KING & SPALDING

Client Alert

Corporate, Finance and Investments

MAY 5, 2022

For more information, contact:

Keith M. Townsend
Partner
ktownsend@kslaw.com

Daniel R. Kahan
Partner
dkahan@kslaw.com

Kevin E. Manz
Partner
kmanz@kslaw.com

J. Hillyer Jennings
Senior Associate
hjennings@kslaw.com

King & Spalding

Atlanta
1180 Peachtree Street, NE
Atlanta, Georgia 30309
Tel: +1 404 572 4600

New York
1185 Avenue of the Americas
New York, New York 10036
Tel: +1 212 556 2100

Miami
Southeast Financial Center
200 S Biscayne Boulevard
Miami, Florida 33131
Tel: +1 404 572 4600

The Rise of Crypto SPACs

Digital assets and special purpose acquisition companies ("SPACs") have been two of the hottest topics in the financial world over the past few years, and, unsurprisingly, the topics overlap with increasing frequency. We have set forth below a high-level overview of what SPACs are (including an explanation of the documentation involved in a crypto-related SPAC), guidance on what makes cryptocurrency-related SPACs unique and difficult to execute, a list of historical examples of such SPACs that have successfully completed an acquisition, a pipeline of potential crypto SPACs and some expectations for the future.

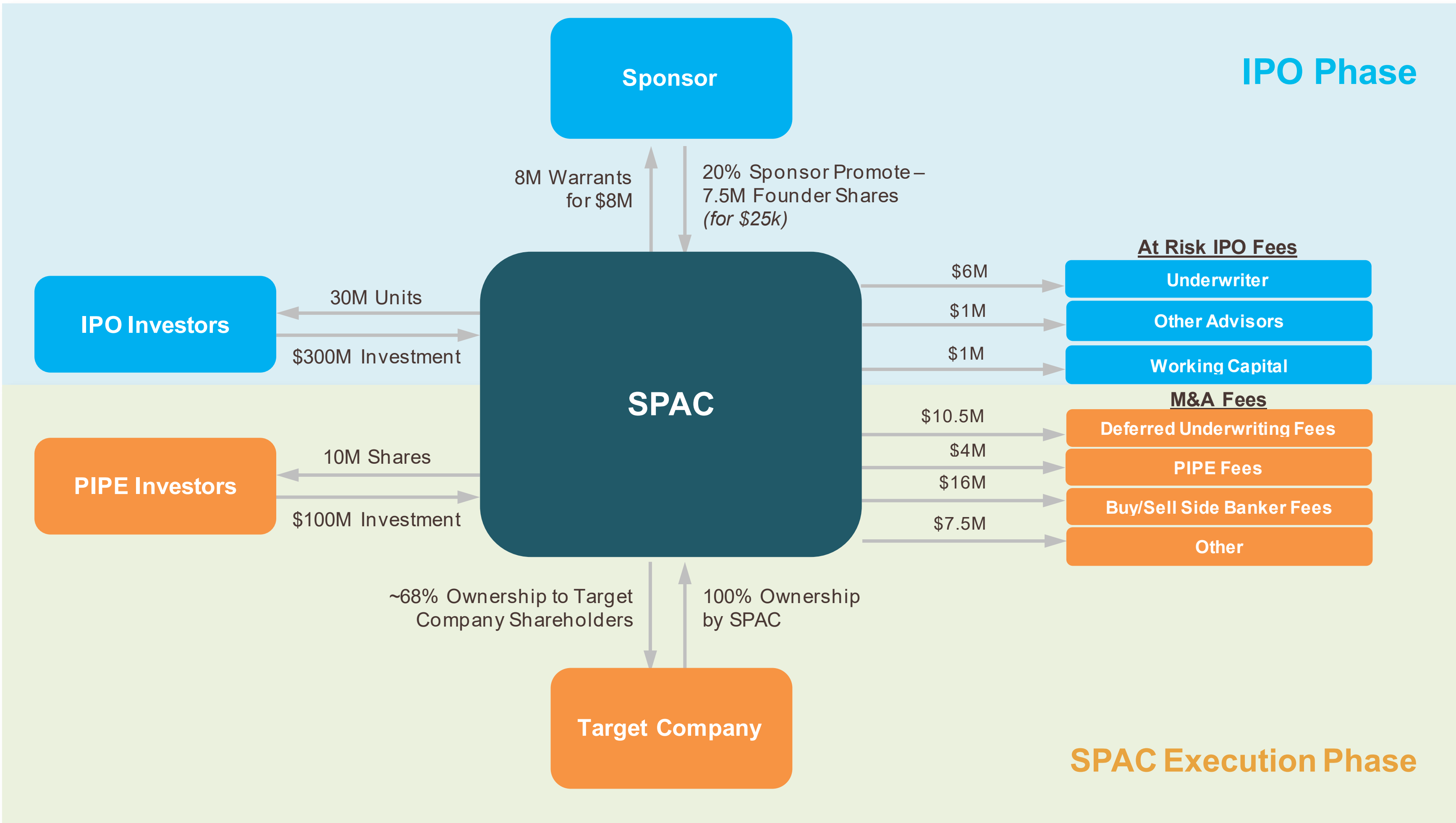
SPACs EXPLAINED

SPACs are publicly traded companies formed for the purpose of effecting an acquisition of one or more businesses. SPACs have been around since the 1990s, but they have surged in popularity in the last two years (although they are currently encountering some headwinds, as described in more detail below). The target is typically not identified prior to the initial public offering ("IPO"), and the IPO proceeds are held in trust pending an acquisition. If no acquisition is completed within a set timeframe, the SPAC is dissolved and funds are returned to investors.

There are two phases to the SPAC process: the IPO phase and the SPAC combination phase (or the "de-SPAC" phase). While the IPO phase has many features in common with a normal IPO process, the disclosures required for a SPAC IPO are more streamlined as a result of the SPAC not having material historical operations or assets to disclose.

Typically, SPAC IPOs sell units, consisting of one share of Class A common stock and a fraction of a warrant (i.e., the right to buy shares at a certain price). SPAC sponsors/founders usually receive Class B common stock and additional warrants in a private placement. An example of the common economics for SPAC funding is set forth in the diagram below:

