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Accounting and SEC Reporting Considerations for SPAC Transactions

This publication was updated on September 14, 2021, to address additional accounting considerations. Note that it was also updated on February 10, 2021; March 19, 2021; March 25, 2021; and April 30, 2021, to reflect additional interpretive guidance on financial statement presentation for reverse recapitalizations, accounting for shares and warrants issued by a SPAC, classifying share-settleable earn-out arrangements, share-based payment considerations, 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.

- Internal Control Over Financial Reporting and Disclosure Controls and Procedures
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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.

On March 31, 2021, SEC Acting Chief Accountant Paul Munter issued a public statement regarding SPAC transactions. Mr. Munter stated that such transactions are subject to the same review process by the SEC as traditional IPOs. He also highlighted five key considerations, many of which are further addressed in this publication:

1. *Market and timing* — A SPAC target may have not begun preparing to become a public company and may need to evaluate "the status of various functions, including people, processes, and technology, that will need to be in place to meet SEC filing, audit, tax, governance, and investor relations needs" after the SPAC transaction.
2. *Financial reporting* — SPAC transactions involve several complex areas of financial accounting and reporting, including:
    a. Identifying the accounting acquirer.
    b. Accounting for earn-out arrangements and complex financial instruments.
    c. Public company disclosure requirements and adoption dates for new accounting standards.

3. *Internal control* — SPAC targets must establish and maintain internal control over financial reporting and disclosure controls and procedures upon the close of the transaction, which may necessitate advanced planning.
4. *Corporate governance and audit committee* — Mr. Munter stressed the importance of oversight by both the corporate board and the audit committee to ensure that a company provides high-quality financial reporting. He emphasized that an audit committee should be composed of "individuals with the appropriate skills and background" to oversee the SPAC transaction and combined company.
5. *Auditor considerations* — SPAC transactions are generally subject to additional audit procedures to comply with SEC and PCAOB requirements for audit and independence standards.

On the same day Mr. Munter issued his statement, the SEC Division of Corporation Finance issued a staff statement regarding SPACs. The statement addressed (1) certain restrictions on SPACs and the combined company as a result of the SPAC's shell company status (e.g., ineligible issuer classification); (2) the books and records and internal control requirements that apply to the SPAC, target, and combined company; and (3) listing qualifications on national securities exchanges that the combined company must meet to retain its publicly listing. ***[Paragraph added April 30, 2021]***

In addition, 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.
- 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.
- Accounting for Shares and Warrants Issued by a SPAC.
  - Unit of Account.
  - Classification of Class A Shares.
  - Classification of Class B Shares.
  - Public Warrants.
  - Private Placement Warrants.
  - Accounting for Issuance Costs.
  - Consolidation of SPACs.
- Classifying Share-Settleable Earn-Out Arrangements.
  - Unit of Account.
  - Indexation.
  - Equity Classification Conditions.
  - Other Considerations.
- Share-Based Payment Considerations.
- 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 generate additional complexity when foreign entities or multiple targets are involved. In addition, we have recently observed new structures in which either the target or a newly formed company acquires the SPAC. Such transactions may be viewed as the IPO of the target and, thus, different considerations may apply (e.g., two years of financial statements may be appropriate if the target qualifies as an EGC, and the confidential filing process may be available for a longer period).

In such cases, 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. ***[Section amended September 14, 2021]***

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

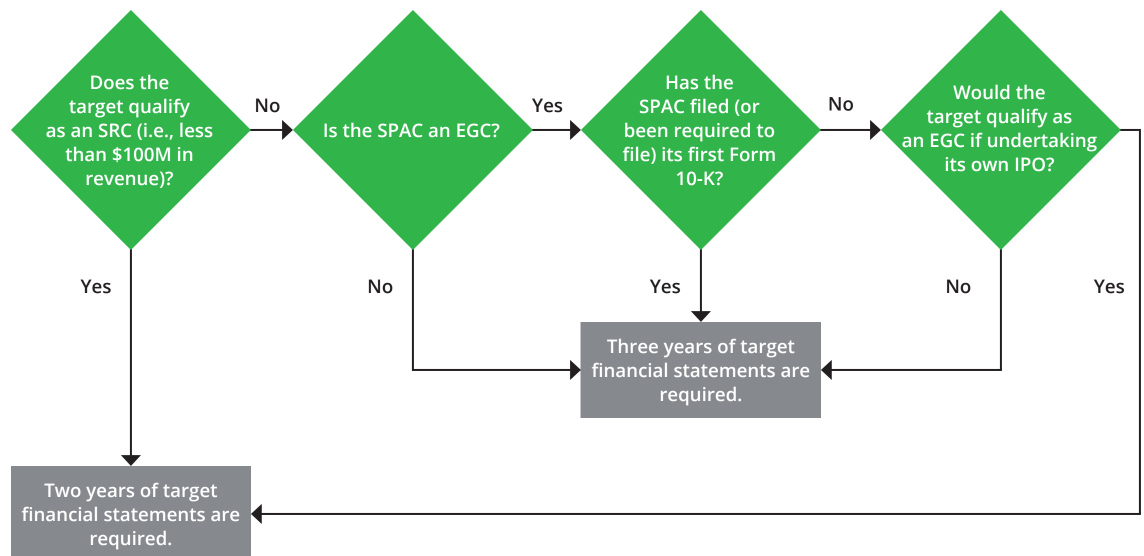
The SPAC's shareholders are required to vote on the transaction in which the SPAC merges with the target. Therefore, the proxy/registration statement must include the information below related to the target.

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 paragraphs 1140.3 and 5110.3 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 when a SPAC acquires a target. 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 480[2]), segment- and entity-wide disclosures (ASC 280), earnings per share (EPS) (ASC 260), disaggregation of revenues (ASC 606), and incremental business combination disclosures (ASC 805). For further discussion, see Chapter 5 of Deloitte's Roadmap *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 Roadmap *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 Roadmap *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 Roadmap *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 Roadmap *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).
- Comparative per share information (see Item 14(b)(10) of Schedule 14A, "Information Required in Proxy Statement," and Form S-4, Item 3(f)).

Changing Lanes

[Added February 10, 2021; amended September 14, 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).
- Eliminates the requirement for comparative per share information.
- 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).
- 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 Roadmap *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 straightforward (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 Roadmap *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 common shares	For periods before the reverse recapitalization, the common shares of the combined company are presented on the basis of the historical common shares of the target before the reverse recapitalization, retroactively recast to reflect the number of common shares deemed to be received in the transaction. ***[Paragraph amended September 14, 2021]***
EPS	For periods before the reverse recapitalization, the EPS 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.

(Table continued)

Balance	Measurement Basis
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.

Accounting for Shares and Warrants Issued by a SPAC

[Section added March 19, 2021]

The guidance in this section is based on the typical terms and conditions that have been observed in practice. Since the specific terms can affect the accounting, consultation with an entity's accounting advisers is recommended.

In its IPO, a SPAC typically issues units to third-party investors at $10.00 per unit. Each unit generally contains both of the following:

- One Class A ordinary share (a "Class A Share").
- A fraction of a warrant to purchase one Class A Share at an exercise price of $11.50 (a "Public Warrant").

The sponsor and its affiliates generally receive Class B ordinary shares ("Class B Shares") in return for forming the SPAC. They may also purchase warrants ("Private Placement Warrants") to acquire Class A Shares at an exercise price of $11.50 per share. Alternatively, a so-called "anchor investor" may purchase Private Placement Warrants in lieu of their being purchased by the sponsor. The Private Placement Warrants are generally purchased at $1.00 or $1.50 per warrant, and the proceeds received by the SPAC are used to pay the underwriting fees incurred in conjunction with the SPAC's IPO. ***[Paragraph amended April 30, 2021]***

In addition, there may be other arrangements that entities enter into upon the formation of a SPAC or at a later date before the SPAC completes a merger. Those may include the following:

- Forward contracts that (1) obligate the SPAC to issue additional Class A Shares to a counterparty at a fixed price and (2) are settled immediately before the SPAC completes a merger with a target.
- Warrants on Class A Shares or on Class B Shares that are issued to the sponsor, its affiliates, or third parties in return for providing financing to the SPAC.
- Classes of preferred stock issued to third-party investors, the sponsor, or the sponsor's affiliates.
- Class A Shares or Class B Shares (or warrants on such shares) that are issued to the SPAC's employees or third-party service providers as compensation for services provided.

While the discussion in this publication does not specifically address these other arrangements, the accounting analysis of some of these arrangements (e.g., the forward contracts and warrants described in the first two bullet points) may be similar to that of Public Warrants or Private Placement Warrants, which are discussed below. SPACs that issue

preferred shares or share-based payment arrangements should consider other applicable GAAP to determine the appropriate accounting, including the potential effect of those instruments on reported EPS. Any shares or warrants issued as a share-based payment arrangement must be accounted for in accordance with ASC 718.

