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# Sandpiper Partners LLC

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## **SPACs, De-SPACs and SPAC Litigation: Current Developments, Litigation, Investigations and What's on the Horizon?**

*A Virtual Zoom Conference*

**Tuesday, September 28, 2021**

**10:00 a.m. – 1:00 p.m. EDT**

- **Current Developments**
  - **Securities Litigation**
- **Regulation & Investigations**

[CLICK HERE TO REGISTER for this Complimentary Program](#)

Developed by legal specialists from top law firms and advisors working with Sandpiper, our curriculum covers the lifecycle of Special Purpose Acquisition Companies (SPACs), including the critical legal, business, accounting and regulatory issues arising out of SPACs and the ensuing publicly-listed companies. Securities and Exchange Commission (SEC) and NASDAQ officials are planning to participate in discussions about these timely issues with our faculty of top-tier lawyers and advisors.

### **A Boom in Deals, Lawsuits and Investigations**

SPAC transactions have exploded over the past two years, spawning broad interest as a corporate finance vehicle. Following the SPAC explosion, we are now seeing increased regulatory oversight and a wave of SPAC-related litigation and enforcement activity.

This special conference will examine the latest trends, approaches and risks related to SPACs, with insights and “best practices” from a panel of experts who are on the front lines. In addition to attorneys and advisors from top legal and consulting firms, SEC and NASDAQ officials will offer their views—making this an authoritative and “must attend” briefing.

### **A Timely & Practical Agenda**

#### **1. Opening Conversation**

- *A discussion between Stephanie Avakian, former SEC Enforcement Director, Chair, Securities and Financial Services, Partner, WilmerHale, and Myron Marlin, former SEC*

*Communications Director, Head of Crisis & Litigation Communications, FTI Consulting (Moderator).*

## **2. SPACs Today—Corporate Finance: Current Trends & Developments**

The SPAC market is funding many early stage high-growth companies in tech-enabled/game-changing sectors. In the first half of 2021, the number of SPACs increased by 67%, reaching 515.

Regulators, commentators and litigants have raised many issues about the proliferation of SPAC transactions and the market continues to adjust to these developments. For example, the SEC issued a public statement earlier this year on accounting and reporting considerations for warrants issued by SPACS, identifying an accounting issue concerning the treatment of certain warrants as liabilities. Regulators have also warned SPACs and their target companies to improve processes and policies in order to be better prepared to become public companies, to be careful with overly optimistic projections, and to undertake more due diligence. Price volatility in the trading of post-SPAC companies has also focused market participants to consider a wide variety of risks.

The panel of experts will address the rapidly evolving landscape applicable to SPAC and potential SPAC combination partners, as well as the steps that industry participants and advisors are undertaking to enhance due diligence, provide investor comfort on transaction valuations and prepare operating companies for the challenges of the public markets.

## **3. Securities and Corporate Litigation: Allegations, Current Cases and What is Yet to Come?**

Over the last year, there has been a dramatic increase in civil securities and fiduciary duty litigation challenging both SPAC transactions and companies that have listed through a business combination with a SPAC (known as a “de-SPAC transaction”). Part of this increase is consistent with a groundswell of listed SPACs and increased use of SPACs by operating companies seeking capital markets access. However, there are a variety of trends emerging in these litigations, and de-SPAC transactions have proved to be fertile ground for litigation on many issues. For example, we are seeing significant lawsuits on multiple issues, including:

- **Structural SPAC Challenges.** There are several lawsuits pending in Delaware and other courts where the plaintiffs allege that conflicts inherent in the SPAC process necessitate stringent judicial review and/or raise issues systemic to the SPAC model.
- **De-SPAC Injunctive Lawsuits.** There have been a number of challenges brought this year under Delaware law and the federal securities laws, as well as suits seeking to enforce specific shareholder rights.
- **De-SPAC Transaction Disclosure Lawsuits.** In 2021, we have seen significant proliferation of these types of cases (historically seen in connection with public company M&A), with

lawsuits alleging disclosure issues being filed in response to almost every de-SPAC transaction, primarily in state or federal courts outside of Delaware.

