

• Corporate and Investment Banking Practice

# 2022 SPAC Overview

August 2022

# 2022 SPAC Outlook

- 2022 could prove to be the inflection point for the U.S. SPAC industry due to the evolving situation on multiple fronts, including new and stricter regulations, creative financing methods, fierce competition for targets and the development of the SPAC market in other geographies.

Introduction of new regulations on SPACs, which will align with the traditional way of going public, increasing the time and due diligence requirement at both the IPO and de-SPACing stages.

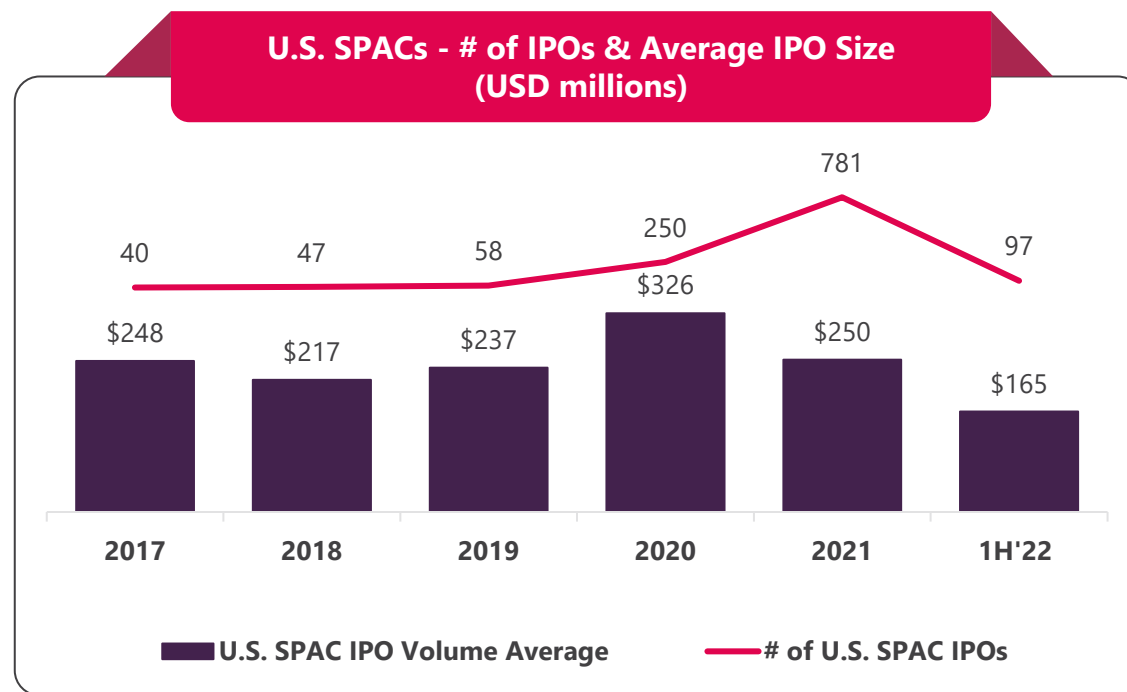
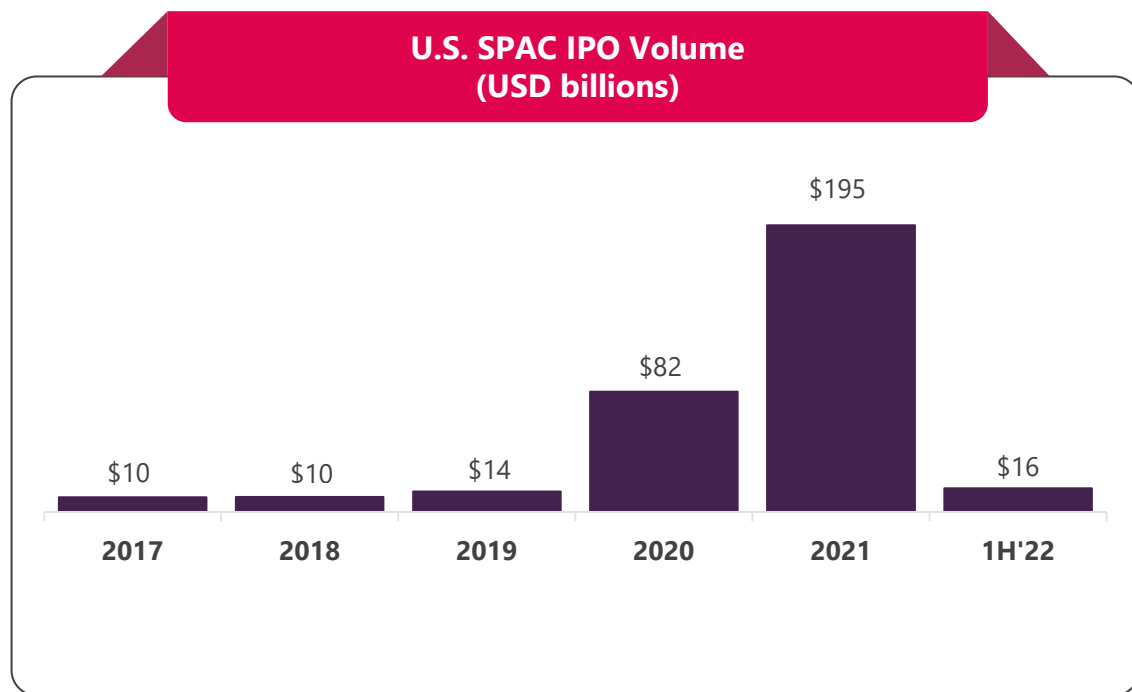
Currently, ~600 SPACs are trying to find their target companies and running short on their two-year timeline. ~280 U.S. SPACs have a deadline to de-SPAC by Q1'23; however, with limited good targets available, chances are that many of the SPACs will end up liquidating in 2023.

