

As SPAC Boom Subsides, Some De-SPACed Companies Seek Chapter 11 Protection

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Key Points

- The boom in SPAC IPOs in 2020 and 2021 led to hundreds of de-SPAC mergers. Many were early-stage tech or biotech enterprises that had not yet achieved profitability and have struggled to remain viable as capital markets tightened.
- Some of those companies with debt or other significant liabilities have turned to Chapter 11 bankruptcy for its flexibility in restructuring their obligations and preserving the value of their businesses as a going concern.
- Management of companies under financial stress and other stakeholders must weigh an array of factors in deciding whether to opt for Chapter 11 and, if so, which strategies in bankruptcy will maximize value.

The contraction of the market for special purpose acquisition companies (SPACs) and the recent challenges de-SPACed companies have encountered have attracted considerable press attention. The stocks of many de-SPACed businesses — companies formed by the merger of a SPAC with an operating business — are trading well below the SPACs' original IPO price, and a number have filed for bankruptcy.

Some press reports frame these bankruptcies as evidence that the 2020-21 SPAC boom was a “fad” driven by “hype” and “speculati[on],”¹ but the reality is more complicated. Most de-SPACed companies that have filed for bankruptcy over the past year are early-stage technology or biotechnology companies strained by growing economic headwinds. In those sectors, even marquee names have suffered as macroeconomic uncertainty persists and potential sources of capital retreat to government bonds and other safe assets. But this flight to safety was particularly damaging to young, high-growth companies that required substantial additional capital to achieve profitability, forcing some into bankruptcy.

Bankruptcy, though, is not necessarily the end of the road for a struggling de-SPACed company.

Of the de-SPACed companies that have filed for bankruptcy thus far, most have successfully completed, or are pursuing, a reorganization or going-concern sale that will preserve much of the business. What that demonstrates is that boards, officers, stockholders and other stakeholders, as well as potential investors and acquirers, should regard Chapter 11 as a strategic option to rehabilitate a potentially distressed de-SPACed company. And investors in distressed de-SPACed companies should diligently monitor the company and understand the unique risks and opportunities a Chapter 11 proceeding may present.

The SPAC Boom and Subsequent Contraction

Most of today's de-SPACed companies are the result of the boom in SPAC fundraisings in 2020 and 2021, when there were 861 SPAC initial public offerings (IPOs), accounting for more than half of all IPOs in both years.² That, in turn, precipitated a wave of de-SPAC transactions as those SPACs sought out and combined with operating businesses. An unprecedented 34% of all 2021 going-public transactions took the form of de-SPAC mergers.³

¹ Bailey Lipschultz & Jeremy Hill, “The SPAC Fad Is Ending in a Pile of Bankruptcies and Fire Sales,” *Bloomberg Businessweek*, Feb. 28, 2023.

² Jay R. Ritter, “Special Purpose Acquisition Company (SPAC) IPOs Through 2022” (Jan. 24, 2023).

³ Klausner *et al.*, “A Sober Look at SPACs,” *Yale Journal on Regulation* (2021).

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The SPAC IPO market began to wane in late 2021 and contracted further in 2022. The number of de-SPAC transactions also declined: Just 100 de-SPAC mergers closed in 2022, compared to 200 in 2021.⁴ In addition, it became harder for SPACs to complete mergers with operating businesses as investors became more risk averse. When the SPAC presents a de-SPAC merger to its shareholders for approval, they have the option to redeem — cash out — their shares at the full IPO price, and many exercised that right. Where the deal went forward, that often resulted in less available capital. Redemption rates soared in 2022 and have remained elevated in 2023.

Why Struggling De-SPACed Companies Are Increasingly Seeking Chapter 11 Protection

Prevailing economic conditions, while challenging even for many mature companies, are especially vexing for the early-stage, high-growth companies that typified the recent SPAC boom. Many such companies intended to prioritize rapid expansion over near-term profitability. But the dramatic tightening of capital markets over the past 18 months has made it even more challenging for these companies, as they seek substantial additional capital required to sustain near- and medium-term operating losses while scaling their businesses to profitability.