Unit of Account

Although initially issued as a unit, the Class A Shares and Public Warrants become separately tradable shortly after the IPO. In addition, upon exercise, the Public Warrants do not alter the terms of the Class A Shares previously issued. Therefore, the Public Warrants (1) are legally detachable and separately exercisable from the Class A Shares issued as part of the units and (2) meet the definition of a freestanding financial instrument in ASC 480-10-20.

Since the Class A Shares and Public Warrants constitute separate units of accounting, the proceeds from the issuance of these units (net of any direct and incremental offering costs paid to the investors[7]) must be allocated between the two components. The appropriate allocation method depends on how the Public Warrants are classified:[8]

- *Public Warrants classified as liabilities* — The SPAC must use the with-and-without method to allocate the net proceeds among the Class A Shares and Public Warrants. Under that method, a portion of the net proceeds from the issuance of the units that equals the Public Warrants' issuance-date fair value must first be allocated to the Public Warrants. The entity then allocates the remaining net proceeds to the Class A Shares. The with-and-without allocation approach avoids the recognition of a "day 1" gain or loss in earnings on the Public Warrants that is not associated with a change in their fair value (i.e., an entity does not recognize a day 1 gain or loss for the Public Warrants, which are subsequently measured at fair value, with changes in fair value recognized in earnings).
- *Public Warrants classified as equity instruments* — The SPAC must use the relative fair value method to allocate the net proceeds among the Class A Shares and Public Warrants. Under that method, the SPAC makes separate estimates of the fair values of the Class A Shares and Public Warrants and then allocates the net proceeds in proportion to those fair value amounts. Because the relative fair value method requires SPACs to independently measure each instrument, entities must make more fair value estimates under this method than under the with-and-without method.

The Class B Shares and any Private Placement Warrants issued by the SPAC also generally represent separate units of accounting. If the Private Placement Warrants were purchased by the sponsor in contemplation of the formation of the SPAC, the entity should consider (1) the need to allocate the amount it paid for these warrants between the Class B Shares and Private Placement Warrants and (2) whether such warrants represent share-based payment awards to the sponsor. In the discussion of the classification of the Private Placement Warrants below, it is assumed that the warrants are not share-based payment arrangements. In a manner consistent with the discussion of Class A Shares and Public Warrants above, if the Private Placement Warrants are classified as liabilities, the initial amount allocated to those warrants must equal their initial fair value. ***[Paragraph amended March 25, 2021]***

To perform the allocations discussed above, entities must measure the fair value of the instruments in accordance with ASC 820. Although Public Warrants and Private Placement Warrants are generally not "in-the-money" on the issuance date and are often contingently exercisable, their fair value is nevertheless greater than zero. When measuring fair value, the entity must take into account the relatively high probability that the SPAC will successfully

[7] Direct and incremental costs associated with the offering that are paid to third parties should be allocated to the associated freestanding financial instruments *after* the allocation of proceeds discussed here (see the Accounting for Issuance Costs section for more information).

[8] The classification of the Public Warrants and Class A Shares is discussed below. In the discussion of the allocation of proceeds, it is assumed that the Class A Shares are classified as equity instruments.

merge with a target and the warrants will subsequently become exercisable and contain intrinsic value. The issuance-date fair value of a Public Warrant or Private Placement Warrant is not zero because there is no intrinsic value on that date. All warrants on equity shares have time value, which equals the fair value of the warrant when it is not in-the-money.

For further information on the allocation of proceeds to multiple freestanding financial instruments, see Section 3.4 of Deloitte's Roadmap *Issuer's Accounting for Debt*. For more information on fair value measurements, see Deloitte's Roadmap *Fair Value Measurements and Disclosures (Including the Fair Value Option)*.

Classification of Class A Shares

Class A Shares issued by a SPAC are equity in legal form. Therefore, these shares should only be classified as liabilities if they represent (1) mandatorily redeemable financial instruments under ASC 480-10-25-4 or (2) unconditional obligations to deliver a variable number of equity shares that are liabilities under ASC 480-10-25-14. In practice, liability classification of the Class A Shares has not been required under this guidance.

Since a SPAC is an SEC registrant, it must apply the guidance in ASC 480-10-S99-3A on redeemable equity securities. Class A Shares generally contain the following redemption provisions:

- If the SPAC does not consummate a business combination by a specified date after the IPO (e.g., two years after the IPO), the SPAC will liquidate and the Class A Shares will automatically be redeemed at approximately $10.00 per share.
- If the SPAC does consummate a business combination, all holders of the Class A Shares have the right to redeem their shares at approximately $10.00 per share immediately before the consummation (generally subject to the requirement that the SPAC maintain a minimum amount of net tangible assets [e.g., $5 million]).

Because it is certain that the Class A Shares will be redeemed or become redeemable and no exceptions in ASC 480-10-S99-3A apply, the shares (1) must be classified within temporary equity in the SPAC's financial statements and (2) are subject to the subsequent measurement guidance in ASC 480-10-S99-3A. An entity must subsequently measure the shares to their redemption amount because, as a result of the allocation of net proceeds to the Public Warrants, the initial carrying amount of the Class A Shares will be less than $10.00 per share. In accordance with ASC 480-10-S99-3A(15), there are two alternative methods that an entity can apply when subsequently measuring Class A Shares:

- Remeasure the Class A Shares to their redemption amount (i.e., $10.00 per share) immediately as if the end of the first reporting period after the IPO was the redemption date.
- Accrete changes in the difference between the initial carrying amount and the redemption amount from the IPO date to the redemption date. To apply this method, the SPAC must consider the date on which it expects a business combination to occur, rather than merely accreting to the automatic redemption date.

Because a SPAC has two classes of shares (i.e., Class A Shares and Class B Shares), it must apply the EPS guidance in ASC 480-10-S99-3A, which requires specific accounting for the measurement adjustments. That is, the SPAC must apply the two-class method of calculating EPS while taking into account the measurement adjustments under an assumption that they represent dividends to the holders of the Class A Shares. Generally, Public Warrants and Private Placement Warrants do not represent participating securities; therefore, the application of the two-class method of calculating EPS is limited to the allocation of the SPAC's net income or loss between the Class A Shares and Class B Shares.

After the completion of a business combination with a target, the redemption features on the Class A Shares generally lapse. Therefore, in the absence of other redemption provisions, the temporary equity classification of such shares is no longer required. That is, provided the Class A Shares are redeemable only on an ordinary liquidation of the SPAC after a business combination, which is generally the case, they are not required to be classified in temporary equity.

Classification of Class B Shares

The Class B Shares issued by a SPAC are equity in legal form. SPACs should consider whether these shares are within the scope of ASC 718 on the basis of the specific terms of the shares and other relevant facts and circumstances. The classification guidance in ASC 718 refers to the classification guidance in ASC 480, but there are additional considerations under ASC 718 that SPACs should take into account. The Class B Shares should be classified as liabilities if they represent (1) mandatorily redeemable financial instruments under ASC 480-10-25-4 or (2) unconditional obligations to deliver a variable number of equity shares that are liabilities under ASC 480-10-25-14. In practice, liability classification of the Class B Shares has not been observed. ***[Paragraph amended March 25, 2021]***

Class B Shares are generally not redeemable by the holder, and a holder is not entitled to any proceeds if the SPAC liquidates because of a failure to complete a business combination. That is, in the absence of a merger of the SPAC with a target, the Class B Shares will be worthless.[9] Because there are no redemption provisions, entities are not required to classify Class B Shares in temporary equity under ASC 480-10-S99-3A.

Public Warrants

To determine the appropriate classification of the Public Warrants, SPACs must first consider the liability classification guidance in ASC 480. ASC 480-10-25-8 states:

> An entity shall classify as a liability (or an asset in some circumstances) any financial instrument, other than an outstanding share, that, at inception, has both of the following characteristics:
>
> a. It embodies an obligation to repurchase the issuer's equity shares, or is indexed to such an obligation.
>
> b. It requires or may require the issuer to settle the obligation by transferring assets.

The evaluation of whether Public Warrants are liabilities under ASC 480-10-25-8 will generally depend on when the warrants become exercisable.

The Public Warrants may be exercised **before** a merger with a target.	The Public Warrants are liabilities under ASC 480-10-25-8 because the Class A Shares received upon exercise of the warrants may be redeemed at the holder's option upon a merger of the SPAC. The SPAC is obligated to use its best efforts to complete a merger.
The Public Warrants may be exercised only **after** a merger with a target. For example, they may be exercised only upon on the later of (1) 30 days after the SPAC completes a business combination and (2) 12 months from the date on which the SPAC's IPO closes.	The Public Warrants are not liabilities under ASC 480-10-25-8 because once the warrants are exercisable, the holder will receive Class A Shares that are not redeemable. As discussed above, once a merger with a target is completed, the holders of Class A Shares no longer have any ability to redeem their shares. Rather, such shares are redeemable only upon an ordinary liquidation of the combined company.

[9] Class B Shares generally convert into Class A Shares upon a merger of the SPAC with a target. In some cases, the holders can elect to convert the Class B Shares into Class A Shares before completion of a business combination. However, such conversion generally does not change the fact that the shares held by the sponsor and its affiliates do not have any redemption rights or rights to participate in the distribution of proceeds upon a liquidation of the SPAC.

