SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 3a-10

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 3(a)(1)(A) of the Investment Company Act of 1940 ("Investment Company Act")[1] defines an "investment company" as any issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.[2] Depending on the facts and circumstances, special purpose acquisition companies (SPACs) could meet this definition of "investment company" in Section 3(a)(1)(A). A SPAC is typically a shell company that that is organized for the purpose of merging with or acquiring one or more unidentified private operating companies (a "de-SPAC transaction") within a certain time frame (often two years) and that conducts a firm commitment underwritten initial public offering of $5 million or more in units consisting of redeemable shares and warrants. Most SPACs ordinarily invest substantially all their assets in securities, often for a period of a year or more, meaning that investors hold interests for an extended period in a pool of securities. Moreover, whatever income a SPAC generates during this period is generally attributable to its securities holdings. The asset composition and sources of income for most SPACs may therefore raise questions about their status as investment companies under Section 3(a)(1)(A) of the Investment Company Act, and in recent years, some SPACs have sought to operate in novel

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1 15 U.S.C. 80a 1 et seq.

2 15 U.S.C. 80a-3(a)(1)(a).

ways that suggest that SPACs and their sponsors should increase their focus on evaluating when a SPAC could be an investment company.[3]

On March 30, 2022, the Commission issued a release proposing new Rule 3a-10, which would provide a safe harbor from the definition of "investment company" under Section 3(a)(1)(A) of the Investment Company Act for SPACs that meet certain conditions.[4] Specifically, in order to rely on the proposed safe harbor, a SPAC must, among other things: (1) maintain assets consisting solely of Government securities, Government money market funds and cash items prior to the completion of the de-SPAC transaction; (2) seek to complete a single de-SPAC transaction as a result of which the surviving public entity (the "surviving company"), either directly or through a primarily controlled company, will be primarily engaged in the business of the target company or companies, which is not that of an investment company; (3) enter into an agreement with a target company to engage in a de-SPAC transaction within 18 months after the SPAC's initial public offering and complete the de-SPAC transaction within 24 months of such offering; and (4) as relevant here, adopt an appropriate resolution of the SPAC's board of directors evidencing that the SPAC is primarily engaged in the business of seeking to complete a single de-SPAC transaction as described by the rule, which would need to be recorded contemporaneously in its minute books or comparable documents. A SPAC would not, however, be required to rely on the safe harbor.

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[3] *See* Special Purpose Acquisition Companies, Shell Companies, and Projections, Investment Company Act Release No. 34549 (Mar. 30, 2022) ("Proposing Release")

[4] *Id.*

2. Purpose and Use of the Information Collection

One provision of the proposed rule contains "collection of information" requirements within the meaning on the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act"),[5] and the Commission is submitting the collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The conditions of the proposed safe harbor in Rule 3a-10 are generally designed to align with the structures and practices that we believe would distinguish a SPAC that is likely to raise questions regarding a SPAC's status as an investment company under Section 3(a)(1)(A) from one that would not. The conditions' information collection requirement, i.e., the requirement to adopt an appropriate resolution of the SPAC's board of directors and record it contemporaneously in its minute books or comparable documents, would further these goals by evidencing that the company is primarily engaged in the business of seeking to complete a single de-SPAC transaction as described by the rule. This requirement would publicly document the intent of management and help to establish a shared understanding of shareholders concerning the business purpose of the SPAC.

3. Consideration Given to Information Technology

To the extent a SPAC determines to rely on the proposed safe harbor included in Rule 3a-10, proposed Rule 3a-10 would require the maintenance of certain records. Specifically, proposed Rule 3a-10 would require the SPAC's board of directors to adopt an appropriate resolution evidencing that the company is primarily engaged in the business of seeking to complete a single de-SPAC transaction as described by the rule, which would need to be recorded contemporaneously in the SPAC's minute books or comparable documents. The

[5] 44 U.S.C. 3501 *et seq.*

Electronic Signatures in Global and National Commerce Act[6] and the conforming amendments to rules under the Investment Company Act permit funds to maintain records electronically, and the Commission does not prescribe how SPACs keep records of board resolutions.

4. Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule. Proposed Rule 3a-10 would require a SPAC, in order to rely on the proposed safe harbor, to, among other things: (1) maintain assets consisting solely of Government securities, Government money market funds and cash items prior to the completion of the de-SPAC transaction; (2) seek to complete a single de-SPAC transaction as a result of which the surviving public entity (the "surviving company"), either directly or through a primarily controlled company, will be primarily engaged in the business of the target company or companies, which is not that of an investment company; (3) enter into an agreement with a target company to engage in a de-SPAC transaction within 18 months after the SPAC's initial public offering and complete the de-SPAC transaction within 24 months of such offering; and (4) as relevant here, adopt an appropriate resolution of the SPAC's board of directors evidencing that the SPAC is primarily engaged in the business of seeking to complete a single de-SPAC transaction as described by the rule, which would need to be recorded contemporaneously in its minute books or comparable documents.[7] A SPAC would not, however, be required to rely on the safe harbor. The information required by proposed Rule 3a-10 is not generally duplicated elsewhere.

