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The de-SPAC transaction: What went wrong and what public company GCs should still know

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Between 2020 and 2022, more than 900 companies went public through SPAC mergers. It was the fastest and, for a time, the most fashionable route to the public markets. Sponsors raised billions in weeks.

Targets got certainty, a fixed valuation, a faster timeline, and an easier path to the capital they needed. Bankers, lawyers, and advisors were busy around the clock. The de-SPAC transaction was, albeit briefly, the defining feature of the capital markets landscape.

Then the market changed, redemption rates increased, and share prices started to collapse. The SEC showed up with new rules, new enforcement priorities, and pointed questions about projections.

Earn-out disputes moved to the courtroom, and a generation of companies that went public through the SPAC route were now operating as reporting companies without the infrastructure, institutional muscle, or governance foundation that a traditional IPO process tends to put in place.

I advised clients through that era, on both sides of de-SPAC transactions. Here's my account of what went wrong and what general counsels at formerly de-SPAC'd companies should still be managing today.

The governance gap that nobody talked about

The traditional IPO process is slow and expensive. The S-1 drafting process, the SEC comment letter cycle, the roadshow, and the underwriter diligence force a company to build the documentation, controls, and institutional discipline that public company life demands.

By the time a company rings the bell on a traditional IPO, it has usually spent 12 to 18 months getting up to speed. The governance infrastructure is in place because the process required it.

The de-SPAC transaction compressed that timeline dramatically. Companies that were 18 months away from IPO-readiness were suddenly public in six.

Board composition was sometimes an afterthought, and audit committees were hastily populated. Disclosure controls and procedures, the plumbing of a public company's compliance program, were frequently underdeveloped or untested when it came time for closing. Insider trading policies, related-party transaction procedures, and whistleblower programs were often put in place after the transaction closed.

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For GCs at companies that went public this way, the question is: What are we still missing? What policies have never been tested, what committee charters were forgotten, what disclosure controls have never been stress-tested against a real event? That audit, if it has not happened, needs to happen now.

The SEC's ongoing interest in de-SPAC projections

One of the original selling points of the de-SPAC structure was the ability to use five-year, forward-looking financial projections in deal disclosures. Under traditional IPO rules, these are effectively prohibited.

Targets used this latitude aggressively. Projections were ambitious to the point of being untethered from the underlying business. And when those projections failed to materialize, the SEC took notice.

The Commission's 2021 and 2022 guidance, and the subsequent 2024 rules on SPAC disclosures, made clear that the safe harbor protections companies thought they had for those projections were narrower than assumed. The SEC's enforcement docket has included de-SPAC-related actions targeting misleading projections, inadequate risk disclosures, and failures to update material information between signing and closing.

For GCs, the risk here is that old disclosures, projections, and deal documents are part of the public record and can be weaponized in private securities litigation. Plaintiff firms have been active in this space. Class action complaints routinely look back to merger proxy statements and PIPE investor

materials to find the delta between what was promised and what was delivered.

GCs should have a clear picture of where their company's public disclosures sit relative to actual performance and should be working with litigation counsel to assess and document their defensible position. Together with the finance team, the legal team should be driving to update disclosures and document the reasons that were not known at the time initially made, and change factors.

Earn-out disputes: The deferred problem

Many de-SPAC transactions were structured with earn-outs or contingent consideration payable to the target's founders and shareholders if post-closing performance milestones were achieved. At the time of negotiation, earn-outs felt like elegant solutions to valuation gaps. In practice, they have been a significant source of post-closing friction.

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The disputes tend to follow a recognizable pattern. For example, the target's founders may allege that the acquiring SPAC (now a public company) took actions post-closing that intentionally or negligently impaired the company's ability to hit the earn-out milestones.

The company, facing a market environment different from what anyone anticipated, may believe the milestones simply weren't achieved. Both sides have lawyers, and each has a plausible story.

GCs at companies with outstanding earn-out obligations (or earn-outs that have already lapsed without payment) should actively manage the litigation risk and the documentary record. Every significant business decision made during the earn-out period should be documented with a clear business rationale.

If earn-out obligations remain live, the governance for tracking and reporting earn-out milestones internally deserves close attention. The plaintiff's bar has developed real sophistication in earn-out litigation, and cases that looked weak at the outset have found traction in Delaware and beyond.

What GCs should be doing right now

The de-SPAC moment has passed, but the legal and governance work it left behind has not. For general counsel at companies that went public through this route, the agenda is clear.

First, conduct a thorough governance audit. Do not rely on the policies and committee charters drafted at or around closing. Test them. Bring in outside counsel or governance advisors to objectively assess whether your public company compliance infrastructure is functioning. Repeat governance audits annually, or more frequently if there are significant regulatory developments or organizational changes.

Second, review your historical disclosures with fresh eyes and in the context of current events. What did your merger proxy say about the business? What have you disclosed since? Where are the gaps or inconsistencies that a plaintiff's attorney might find interesting? This review should be done with litigation counsel, under privilege, and produce a clear-eyed risk assessment.

Third, if earn-out disputes are on the horizon or already in progress, have you anticipated and documented defenses? The intersection of contract interpretation, Delaware law, and securities disclosure creates a complex risk environment that requires an integrated legal strategy.

Ultimately, the unwind of the de-SPAC cycle is a reminder that public company readiness cannot be shortcut. Governance discipline, defensible disclosures, and proactive risk management are not one-time exercises tied to a transaction, but rather ongoing obligations that shape long-term value and resilience.

About the author

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