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# SEC Chair Gensler Testifies on “Unprecedented Surge” in SPACs

**Corporate Defense and Disputes Blog** on **June 8, 2021**

SPACs remain on everyone’s mind, especially the country’s chief regulator. On May 26, 2021, SEC Chair Gary Gensler testified before the U.S. House Subcommittee on Financial Services and General Government on “key capital market trends” that will impact SEC resources in the coming years. And the very first topic he raised – Initial Public Offerings and Special Purpose Acquisition Companies – was of no surprise to most market watchers.

While Gensler noted the market is on track to offer “more traditional IPOs than there were during the dot-com peak of 2000,” he also remarked that the capital markets are “witnessing an unprecedented surge in non-traditional IPOs by special purpose acquisition companies.” The SEC has already received 700 S-1 filings in 2021, compared to 13 such filings in all of 2016.

Gensler also made news by stating he refers to de-SPAC transactions – when a SPAC merges with a target company – as “target IPOs” as they “enable target companies to access public markets for the first time.” This line of reasoning echoes language used in Acting Director of the Division of Corporate Finance John Coates’ April 8, 2021 release on “SPACs, IPOs, and Liability Risk under the Securities Laws.”

Further, the SEC has noted a rise in primary direct listings, “where companies can sell shares directly on exchanges without a traditional underwritten public offering.” Gensler noted this may be a new trend that calls upon even more SEC resources.

Beyond requiring significant SEC resources, the recent rise in SPACs prompted Gensler to highlight two key questions that the SEC will have to address. First, “are SPAC investors being appropriately protected? Are retail investors getting the appropriate and accurate information they need at each stage — the first blank-check IPO stage and the second target IPO stage?”

Second, "how do SPACs fit in to our mission to maintain fair, orderly, and efficient markets?" Gensler, supported by a recent study, noted that it could be the case the "SPACs are less efficient than traditional IPOs." By receiving a twenty percent promote, this study found "SPAC sponsors generate significant dilution and costs." Coupled with the common occurrence that the investors in private investments in public equity (PIPEs) "are buying at a discount to a post-target IPO price[,] [i]t may be that the retail public is bearing much of these costs."

Gensler concluded his thoughts on SPACs by noting he asked SEC staff to "consider what recommendations they would make to the Commission for possible rules or guidance in this area."

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