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FPIs IN SPAC LAND – CONSIDERATIONS FOR FOREIGN PRIVATE ISSUERS IN CONNECTION WITH SPACs

Special Purpose Acquisition Companies that are Foreign Private Issuers or acquire Foreign Private Issuers should be mindful of new SEC rules, especially SEC Guidance on timing of Foreign Private Issuer status.

By Paul M. Dudek *

In recent years, and particularly throughout 2020, 2021, and the first half of 2022, the number and dollar amount of initial public offerings (“IPOs”) by special purpose acquisition companies (“SPACs”) and business combination transactions involving SPACs and private target operating companies increased markedly. Subsequently, in response to asserted concerns relating to the adequacy of disclosures and other investor protection matters relating to SPACs, the US Securities and Exchange Commission adopted a comprehensive set of disclosure, procedural, and financial statement mandates affecting both SPAC IPOs and so-called deSPAC transactions on January 24, 2024.¹ These rules became effective on July 1, 2024, after which compliance is required for all filings scoped in under the new rules, regardless of whether a particular transaction document was previously filed with the SEC prior to that effective date.

Foreign private issuers (“FPIs”) are a meaningful part of the SPAC universe: FPIs can be SPACs, the private

operating business that is the subject of a deSPAC transaction and the resulting SEC-registered entity after the deSPAC transaction.² This article discusses how FPIs have historically navigated SEC rules relating to SPACs and how the SEC’s new rules specifically impact FPIs.³

¹ Special Purpose Acquisition Companies, Shell Companies and Projections, Rel. No. 33-11265 (2024).

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² An FPI is an entity (other than a foreign government) incorporated or organized under the laws of a foreign jurisdiction unless: (1) more than 50% of its outstanding voting securities are directly or indirectly owned of record by US residents and (2) any of the following applies: (i) the majority of its executive officers or directors are US citizens or residents; (ii) more than 50% of its assets are located in the United States; or (iii) its business is administered principally in the United States. Rule 405 under the Securities Act of 1933 and Rule 3b-4(c) under the Securities Exchange Act of 1934. In its adopting release, the SEC noted that non-US corporations, especially from the Cayman Islands and Marshall Islands, are involved in some facet of the SPAC lifecycle and represent a significant percentage of SPAC entities.

³ Other recent SEC rules affecting FPIs are discussed in “The Unique Impact of Recent SEC Rules on Foreign Private Issuers,” by the author, 56 Rev. of Securities & Compliance Reg’n 227 (Sept 27, 2023).

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