulation 14A (Commission Rules 14a-1 through 14a-21 and Schedule 14A)” (OMB Control Number 3235-0059); “Regulation 14C (Commission Rules 14c-1 through 14c-7 and Schedule 14C)” (OMB Control Number 3235-0057); “Schedule TO” (OMB Control Number 3235-0515); “Form S-1” (OMB Control Number 3235-0065); “Form S-4” (OMB Control Number 3235-0324); “Form F-1” (OMB Control Number 3235-0258); “Form F-4” (OMB Control Number 3235-0325); “Form 8-K” (OMB Control Number 3235-0060); “Form 10-K” (OMB Control Number 3235-0063); and “Form 10-Q” (OMB Control Number 3235-0070). In the rule, SEC summarized the paperwork burden changes to existing information collections, including the estimated the total reporting burdens and costs under the rule.

Statutory authorization for the rule

SEC promulgated this final rule pursuant to sections 6, 7, 10, 19(a), and 28 of the Securities Act of 1933, 15 U.S.C. §§ 77a *et seq.*, as well as sections 3, 12, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Act.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Act.