

# **SPAC = Public Company = Public Scrutiny**

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## **Midyear SPAC Transaction and Compliance Updates**

*DealFlow Events held its annual SPAC Conference in Rye, New York on June 23-24, 2021. The Conference was attended by SPAC organizers, accounting, legal, transaction advisory and valuation professionals including David Gaynor, ASA and Cara Burnham from Marshall & Stevens.*

Here are four important take-aways from the Conference:

**1. SEC's Statement regarding SPAC Warrants** – The SEC issued a statement in April that SPAC warrants that lack an embedded feature (specifically, those that are options to purchase shares at a predetermined price within a defined time period) should be considered a liability on the balance sheet - a departure from the historical practice which treated them as equity instruments. Once categorized as liabilities, the warrants must also then be marked-to-market which could have material implications for profit-and-loss statements.

The SEC's statement created some turmoil in the SPAC market as many SPACs and subsequently acquired operating companies were advised of a need for restatement or delayed SEC reporting. While some professionals provided theories on how SPACs could continue to classify warrants as equity, it was recommended that SPACs consult their legal and accounting advisors on how to support such an approach.

**2. SEC Scrutiny of Projections and Due Diligence** – The SEC appears to have increased its scrutiny of SPAC financial projections and due diligence. It was recommended that projections be thoroughly documented and supported and that an independent third-party be engaged to perform a detailed due diligence of target companies and financial projections in preparation of review by the SPAC's board well in advance of deal approval.

**3. An Emphasis on Fairness Opinions** – Multiple attorneys recommended that SPACs retain an independent valuation firm to perform a fairness opinion for its transactions. Even though a fairness opinion is not required by law, a fairness opinion helps to lessen the threat of potential litigation while protecting the board, management, and shareholders. Overall, a fairness opinion improves the SPAC’s board of directors’ decision-making process.

**4. Engaging a Third-Party Valuation Firm** – Multiple presenters recommended that an independent third-party valuation firm be engaged to perform all valuation work, including warrants, purchase price allocation analyses, and fairness opinions. They also stressed the importance of having the valuation work performed as early as possible so to avoid delaying any filing requirements.

Marshall & Stevens’ has significant experience performing valuations for public companies, including SPAC debt and equity instrument valuations, purchase price allocations, and fairness opinions. Several of our valuation professionals have worked in the valuation practices of public accounting firms and understand, from personal experience, what audit firms expect. We are happy to get on the phone with you and your advisors to discuss your potential valuation needs.

For more information about the topics mentioned above contact David Gaynor, ASA at [dgaynor@marshall-stevens.com](mailto:dgaynor@marshall-stevens.com), Cara Burnham at [cburnham@marshall-stevens.com](mailto:cburnham@marshall-stevens.com).

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