If the Public Warrants are not liabilities under ASC 480-10-25-8, the SPAC should consider whether they represent liabilities under ASC 480-10-25-14. In practice, it would be unusual for such warrants to represent an obligation to issue a variable number of equity shares whose monetary value is based solely or predominantly on (1) a fixed amount, (2) variations in something other than the fair value of the Class A Shares, or (3) variations that are inversely related to the fair value of the Class A Shares. Public Warrants that are not liabilities under ASC 480 are classified as liabilities or equity in accordance with ASC 815-40.[10]

To be classified as an equity instrument under ASC 815-40, the Public Warrants must meet two conditions:

- They are indexed to the SPAC's stock.
- They meet the criteria for equity classification (i.e., the SPAC controls the ability to settle the warrants in shares; note that these criteria are relevant even if the contract requires settlement in shares).

Indexation

ASC 815-40-15 contains a two-step model that an entity must apply to determine whether the Public Warrants are indexed to the SPAC's stock. The evaluation must consider the following:

- *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").

For each unit of account, the entity evaluates the indexation requirements in ASC 815-40-15. If the entity determines that the contract is not considered indexed to the company's stock, the contract must be classified as a liability (i.e., equity classification is never permitted).

ASC 815-40-15-7A addresses step 1 of the two-step indexation evaluation and 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 following features, which are exercise contingencies that generally exist in Public Warrants, would not preclude the warrants from being indexed to the SPAC's stock under step 1 of ASC 815-40-15:

- The Public Warrants are exercisable only if the SPAC completes a business combination.
- The Public Warrants are no longer exercisable if the SPAC liquidates.
- The SPAC can force early exercise of the Public Warrants through certain redemption features.

While the above features represent the typical contingent exercise provisions in Public Warrants, there may be other features that must be evaluated under step 1 of ASC 815-40-15.

ASC 815-40-15-7C through 15-7I discuss the evaluation of settlement provisions. Any provision that (1) can potentially alter either the exercise price or the number of Class A Shares that are issuable upon exercise of the Public Warrants and (2) is not considered a down-round

[10] Public Warrants generally meet the characteristics of a derivative instrument in ASC 815-10-15-83. However, the guidance in ASC 815-40 must be applied regardless of whether such warrants contain all the characteristics in ASC 815-10-15-83.

provision must be evaluated to determine whether it represents an input into the pricing of a fixed-for-fixed forward or option on equity shares. Common provisions that require evaluation include the following:

- Antidilution-type adjustment provisions.
- Replacement of the Class A Shares with other consideration in a reorganization or recapitalization.
- Adjustments to the exercise price or number of Class A Shares as a result of the SPAC's issuance of additional Class A Shares or other equity instruments at a price or effective price that is less than the Public Warrants' exercise price (note that for such a provision to not preclude the Public Warrants from being indexed to the SPAC's stock, the provision must meet the ASC master glossary definition of a down-round feature).
- Adjustments to the number of Class A Shares issuable to compensate the holder for lost time value upon an early settlement of the Public Warrants.
- Adjustments to the exercise price or number of Class A Shares that are made at the discretion of the SPAC to benefit the holders of the Public Warrants.

Public Warrants generally contain multiple provisions that adjust the settlement amount to compensate the holders for lost time value upon an early exercise or settlement. For such provisions to not preclude the Public Warrants from being considered indexed to the SPAC's stock under step 2 of ASC 815-40-15, the entity must conclude that the adjustment (e.g., the increase in the number of additional Class A Shares issuable) represents a reasonable amount of compensation to the holder for lost time value. We generally believe that if the additional value paid to the holder does not exceed the amount of lost time value, the adjustment will not preclude the Public Warrants from being indexed to the SPAC's stock under step 2 of ASC 815-40-15. That is, as long as the holder would receive a monetary amount upon settlement that is (1) not less than the intrinsic value of the Public Warrants on the early settlement date and (2) not more than the fair value of the Public Warrants on the early settlement date, the settlement provision would not preclude the Public Warrants from being indexed to the SPAC's stock under step 2 of ASC 815-40-15. For the purpose of this determination, fair value means an amount that is consistent with the fair value measurement guidance in ASC 820.

Many Public Warrants contain a provision that allows the SPAC to call them for either (1) \$0.10 per warrant or (2) Class A Shares, provided that the shares' fair value equals or exceeds \$10.00.[11] If the SPAC exercises this call right, the holders are entitled to exercise and settle the Public Warrants on a net share basis. While such a feature may specify the payment of \$0.10 per warrant, the economic substance of the feature is the same even if the \$0.10 payment is not specified. (Hereafter, such a call right is also referred to as a "redemption-for-stock" feature). The determination of the number of Class A Shares issuable upon a settlement of a redemption-for-stock feature is based on a table whose axes are share price and time to maturity. The purpose of the table is to prescribe the amount of compensation the holder should receive for lost time value for any settlement that occurs when the Class A Share price is below \$18.00. For the settlement amounts in this table to not preclude the Public Warrants from being indexed to the SPAC's stock under step 2 of ASC 815-40-15, the entity must conclude, on the basis of reasonable assumptions as of the issuance date of the Public Warrants, that each settlement number in the table represents a reasonable amount of compensation for lost time value. The assumptions that affect the estimated fair value of the Public Warrants should affect the number of shares included in each cell in the settlement table and should be determined in a commercially reasonable manner. Those assumptions include stock volatility, interest rates, and dividends. Because these assumptions change over time, a SPAC cannot conclude that a potential settlement based on share amounts in the table does not preclude the Public Warrants from being indexed to the SPAC's stock under step 2 of

[11] Public Warrants may also contain a provision that allows the SPAC to call them for \$0.01 per warrant if the fair value of the Class A Shares exceeds \$18.00 for a defined number of trading days. This feature is only considered an exercise contingency because it does not change the settlement terms.

ASC 815-40-15 solely because the share amounts in the table are the same as those in other Public Warrant agreements issued by other SPACs. Rather, each SPAC will generally need to consult with valuation specialists to determine whether the settlement provisions that apply in accordance with these settlement tables preclude the Public Warrants from being indexed to the SPAC's stock under step 2 of ASC 815-40-15. See Chapter 4 of Deloitte's Roadmap *Contracts on an Entity's Own Equity* for further information on the indexation requirements. ***[Paragraph amended April 30, 2021]***

Some Public Warrants contain a provision that indicates that the settlement amount could differ if the warrants are held by the SPAC's officers or directors. This settlement difference would arise in the event that the SPAC exercises its redemption-for-stock feature. In such cases, holders of Public Warrants that are not officers or directors of the SPAC would receive a number of Class A Shares per warrant on the basis of the table described in the previous paragraph, but holders of Public Warrants that *are* officers or directors of the SPAC would receive a number of Class A Shares on the basis of the fair value of their warrants. An example of such a provision is as follows: ***[Paragraph added April 30, 2021]***

> Public Warrants held by the Company's officers or directors. The Company agrees that if Public Warrants are held by any of the Company's officers or directors, the Public Warrants held by such officers and directors will be subject to the redemption rights provided in Section 6.2, except that such officers and directors shall only receive ***"Fair Market Value"*** ("Fair Market Value" in this Section 6.6 shall mean the last sale price of the Public Warrants on the Alternative Redemption Date) for such Public Warrants so redeemed.

On April 12, 2021, the SEC staff issued *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies ("SPACs")* (the "SEC Staff Statement"), which addresses certain balance sheet classification matters related to warrants issued by SPACs. The SEC Staff Statement discusses a fact pattern related to the terms of warrants that were issued by a SPAC and states, in part: ***[Paragraph added April 30, 2021]***

> [T]he warrants included provisions that provided for potential changes to the settlement amounts dependent upon the characteristics of the holder of the warrant. Because the holder of the instrument is not an input into the pricing of a fixed-for-fixed option on equity shares, OCA staff concluded that, in this fact pattern, such a provision would preclude the warrants from being indexed to the entity's stock, and thus the warrants should be classified as a liability measured at fair value, with changes in fair value each period reported in earnings.

ASC 815-40-15-7E discusses the inputs into the pricing of a fixed-for-fixed option on equity shares. As indicated in the SEC Staff Statement, the holder is not an input into the pricing of an option on equity shares. Therefore, if the settlement terms of the instrument (i.e., the exercise price or number of shares) could potentially vary on the basis of its holder, the instrument is not considered indexed to the SPAC's stock. Public Warrants with an officer or director provision such as the one described above have settlement terms that depend on the holder. Accordingly, such Public Warrants are not considered indexed to the SPAC's stock and must be classified as liabilities. Note that such liability classification is required both before and after a SPAC merges with a target. ***[Paragraph added April 30, 2021]***

In addition, some Public Warrants contain a provision that caps the holder to 0.361 shares per warrant in some, but not all, circumstances. In cases in which such a Public Warrant allows the holder to avoid being subject to the cap if (1) it exercises the warrant on a physical (cash) basis and (2) such exercise is allowed only if there is an effective registration statement for the underlying shares, the warrant would be considered indexed to the condition that there is an effective registration statement in a manner that is inconsistent with ASC 815-40's requirements for equity classification (i.e., the holder would potentially receive less value when the underlying shares are not registered for resale). As a result, such Public Warrants would not be considered indexed to the issuer's shares under ASC 815-40-15 and must be classified as liabilities. ***[Paragraph added September 14, 2021]***

Equity Classification Conditions

[Section amended April 30, 2021]

If an entity determines that the Public Warrants are considered indexed to the SPAC's stock under ASC 815-40, it must evaluate the conditions in ASC 815-40-25 to determine whether it controls the ability to settle the contract in its shares. 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. For example, if (1) the holder of Public Warrants is able to net cash settle its warrants upon the occurrence of an event outside the SPAC's control and (2) holders of the common shares underlying such warrants are not entitled to the same cash settlement right, the Public Warrants would not meet the equity classification requirements in ASC 815-40-25.