Illustrative Economics for SPAC Funding

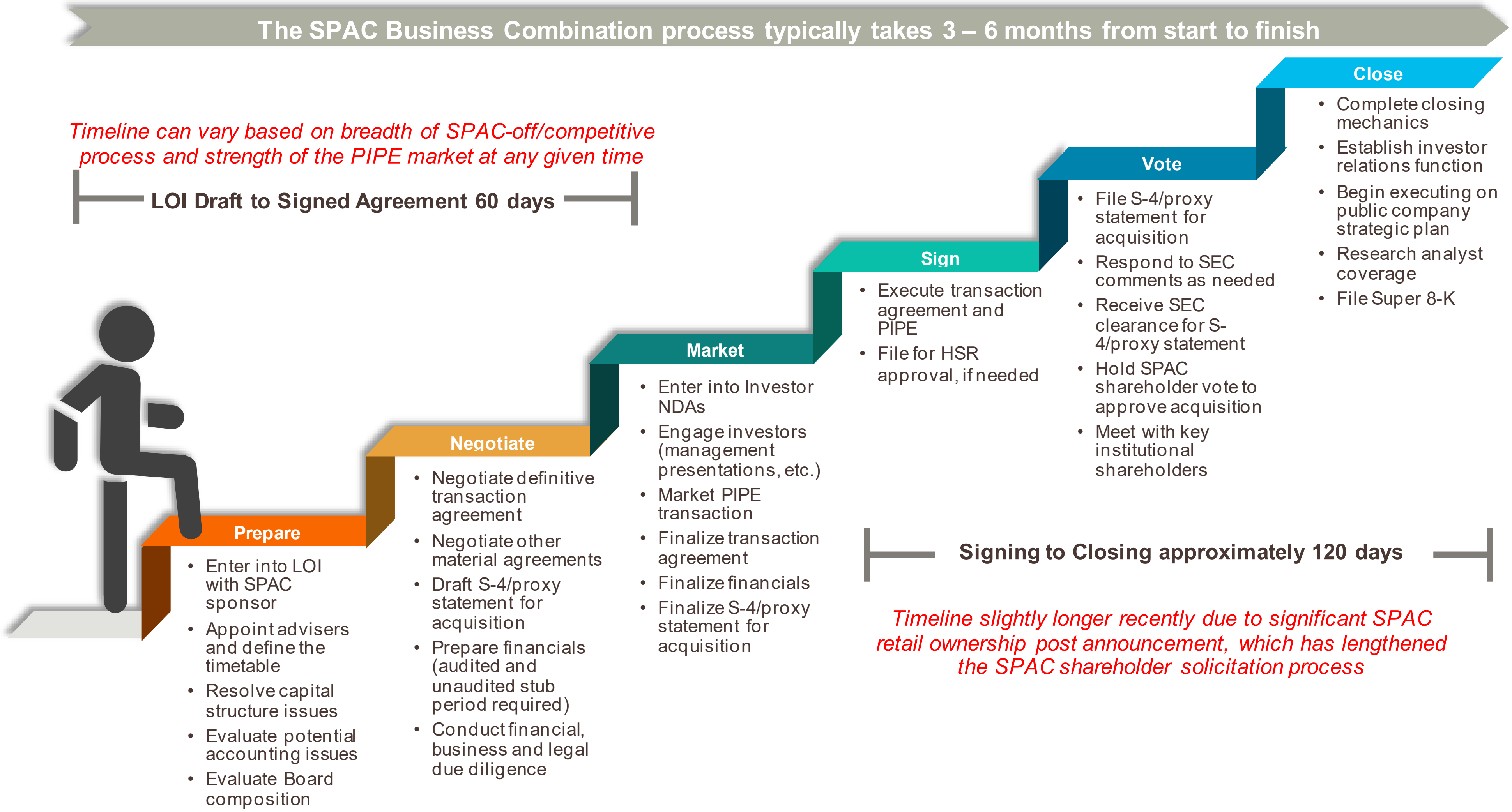


In order to complete a SPAC IPO, it is necessary to engage with a host of third parties, including underwriters, a stock exchange, an accounting consultant, a PCAOB auditor, a trustee and transfer agent, a financial printer, a press release wire service, a D&O insurance provider, target company counsel, foreign counsel (as applicable) and a website developer, among others. In addition to a handful of public company policies and Board committee charters, the following steps and documents are also required:

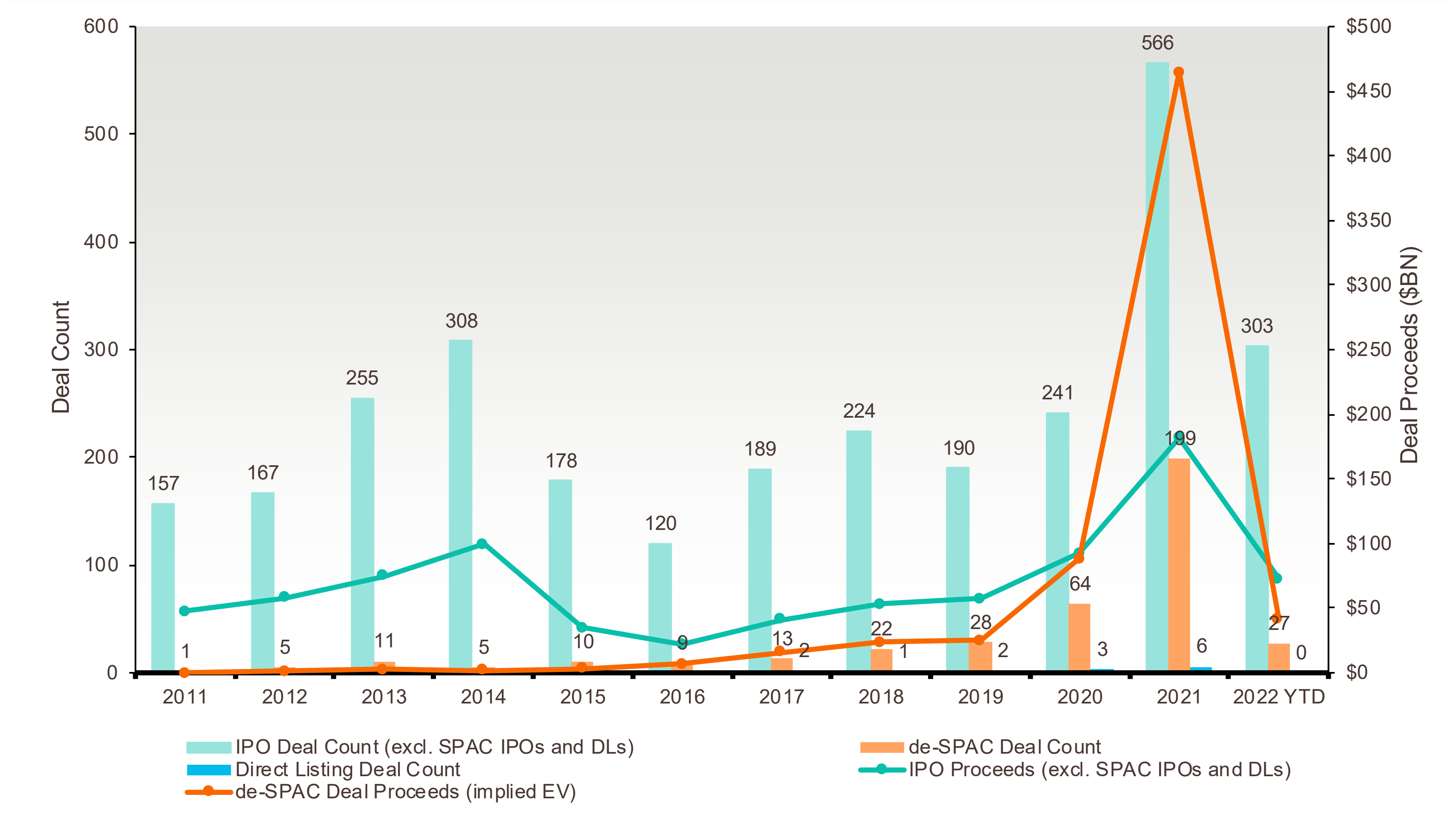
SPAC IPO Workstream Checklist

Offering Documentation	Initial Formation	Definitive Documentation
Registration Statement on Form S-1	SPAC Certificate of Incorporation and Bylaws	Stock/Warrant Certificates
Audited Financial Statements	Sponsor Organizational Documents (LLC or Operating Agreement)	Private Placement Warrant/Unit Purchase Agreement
Legal Opinions and 10b-5 Letter	Founder Shares Subscription	Trust Agreement
Due Diligence Meetings and Questionnaires	Sponsor Promissory Note	Registration Rights Agreement
Investor Presentation	Tax ID Filings	Underwriting Agreement
FINRA and Exchange Applications	Edgar Code Applications	Investment Management Agreement
Auditor Comfort		Indemnity Agreement
Director Consents and Signatures		Letter/Key Terms Agreement
		Administrative Support Agreement

Following the IPO, the next phase is to identify and acquire a target. The acquisition or "de-SPAC" phase is similar in many ways to a normal public M&A acquisition, and the diagram below provides an overview of the SPAC execution process:



Despite their complexity, SPACs became particularly popular during the past two years, as shown in the diagram below:



- *IPO Statistics per FactSet as of March 22, 2022, reflecting NYSE and Nasdaq IPOs, excluding Blank Check IPOs and Direct Listings*
- *de-SPAC transaction statistics per SPACInsider as of December 2, 2021; deal proceeds reflects implied transaction EV from SPACInsider*

As demonstrated above, while SPAC IPOs may be streamlined in some respects relative to traditional IPOs and grew in popularity as a result, SPACs are quite complex and require significant amounts of time and money to execute.

CRYPTO SPAC EXAMPLE

In order to fully illustrate the documentation required in connection with a SPAC lifecycle, it is helpful to reference the actual filings in a recent, high-profile example of a crytpo-related SPAC. Bakkt (the target), a digital asset marketplace and wallet provider, completed a SPAC merger with VPC Impact Acquisition Holdings (the SPAC) on October 15, 2021 and now trades on the New York Stock Exchange under ticker "BKKT." Using Bakkt's documents as examples (including hyperlinks below), the journey from a SPAC IPO to consummation of an acquisition includes the following key filings with the U.S. Securities and Exchange Commission ("SEC"):

