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## SPAC LITIGATION: CURRENT STATE AND BEYOND

*In this article the authors discuss the structural features and disclosure-related issues arising in SPAC transactions and in SPAC litigation. They begin with a discussion of SPAC structures and potential conflicts. They then turn to Delaware's approach to SPAC litigation, the SEC's approach to SPAC disclosures and conflict issues, and private plaintiffs' securities law actions to recover losses in SPAC investments. At two points they provide key takeaways and observations regarding this litigation. They close with notes on the new frontiers for SPAC trends.*

By Jenny Hochenberg and Justin C. Clarke \*

Recent years have witnessed a widely remarked increase in sponsor activity establishing special purpose acquisition companies (or "SPACs"). In 2021 alone, there have been over 600 initial public offerings of SPACs, which have raised in excess of \$160 billion in funds. Of these, close to 500 are still seeking a merger partner.<sup>1</sup>

The SPAC boom has generated new opportunities for some start-ups and other high-growth companies to access the public equity markets before they might otherwise have been regarded as eligible candidates for an IPO. It has also given retail investors the chance to invest in companies that might otherwise be the exclusive domain of venture capital firms and professional investors. At the same time, investments in such early-stage companies can carry risks, and the performance of these companies after going public via a business combination with a SPAC (or a "de-SPAC"

transaction) has been mixed and, in many cases, disappointing.

Adding to this dynamic is a SPAC structure that, from a litigation and regulatory perspective, contains an unusual variety of "threat surfaces." Depending on a particular SPAC's structural features and the particular details of its de-SPAC transaction, the sponsors, directors, and/or officers of the SPAC, as well as the controlling shareholders, directors, and/or officers of the company combining with the SPAC (or "target" company), may be subject to shareholder claims under core fiduciary-duty doctrines, as well as private causes of action arising under state and federal securities law. In addition, SPACs have drawn increased attention from regulators, including through enforcement actions by the Securities and Exchange Commission.

These factors have resulted in a dramatic increase in litigation involving SPACs – a trend that is not expected to abate anytime soon. In fact, novel and complex legal issues are almost certain to arise as newly formed SPACs enter the next phase of their lifecycle and undertake de-SPAC transactions and as previously de-

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<sup>1</sup> *SPAC IPO Transactions: Summary by Year and SPAC Status by Year of IPO*, SPACINSIDER, available at <https://spacinsider.com/stats>. Data as of December 31, 2021.

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