Public Warrants often contain a provision that allows their holders to receive cash in the event of a tender or exchange offer involving the common shares underlying such warrants. (Note that Private Placement Warrants may also be subject to this provision; therefore, the discussion in this section applies to both Public Warrants and Private Placement Warrants.) An example of such a provision (a tender offer provision) is as follows:[12]

> (ii) [I]f a tender, exchange or redemption offer shall have been made to and accepted by the holders of the Common Stock (other than a tender, exchange or redemption offer made by the Company in connection with redemption rights held by stockholders of the Company as provided for in the Company's amended and restated certificate of incorporation or as a result of the repurchase of shares of Common Stock by the Company if a proposed initial Business Combination is presented to the stockholders of the Company for approval) under circumstances in which, upon completion of such tender or exchange offer, the maker thereof, together with members of any group (within the meaning of Rule 13d-5(b)(1) under the Exchange Act (or any successor rule)) of which such maker is a part, and together with any affiliate or associate of such maker (within the meaning of Rule 12b-2 under the Exchange Act (or any successor rule)) and any members of any such group of which any such affiliate or associate is a part, own beneficially (within the meaning of Rule 13d-3 under the Exchange Act (or any successor rule)) more than 50% of the outstanding shares of Common Stock, the holder of a Warrant shall be entitled to receive as the Alternative Issuance, the highest amount of cash, securities or other property to which such holder would actually have been entitled as a stockholder if such Warrant holder had exercised the Warrant prior to the expiration of such tender or exchange offer, accepted such offer and all of the Common Stock held by such holder had been purchased pursuant to such tender or exchange offer, subject to adjustments (from and after the consummation of such tender or exchange offer) as nearly equivalent as possible to the [antidilution] adjustments.

The SEC Staff Statement addresses the effect of this type of provision on the classification of Public Warrants and Private Placement Warrants issued by a SPAC. It states, in part:

> GAAP further includes a general principle that if an event that is not within the entity's control could require net cash settlement, then the contract should be classified as an asset or a liability rather than as equity. However, GAAP provides an exception to this general principle whereby equity classification would not be precluded if net cash settlement can only be triggered in circumstances in which the holders of the shares underlying the contract also would receive cash. Scenarios where this exception would apply include events that fundamentally change the ownership or capitalization of an entity, such as a change in control of the entity, or a nationalization of the entity. [Footnotes omitted]
>
> We recently evaluated a fact pattern involving warrants issued by a SPAC. The terms of those warrants included a provision that in the event of a tender or exchange offer made to and accepted by holders of more than 50% of the outstanding shares of a single class of common stock, all

[12] Note that in this example, "Common Stock" refers to the Class A Shares of the SPAC. After a merger of the SPAC with a target, Common Stock refers to either (1) the single class of common shares of the combined entity or (2) the Class A common shares if the combined entity has multiple classes of common shares.

> holders of the warrants would be entitled to receive cash for their warrants. In other words, in the event of a qualifying cash tender offer (which could be outside the control of the entity), all warrant holders would be entitled to cash, while only certain of the holders of the underlying shares of common stock would be entitled to cash. OCA staff concluded that, in this fact pattern, the tender offer provision would require the warrants to be classified as a liability measured at fair value, with changes in fair value reported each period in earnings.
>
> The evaluation of the accounting for contracts in an entity's own equity, such as warrants issued by a SPAC, requires careful consideration of the specific facts and circumstances for each entity and each contract. OCA is available for consultation on accounting and financial reporting issues, including relating to an entity's specific fact pattern on issues similar to those described above or on other instruments and accounting issues. [Footnote omitted]

The SEC Staff Statement addresses a fact pattern in which a SPAC and a target merge, and after the transaction, the combined company has two classes of common shares — Class A and Class B. The tender offer provision pertains to the Public Warrants and Private Placement Warrants, which are both exercisable into Class A Shares. The Class B Shares control the entity and would continue to have such control regardless of the number of Class A Shares involved in a tender or exchange offer (i.e., there would not be a change in control of the entity). The SEC staff concluded that as a result of the tender offer provision, the Public Warrants and Private Placement Warrants would not meet the ASC 815-40-25 conditions for equity classification because (1) all such warrants could be cash settled upon an event outside the entity's control and it is possible that less than all or substantially all of the Class A Shares would be eligible to receive cash (e.g., the tender offer provision applies if 50.1 percent of the Class A Shares are involved in a tender or exchange offer) and (2) the provision that would result in such a cash settlement would not lead to a change in control of the entity.

In reaching this conclusion, the SEC staff acknowledged that ASC 815-40-55-2 through 55-4 can be interpreted as providing a limited exception to the general principle that an equity-linked holder cannot be entitled to receive cash unless the holders of all shares underlying the contract are also entitled to receive cash. The paragraphs that describe this limited exception state:

> **55-2** An event that causes a change in control of an entity is not within the entity's control and, therefore, if a contract requires net cash settlement upon a change in control, the contract generally must be classified as an asset or a liability.
>
> **55-3** However, if a change-in-control provision requires that the counterparty receive, or permits the counterparty to deliver upon settlement, the same form of consideration (for example, cash, debt, or other assets) as holders of the shares underlying the contract, permanent equity classification would not be precluded as a result of the change-in-control provision. In that circumstance, if the holders of the shares underlying the contract were to receive cash in the transaction causing the change in control, the counterparty to the contract could also receive cash based on the value of its position under the contract.
>
> **55-4** If, instead of cash, holders of the shares underlying the contract receive other forms of consideration (for example, debt), the counterparty also must receive debt (cash in an amount equal to the fair value of the debt would not be considered the same form of consideration as debt).

However, the SEC staff concluded that this exception could only be applied if the event giving rise to the cash settlement of the equity-linked financial instrument would always cause a change in control of the entity. Because a change in control could never occur in the fact pattern in the example, the SEC staff concluded that the limited exception would not apply and, therefore, the registrant's Public Warrants and Private Placement Warrants would not meet the equity classification conditions in ASC 815-40-25 (i.e., the cash settlement provided by the tender offer provision violated the general principle in ASC 815-40-25 for equity classification). As a result, the registrant would be required to classify those warrants as liabilities.

On the basis of informal discussions, we understand that the SEC staff's conclusion specifically addresses the particular facts and circumstances of the registrant, which has a dual common share structure. Therefore, if (1) a Public Warrant or Private Placement Warrant contains a

provision similar to the tender offer provision described above and (2) the registrant has a dual common share structure in which both classes are entitled to vote on matters submitted to the vote of the entity's stockholders (which is usually the case before any acquisition of a target by the SPAC), the warrant would not meet the equity classification conditions in ASC 815-40-25 and must be classified as a liability. The same conclusion would apply if there was a single common share structure but other classes of securities were entitled to currently vote on matters submitted to the vote of the entity's stockholders.

However, we do not believe that the SEC staff's conclusion must be applied when there is a similar tender offer provision if (1) there is only a single class of voting common shares and (2) only that class of shares is entitled to vote on matters submitted to the entity's stockholders (i.e., the entity has no other class of voting securities). We believe that, in these circumstances, it is acceptable to apply the limited exception for changes in control in ASC 815-40-55-2 through 55-4.[13]

The table below provides examples of tender offer provisions similar to the one described above and explains when liability classification of Public Warrants and Private Placement Warrants is and is not required.

