

Top 10 Practice Tips: PIPE Transactions by SPACs

A Practical Guidance® Practice Note by Anna Pinedo, Brian Hirshberg, and Ryan Castillo,
Mayer Brown LLP



Anne Pinedo
Mayer Brown LLP



Brian Hirshberg
Mayer Brown LLP



Ryan Castillo
Mayer Brown LLP

explores the intricacies of wall-crossing procedures, due diligence obligations for placement agents, the implications of proposed SEC rules that may expand underwriter liability, and the importance of keeping current with evolving market standards and regulatory expectations. It highlights the significance of robust diligence by both placement agents and prospective investors, especially given the limited public information on private company targets. The document further addresses the structure and negotiation of PIPE purchase agreements, including representations, warranties, and indemnification provisions. Finally, it discusses registration rights, Rule 144 limitations, and compliance issues specific to SPACs as shell companies, particularly in relation to communication restrictions and the use of free writing prospectuses.

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This practice note provides a comprehensive overview of key considerations for legal counsel involved in private investment in public equity (PIPE) transactions conducted alongside business combinations by special purpose acquisition companies (SPACs). It outlines the context of SPACs, including their structure, market trends, and the role of PIPEs in mitigating redemption risks. This note discusses the importance of engagement letters, timing of announcements, and alternative transaction structures to address market volatility. It emphasizes the need for careful planning around investor commitments, use of convertible instruments, and lock-up agreements. The document also

Anna Pinedo, Partner, Mayer Brown LLP

Anna Pinedo represents issuers, investment banks and other financial intermediaries as well as investors in financing transactions, including public offerings and private placements of equity, equity-linked and debt securities. She also advises on structured products and derivatives matters.

Anna works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters..

Brian Hirshberg, Partner, Mayer Brown LLP

Brian Hirshberg represents US and foreign private issuers, sponsors, and investment banks in registered and unregistered securities offerings, including:

- Initial public offerings
- Follow-on offerings
- Private placements (including Rule 144A and PIPE transactions)
- At-the-market offerings
- Registered direct offerings
- Liability management transactions
- Preferred stock and debt offerings
- Secondary offerings on behalf of issuers in a variety of industries

Brian serves clients on specialty finance, real estate and real estate investment trusts (REITs), business development companies (BDCs), and life sciences company deals. He also assists public company clients with ongoing securities law compliance requirements, listing standards of the major US stock exchanges, SEC public reporting obligations, shareholder-related disputes, and governance matters.

Ryan Castillo, Partner, Mayer Brown LLP

Frederick Ryan Castillo is a partner in Mayer Brown's New York office and a member of the Capital Markets practice. His work focuses on securities and corporate finance transactions. Ryan advises issuers, investment banks and sponsors in connection with public offerings and private placements of debt, equity and hybrid securities, including initial public offerings, follow-on offerings, investment grade and high-yield debt offerings, private investment in public equity, tender and exchange offers, consent solicitations, medium-term note programs and other capital markets transactions in the United States, Canada and the Euro markets. He represents companies and financial intermediaries involved in a broad range of industries, including financial services, technology, telecommunications, retail, life sciences, real estate and energy. He also advises clients on corporate governance, securities law compliance and general corporate matters.

The Legal 500 US 2024 ranks Ryan as a "Next Generation Partner" for Capital Markets: Debt Offerings, calling him an "emerging talent," and recommends him for Capital Markets: High-Yield Debt Offerings. He has also been recommended for Capital Markets: Global Offerings. *IFLR1000 2024* names him a "Rising Star Partner" for Capital Markets: Debt and Capital Markets: Equity in the United States. He was ranked as a "Rising Star" for the same categories by *IFLR1000 2021, 2020, and 2019*. *Euromoney* recognized Ryan as a "Rising Star" in the capital markets category at its 2020 Rising Stars Americas Awards. He is named a "Rising Star" for the Americas in the Capital Markets category in *Euromoney's Expert Guides: Rising Stars in 2022 and 2021*. Ryan is recognized by *Best Lawyers: Ones to Watch 2021* for his work in Securities and Capital Markets law in the United States.

Ryan is co-author of *A Deep Dive Into Capital Raising Alternatives (2020)* and author of *Non-GAAP Explained (2017)*, both published by the *International Financial Law Review*. He regularly writes on securities law issues and has authored a number of capital markets-related thought leadership pieces, including articles published by *LexisNexis, Thomson Reuters, The Business Lawyer* and the *Harvard Business Law Review*. Ryan serves as an adjunct professor at the George Washington University School of Law, where he teaches a course on securities regulation.

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