

# SPAC EXPERIENCE

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## SPAC EXPERTISE

Withum underwent a substantial due diligence process with the largest and most prominent investment banking firms in the country. As a result of this, the Firm is now on the short list of acceptable auditors for SPAC (Special Purpose Acquisition Corporation) Initial Public Offerings (IPOs). Withum has been involved with over 300 SPAC transactions. During this tenure, we have virtually worked with all the legal and underwriting players in this niche space. These individual transactions have resulted in deals ranging from \$50 million to over \$1 billion, the majority of which were sponsored by the private equity and venture capital community. Withum has been the auditor of record for approximately \$100 billion of SPAC IPO's sponsored by the investment community during the last 24 months, including the largest SPAC IPO since the global financial crisis, which raised \$1 billion in trust proceeds, a few of which are noted below



**Withum ranked Number One of Non-Big Four Firm in total proceeds raised in IPOs; \$100 billion over the last five years.**

## OUR ROLE IN SPAC IPO PROCESS

### PHASE 1 DELIVERABLES

"Seed" audit of the recently formed SPAC to be included in an S-1 registration statement



Reading / review of the S-1 registration statement



Assistance to management relative to SEC comments



Consents for filing our opinion in subsequent amendments to the S-1 Registration Statement



Note: Each consent will require abbreviated audit update procedures

## OUR ROLE IN SPAC IPO PROCESS

### PHASE 2 DELIVERABLES

Comfort letter to the underwriters  
prior to "going effective"

1

2

Bring down letter to underwriters  
prior to IPO closing

"Closing date" balance sheet  
audit to be included in Form 8-K

3

Bring down letter to  
underwriters prior to over-  
allotment closing, if necessary

4

## SPAC REQUEST LIST

Below is a list of items we will need as part of the audit documentation for the financial statements of the intended SPAC for the audited period from inception through the seed audit date. To the extent possible, please provide the information in electronic format (i.e. excel, word, pdf)

	Copies of all corporate documents (articles of incorporation, bylaws, certification of formation, etc.)		Copies of the all signed stock subscription agreements or applicable documents (and warrant/options agreements, if separate)		Listing of all members of management, board members and audit committee or equivalent thereof
	Copy of the certificate of incorporation		Copies of any board of directors minutes and resolutions (or equivalent)		Copies of all signed loan documents that have taken place
	Copy of underwriting agreement (when available)		Draft copy of the S-1 filing		Draft of your financial statements as of the audit date
	General ledger detail from inception		Detail of all expenses paid, and detailed of expenses to be accrued through date of audit, including a listing of expenses paid out of pocket that will be charged to the SPAC entity (management needs to provide)		Detail of all equity

# SPAC PROCESS

## SPAC FORMATION

1. Identify Working Group

## INCEPTION OF SPAC

1. SEC counsel will draft up S-1/F-1 document and formation agreements.
2. Prospect will open a bank account:
  - **Funding # 1** - Initial Shareholders “Sponsors” will purchase their equity shares and the money will be deposited into bank account (typical funding is \$25,000).
  - **Funding # 2** - At the Sponsors discretion, or at the point of time that the Company’s expenses exceed the proceeds obtained through Funding #1, the Sponsors will loan the SPAC start-up money to cover operating costs (i.e. legal and accounting retainers, filing fees, etc.). Typical funding is in the range of \$100,000 – 250,000 payable 1 year from the date of issuance or upon the consummation of the proposed offering (typically noninterest bearing).

Once the above steps are done and the team is in place the audit can be performed.

## AUDIT PROCEDURES

1. The client and the audit firm will choose an audit date. This date will cover the period of inception through the funding dates (Funding #1 and #2).

**NOTE:** The audit goes stale after 134 days for domestic filers (9-months for foreign private issuers) and must be updated with a more current audit date.

2. The audit will be performed typically with the following procedures:
  - Confirming cash in the bank and the note payable with the Sponsor(s)
  - Confirming with prospects counsel that no legal contingencies exist
  - Obtaining signed stock agreements (if available)
  - Obtaining draft financial statements
  - Agreement of the Registration Statement to the financial statements including the various tables (i.e. dilution table, summary financial data, pro forma net tangible book value and capitalization table).