Liability Classification Is Required	Liability Classification Is Not Required
Before a merger with a target, a SPAC has two classes of voting shares (Class A and Class B). The tender offer provision pertains only to the warrants on the Class A Shares. Liability classification of such warrants is required as a result of the tender offer provision because (1) it is possible that the warrants will be cash settled in a tender or exchange offer made by a third party (even if those warrants are not otherwise currently exercisable) and (2) such a tender or exchange offer may not result in a change in control of the SPAC.	After a merger with a SPAC, the combined company has a single class of common shares that controls the entity. The tender offer provision pertains only to the warrants on this single class of shares. The entity has no other voting securities. Liability classification of such warrants is not required as a result of the tender offer provision because in any cash settlement of the warrants, the group of common shareholders before the tender or exchange offer will no longer control the entity after the tender or exchange offer (i.e., a third party or group obtains control of the entity).
After a merger with a SPAC, the combined company has a single class of common shares. Although the common shares collectively control the entity, there are outstanding preferred shares that are entitled to currently vote on an as-converted basis. Liability classification of such warrants is required as a result of the tender offer provision because (1) it is possible that the warrants will be cash settled in a tender or exchange offer made by a third party and (2) such tender or exchange offer may not result in a change in control of the entity.	After a merger with a SPAC, the combined company has two classes of shares (Class A and Class B). The Class A Shares have voting rights and control the entity; the Class B Shares have no voting rights. The entity has no other securities with voting rights. The tender offer provision pertains only to the warrants on the Class A Shares. Although there is a dual-class common share structure, liability classification of such warrants is not required as a result of the tender offer provision. This is because in any cash settlement of the warrants, the group of common shareholders before the tender or exchange offer will no longer control the entity after the tender or exchange offer (i.e., a third party or group obtains control of the entity).

The above table only addresses certain fact patterns. Consultation with an entity's independent advisers is recommended if there are unique facts and circumstances involving the terms of the tender offer provision or the capital structure of the entity, or if contracts other than equity shares convey control to their holder.

[13] It is also acceptable to classify the Public Warrants as liabilities provided that the approach selected is applied consistently to all instruments with such features.

See Chapter 5 of Deloitte's Roadmap *Contracts on an Entity's Own Equity* for further information on the equity classification conditions in ASC 815-40-25.

Connecting the Dots

On the basis of the SEC Staff Statement, a registrant may conclude that its historical accounting for warrants was incorrect (e.g., classified as equity when terms consistent with the SEC Staff Statement require liability classification). In such situations, the registrant must evaluate the materiality of the error to the previously filed financial statements in accordance with the guidance in SAB Topic 1.M, "Materiality." For further information on assessing materiality and SEC comments on this topic, see Section 2.14 of Deloitte's Roadmap *SEC Comment Letter Considerations, Including Industry Insights*.

If a registrant concludes that the error was material to previously issued financial statements, it must disclose the error by filing an Item 4.02 Form 8-K within four business days of determining that the previously issued financial statements and related audits and reviews should not be relied upon. The registrant also must amend its most recently filed Form 10-K and any subsequently filed Forms 10-Q to restate (1) the financial statements, including applicable disclosures required for error corrections (i.e., ASC 250-50), (2) MD&A, (3) critical accounting estimates that are related to the warrants, (4) quarterly financial information for interim periods during the fiscal periods that were affected by the error (in accordance with Regulation S-K, Item 302), and (5) any other information in the filings that was affected by the change (e.g., risk factors, the business section). If the registrant's auditor communicated CAMs in its auditor's report (see Auditing and Review Standards), it needs to reevaluate CAMs in light of the warrant matter and determine whether it needs to make a change in an existing CAM or identify a new CAM.

The registrant should also consider whether the factors that led to the restatement represent a material weakness in internal control over financial reporting (ICFR) or ineffective disclosure controls and procedures (DCPs). The SEC staff often comments when companies conclude that either ICFR or DCPs remained effective after a material restatement. For more information, see Sections 3.5 and 3.6 of Deloitte's Roadmap *SEC Comment Letter Considerations, Including Industry Insights*.

If the registrant concludes that the error was either (1) not material to the prior period being changed but would be material to the current period if corrected in the current period or (2) not material to any periods being presented in the required financial statements and disclosures, it may update the prior periods in future filings. In addition, as noted in the SEC Staff Statement, registrants that determine that the errors are not material to the required financial statements and disclosures included in a pending transaction may provide the staff, via EDGAR correspondence, a written representation to that effect. A registrant must also evaluate the impact of an immaterial misstatement on ICFR and DCPs since the severity of a deficiency in ICFR depends on whether there is a reasonable possibility that the deficiency could have resulted in a material misstatement. For more information, see Section 3.6.2 of Deloitte's Roadmap *SEC Comment Letter Considerations, Including Industry Insights*.

Earnings per Share

Because Public Warrants represent potential common shares, the accounting and disclosure requirements of ASC 260 must be applied. In calculating diluted EPS, the SPAC should consider the guidance on contingently issuable shares.

Also note that whether classified as equities or liability instruments, Public Warrants that give the holders nonforfeitable rights to dividends represent participating securities regardless of whether the SPAC actually declares or pays dividends.

See Deloitte's Roadmap *Earnings per Share* for further information on contingently issuable shares and participating securities.

Private Placement Warrants

[Section amended April 30, 2021]

Although the terms of Private Placement Warrants are often similar to the terms of Public Warrants, there may be key differences, such as the following:

- Public Warrants often have a redemption-for-stock feature or a feature that allows the SPAC to call such warrants for $0.01 in the event the holder does not exercise them. Private Placement Warrants do not contain redemption features that allow the SPAC to call the warrants to force early exercise.
- Some exercise price adjustments are calculated differently for Private Placement Warrants and Public Warrants.
- The cashless (net share) settlement formulas for Private Placement Warrants differ from those that apply to Public Warrants.

The terms of Private Placement Warrants generally change if they are transferred to a nonpermitted transferee (e.g., a party other than the sponsor or its affiliates). In such a situation, the Private Placement Warrants become Public Warrants.

Indexation

[Section added April 30, 2021]

As noted in the discussion of indexation of Public Warrants, ASC 815-40-15 contains a two-step model that an entity must apply to determine whether Private Placement Warrants are indexed to the SPAC's stock. Under this model, in addition to evaluating contingent exercise provisions, an entity must determine whether any potential adjustment to the exercise price or settlement amount represents an input into the pricing of a fixed-for-fixed option on equity shares. ASC 815-40-15-7E discusses such inputs.

As indicated in the SEC Staff Statement, the holder is not an input into the pricing of an option on equity shares. Therefore, a Private Placement Warrant that contains any of the provisions below is considered not indexed to the SPAC's stock and must be classified as a liability because the provision either (1) ceases to apply or (2) is applied differently if the Private Placement Warrants are transferred to a nonpermitted transferee and thus become Public Warrants. That is, in these cases, the settlement amount (i.e., exercise price or number of shares) of the Private Placement Warrants depends on the holder. Note that the provisions below only affect the classification of Private Placement Warrants because Public Warrants cannot become Private Placement Warrants.

- *Redemption for stock feature* — Public Warrants may contain a provision that allows the SPAC to call them for either (1) $0.10 per warrant or (2) Class A Shares, provided that the shares' fair value equals or exceeds $10.00. When the SPAC exercises this call right, the holders are entitled to exercise and settle the Public Warrants on a net share basis. While such a feature may specify the payment of $0.10 per warrant, the economic substance of the feature is the same even if the $0.10 payment is not specified. An example of a redemption for stock feature is as follows:

  > Redemption of warrants for common stock. Subject to Sections 6.5 and 6.6 hereof, not less than all of the outstanding Warrants may be redeemed, at the option of the Company, ninety (90) days after they are first exercisable and prior to their expiration, at the office of the Warrant Agent, upon notice to the Registered Holders of the Warrants,

as described in Section 6.3 below, at a price equal to a number of shares of Common Stock determined by reference to the table below, based on the redemption date (calculated for purposes of the table as the period to expiration of the Warrants) and the "Fair Market Value" (as such term is defined in subsection 3.3.1(b)) (the ***"Alternative Redemption Price"***), provided that the last sales price of the Common Stock reported has been at least $10.00 per share (subject to adjustment in compliance with Section 4 hereof), on the trading day prior to the date on which notice of the redemption is given and provided that there is an effective registration statement covering the Common Stock issuable upon exercise of the Warrants, and a current prospectus relating thereto, available throughout the 30-day Redemption Period (as defined in Section 6.3 below) or the Company has elected to require the exercise of the Warrants on a "cashless basis" pursuant to subsection 3.3.1.

