



Evolving Market, Unique Risks

In 2020, SPAC IPOs outpaced traditional IPOs in both total number of offerings and collective capital raised; and 2021 is on track to surpass those numbers. As a result, investors, executives, and financial institutions are becoming increasingly wary of a potential wave of litigation, given the challenges posed by SPACs' unique structure and liabilities. The following considerations are intended to help clients mitigate risk as they navigate this complex and uncharted market.

Current Litigation Landscape

- SPACs currently are facing claims typically asserted in traditional M&A litigation. These claims include Section 14(a) and Section 10(b) violations, breach of fiduciary duty, and exercise of shareholder appraisal rights.
- Most of the claims mirror the traditional “deal tax” litigation in M&A transactions that usually result in disclosure-only settlements, allowing plaintiffs to extract quick settlements. Since the Delaware Court of Chancery began limiting these claims in 2016, the majority of the claims are being filed in New York state court or federal district court.
- However, as the SPAC boom continues, we expect to see Plaintiffs and Plaintiffs' lawyers become more creative in the type of claims they are bringing (e.g., *Kwame Amo v. Multiplan*).

State Law Case Trends

- Overall, we are seeing a greater number of SPAC securities claims brought in state courts vs. federal, including a flurry of activity in New York, a majority of which were filed after the SEC's disclosure guidance was issued. Many appear to have used that guidance as a template for the complaints.
- These cases usually are filed after the announcement of the de-SPAC transaction and before the shareholder vote/subsequent closing of the transaction, ostensibly seeking preliminary injunctive relief to enjoin the transaction until alleged disclosure deficiencies are rectified.
- The majority of these cases thus far have not resulted in substantive proceedings, and a number of plaintiffs have voluntarily discontinued lawsuits after a SPAC releases supplemental disclosures addressing the purported disclosure deficiencies.

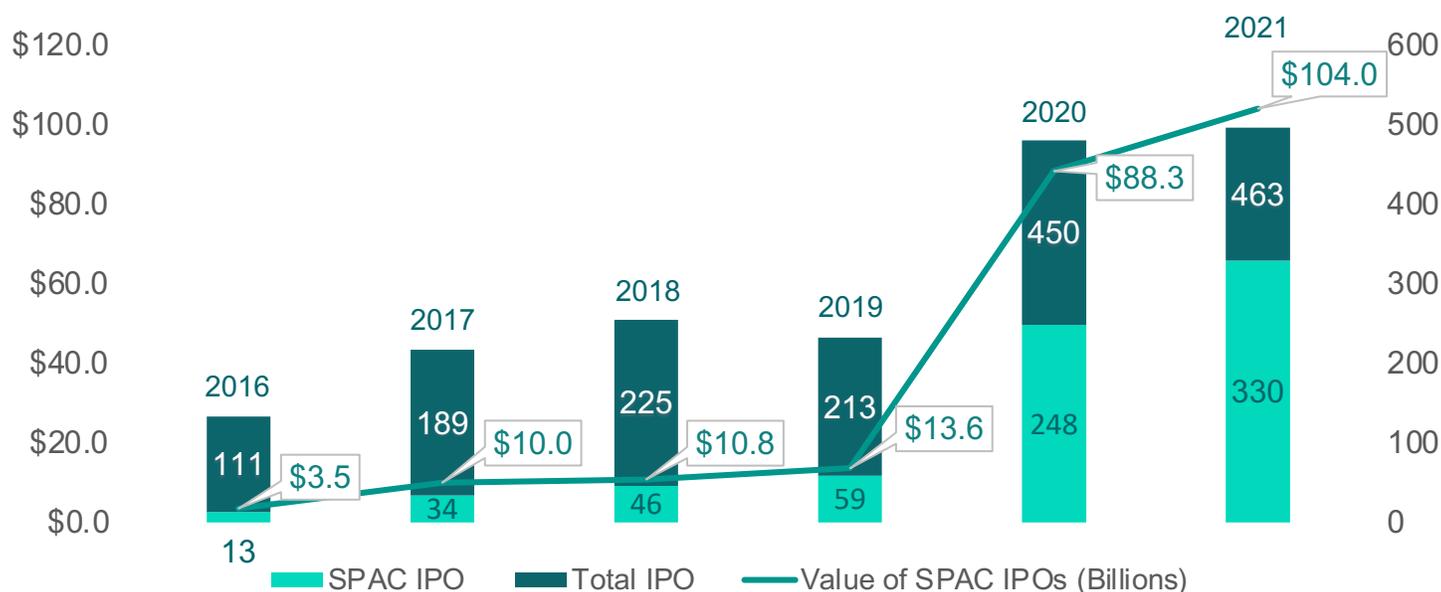
D&O Insurance Considerations

- De-SPAC transactions pose additional challenges in a D&O insurance market that is already constricted.
- There is significant competition for limited D&O insurance capacity.
- The underwriting and negotiation of a D&O policy will take time and preparation: start the process as soon as possible.
- Selecting a sophisticated broker with extensive experience in the D&O/ de-SPAC space is critical to successfully obtaining insurance.
- R&W Insurance is a potential tool for a SPAC in the de-SPAC process.

SEC Scrutiny

- Continued guidance from the SEC (through public statements) as well as congressional discussions on amending the 33 Act and 34 Act, point to potential future regulatory activity.
- A key issue framed by the SEC is whether the PSLRA Safe Harbor protections apply to SPAC transactions.

SPACs By The Numbers:



Case Citations

- [Amo v. Multiplan Corporation, et. al, No. 2021- 0258](#)
- [Matthew Rico, et al. v. Lordstown Motors Corp., et al., 21-CV-00616](#)
- [Lavin v. Virgin Galactic Holdings Inc., 21-cv-03070I](#)
- [Pitman v. Immunovant, Inc. et al., 1:21-cv-00918-KAM](#)

Mintz Materials

- [SPAC Chat Podcast: Litigation Update](#)
- [SEC Discloses Its Recommendations on Key Issues for Private Companies Weighing SPAC Transactions](#)
- [2021's Continued SPAC Boom Invites Heightened SEC Scrutiny of SPAC Transactions](#)
- [Breaking Down the SPAC Surge: A Review of Key Trends & Issues Defining the Phenomenon](#)
- [Visit our SPAC Webpage](#)

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