## SPAC PROCESS

### REGISTRATION STATEMENT AND ROADSHOW

1. Registration statement is filed after audit is completed and all parties are signed off on the document
2. Once the comments are down to a handful, the Sponsors and Underwriters will conduct a road show. Deal Structures (offering size) are sometimes changed as a result of the response received during the road show.

### REGISTRATION STATEMENT DECLARED EFFECTIVE AND FUNDING

1. The client goes effective and they have their initial offering a few days later. A comfort letter is issued by the accountants to the underwriters on the date the securities are listed on an exchange.
2. The Company will file an 8-K showing proceeds from the offering within 4 business days of funding. This filing is required to include an audited balance sheet as of the funding date.
3. A second comfort letter is issued (called a "bring-down" letter) to the underwriter which bridges the gap in days from the date the prospect went effective to the date of funding.
4. If the underwriters elect to exercise their over-allotment (green-shoe), typically, another 8-K/6-K is filed showing the pro forma effects from the original proceeds received to include the overallotment proceeds. An additional bring down letter is issued to the underwriters as a result of the over allotment.

## KEY TAKEAWAYS

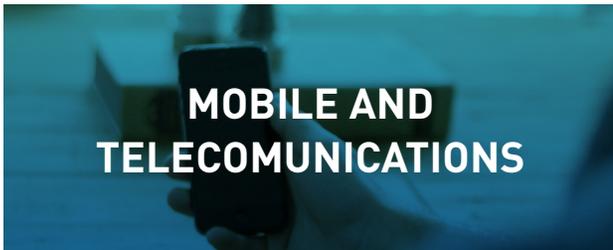
- A discussion should be held with independent registered public accounting firm before finalizing any equity arrangements that the Company might enter into as there could be potential liability and derivative accounting impacts if not vetted up front.
- Due to the JOBS Act, SPACs are classified as emerging growth companies and are exempt from Sarbanes Oxley Section 404(b) which requires auditor attestation on the Company's internal control over financial reporting.
- The Company may be required to file a Form 10-Q or 10-K if the reporting date was crossed over during the registration statement process. This filing will be due 45 days from the date the registration statement was declared effective.
- 135 Day rule for age of financial statements:
  - A prospectus that is used in connection of an offering cannot contain financial statements that are older than 135 days from the balance sheet date included in the audited financial statements.
  - If incorporated offshore (Cayman or British Virgin Islands) there could potentially be delays in setting up a bank account due to AML diligence by banks.
  - After a target is identified, it is important to determine accounting acquirer in the transaction early in the event that fair value and push down accounting are required as that could delay the business combination process. Learn more at:

[www.withum.com/resources/accounting-acquirer-in-a-spac-business-combination/](http://www.withum.com/resources/accounting-acquirer-in-a-spac-business-combination/)

## KEY TAKEAWAYS (CONTINUED)

- Only significant acquisitions need to be presented with financial statements. Insignificant includes:
  - Any consummated acquisitions whose significance does not exceed 20% that were consummated after the balance sheet date of the most recent annual audited financial statements included in the registration or proxy statement through the effective date of the registration statement or the date the proxy statement is mailed;
  - Any probable acquisitions whose significance does not exceed 50%; and
  - Any consummated acquisitions whose significance exceeds 20%, but does not exceed 50%, for which financial statements are not yet required because of the 75-day rule in S-X 3-05(b)(4).
- Consideration should be applied concerning where to deposit trust funds. Depending on the depository, certain SPACs have seen greater returns at different institutions so it is worthwhile to consider multiple locations to determine returns.
- D&O insurance is a significant expense for an emerging growth company — the prices associated with these fees range significantly and it is worthwhile to shop for these. Ranges noted in audits have been between \$300K and \$1M depending on vendor, board, duration, etc.
- Income tax obligations of a U.S. based SPAC due to the current interest rates. The majority of expenses incurred before a business combination are not deductible until completion of the combination, creating taxable income for the Company due to the interest income being generated on the trust proceeds.
- Use of outside consultant to focus efforts on identifying a target should be considered.