With the decline in the U.S. SPAC market, global markets will record more deals, especially in SPAC-friendly markets like Singapore and Hong Kong, however, growth in European markets will remain uncertain because of the stricter regulations and ongoing war effects on the economy.

As PIPE investors are becoming more critical of the SPACs due to the overvaluation, poor performance, unethical practices etc., SPAC sponsors will move towards alternative sources of funding like convertible debts, preferred stocks and backstop financing to fund the de-SPAC process.

# U.S. SPAC IPO Activity Significantly Decelerated in 1H'22 After 2021 Frenzy

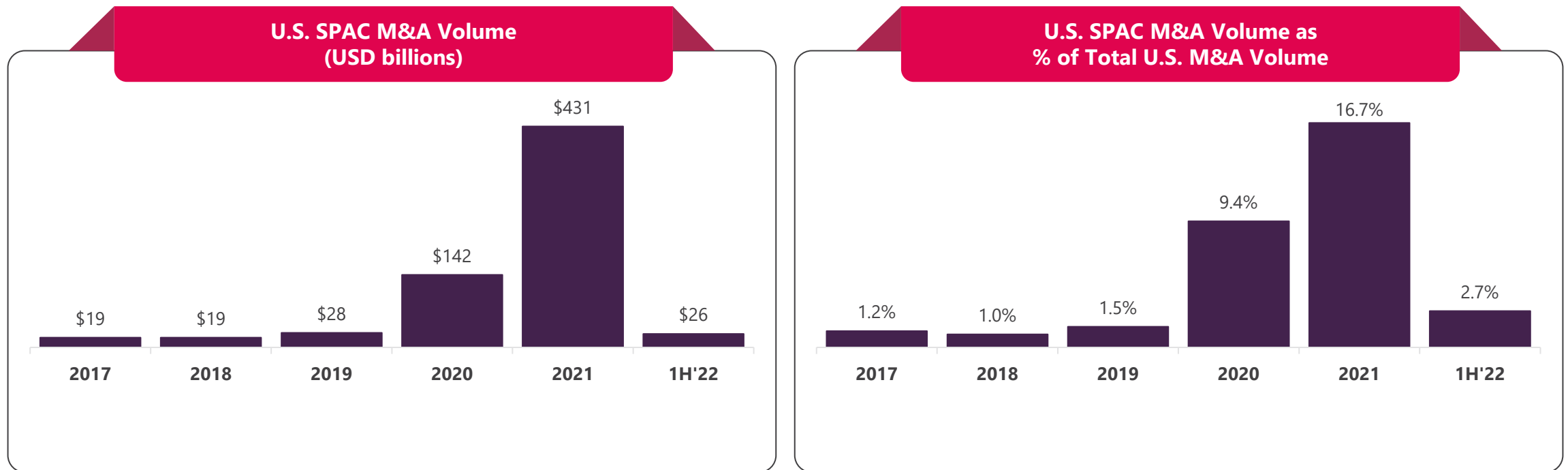
- The main reason behind the slowdown was the SEC's intention to introduce stricter rules to govern SPACs; increased litigation on SPACs because of unethical practices and poor share price performance after de-SPACing.
- SPACs are allowed to make financial projections in order to attract investors, but many of them failed to achieve them and were litigated for misleading investors.
- Over 10% of the de-SPACs concluded in the last two years issued "going-concern" warnings for the next 12 months.