- IPO Prospectus (*filed on Form S-1*): The IPO prospectus will include (i) a description of the recently founded company, (ii) the terms and conditions of the initial equity offering and (iii) any other information that would be considered material to a potential investor deciding to invest. In the IPO prospectus, the SPAC may identify a specific industry or business that it will target for its acquisition of an operating company, but there is no obligation to stick to such industry or business.
- IPO 8-K (*filed on Form 8-K*): In connection with the IPO prospectus, the SPAC will file a Form 8-K to announce the consummation of its initial public offering. This 8-K will attach Exhibits that include an Underwriting Agreement, a Warrant Agreement, a Letter/Key Terms Agreement, an Investment Management Agreement, a Registration Rights Agreement, a Private Placement Warrant/Unit Purchase Agreement and an Administrative Services/Support Agreement, among others.
- Acquisition Announcement 8-K (*filed on Form 8-K*): After identifying a target operating company and negotiating the terms of an acquisition agreement, the SPAC files a Form 8-K announcing the signing of the acquisition agreement (see the following item). The 8-K will attach the acquisition agreement as an Exhibit, and it will contain a summary of the acquisition agreement and certain related agreements. Furthermore, this 8-K will attach a press release and investor presentation.
- Acquisition Agreement (*filed as an Exhibit to Form 8-K*): The Merger Agreement or Agreement and Plan of Merger is a contract that includes the terms of the proposed business combination transaction. The agreement includes conditions to closing, covenants (including (i) covenants applicable during the period between signing the agreement and closing of the transaction and (ii) post-closing covenants), representations and warranties of the parties, closing mechanics and attached ancillary agreements.
- Proxy Statement for Initial Business Combination (*filed on Form S-4 or F-4, as applicable*): The SPAC will provide a proxy statement to the shareholders before the shareholder vote to approve the business combination transaction. The proxy statement will include information about the target business, financial statements, interests of the parties, the terms and conditions of the acquisition, the combined company's capital structure and optional redemption rights.
- Super 8-K (*filed on Form 8-K*): Within four business days of completion of the merger, the registrant must file what is informally referred to as the "Super 8-K," which includes all information that would be required in a registration statement on Form 10, including historical financial statements and updated pro forma financial information.

UNIQUE CONSIDERATIONS FOR CRYPTO SPACs

SPACs that target operating companies in the cryptocurrency/blockchain/digital currency space follow the same processes as SPACs in other industries in many ways. However, there are two key differences to consider when pursuing a SPAC opportunity in this space: (i) complex, technical business models and fluctuating cryptocurrency valuations (which have a ripple effect across the industry) make it difficult to value acquisition targets and (ii) ever-changing and increasing regulatory scrutiny and obligations make it difficult to ascertain and describe the risks associated with a cryptocurrency company.

Valuation Difficulties: Investors often have difficulty determining how to valuate a cryptocurrency company and understand the technical aspects of its business model, in large part because cryptocurrency is relatively new and quite complex. Furthermore, the profitability of the entire industry varies as the prices of cryptocurrencies (such as Bitcoin), which are particularly volatile, fluctuate. For example, see the recent revaluation of Circle, as described in the "*Pipeline*" Section below. These factors can make it difficult to attract investors to a SPAC with a stated cryptocurrency industry focus and can lead to high levels of redemptions (i.e., the right of SPAC investors to redeem their shares prior to the business combination) once a cryptocurrency company has been identified as the acquisition target. Also, the description of the target company in the proxy statement is quite lengthy, due to the difficulty in explaining the business model and value drivers in a format that investors can readily understand.

Valuation difficulties are also compounded by the confusing rules governing how companies reflect cryptocurrency holdings in their financial statements. Under current US GAAP accounting guidance, companies that hold cryptocurrency in their treasuries are generally required to treat those holdings as intangible assets.[1] If the value of those holdings decreases, the decrease is recorded as an impairment; no corresponding upward adjustment is permitted to be disclosed (even as a non-GAAP metric with explanatory disclosure[2]) if the value increases. Yet, per a recent SEC Staff Accounting Bulletin, issuers that hold cryptocurrency as custodians for other parties are required to record those holdings as liabilities, measured at fair value on the relevant date.[3] These complex rules make it difficult for sponsors, advisors and investors to understand the impact of cryptocurrency holdings on a company's financial condition and operations, and hence, its overall valuation.