# INDUSTRY VERTICALS WITH YOUR SPONSORS COMPANIES



# CORPORATE TAX ASPECTS AND COMPLIANCE CONSIDERATIONS

**Below are certain aspects of the tax compliance issues that you may confront. This is by no means comprehensive and is not intended to be a substitute for a discussion with your tax team.**

## **PUBLIC SHELL VERSUS THE SPONSOR ENTITY**

Your Withum Team will be responsible for the preparation of tax compliance related to the Public Shell. Due to SEC independence rules we cannot provide tax compliance services for the Sponsor entity. We would be happy to provide you with a referral to a knowledgeable professional who can assist in the compliance. The remainder of this memo will address tax compliance issues just related to the Public Shell.

## **BASIC US FILING REQUIREMENTS**

All corporate entities are required to file a US federal corporate income tax return (Form 1120) on an annual basis regardless of activity. Corporate entities can choose either a calendar year end or a fiscal year end, however, its initial period can be no longer than 12 months. A year end is selected with the initial filed return. The entity will also need a Federal ID number which should be obtained as part of the initial formation process. During the application for the ID number you will be asked about the intended tax year end. The initial filing deadline for calendar year returns is the 15th day of the 4th month after year end. Corporations with a

fiscal year end of June 30 are due by the 15th day of the 3rd month after year end (i.e., September 15th). An extension can be obtained that will provide 6 additional months to file the return. Note that the extension is only to file the form; any tax due must be paid with the extension.

## **BOOK VERSUS TAXABLE INCOME - STARTUP COSTS**

The most substantive adjustment will be to capitalize essentially all of the costs, which would have been otherwise deductible, incurred by the entity during the year. The concept in play is that the SPAC is not yet “in business”, therefore the costs it is incurring are considered startup costs. These costs are capitalized until such time as the company is engaged in a business (does a deal) and can then be amortized over a 15-year period. See discussion below on this point.

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**Refer to our website for a more detailed guide of Withum’s SPAC capabilities concerning your tax needs.**

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# TRADITIONAL SERVICES

## ACCOUNTING AND REPORTING

- Audit and Assurance Services
- Accounting Services
- Employee Benefit Plan Audits
- SEC Compliance and Reporting
- SPACs
- Technical Advisory Services

## TAX PLANNING AND PREPARATION

- State and Local Tax (SALT)
- Partnership and Corporate Tax
- International Tax
- Tax Planning and Compliance
- Tax Due Diligence
- Cost Segregation Studies

## ADVISORY SERVICES

- M&A Advisory
- Due Diligence
- IPOs
- Cybersecurity and IT Controls Assessment
- Internal Audit Services
- Process and Control Improvement

## FORENSIC AND VALUATION SERVICES

- Business Valuation
- Forensic/Fraud Services
- Stockholder Disputes

# TRANSACTION ADVISORY SERVICES

## FINANCIAL DUE DILIGENCE (BUY-SIDE, SELL-SIDE AND LENDING)

- Internal controls
- Quality of earnings/EBITDA
- Normalized working capital
- Proforma financials
- Forecasts

## TAX SERVICES

- Tax due diligence
  - Federal, state and international
  - Income, franchise, sales and use, excise, payroll, bulk sale
- Deal structure optimization
- Purchase price allocation
- Transfer pricing studies
- Cost segregation studies
- Compliance
- Planning

## IT SERVICES

- IT due diligence
  - Pre-acquisition systems and software assessments
  - Cyber security assessments of target
- IT integration and upgrades
- Data analytics and dashboard reporting

## CORPORATE FINANCE

- Business valuation
- Due diligence and IPO preparation
- Wealth management

## ABOUT WITHUM

**Withum is a national CPA and advisory firm with 16 offices across the country, including New York, Boston and California. The Firm has 1,400 team members and annual revenues of \$318M, ranking in the top 25 firms in the country.**

In today's dynamic marketplace, Special Purpose Acquisition Companies (SPAC) need leading service providers to ensure they benefit from experience in the delivery of audit and tax services, realizing value-added perspective and knowledge, appropriate technical advice, and efficiencies in the execution of services.

With office locations in major cities and financial centers across the country, and as an independent member of HLB, the global advisory and accounting network.

As a registered firm with the Public Company Accounting Oversight Board, our professionals are up-to-the-minute on matters affecting the PCAOB, SEC, FINRA, NFA, CFTC and other regulatory organizations.



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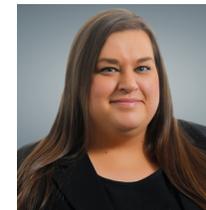
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