Sources: Refinitiv, Audit Analytics, Businessinsider. Notes: U.S. represents U.S.-based stock exchanges IPOs. 1H'22 represents data until 6/24/2022.

# U.S. SPAC M&A Deals Saw Unprecedentedly Low Activity in 1H'22

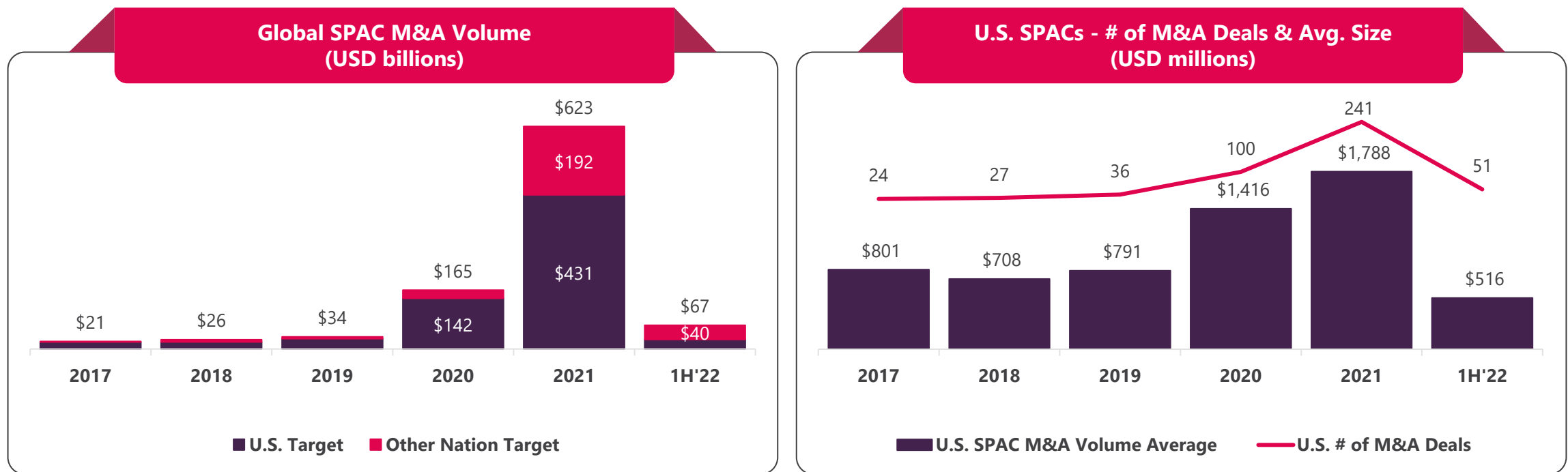
- In 1H'22, the market saw a significant decline in deal activity mainly due to a higher redemption rate compared to 2021 and 2020, as investors are pulling out money because of the high failure rate among SPACs, geopolitical conflicts and tighter monetary policies.
- However, in 2021, a record level of deals were executed because of the readily available financing options like Private Investment in Public Equity (PIPE) and less stringent regulations.



Sources: Refinitiv. Notes: U.S. represents M&A deals with U.S. targets. Years based on announcement date. 1H'22 represents data until 6/28/2022.