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[6] P.L. 106-229, 114 Stat. 464 (June 30, 2000).

[7] Proposed Rule 3a-10.

5. Effect on Small Entities

The information collection condition of proposed Rule 3a-10 does not distinguish between small entities and other funds. As a result, the burden of the condition on smaller SPACs may be proportionally greater than for larger funds. The Commission believes, however, that imposing different conditions on smaller SPACs would not be consistent with the purposes of the rule's condition and could potentially jeopardize the interests of investors in smaller SPACs. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

6. Consequences of Not Conducting Collection

Proposed Rule 3a-10 would impose information collection requirements for SPACs that have determined to rely on the rule's safe harbor. Not collecting the information or collecting such information less frequently would be incompatible with the objectives of Rule 3a-10. The condition requiring a SPAC to adopt an appropriate resolution of the SPAC's board of directors and record it contemporaneously in its minute books or comparable documents is an integral part of evidencing that the company is primarily engaged in the business of seeking to complete a single de-SPAC transaction as described by the rule.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

None.

8. Consultation Outside the Agency

Before adopting proposed Rule 3a-10, the Commission will receive and evaluate public comments on the proposal and its collection of information condition. Moreover, the Commission and the staff of the Division of Investment Management participate in an ongoing

dialogue with representatives of the investment company industry through public conferences, meetings, and information exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Assurance of Confidentiality

No information would be submitted directly to the Commission under proposed Rule 3a-10. Other information provided to the Commission in connection with staff examinations or investigations would be kept confidential subject to the provisions of applicable law. If information collected pursuant to proposed Rule 3a-10 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Estimate of Hour Burden

As discussed above, to the extent a SPAC determines to rely on the safe harbor in Rule 3a-10, its board of directors would be required adopt an appropriate resolution evidencing that the SPAC is primarily engaged in the business of seeking to complete a single de-SPAC

transaction as described by the rule, which would need to be recorded contemporaneously in its minute books or comparable documents.

We estimate below the incremental and aggregate increase in paperwork burden, which represent the average burden for all respondents, both large and small.[8] The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors, including the size and complexity of their business. These estimates include the time and the cost of preparing and retaining records. We believe that some registrants will experience costs in excess of this average and some registrants will experience less than the average costs. For purposes of these estimates, the burden is allocated between internal burden hours and outside professional costs. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

For each SPAC, the estimated effect of the proposed information collection condition of proposed Rule 3a-10 would be, on average, an increase of one (1) burden hour. The percentage estimates we use for the burden allocation for Rule 3a-10 is 50% internal and 50% outside professionals, and we estimate that the average cost of retaining outside professionals is $400 per

[8] While no SPAC would be required to rely on Rule 3a-10, for purposes of this analysis, we assume that all SPACs conducting an initial public offering subsequent to adoption of the proposed rule would rely on proposed Rule 3a-10 and, therefore, prepare a board resolution in accordance with the conditions of Rule 3a-10.

hour.[9] On an aggregate basis, we estimate that there will be 98 affected respondents per year,[10] and as a result, the total estimated increase in internal burden hours would be 49 hours. Further, the total estimated increase in outside professional hours would be 49 hours, with a total increase in outside professional costs of $19,600.

IC	Rule 3a-10	**Annual No. of Responses**			**Annual Time Burden (HRs)**			**Monetized Time Burden**		
	Description Parts of IC	*Previously Approved*	*Requested Change Due to Agency Discretion*	*Total*	*Previously Approved*	*Requested Change Due to Agency Discretion*	*Total*	*Previously Approved*	*Requested Change Due to Agency Discretion*	*Total*
IC1	Recordkeeping	0	98	98	0	98	98	0	$19,600	$19,600
Total for IC		0	98	98	0	98	98	0	$19,600	$19,600

[9] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting.

[10] Our estimates represent the burden for all SPACs that file registration statements with the Commission for registered offerings and all registrants that file disclosure documents in connection with a de-SPAC transaction or a business combination involving a shell company or a reporting shell company. Based on a review of Commission filings during the period 2011 – 2021 and an analysis of the effects of the proposed new rules and amendments, the staff estimates that SPACs will file an average of 90 registration statements each year for registered offerings on Form S-1 and 8 registration statements on Form F-1, other than for de-SPAC transactions. We based our estimates, in part, on a review of Commission filings over a 10-year period because we believe that this longer timeframe would more accurately reflect the average number of registration statements filed by SPACs and disclosure documents for de-SPAC transactions in a given year.

13. Cost to Respondents

Proposed Rule 3a-10 does not impose any paperwork related cost burden that is not described above in Item 12 above.

14. Costs to Federal Government

Proposed Rule 3a-10 does not impose a cost to the federal government. Commission staff may, however, review any records produced pursuant to the rule in order to assist the Commission in carrying out its examination and oversight program.

15. Changes in Burden

This is the first request for approval of the collection of information for this rule.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

The Commission is not seeking an exception to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.