- **Federal Securities & Derivative Lawsuits.** A wide range of these lawsuits were filed during 2021, generally alleging Section 10(b)/Rule 10b5-1 securities fraud, based on undisclosed business risks or misleading projections in connection with a de-SPAC transaction. Many of these lawsuits have been triggered by short-seller reports, earnings misses, or other negative news triggering a stock drop in the share price of companies recently listed through de-SPAC transactions.

The panel of experts will address SPAC-related litigation trends, current fault lines and perspectives on future activity and risk management.

#### **4. Regulatory Activity/Investigations of SPACs**

SPACs and their associated publicly-listed companies have drawn significant regulatory scrutiny in the past year, including on issues related to due diligence, financial projections, disclosures, and a variety of accounting concerns.

SEC pronouncements have had broad effects in the SPAC market, and recent enforcement activity and industry sweeps by the SEC Division of Enforcement and the Department of Justice have been closely watched by SPAC market participants. There have also been a host of short seller reports alleging the newly public companies engaged in various improprieties and allegations from whistleblowers that have resulted in boards of these companies launching internal investigations.

The panel of experts will address the regulatory risks related to SPACs, the scrutiny from regulators and the market, and best practices for both investors and target companies who are the subject of government inquiries and whistleblower allegations, including board members overseeing internal investigations.

#### **FACULTY**

**Stephanie Avakian**, Chair, Securities and Financial Services, Partner, WilmerHale; Former Director, Division of Enforcement, SEC, Washington, D.C.

**Marc P. Berger**, Partner, Simpson Thacher & Bartlett LLP; Former Acting Director and Deputy Director, Division of Enforcement & Director of the New York Regional Office, SEC; Former Chief, Securities and Commodities Fraud Task Force, U.S. Attorney's Office, Southern District of New York, New York

**Stephen Blake**, Partner, Litigation Department, Simpson Thacher & Bartlett LLP, Palo Alto

**Cheemin Bo-Linn**, Chief Executive Officer, Peritus Partners Inc.; Board of Director, BlackLine Safety, San Jose, CA

**Roderick Branch**, Partner, Corporate Department, Latham & Watkins LLP, Chicago

**Mark Brod**, Partner, Corporate Department, Simpson Thacher & Bartlett LLP, New York

**Mary Eaton**, Partner, Co-Head of Securities & Shareholder Litigation,

Freshfields Bruckhaus Deringer LLP, New York

**Stuart Gleichenhaus**, Senior Managing Director, Leader of SPAC Initiative, FTI Consulting, Dallas

**Melissa Hodgman**, Associate Director, Division of Enforcement, U.S. Securities and Exchange Commission, Washington, D.C.

**Lindi Jarvis**, Senior Managing Director, FTI Consulting, Seattle

**Kevin LaCroix**, Executive Vice President, RT ProExec, a division of R-T Specialty, LLC, Cleveland, OH

**Mark Lebovitch**, Partner, Bernstein Litowitz Berger & Grossmann LLP, New York

**Myron Marlin**, Senior Managing Director, FTI Consulting, Washington, D.C.

**Steven R. Peikin**, Partner, Sullivan & Cromwell LLP, Former Co-Director, Division of Enforcement, SEC, New York

**Susan L. Saltzstein**, Partner; Co-Deputy, Securities Litigation Group, Skadden, Arps, Slate, Meagher & Flom LLP, New York

**Eklavya Saraf**, Managing Director, Global Head of SPAC Listings, NASDAQ, New York

**Keith M. Townsend**, Partner, King & Spalding LLP, Atlanta

**Perrie M. Weiner**, Chair, North America Securities Litigation Group; Partner in Charge, Los Angeles Office, Baker McKenzie LLP, Los Angeles

**Debra Wong Yang**, Partner; Chair of the Crisis Management Practice Group, Gibson, Dunn & Crutcher LLP, Los Angeles

***CLE and CPE credits have been applied for.***

**QUESTIONS?** Email Brett Verbist at [brettverbist@sandpiperpartners.com](mailto:brettverbist@sandpiperpartners.com)

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