# U.S. Target SPAC M&A Deals Represent ~70% of Global SPAC M&A Deals

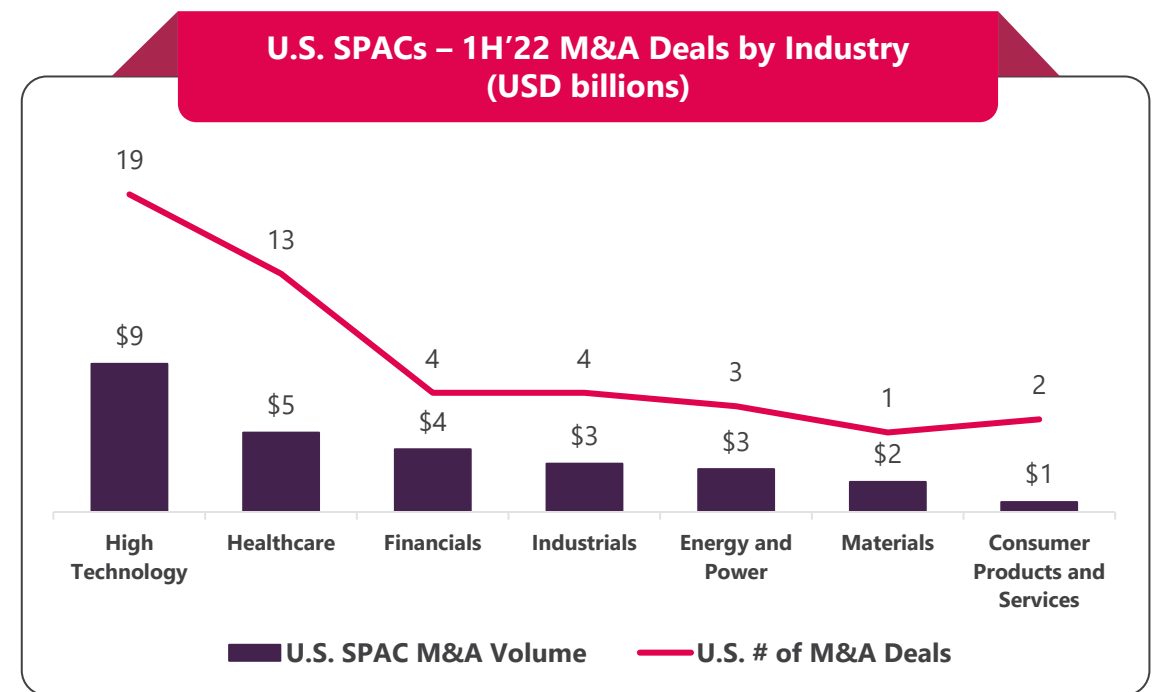
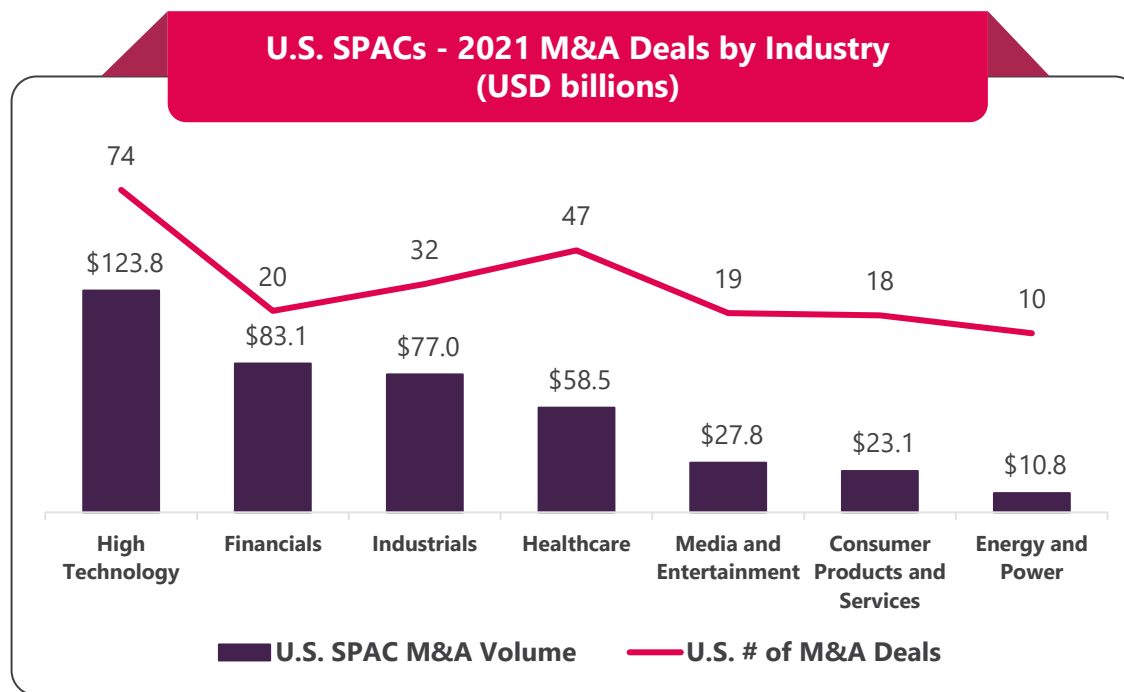
- During 1H'22, 78% of SPAC IPO volume was raised in U.S. stock exchanges, with 61% of SPAC M&A activity involving a target from another country.
- Although 87% of SPAC IPO volume was raised in U.S. stock exchanges, 31% of SPAC M&A activity involved a target from another country in 2021.