Eleven de-SPACed companies that formed between 2020 and 2022, and one from 2018, found themselves in this position and have already sought Chapter 11 relief to address their challenges. A number of others are considering their strategic options, which could include bankruptcy protection. (The companies, the circumstances precipitating their filings and the outcomes of the cases are listed at the bottom of this article.)

In many cases, Chapter 11 of the U.S. Bankruptcy Code offers a way to preserve the value of a business and maximize the benefits to stakeholders.

- It provides financially distressed companies with powerful tools to reduce or eliminate unsustainable debt and other liabilities while continuing to operate as a going concern.
- Unlike a liquidation under Chapter 7 of the Bankruptcy Code, Chapter 11 is a “debtor in possession” proceeding: The debtor, under the direction of its existing managers, retains possession of its property and continues to operate its business while the bankruptcy is pending.
- The aim is to rehabilitate businesses as going concerns. The basic premise of Chapter 11 is that even an insolvent (or otherwise financially distressed business) may have significant going-concern value after its existing debt and other liabilities are restructured, and that creditors as a whole are better off

preserving the business and sharing in its going-concern value than liquidating it piecemeal.

- Chapter 11 affords debtors and their stakeholders significant flexibility to pursue a wide range of possible restructuring transactions.
 - Some Chapter 11 proceedings yield a stand-alone restructuring where either (1) existing equity interests are eliminated and creditors emerge as the debtor’s new equity owners in exchange for their pre-bankruptcy claims or (2) a “plan sponsor” injects new capital in to the debtor in exchange for equity in the reorganized entity.
 - In other cases, the debtor (or substantially all of its assets) is sold to a third party, with the consideration distributed among the debtor’s existing creditors and equity holders in accordance with their respective priorities.

Considerations for De-SPACed Companies and Their Stakeholders in Chapter 11

The small number of de-SPAC bankruptcy proceedings completed to date preclude any definitive conclusions. But some broad trends are evident. Perhaps most notably, most de-SPACed companies have opted for Chapter 11 proceedings: Just one of the 12 de-SPAC bankruptcies to date has been a Chapter 7 liquidation. In all the other cases, the debtor completed or is pursuing either a going-concern sale or a stand-alone reorganization in Chapter 11.

The sale price or the value placed on the business in the reorganization plan typically falls well short of the valuation implied by the company’s earlier de-SPAC transaction. But these transactions demonstrate that troubled de-SPACed companies may retain significant going-concern value even in today’s challenging environment. This has important implications for de-SPACed companies and their stakeholders.

Considerations for De-SPACed Companies

For managers of distressed de-SPACed companies, Chapter 11 offers powerful tools to address unsustainable liabilities and preserve and enhance value for stakeholders. And, because those tools are often most effective when a company files for bankruptcy proactively and in a well-planned fashion, management should view Chapter 11 as an option to be weighed alongside other strategic alternatives.

Important factors to consider in assessing whether a Chapter 11 process is a suitable option include:

- **Liabilities to restructure.** To what extent are the company’s difficulties attributable to excessive debt and other existing liabilities (e.g., above-market leases and significant litigation)? As noted above, the principal objective of Chapter 11 is to rehabilitate debtors burdened by unsustainable debt and other

⁴ Data collected from Deal Point Data.

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liabilities. The process is not suitable for companies with no significant debt or other liabilities to restructure.

