

Gensler Speaks Out on SPACs, Notes Similarities with Traditional IPOs and Hints at Future SEC Action

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SEC Chair Gary Gensler made news again last week with a series of statements regarding SPACs, noting their similarities with traditional IPOs and hinting at future regulatory action aimed at these investment vehicles.

In a December 9, 2021 [speech before the Healthy Markets Association Conference](#), Chair Gensler addressed SPACs and how the SEC staff believes they can interact with three key SEC objectives: eliminating information asymmetries, protecting against misleading information and fraud, and mitigating conflicts of interest.

Noting the existing requirements around traditional IPOs, Chair Gensler remarked that “[c]urrently, I believe the investing public may not be getting like protections between traditional IPOs and SPACs.” Within four categories, Chair Gensler raised his concerns with how SPACs may not provide sufficient investor protections and how he (and the SEC) intends to combat these concerns.

- Disclosure: With respect to disclosure, Chair Gensler indicated that the SEC staff questions whether there is “inconsistent and differential disclosure among the various parties involved in SPACs transaction — both the SPAC blank-check IPO and the SPAC target IPO.” To remedy these concerns, he stated that the SEC staff will compose recommendations to ensure the public is better informed on the costs and conflicts that may exist in the SPAC process and to consider “clarifying disclosure obligations under existing rules.”
- Marketing Practices: Next, Chair Gensler raised concerns about how SPACs are presented to potential investors. Specifically, he noted: “SPAC sponsors may be priming the market without providing robust disclosures to the public to back up their claims. Investors may be making decisions based on incomplete information or just plain old hype.” The SEC staff will consider recommendations to guard against “improper conditioning of the SPAC target IPO market,” which may include more fulsome public disclosure at the time a SPAC target is announced to the public.

- Gatekeeper Obligations: Fearful that some would attempt to use SPAC structures to mitigate liability compared to traditional IPOs, Gensler remarked many SPAC gatekeepers “carry out functionally the same role as they would in a traditional IPO but may not be performing the due diligence that we’ve come to expect.” He then declared that SPACs “do not provide a ‘free pass’ for gatekeepers” and that he asked the SEC staff for recommendations about “how we can better align incentives between gatekeepers and investors, and how we can address the status of gatekeepers’ liability obligations.” This may include questions raised earlier this year by former Division of Corporation Finance Acting Director Coates questioning the un-availability of the Private Securities Litigation Reform Act safe harbor for projections provided in SPAC transactions.
- Cop on the Beat: Finally, Chair Gensler highlighted the SEC Division of Enforcement as the “cop on the beat” to ensure investors are protected against potential risks and stated they would remain active to protect those who invest in SPACs.

Chair Gensler concluded his remarks by reminding the public that functionally SPACs and IPOs share a great deal of similarities and hinted that like investments should be subject to like regulations.

We will continue to follow all SPAC news and any related SPAC regulations closely, and will keep you updated.

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