	Fair Market Value of Class A Common Stock								
Redemption Date (period to expiration of warrants)	$ 10.00	$ 11.00	$ 12.00	$ 13.00	$ 14.00	$ 15.00	$ 16.00	$ 17.00	$ 18.00
57 months	0.257	0.277	0.294	0.31	0.324	0.337	0.348	0.358	0.365
54 months	0.252	0.272	0.291	0.307	0.322	0.335	0.347	0.357	0.365
51 months	0.246	0.268	0.287	0.304	0.32	0.333	0.346	0.357	0.365
48 months	0.241	0.263	0.283	0.301	0.317	0.332	0.344	0.356	0.365
45 months	0.235	0.258	0.279	0.298	0.315	0.33	0.343	0.356	0.365
42 months	0.228	0.252	0.274	0.294	0.312	0.328	0.342	0.355	0.364
39 months	0.221	0.246	0.269	0.29	0.309	0.325	0.34	0.354	0.364
36 months	0.213	0.239	0.263	0.285	0.305	0.323	0.339	0.353	0.364
33 months	0.205	0.232	0.257	0.28	0.301	0.32	0.337	0.352	0.364
30 months	0.196	0.224	0.25	0.274	0.297	0.316	0.335	0.351	0.364
27 months	0.185	0.214	0.242	0.268	0.291	0.313	0.332	0.35	0.364
24 months	0.173	0.204	0.233	0.26	0.285	0.308	0.329	0.348	0.364
21 months	0.161	0.193	0.223	0.252	0.279	0.304	0.326	0.347	0.364
18 months	0.146	0.179	0.211	0.242	0.271	0.298	0.322	0.345	0.363
15 months	0.13	0.164	0.197	0.23	0.262	0.291	0.317	0.342	0.363
12 months	0.111	0.146	0.181	0.216	0.25	0.282	0.312	0.339	0.363
9 months	0.09	0.125	0.162	0.199	0.237	0.272	0.305	0.336	0.362
6 months	0.065	0.099	0.137	0.178	0.219	0.259	0.296	0.331	0.362
3 months	0.034	0.065	0.104	0.15	0.197	0.243	0.286	0.326	0.361
0 months	—	—	0.042	0.115	0.179	0.233	0.281	0.323	0.361

The exact Fair Market Value and Redemption Date (as defined below) may not be set forth in the table above, in which case, if the Fair Market Value is between two values in the table or the Redemption Date is between two redemption dates in the table, the number of Common Stock to be issued for each Warrant redeemed will be determined by a straight-line interpolation between the number of shares set forth for the higher and lower Fair Market Values and the earlier and later redemption dates, as applicable, based on a 365- or 366-day year, as applicable.

> The stock prices set forth in the column headings of the table above shall be adjusted as of any date on which the number of shares issuable upon exercise of a Warrant is adjusted pursuant to Section 4. The adjusted stock prices in the column headings shall equal the stock prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the number of shares deliverable upon exercise of a Warrant immediately prior to such adjustment and the denominator of which is the number of shares deliverable upon exercise of a Warrant as so adjusted. The number of shares in the table above shall be adjusted in the same manner and at the same time as the number of shares issuable upon exercise of a Warrant.

- *Exercise price adjustment upon certain changes of control* — Many warrants issued by a SPAC contain a provision that requires the exercise price to be adjusted if (1) there is a change of control of the entity and (2) less than 70 percent of the consideration received is stock listed on an exchange. The calculation of the exercise price adjustment differs for Public Warrants as compared to Private Placement Warrants. That is, for Public Warrants, the adjustment is calculated on the basis of a capped American call option, whereas for Private Placement Warrants, the adjustment is calculated on the basis of an uncapped American call option.[14] If, however, the Private Placement Warrants are transferred to a nonpermitted transferee, the exercise price adjustment changes from being calculated on the basis of an uncapped American call option to being calculated on the basis of a capped American call option. An example of such a provision is as follows:

> [I]f less than 70% of the consideration receivable by the holders of the Common Stock in the applicable event is payable in the form of common stock in the successor entity that is listed for trading on a national securities exchange or is quoted in an established over-the-counter market, or is to be so listed for trading or quoted immediately following such event, and if the Registered Holder properly exercises the Warrant within thirty (30) days following the public disclosure of the consummation of such applicable event by the Company pursuant to a Current Report on Form 8-K filed with the Commission, the Warrant Price shall be reduced by an amount (in dollars) equal to the difference of (i) the Warrant Price in effect prior to such reduction minus (ii) (A) the Per Share Consideration (as defined below) (but in no event less than zero) minus (B) the Black-Scholes Warrant Value (as defined below). The "***Black-Scholes Warrant Value***" means the value of a Warrant immediately prior to the consummation of the applicable event based on the Black-Scholes Warrant Model for a Capped American Call on Bloomberg Financial Markets ("***Bloomberg***"). For purposes of calculating such amount, (1) Section 6 of this Agreement shall be taken into account, (2) the price of each share of Common Stock shall be the volume weighted average price of the Common Stock as reported during the ten (10) trading day period ending on the trading day prior to the effective date of the applicable event, (3) the assumed volatility shall be the 90 day volatility obtained from the HVT function on Bloomberg determined as of the trading day immediately prior to the day of the announcement of the applicable event, and (4) the assumed risk-free interest rate shall correspond to the U.S. Treasury rate for a period equal to the remaining term of the Warrant. "***Per Share Consideration***" means (i) if the consideration paid to holders of the Common Stock consists exclusively of cash, the amount of such cash per share of Common Stock, and (ii) in all other cases, the volume weighted average price of the

[14] In the example, the difference arises because of the reference to Section 6 of the Warrant Agreement, which explains that Public Warrants are subject to redemption (i.e., forced exercise) whereas Private Placement Warrants are not.

Common Stock as reported during the ten (10) trading day period ending on the trading day prior to the effective date of the applicable event. If any reclassification or reorganization also results in a change in shares of Common Stock covered by subsection 4.1.1, then such adjustment shall be made pursuant to subsection 4.1.1 or Sections 4.2, 4.3 and this Section 4.4. The provisions of this Section 4.4 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers. In no event will the Warrant Price be reduced to less than the par value per share issuable upon exercise of the Warrant.

- *Different formulas used to determine the number of shares delivered in a cashless (net share) settlement* — There are often multiple definitions of "fair market value" that may apply in the event of a cashless settlement. If the definition(s) applicable to Public Warrants differ from the definition(s) applicable to Private Placement Warrants in any respect, the Private Placement Warrants are not considered indexed to the SPAC's stock because the applicable definitions change if the Private Placement Warrants are transferred to a nonpermitted transferee and thus become Public Warrants. Two examples of a potential difference are as follows:
  - *For Public Warrants*:

    [T]the volume weighted average price of the Common Stock as reported during the ten (10) trading day period ending on the trading day prior to the date that notice of exercise is received by the Warrant Agent from the holder of such Warrants or its securities broker or intermediary.

    For Private Placement Warrants:

    [T]he average last sale price of the Common Stock for the ten (10) trading days ending on the third trading day prior to the date on which notice of exercise of the Warrant is sent to the Warrant Agent.
  - *For Public Warrants in the case of notice of redemption at $.01*:

    The average reported last sale price of the shares of Common Stock for the ten trading days ending on the third trading day **prior to the date on which the notice of redemption is sent** to holders of Warrant.

    For Private Placement Warrants:

    The average reported last sale price of the shares of Common Stock for the ten trading days ending on the third trading day **prior to the date of exercise**.

If a Private Placement Warrant (1) does not contain any settlement provision (i.e., a provision other than a standard antidilution adjustment that affects the exercise price or number of shares) or (2) could never become a Public Warrant, the Private Placement Warrant could be classified as equity provided that there are no other provisions or circumstances that cause the warrant to not be considered indexed to the SPAC's stock or not meet the equity classification conditions in ASC 815-40-25. As discussed above, as a result of a tender offer provision, Private Placement Warrants may not meet the equity classification conditions in ASC 815-40-25.

In current practice, because warrant agreements generally have one or more of the provisions above, most Private Placement Warrants are not considered indexed to the SPAC's stock and require liability classification both before and after a merger of the SPAC with a target.[15] On the basis of the SEC Staff Statement, some registrants may need to determine whether they have classified such warrants incorrectly in previously filed financial statements. For information about evaluating errors, see the Connecting the Dots discussion in the Equity Classification Conditions section.

Accounting for Issuance Costs

[Section added April 30, 2021]

Nonauthoritative AICPA Guidance

Technical Q&As Section 4110, "Issuance of Capital Stock"

.01 Expenses Incurred in Public Sale of Capital Stock

Inquiry — A closely held corporation is issuing stock for the first time to the public.

How would costs, such as legal and accounting fees, incurred as a result of this issue, be handled in the accounting records?

Reply — Direct costs of obtaining capital by issuing stock should be deducted from the related proceeds, and the net amount recorded as contributed stockholders' equity. Assuming no legal prohibitions, issue costs should be deducted from capital stock or capital in excess of par or stated value.

Such costs should be limited to the direct cost of issuing the security. Thus, there should be no allocation of officers' salaries, and care should be taken that legal and accounting fees do not include any fees that would have been incurred in the absence of such issuance.

SEC Staff Accounting Bulletins

SAB Topic 5.A, Expenses of Offering [Reproduced in ASC 340-10-S99-1]

Facts: Prior to the effective date of an offering of equity securities, Company Y incurs certain expenses related to the offering.

Question: Should such costs be deferred?

Interpretive Response: Specific 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. However, management salaries or other general and administrative expenses may not be allocated as costs of the offering and deferred costs of an aborted offering may not be deferred and charged against proceeds of a subsequent offering. A short postponement (up to 90 days) does not represent an aborted offering.

Issuance Costs Incurred in Conjunction With a SPAC's IPO

In addition to the above guidance, SAB Topic 2.A.6 states, in part, that "[f]ees paid to an investment banker in connection with a business combination or asset acquisition, when the investment banker is also providing interim financing or underwriting services, must be allocated between acquisition related services and debt issue costs."