Sources: Refinitiv. Notes: U.S. represents M&A deals with U.S. targets. Years based on announcement date. 1H'22 represents data until 6/28/2022.

# Tech Was the Industry with Highest SPAC M&A Volume Surpassing Financials

- Tech companies are looking for rapid access to public markets through SPACs, as the intention is to capture their market faster because of relatively fewer regulations and low barriers to entry for competitors.
- Other factors are lower valuation risk, availability of dry powder and investor special interest in tech businesses.
- EJV Acquisition acquired Pagaya Technologies for ~\$8B, and Dragoner Growth Opportunities Corp II acquired Cvent for ~\$4.5B, making technology the industry with the highest SPAC M&A volume.



Sources: Refinitiv, PR Newswire. Notes: U.S. represents M&A Deals with U.S. targets. Years based on announcement date. Industry based on the target company. 1H'22 represents data until 6/28/2022.

# New Rules Proposed By U.S. SEC To Regulate SPACs

- On March 30, 2022, the SEC proposed new stringent rules to curb the SPACs frenzy, which led to many class actions filed on account of misleading projections, unethical activities and many other issues.
- SEC Chairman Gary Gensler stated that SPAC investors deserve the protections they receive from traditional IPOs with respect to information asymmetries, fraud and conflicts, and when it comes to disclosure, marketing practices, gatekeepers and issuers.

## Rules Promulgated by SEC, in a three-to-one vote of its commissioners regarding SPACs

### **Elimination of Private Securities Litigation Reform Act ('PSLRA') safe harbor for forward-looking statements:**

Major implications will be that liability will be extended for forward-looking statements to other merger participants, including underwriters.

### **Underwriter liability:**

This rule includes new securities Act Rule 140a, which will make an underwriter for SPAC also liable as underwriter in de-SPAC process given certain conditions are met. The intention behind this rule is to make underwriters perform intense due diligence to protect investors.

### **Requirement of de-SPAC target to be a co-registrant to the merger registration statement:**

The major implication will be that a target, which is a private company, will also be liable in case of any material misstatement or omission in their disclosure, making the target and its officers more susceptible to litigations.

### **Providing safe harbor under Investment Company Act of 1940 (1940 Act):**

SPACs were sued by third parties claiming that 1940 Act should apply on SPACs, as they hold government securities in trust, however certain leading law firms mentioned that SPACs only temporarily hold the government securities and are mainly engaged in finding targets and doing mergers within a certain timeframe and hence should not be liable under the 1940 Act. Furthermore, according to SEC, to fall within the safe harbor, SPACs must:

- Initiate the de-SPAC transaction within 18 months of SPAC's IPO; and
- Complete the de-SPAC transaction within 24 months of SPAC's IPO

### **Requirement for Fairness Opinion:**

This would require the SPAC to obtain fairness opinion from independent investment firm on wide ranging matters like fairness of de-SPAC transactions to unaffiliated shareholders; the basis of target projections & valuation; and financing, among others.

