Articles
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Developments in 2021 for SPACs Under the 1940 Act

In their third decade of existence, special purpose acquisition companies (SPACs), have gone from novel to ubiquitous. According to the *Wall Street Journal*, during the first quarter of 2021 alone, SPACs raised nearly $75 billion and accounted for more than 70 percent of all initial public offerings, a 20 percent increase over 2019. Recent growth of SPACs represents an even larger increase over earlier time periods. Whether due to general notoriety or specific circumstances, recently attention has been called to the status of SPACs under the Investment Company Act of 1940 (1940 Act), including questions raised in certain derivative lawsuits. The question of SPACs' status under the 1940 Act is integral to their continued operation because, due to operational constraints, a SPAC cannot realistically operate as a registered investment company.

As background, the status of a company under the 1940 Act is binary. That is, a US issuer of securities in a public offering either is, or is not, an investment company. If the issuer meets the definition of an investment company and is not able to rely on an exemption, it must register as an investment company with the Securities and Exchange Commission (SEC) and become subject to comprehensive regulation under the 1940 Act. So far, the SEC and its Staff, and even its current Chairman Gary Gensler, have studied SPACs deeply without suggesting that a typical SPAC meets the definition of an investment company.

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