Regulatory Uncertainty: Regulatory scrutiny under federal securities and antitrust laws has been increasing as the popularity of SPACs and cryptocurrencies has grown. Not only have SPACs become increasingly subject to SEC warnings, rules proposals (as described in more detail below) and lawsuits (which has led to skyrocketing costs for directors & officers' liability insurance for SPACs), but cryptocurrency companies have also been subject to intensifying attention from regulators, lawmakers and law enforcement officials. For an example of the lengthy disclosures required in crypto-related SPAC filings to address these risks, which can also result in lengthier review periods by the SEC, see the "*Risk Factors*" section beginning on page 54 of the Bakkt proxy statement/prospectus linked above, including the "*Risk Factors—Regulatory, Tax and Other Legal Risks*" subsection beginning on page 86 of such proxy. Largely as a result of such regulatory uncertainty, the volume of SPACs has decreased significantly from its highwater mark in 2021. Similarly, several countries, including China, have either banned cryptocurrencies or implemented severe restrictions. These factors make crypto SPACs increasingly difficult to navigate.

COMPLETED CRYPTO SPACs

The majority of completed SPACs across all industries are located in the United States, and the same is true for crypto-related SPACs. As of April 29, 2022, the following SPACs have **consummated** acquisitions of crypto-focused target companies:[4]

SPAC Entity	Target Entity	Exchange and Ticker	Date of Acquisition Closing
8i Enterprises Acquisition Corp.	Diginex Limited (now Eqonex Limited)	NASDAQ: EQOS	October 1, 2020
Capricorn Business Acquisition Inc.	Canada Computational Unlimited Corp.	TSXV: SATO	May 25, 2021
Good Works Acquisition Corp.	Cipher Mining Inc.	NASDAQ: CIFR	August 27, 2021
VPC Impact Acquisition Holdings	Bakkt Holdings, LLC (now Bakkt Holdings, Inc.)	NYSE: BKKT	October 18, 2021
Roman DBDR Tech Acquisition Corp.	CompoSecure Holdings, Inc.	NASDAQ: CMPO	December 27, 2021
Power & Digital Infrastructure Acquisition Corp.	Core Scientific Holding Co. (now Core Scientific, Inc.)	NASDAQ: CORZ	January 20, 2022
TradeUP Global Corporation	SAITECH Limited	NASDAQ: SAI	April 29, 2022

There have been several other de-SPAC targets with business *components* that relate to cryptocurrency, but there have been only a handful of completed de-SPACs so far with targets that are *primarily focused* on cryptocurrency, as shown above.

PIPELINE

Despite the limited number of completed crypto-focused de-SPACs to date, there is a significant pipeline of such transactions expected to close this year.[5] As of April 26, 2022, the following SPACs have **announced**, but not yet completed, acquisitions of crypto-focused target companies:

SPAC Entity	Target Entity	Date of Acquisition Agreement Signing	Expected Completion
Fintech Acquisition Corp. V	eToro (eToro Group Ltd.)	March 16, 2021	Q3 2021 (delayed to 2022)
Concord Acquisition Corp	Circle (Circle Internet Financial Limited)[6]	July 7, 2021	Q4 2021 (delayed to 2022)
Far Peak Acquisition Corporation	Bullish (Bullish Global)	July 8, 2021	End of 2021 (delayed to 2022)

Blue Safari Group Acquisition Corp.	Bitdeer (Bitdeer Technologies Holding Company)	November 18, 2021	Q1 2022 (delayed to later in 2022)
Adit EdTech Acquisition Corp.	GRIID (Griid Holdco LLC)	November 29, 2021	Q1 2022 (delayed to later in 2022)
Aries I Acquisition Corporation	InfiniteWorld (Infinite Assets, Inc.)	December 13, 2021	First half 2022
Arisz Acquisition Corp.	BitFuFu (Finfront Holding Company)	January 21, 2022	Q3 2022
Abri SPAC I, Inc.	Apifiny (Apifiny Group Inc.)	January 27, 2022	Q3 2022
Brilliant Acquisition Corporation	Nukkleus Inc.	February 22, 2022	Q2 or Q3 2022
Thunder Bridge Capital Partners IV, Inc.	Coincheck, Inc.	March 22, 2022	Second half 2022
10X Capital Venture Acquisition Corp. II	PrimeBlock (Prime Blockchain Inc.)	April 1, 2022[7]	Second half 2022

