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## Going Public: Business Combination with a SPAC vs. Reverse Merger with a Non-SPAC Shell Company



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**A** special purpose acquisition company (SPAC) is a blank-check company with no business operations, formed to raise capital through an initial public offering (IPO) for the purpose of effecting a merger or other forms of business combination with one or more target businesses (also known as de-SPAC), effectively taking the target companies public. Going public via a de-SPAC is generally preferable to a reverse merger with an over-the-counter (OTC) shell company because, in general, the stock exchanges do not allow companies resulting from a reverse merger transaction with a non-SPAC shell company to list without meeting their reverse merger requirements under either Section 102.01F of the New York Stock Exchange Manual or Nasdaq Rule 5110(c). Unless: (i) the uplisting to the main board is in connection with the closing of a firm commitment underwritten offering with at least \$40 million in gross proceeds; or (ii) the combined company complies with what is generally known as the "seasoning" rules which require that prior to listing, the reverse merger company

must have: (1) been traded on the OTC market, or an exchange for at least one year; (2) timely filed all required periodic financial reports (including at least one annual report) with the SEC for the prior year, and the annual report must contain the combined company's audited financial statements for a full fiscal year; and (3) maintained a \$4.00 closing price for no less than 30 of the most recent 60 trading days immediately prior to submitting the listing application as well as at least 30 of the most recent 60 trading days prior to the approval of the listing, the reverse merger company will not be listed.

A listed SPAC is excluded from the seasoning requirements, which means the combined company can list immediately upon a de-SPAC closing even without an underwritten offering. However, if a SPAC was originally listed on an exchange but was subsequently delisted for reasons such as failure to complete a business combination within 36 months of the effectiveness of its IPO registration statement, it might not be able to re-list without complying with the seasoning rules.

Consistent with the SEC's position that a de-SPAC more closely resembles an IPO of the target company than a reverse merger transaction, Nasdaq amended its rules in December 2025 to exclude de-SPACs by listed and formerly listed OTC-trading SPACs from the definition of "reverse merger" and remove certain average daily trading volume requirement (the ADV Requirement) as a listing requirement for formerly listed OTC-trading SPACs. Under the amended rules, rules applicable to an IPO (as opposed to the often more onerous reverse merger requirements (including the "seasoning" rules)) will apply to a de-SPAC with a formerly listed OTC-trading SPAC the same way as a de-SPAC with a listed SPAC. On January 29, 2026, the New York Stock Exchange proposed a similar rule change to exclude de-SPACs by listed and formerly listed OTC-trading SPACs from its definition of "reverse merger" and asked the SEC for immediate effectiveness of this "non-controversial" rule change. That's why going public via a de-SPAC with a SPAC (whether currently or formerly listed) will continue to be preferred over a reverse merger with a non-SPAC shell company.

As long as an OTC-trading SPAC can complete a business combination prior to the expiration of its life and avoid complete liquidation of the trust account, its failure to close a de-SPAC within 36 months of its IPO is no longer an issue.

These amended rules give SPACs the welcome additional time to search for and

complete a de-SPAC with one or more suitable targets, and give target companies an even greater number of SPACs to choose from.