In accordance with this guidance, a SPAC should evaluate which fees and costs incurred in conjunction with its IPO and any issuance of Private Placement Warrants or other securities represent direct and incremental costs that would be eligible for deferral. For example,

[15] As discussed above, this section assumes that the Private Placement Warrants are not within the scope of ASC 718. If a Private Placement Warrant is within the scope of ASC 718, the classification would be determined on the basis of the classification guidance in ASC 718. In these circumstances, if the holder has no continuing service requirement after the SPAC merges with a target and the transaction is accounted for as a reverse recapitalization, the combined company should reassess the accounting classification of the Private Placement Warrant as of the date of the merger with the SPAC in accordance with the classification guidance in ASC 480-10 and ASC 815-40.

underwriting costs incurred to issue the units, as well as certain legal and accounting fees, may be direct and incremental costs. However, costs that are not direct or incremental must be expensed as incurred.

After identifying the population of eligible costs that would qualify for deferral, the SPAC should appropriately allocate such costs to the various instruments issued. For example, when a SPAC incurs underwriting costs with an investment bank (including deferred costs) and the amount of those costs is directly related to the proceeds received from issuing the units, those costs should only be allocated to the units. Other costs that are not directly related to a specific type of instrument may be allocated by using a rational basis.

The underwriting fees are generally allocated only to the units because the amount of such costs is directly related to the number of units issued. Since the units contain two separate units of accounting (i.e., Class A Shares and Public Warrants), such costs will be further allocated to those separate units of accounting. Any amounts allocated to Class A Shares would be classified in temporary equity because those shares are redeemable securities. Any costs allocated to Public Warrants would be allocated to permanent equity if the Public Warrants are classified as equity instruments and would be immediately expensed if the Public Warrants are classified as liabilities that are initially and subsequently measured at fair value, with changes in fair value reported in earnings. For further information on the allocation of costs, see Section 3.3.4.4 of Deloitte's Roadmap *Distinguishing Liabilities From Equity*.

Issuance Costs Incurred in Conjunction With the Merger of a SPAC and Target

[Section added September 14, 2021]

Certain costs that the target company incurs in conjunction with a merger with a SPAC may represent direct and incremental costs (i.e., costs that qualify for deferral as part of the reverse capitalization). To properly account for them, the target company may need to allocate the eligible costs to the respective instruments issued or assumed in the SPAC merger.

If the target company in the SPAC merger does not recognize any liabilities that require subsequent accounting at fair value, with changes in fair value reported in earnings, it can recognize all direct and incremental costs in equity (i.e., APIC). However, the target company must take additional considerations into account if it recognizes any liability-classified instrument that is subsequently measured at fair value through earnings because the costs related (or allocated) to such instruments must be expensed as incurred.

In cases in which the target company issues or assumes in the SPAC merger any liability-classified instruments that are subsequently accounted for at fair value, it should first evaluate whether any eligible costs are directly related to a specific instrument. Such costs should be allocated to that instrument and capitalized or expensed, as appropriate (i.e., costs allocated to an equity instrument are recognized in equity, and costs allocated to a liability instrument that is subsequently reported at fair value through earnings are expensed as incurred). Other direct and incremental costs that are not directly related to a specific instrument should be allocated by using a rational basis. Because U.S. GAAP does not specifically address the accounting for costs incurred in a reverse capitalization involving a SPAC, we believe there are two acceptable views on how to allocate direct and incremental costs that are not directly related to a specific instrument. Those views are as follows:

- *View A — Allocate costs to all instruments assumed or issued in the SPAC merger on a relative fair value basis.* Under this approach, eligible costs would be allocated to all the SPAC shares, SPAC warrants, and earn-out arrangements involved in the merger. Costs allocated to liability-classified instruments that are subsequently measured at fair value through earnings (e.g., SPAC warrants and earn-out arrangements entered into with the SPAC sponsor[16]) must be expensed as incurred.

[16] Earn-out arrangements entered into with all the target's shareholders on a pro rata basis are treated as dividends. As a result, it is acceptable to recognize the amounts allocated to these arrangements in equity.

- *View B — Allocate costs only to the SPAC shares and any newly issued instruments in the SPAC merger on a relative fair value basis.* Under this approach, eligible costs would not be allocated to assumed liabilities such as liability-classified SPAC warrants. Rather, eligible costs would only be allocated to the SPAC shares and any newly issued instruments, such as earn-out arrangements. Costs allocated to liability-classified instruments that are subsequently measured at fair value through earnings (e.g., earn-out arrangements with the SPAC sponsor[17]) must be expensed as incurred.

Consolidation of SPACs

It is becoming increasingly common for the sponsors of SPACs to be businesses that prepare consolidated financial statements. In these situations, the sponsor must evaluate whether the SPAC must be consolidated under ASC 810. For further information about the consolidation guidance in ASC 810, see Deloitte's Roadmap *Consolidation — Identifying a Controlling Financial Interest*.

If a sponsor of a SPAC concludes that it must consolidate the SPAC:

- Any instrument classified as equity in the SPAC's financial statements that is not owned by the sponsor will represent a noncontrolling interest in the sponsor's consolidated financial statements.
- Any instrument issued by the SPAC that is owned by the sponsor will be eliminated in the sponsor's consolidated financial statements.

The sponsor must apply the noncontrolling interest guidance in ASC 810 as well as the guidance that applies to SEC registrants in ASC 480-10-S99-3A. The recognition, measurement, and EPS guidance in ASC 480-10-S99-3A can be very complex and often requires the entity to make several accounting policy elections (e.g., how measurement adjustments under ASC 480-10-S99-3A will be reflected in the income statement and EPS calculations of the sponsor). For further information, see Deloitte's Roadmap *Noncontrolling Interests*.

Classifying Share-Settleable Earn-Out Arrangements

[Section added February 10, 2021; amended March 19, 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.[18] 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).

[17] See footnote 16.

[18] 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.

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 merger, 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 (e.g., they would be forfeited if one or more conditions are not met by a stated date), 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 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.[19] 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.

[19] 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. For further information, see the Share-Based Payment Considerations section.

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 Roadmap *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 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.[20] 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.

[20] 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.

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.

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 (provided that those adjustments reflect only reasonable compensation for lost time value).

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.

We have observed that in current practice, earn-out arrangements can be generally categorized into four different types, which are discussed in the table below.

Type	Evaluation of Indexation Guidance
A fixed number of shares will be issued if (1) the combined company's stock price meets or exceeds a stated price or (2) there is a change of control of the combined company. See Example 5.	If one of these two conditions is met, the issuance of the earn-out shares is only considered an exercise contingency because there is no variability in the number of shares issuable. This exercise contingency does not preclude the earn-out share arrangement from being considered indexed to the combined company's stock.
A variable number of shares will be issued on the basis of the combined company's stated stock prices. If there is a change of control, all the earn-out shares will be issued. Example: 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* — 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. • *Level 2* — 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. • *Level 3* — 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. • *Level 4* — 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. 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. If, however, the combined company is acquired in a change of control, all previously unissued shares will be issued.	This arrangement contains a provision that affects the settlement amount. The number of earn-out shares issuable varies on the basis of whether there is a change of control of the combined company. That is, in the absence of a change of control, a variable number of shares will be issued on the basis of stock price. However, if a change of control occurs, all of the earn-out shares will be issued (i.e., 4 million shares will be issued regardless of the combined company's stock price). This arrangement contains a settlement provision that precludes it from being indexed to the combined company's stock under step 2 of ASC 815-40-15; therefore, liability classification is required.

(Table continued)

Type	Evaluation of Indexation Guidance
A variable number of shares will be issued on the basis of the combined company's stated stock prices. If there is a change of control at a price per share that equals or exceeds a stated amount that is less than the price needed for all the earn-out shares to be issued, all of the earn-out shares will nevertheless be issued. Example: 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* — 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. • *Level 2* — 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. • *Level 3* — 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.	This arrangement contains a provision that affects the settlement amount. The number of earn-out shares issuable varies depending on whether there is a change of control of the combined company at a stated price. That is, in the absence of a change of control at a stated price, a variable number of shares will be issued on the basis of stock price. However, if a change of control occurs at a price per share of $15 or more, all the earn-out shares will be issued (i.e., 4 million shares will be issued regardless of the combined company's stock price). This arrangement contains a settlement provision that precludes it from being indexed to the combined company's stock under step 2 of ASC 815-40-15; therefore, liability classification is required.
• *Level 4* — 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. 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. If, however, the combined company is acquired in a change of control at a price of $15.00 or more, all previously unissued shares will be issued.	