Sources: GreenbergTraurig, National Law Review, Bloomberg Law, Dorsey & Whitney LLP

# American Bar Association ('ABA') Take On SEC Proposed SPAC Rules

- In general, the ABA supported the increased disclosure requirement **but intensely opposed the proposals** to require a **fairness opinion in** connection with the de-SPAC transaction; requirement that **target be a co-registrants** to the merger registration statement; imposing **underwriting liability** in de-SPAC transactions and **eliminating the PSLRA** safe harbor for forward-looking statements.
- In perspective, the ABA opposed all the major new rules proposed by the SEC, with the exception of an enhanced disclosure requirement.

## New SEC Rules Opposed by Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association

ABA Committee **opposed the proposal** to remove the current safe harbor under PSLRA, mentioning that **there are important distinction between de-SPAC transactions and traditional IPOs**, and this amendment will discourage de-SPAC transactions.

ABA committee **opposed** imposing underwriting liability under de-SPAC transactions, stating that the **intention to identify additional gatekeepers is not supported by the definition of underwriter** in the Securities Act and has created uncertainty and concern in the market.

ABA committee called making targets co-registrants **inappropriate**, as targets are not necessarily **issuing any securities** in the de-SPAC transaction, and this **amendment is inconsistent** with the existing Securities Act rules and interpretation regarding co-registrant status.

ABA committee on proposing a safe harbor for the SPACs under the **1940 Act stated that SPACs are not investment companies** and are not engaged in any activity related to investment companies, and hence there is no need or basis for the safe harbor proposal.

ABA committee **opposed** the requirement of a fairness opinion in connection with de-SPAC transactions and stated that this is **outside the SEC's rulemaking authority**. And assuming the SEC has such authority, the scope of fairness should not just cover the SPACs' unaffiliated security holders but rather should cover all aspects in its entirety.



# Amidst Downward Trend in PIPE, Higher Redemption Rate and Controversies Surrounding SPACs' New Financing Methods are Evolving

- In 2022, PIPE financing has dried up after the high of 2021 - almost all the deals had backing of PIPE (95% of closed deals) in 2021, with an average PIPE of ~\$316M.
- Now in 2022, sponsors are increasingly moving away from PIPE to more innovative methods of financing like convertible debts, preferred stocks, warrants and backstops, as PIPE investors are more skeptical about target viability and deal terms.

## Major New Financing Methods

- **Convertible Debts:**
  - Several de-SPACs have gone for 5-years convertible notes, with conversion prices between \$11.50 - \$12.00
  - Issuers, including famous names like SOFI and Lucid, also accessed the convertible debt market
- **Backstop Financing:**
  - Backstop investors provide financing commitment in return for equity compensation









## Significant Growth in Redemptions

- In **Q1'22**, redemption rates increased **to 85%** (vs. **11% in Q1'21**), however slightly improving back to 79% in Q2'22
- Some deals recorded redemptions of over **90% in 2021**
- As sponsors are asking shareholders to vote on extension periods to find targets, **many are choosing to redeem** following market uncertainties

## Increase in Litigations, Inquiries and Withdrawals

- **6x** increase in **securities class actions (SCA) in 2021** (vs. 2020) against SPACs
- The SEC is scrutinizing many de-SPACs, including the merger between **Digital World Acquisition Corp.** and **Trump Media Technology Group**
- Many SPACs withdrew plans for IPOs, including **Silverman Acquisition, Atlas Crest, Trepont Acquisition and Omnichannel Acquisition**

# 1H'22 Top 5 Global SPAC M&A Deals

SPAC	Target	Deal Value
	<p>FL/ENTERTAINMENT</p>	<p>\$4.1B</p>
<p>Goldenstone Acquisition</p>		<p>\$3.6B</p>
		<p>\$3.4B</p>
		<p>\$2.5B</p>
		<p>\$2.0B</p>

Source: Refinitiv

# About the Author

**Himanshu D. Sharma**

**Research Lead**

**Corporate and Investment Banking LoB**

Himanshu has several years of working experience in the domain of credit research, corporate & investment banking and private equity.

[himanshu.sharma2@evalueserve.com](mailto:himanshu.sharma2@evalueserve.com)



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