- **Liquidity requirements.** How much, if any, additional near-term liquidity does the company require to sustain operations during its restructuring process and fund the administration of its Chapter 11 case, and what are possible sources of the necessary funding? Importantly, a de-SPACed company's inability to access additional capital outside of bankruptcy **does not** mean that incremental liquidity will be unavailable in bankruptcy. Debtor-in-possession (DIP) financing is often available. DIP loans generally constitute superpriority, first-lien obligations, and DIP lenders often negotiate for significant additional advantages (such as consent rights over various elements of the debtor's Chapter 11 case and the opportunity to "roll up" all or a portion of their existing debt into DIP loans). Consequently, debtors are often able to obtain DIP financing even though they could not have obtained similar financing out of court. Several de-SPACs that have filed under Chapter 11 have obtained substantial DIP credit facilities from incumbent lenders.
- **Longer-term strategic options.** What is the company's plan to achieve profitability after addressing its existing liabilities in bankruptcy? Does a stand-alone reorganization plan yield greater value than a sale of the business? Notably, the flexibility afforded by Chapter 11 permits a company to pursue multiple options in parallel. (For example, lenders to Starry, Inc. and its affiliated debtors have agreed to support the equitization of their debt under a stand-alone reorganization plan, unless the company's parallel marketing process yields a better third-party bid).
- **Stakeholder perspectives.** What are the rights, objectives, incentives and anticipated responses of creditors, stockholders and other stakeholders in a Chapter 11 process? The company should evaluate whether different constituencies are likely to facilitate or impede its restructuring objectives. As the de-SPAC bankruptcy cases below illustrate, creditor support can take various forms: extending DIP financing; credit bidding in a sale process; backstopping a new capital raise to facilitate the company's emergence from bankruptcy; or agreeing to the equitization or other proposed treatment of existing claims. The company should consider whether it can expect the support necessary to successfully reorganize or sell its business in Chapter 11.

Considerations for Stakeholders

Creditors and stockholders of distressed de-SPACed companies should carefully monitor their investments and evaluate the implications, should the company file for bankruptcy. Stakeholder participation is a hallmark of Chapter 11, and well-prepared and well-organized creditors and stockholders may have significant opportunity to minimize losses and potentially capture upside value.

For example, creditors facing fractional recoveries on their existing claims might nonetheless have an opportunity, through a new-money rights offering, to invest in a rehabilitated company at a substantial discount to plan value. Similarly, while most Chapter 11 proceedings yield insufficient value to provide recoveries for existing equity holders, that is not invariably the case. And, in certain cases, existing equity holders could be afforded an opportunity to participate in a rights offering or other new-money investment opportunity.

Finally, de-SPAC bankruptcies may also present strategic bidders or third-party investors with a unique opportunity to purchase attractive assets at a favorable price.

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De-SPAC Bankruptcies

The following is a list of the 12 de-SPAC bankruptcies filed to date, in the order they were filed.

Triggering events and information regarding the purpose of the filing and any exit come from various first day bankruptcy filings.

Chapter 11

Alta Mesa Holdings, LP

Industry: Energy

De-SPAC closing date: February 9, 2018

Chapter 11 petition date: September 11, 2019

Debt at petition date:

- **Total funded debt outstanding:** \$846 million
- **Other debt:** \$30 million in trade and other debt

Triggering events:

- Lenders reduced borrowing base under existing credit facility from \$400 million to \$200 million, resulting in actual borrowings exceeding the new base by \$162 million
- Depressed oil prices; overlevered balance sheet; liquidity constraints

Purpose and outcome of bankruptcy filing:

- **Purpose:** Sale of assets; comprehensive restructuring with nondebtor affiliates
- **Outcome:** 363 sale⁵ closed April 9, 2020; plan of reorganization confirmed May 27, 2020

⁵ A sale pursuant to Bankruptcy Code Section 363, completed before a company's reorganization plan is confirmed.

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Legacy EJY Inc. (f/k/a Enjoy Technology Inc.)

Industry: Retail/E-commerce

De-SPAC: October 15, 2021

Chapter 11: June 30, 2022

Debt:

- **Total funded debt outstanding:** \$5 million
 - \$2.5 million under secured credit agreement
 - \$2.5 million under other secured letters of credit
- **Other debt:** \$21 million
 - \$10 million in unsecured promissory note
 - \$11 million in trade debt

Triggering events:

- High level of redemptions by SPAC shareholders ahead of the de-SPAC merger at the same time as an overall tightening of public equities markets
- Supply chain and manufacturing issues

Purpose and outcome of bankruptcy filing:

- **Purpose:** Sale of assets (entered bankruptcy with signed letter of intent; counterparty thereto funded \$55 million in DIP financing, comprised of \$52.5 million of new money and roll-up of \$2.5 million bridge loan)
- **Outcome:** 363 sale approved August 12, 2022; plan of liquidation confirmed December 14, 2022

Clarus Therapeutics, Inc.