(Table continued)

Type	Evaluation of Indexation Guidance
A variable number of shares will be issued on the basis of either (1) the combined company's stated stock prices or (2) the price per share in a change of control of the combined company. See Example 4.	This arrangement contains a provision that affects the settlement amount. The determination of whether this arrangement is indexed to the combined company's stock under step 2 of ASC 815-40-15 depends on (1) how the price per share is calculated in a change of control of the combined company and (2) an entity's interpretation of the application of ASC 815-40-15 to the potential settlement that would occur upon a change of control. Some entities have determined that the settlement amount is affected by the occurrence or nonoccurrence of a change of control, which is not an input into the pricing of a fixed-for-fixed forward or option on equity shares. These entities have therefore concluded that the earn-out arrangement is not indexed to the combined company's stock under step 2 of ASC 815-40-15. As a result, the earn-out arrangement is classified as a liability. Note that these entities reach this conclusion without evaluating the calculation of the price per share in a change of control of the combined company. Other entities focus on the calculation of price per share in the event of a change of control. On the basis of a preclearance with the staff of the SEC's Office of the Chief Accountant, there are two possible outcomes: • If the price per share is calculated by dividing the transaction consideration by a number of outstanding shares that *excludes* the shares issuable under the earn-out share arrangement, the arrangement is not considered indexed to the combined company's stock under step 2 of ASC 815-40-15 and must be classified as a liability. • If the price per share is calculated by dividing the transaction consideration by a number of outstanding shares that *includes* the shares issuable under the earn-out share arrangement, the arrangement is considered indexed to the combined company's stock under step 2 of ASC 815-40-15 and may be classified as an equity instrument as long as no other condition in ASC 815-40 precludes such classification.
	A price per share calculation that includes the number of shares issuable under the earn-out arrangement can be described as a "circular," "net," or "as-diluted" calculation. Although computable, it is not a simple calculation. In addition, the terms of the provision that apply in the event of a change of control are often subject to interpretation (i.e., ambiguous). In these situations, entities must consult with attorneys to reach the proper legal interpretation. If an entity cannot conclude that the arrangement would follow the circular, net, or as-diluted calculation, the earn-out arrangement cannot be classified in equity. We understand that many entities are modifying the terms of such provisions or taking other actions to eliminate the ambiguity in the contractual terms of the change-of-control provision.

In the table above, it is assumed that none of the earn-out shares are within the scope of ASC 718. We have seen instances in practice in which earn-out share arrangements with target shareholders may be issuable to employees that hold vested or unvested shares or options on the date on which the SPAC merges with a target. In addition to ASC 718 accounting considerations, entities should assess whether the potential shares issuable to common stockholders for which the accounting is in accordance with ASC 815-40 could be affected by the number of shares issuable to recipients for which the accounting is within the scope of ASC 718 (i.e., recipients that receive those shares as a form of stock-based compensation). For example, assume that earn-out shares will be issued to holders of unvested stock options on the merger date provided that those holders are still employees on the date on which the earn-out share target or targets are met. If an option holder is no longer an employee as of that date, the earn-out shares otherwise receivable by the holder will be reallocated to the pool of shares receivable by common stockholders that did not receive such shares in return for services (i.e., that were not within the scope of ASC 718). In this situation, as a result of the guidance on the unit of account in ASC 815-40, the portion of the earn-out arrangement that is within the scope of ASC 815-40 would not be considered indexed to the combined company's stock because the number of shares varies on the basis of employee behavior. In a manner consistent with Example 20 in ASC 815-40-55, the earn-out arrangement within the scope of ASC 815-40 must be classified as a liability in its entirety.

For more information on the application of the indexation guidance, see Chapter 4 of Deloitte's Roadmap *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 Roadmap *Contracts on an Entity's Own Equity* for further information on these classification conditions.

Other Considerations

Regardless of the classification of an earn-out arrangement, ASC 815-40 requires an entity to recognize the initial fair value of the instrument. The offsetting entry will depend on the facts and circumstances. We believe that for earn-out arrangements with target shareholders, the offsetting entry should be reflected in the same manner as if the entity declared a pro rata dividend to its common shareholders.

Entities should also consider the effect that earn-out arrangements may have on their EPS calculations and disclosures. Earn-out arrangements represent potential common shares; therefore, in calculating diluted EPS, the combined company should consider the guidance on contingently issuable shares. In addition, some earn-out arrangements require shares to be issued or released from escrow if the combined company's common stock exceeds a certain price over a specified period. For example, an arrangement may stipulate that 1 million shares must be issued on the date the daily volume-weighted average share price is greater than or equal to $13.00 for any 20 days within a 30-day trading period. For these types of arrangements, we understand that there is diversity in practice regarding how ASC 260 is applied. ASC 260-10-45-52 states:

> The number of shares contingently issuable may depend on the market price of the stock at a future date. In that case, computations of diluted EPS shall reflect the number of shares that would be issued based on the current market price at the end of the period being reported on if the effect is dilutive. If the condition is based on an average of market prices over some period of time, the average for that period shall be used. Because the market price may change in a future period, basic EPS shall not include such contingently issuable shares because all necessary conditions have not been satisfied. ***[Paragraph amended September 14, 2021]***

Some believe that the denominator of diluted EPS should not include any shares that are issuable under the earn-out arrangement unless the triggering event either (1) has been met as of the end of the reporting period or (2) would have been met in the absence of a required waiting period (i.e., some arrangements do not allow stock price conditions to be met until a specified period after the SPAC merger has been consummated). This view is premised on a belief that the guidance on shares that are contingently issuable on the basis of an average of market prices applies and therefore no shares would be included in the denominator of diluted EPS unless a triggering event has been met, or would have been met, as of the reporting date. Under this view, if the triggering event is met as of the end of the reporting period, the shares are included in the denominator from the beginning of the reporting period (or issuance date of the earn-out arrangement, if later). ***[Paragraph added September 14, 2021]***

Others believe that the denominator of diluted EPS should include shares that would be issuable if the entity's stock price as of the end of the reporting period would not change in the future. This view is premised on the belief that the guidance on shares that are contingently issuable on the basis of an average of market prices only applies to the volume-weighted average price as of the end of the reporting period. Under this view, the fact that shares are issuable only if a volume-weighted average daily price is met for a certain number of days within a defined period does not mean that the entity looks to the trailing prices over that defined period as of the end of the reporting period. ***[Paragraph added September 14, 2021]***

We believe that either of these two views is acceptable. Entities should disclose the approach they use to calculate diluted EPS for such arrangements. ***[Paragraph added September 14, 2021]***

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 Roadmap *Earnings per Share* for further information on participating securities and the two-class method of calculating earnings per share.

Share-Based Payment Considerations

[Section added March 19, 2021]

As part of a target's accounting analysis, the entity should assess the impact that the SPAC merger will have on preexisting share-based payment arrangements with employees and nonemployees (collectively, the "grantees") that are within the scope of ASC 718. When the SPAC is the accounting acquirer and the target meets the definition of a business, the entity should consider the guidance on business combinations in Chapter 10 of Deloitte's Roadmap *Share-Based Payment Awards*.

If the target is determined to be the accounting acquirer and the SPAC does not meet the definition of a business, an entity should consider whether the preexisting target awards were modified as part of the SPAC merger. When performing this assessment, the entity should pay careful attention to the original terms of the preexisting target awards and any changes that result from the SPAC merger. This may include the evaluation of any earn-out arrangements with the grantees, including earn-out arrangements in which grantees are subject to ongoing service requirements after the SPAC merger. In addition, the entity should consider the effect, if any, of a SPAC merger on any antidilution provisions included in the original terms of the target awards. These determinations may require consultation with legal counsel. For further discussion of the accounting for modifications, see Chapter 6 of Deloitte's Roadmap *Share-Based Payment Awards*.

As noted in the Indexation section, companies may have earn-out share arrangements that provide earn-out shares to grantees that are subject to forfeiture. We believe that if any forfeited shares are subsequently reallocated to the remaining grantees that are subject to the earn-out share arrangement, the reallocation solely to grantees is analogous to a "last man standing" arrangement. Under that view, the forfeiture and subsequent redistribution of the awards to grantees are accounted for as (1) the forfeiture of the original award and (2) the grant of a new award. For more information, see Section 10.7.3 of Deloitte's Roadmap *Share-Based Payment Awards*.

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 Roadmap *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; however, in alternative structures in which either the target or a newly formed company acquires a SPAC, the confidential review process may be available for a longer period. The draft registration statement in a nonpublic review must be "substantially complete"[21] 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). ***[Paragraph amended September 14, 2021]***

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). Similarly, if there has been a change in the target company's auditor in the two most recent fiscal years or subsequent interim period, such a change must also be disclosed. As a result, in certain circumstances, multiple changes in auditor may be reported in the Super 8-K (e.g., a change in auditor of the target company within the last two years and a change in auditor of the registrant [to the target auditor] upon the close of the transaction). 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). ***[Paragraph amended September 14, 2021]***

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

[21] Source: https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded.

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, though 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 reverse recapitalizations:

- If the combined company files a new or amended registration statement *before the filing of the first periodic report that reflects the transaction*, it does not need to retrospectively revise the financial statements to reflect the recapitalization since the financial statements do not yet include the period in which the transaction is reflected. However, such a registration statement must include the pretransaction financial statements of both the target and the SPAC.
- 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. In such cases, since the financial statement periods included in the registration statement reflect the transaction, the SEC staff will not object if the pretransaction financial statements of the SPAC are omitted from the registration statement. 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 the Changing Lanes discussion in the Other Financial and Nonfinancial Information section for more information on SEC reporting requirements.

[Paragraph last amended September 14, 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 Roadmap *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 ICFR and 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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