There are also several other SPACs that have completed, or are in the process of completing, an IPO and are actively looking for targets. As of April 26, 2022, the following SPACs have **completed an IPO** and signaled in the Form S-1 filing a focus on the acquisition of a cryptocurrency target company:

SPAC Entity	**Stated Target Company Focus**	**Exchange and Ticker**	**Date of IPO Consummation**
Nocturne Acquisition Corporation	A disruptive technology company that focuses on blockchain and artificial intelligence	NASDAQ: MBTC	April 5, 2021
Blockchain Moon Acquisition Corp.	A company that focuses on blockchain technology	NASDAQ: BMAQ	October 18, 2021
Fintech Ecosystem Development Corp.	Financial technology sector in South Asia, and more specifically a business that has developed or is developing technology that addresses the needs of communities and businesses that require new ways to store and transfer money within developing countries and across international borders, by leveraging emerging technologies such as blockchain, cryptocurrencies and decentralized finance, as well as artificial intelligence, machine learning, deep learning and cloud computing	NASDAQ: FEXDU	October 21, 2021

Blockchain Coinvestors Acquisition Corp. I	Companies in the financial services, technology and other sectors of the economy that are being enabled by emerging applications of blockchain	NASDAQ: BCSA	November 15, 2021
Infinite Acquisition Corp.	Five industries, including sports, health & wellness, food tech & supply, e-commerce and crypto & digital assets	NYSE: NFNT	November 23, 2021
Crypto 1 Acquisition Corp	A significant digital assets and cryptocurrency exchange, payment system and/or related financial services company, including wallets, lending and decentralized finance	NASDAQ: DAOO	December 9, 2021
Aurora Technology Acquisition Corp.	High-growth technology companies based in Asia and North America that were founded by Asian or Asian-American entrepreneurs who are building a global enterprise supported by forward thinking vision and innovative technology in predictable growth businesses with substantial revenue potential in frontier technologies including but not limited to artificial intelligence, blockchain, quantum computing, and electric vehicles	NASDAQ: ATAK	February 9, 2022
Aura FAT Projects Acquisition Corp	Companies in the Asia Pacific focusing on new emerging technologies such as Web 3.0, blockchain, cryptocurrency, digital ledger, e-gaming and other new financial technology and services sectors	NASDAQ: AFARU	April 18, 2022

As of April 26, 2022, the following SPACs have **publicly filed for, but not yet consummated, an IPO** and signaled in the Form S-1 filing a focus on the acquisition of a cryptocurrency target company:

SPAC Entity	Stated Focus	Expected Exchange and Ticker	Date of Initial Form S-1 Filing
UNSDG Acquisition Corp.	Decarbonization, sustainable mining, renewable energy, blockchain, commodity trade sectors and the technologies with applications in those sectors	NASDAQ: UNSDU	June 11, 2021
Jade Value Acquisition Corporation	Companies within internet and technology sectors, including but not limited to, blockchain infrastructure and software services	NASDAQ: JVACU	July 20, 2021

Hash Space Acquisition Corp	A disruptive technology company that focuses on blockchain	NASDAQ: HACUU	August 5, 2021
Global Blockchain Acquisition Corp.	Businesses that are focused on blockchain related technology, economy, industries, and solutions	NASDAQ: GBBKU	April 20, 2022

Geographic Expansion: Additionally, crypto SPACs have been expanding geographically. HODL SPAC Europe AB, which trades on the Swedish Spotlight Stock Market (XSAT) with the ticker "HODL", launched on January 21, 2021. HODL is the first SPAC in Europe with a focus on acquiring a company within blockchain, and we highly doubt that it will be the last. More generally, SPACs expanded into Singapore in January 2022, and the geographic expansion of SPACs is likely to continue across the globe this year.

