

On February 9, the SEC proposed changes to the Investment Advisers Act of 1940 (“Advisers Act”). One of the new rules proposed is requiring an **independent Fairness Opinion** for adviser-led secondary transactions.

*Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, SEC, February 9, 2022, Page 122 ([www.sec.gov/rules/proposed/2022/ia-5955.pdf](http://www.sec.gov/rules/proposed/2022/ia-5955.pdf)):

*“The proposed adviser-led secondaries rule would prohibit an adviser from completing an adviser-led secondary transaction with respect to any private fund, unless the adviser distributes to investors in the private fund, prior to the closing of the transaction, a fairness opinion from an independent opinion provider ...”*

Page 125 goes on to further define **independent opinion provider**:

*“To mitigate the potential influence of the adviser’s conflict of interest further, the rule would require these opinions to be issued only by an ‘independent opinion provider,’ which is one that (i) provides fairness opinions in the ordinary course of its business and (ii) is not a related person of the adviser...”*

### SPAC / de-SPAC Transactions

A **Special Purpose Acquisition Company** (“SPAC”) is a company organized and capitalized in support of a plan to acquire a privately-held operating company(ies). The SPAC is taken public through an IPO transaction, but it does not have revenue generating operations until it merges with a business enterprise through a de-SPAC transaction. SPACs are oftentimes referred to as “shell companies” or “blank check companies” because they don’t have revenue generating activity when founded. While SPACs have been around for years, they gained great popularity recently, starting in 2019, and began receiving public scrutiny from the SEC in 2021.

Quoting directly from the SEC’s *Special Purpose Acquisition Companies, Shell Companies, and Projections*, March 30, 2022, Page 18 ([www.sec.gov/rules/proposed/2022/33-11048.pdf](http://www.sec.gov/rules/proposed/2022/33-11048.pdf))

*“...we (SEC) are proposing to, among other things:*

- Require additional disclosures about the sponsor of the SPAC, potential conflicts of interest, and dilution;*
- Require additional disclosures on de-SPAC transactions, including a requirement that the SPAC state (1) whether it reasonably believes that the de-SPAC transaction and any related financing transaction are fair or unfair to investors, and (2) whether it has received any outside report, opinion, or appraisal relating to the fairness of the transaction; and*
- Require certain disclosures on the prospectus cover page and in the prospectus summary of registration statements filed in connection with SPAC initial public offerings and de-SPAC transactions”*