Recent SPAC Headwinds:

While there is clearly a lot of recent activity in the crypto SPAC space, there are a couple of current developments that may work to slow the momentum described above:

SEC Rules Proposals

The SEC issued a press release on March 30, 2022 announcing proposed new rules to enhance disclosure and investor protections in IPOs by SPACs and in de-SPAC transactions. One of the primary goals of the proposed rules is to more closely align the SPAC/de-SPAC process and requirements with those of traditional IPOs. The key changes suggested in the proposed rules include the following:

i. **Enhanced Disclosure and Investor Protection.**

- Increased disclosure requirements, particularly with respect to compensation paid to sponsors and dilution of non-sponsor shareholders that could occur in the event of a de-SPAC transaction.
- Requirement to state whether the de-SPAC transaction (including any related financing) is fair to unaffiliated security holders of the SPAC, which will likely lead to a practical need to obtain a fairness opinion from a third-party advisor. Note that fairness opinions are historically much less common in de-SPAC transactions than in the context of traditional mergers and acquisitions.
- Amendment of the definition of "blank check company" for purposes of the Private Securities Litigation Reform Act of 1995, which eliminates the liability safe harbor for forward-looking statements, such as projections, in SPAC filings.
- Expansion of underwriter liability by extending underwriter status in the subsequent de-SPAC transaction to those underwriters also involved in the preceding SPAC IPO, even if involvement in the de-SPAC transaction is limited or indirect. Underwriters will need to reconsider their involvement and approach in order to meet their obligation to conduct reasonable due diligence while engaged as an underwriter.

ii. **Business Combinations Involving Shell Companies.**

- Any business combination transaction involving a reporting shell company (i.e., a de-SPAC transaction) is deemed a "sale" of securities for purposes of the Securities Act of 1933, which will require financial statements more in line with those in traditional IPOs.

- Liability for target companies (considered co-registrants with the SPACs under the proposed rules), as well as their officers and directors, for omissions or misrepresentations in the merger documents.

iii. **Projections Disclosure.** Amendment of projections rules and new disclosure requirements in order to address concerns about the reliability of projections in SPACs' SEC filings. One of the primary goals is to ensure that all projections have a reasonable basis, which will require additional efforts from SPACs to comply.

iv. **Status of SPACs under the Investment Company Act of 1940.** New safe harbor under the Investment Company Act of 1940 whereby a SPAC can avoid status as an "investment company" by meeting certain requirements. This changes the market's default understanding that SPACs are generally not considered investment companies to an implication that SPACs should comply with the new conditions in order to fall squarely within the new safe harbor.

The full text of the proposed rules can be found here.

Increased Redemptions

As mentioned above, SPAC investors have the right to redeem their shares prior to the business combination. SPAC investors may choose to redeem their shares for a variety of reasons, particularly if they do not like the chosen target or believe it is too risky. According to SPACInsider, the average redemption rate for SPACs during the first quarter of 2021 was only 9.4%. However, during the first quarter of 2022, that average redemption rate skyrocketed to 85.2%. This is due to a variety of reasons, including the trading prices of SPAC shares falling below the typical $10 target price pre-merger. To make matters worse, it is becoming increasingly difficult to find private investments in public equity ("PIPE" investments) to save the de-SPAC transaction when the redemptions are high. The combination of the SEC's proposed SPAC rules and the high redemption rates will likely make it more difficult to successfully navigate the SPAC process, so it remains to be seen how these factors will impact the pipeline of crypto SPACs identified above.

CONCLUSION

Despite valuation difficulties, regulatory uncertainty and recent headwinds, more SPACs remain on track to complete acquisitions of cryptocurrency companies in 2022 than have been completed to date. While the overall popularity (and profitability) of the blockchain industry tends to fluctuate along with the often-volatile prices of cryptocurrencies and other digital assets, crypto-related SPACs have gained steam (particularly within the past 12 months), while raising complex and dynamic issues for investors, SPAC sponsors and prospective de-SPAC targets, as well as their respective advisors.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 23 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
ATLANTA	CHICAGO	GENEVA	MIAMI	RIYADH	TOKYO
AUSTIN	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
BRUSSELS	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	

[1] See more guidance here.
[2] See the SEC response letter found here, which references Rule 100 of Regulation G.
[3] See SEC Staff Accounting Bulletin No. 121, found here.
[4] Note that this list may not be comprehensive.
[5] Note that the following lists may not be comprehensive.
[6] On February 16, 2022, Circle and Concord Acquisition Corp terminated their original transaction agreement and entered into a new agreement which doubles the value of Circle from $4.5 billion to $9 billion. This is an example of how the valuation of cryptocurrency companies is difficult and can change dramatically in a short period of time, adding a layer of difficulty to the process.
[7] King & Spalding is advising on this proposed transaction.