Industry: Pharmaceutical

De-SPAC: September 9, 2021

Chapter 11: September 5, 2022

Debt:

- **Total funded debt outstanding:** \$43 million in senior secured notes
- **Other debt:** \$11 million in trade debt and accounts payable

Triggering events:

- Note payments due and debtors were unable to consistently service their debt obligations
- COVID-19 pandemic halted marketing and sale of new drug launched in February 2020, which was the debtors' sole source of revenue

(Clarus Therapeutics, Inc. continued)

Purpose and outcome of bankruptcy filing:

- **Purpose:** Sale of assets
- **Outcome:** 363 sale closed October 27, 2022; plan of liquidation confirmed February 9, 2023

Fast Radius, Inc.

Industry: Technology/Software

De-SPAC closing date: February 4, 2022

Chapter 11 petition date: November 7, 2022

Debt:

- **Total funded debt outstanding:** \$23.9 million
 - \$7.4 million under senior secured, two-tranche term loan facility from Silicon Valley Bank
 - \$16.5 million under two senior secured term loans from Silicon Valley Bank
- **Other debt:** \$6 million in trade debt

Triggering events:

- 91% redemptions by SPAC shareholders in connection with de-SPAC

Purpose and outcome of bankruptcy filing:

- **Purpose:** Sale of assets
- **Outcome:** 363 sale closed December 16, 2022; wind-down plan confirmed February 22, 2023

Quanergy Systems, Inc.

Industry: Technology

De-SPAC: February 9, 2022

Chapter 11: December 13, 2022

Debt:

- No outstanding funded secured debt
- Total outstanding unsecured debt (including trade): \$25 million

Triggering events:

- Challenging equity markets in industry led to insufficient capital structure to fund operations
- Supply chain issues
- Pending litigation hampered efforts to sell company

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(Quanergy Systems, Inc. continued)

Purpose and outcome of bankruptcy filing:

- **Purpose:** 363 sale
- **Outcome:** 363 sale closed February 23, 2022, followed by wind down

Core Scientific Holding Co.

Industry: Cryptocurrency/Blockchain

De-SPAC: January 19, 2022

Chapter 11: December 21, 2022

Debt:

- **Total funded debt outstanding:** \$908.9 million
 - \$552 million in convertible secured notes, \$234 million of which the notes purchase agreement required to be paid 200%
 - \$284 million in various secured equipment financing for hardware used to mine bitcoin and other digital assets
 - \$30.9 million in secured nonmining equipment financings and leases
 - \$42 million in unsecured bridge notes

Triggering events:

- Drop in price of bitcoin; increased power prices affected ability to mine bitcoin; construction costs for bitcoin mining equipment
- Celsius Networks LLC filed Chapter 11 petition; Celsius owed debtors \$7 million at the time of its Chapter 11 filing
- Lenders accelerated debt, resulting in a cross-default on \$550 million of secured convertible notes

Purpose and outcome of bankruptcy filing:

- **Purpose:** Prearranged Chapter 11 case; as of the petition filing date, the debtors were party to a restructuring support agreement with an ad hoc group of noteholders
 - As of the petition date, debtors were also considering (1) out-of-court restructuring with financing offered by B. Riley and (2) regular Chapter 11 proceedings and exit via plan of reorganization with a third-party DIP lender
- **Outcome:** Case ongoing; DIP funding from B. Riley approved on March 1, 2023

Rockley Photonics Limited

Industry: Health care technology

De-SPAC: August 12, 2021

Chapter 11: January 23, 2023

Debt:

- **Total funded debt outstanding:** \$120 million
 - \$91 million in super senior secured notes
 - \$29 million in secured notes

Triggering events:

- Default under 2020 notes
- Efforts to sell the company or raise more capital failed given lack of prior production and commercialization

Purpose and outcome of bankruptcy filing:

- **Purpose:** Prepackaged plan pursuant to which noteholders would fund through exit financing and a private placement of notes
- **Outcome:** Disclosure statement and prepackaged plan approved on March 10, 2023

Starry, Inc.

Industry: Telecommunications

De-SPAC: March 29, 2022

Chapter 11: February 20, 2023

Debt:

- **Total funded debt outstanding:** \$287.5 million under a senior secured, four-tranche term loan facility

Triggering events:

- Business challenges, losses and negative cash flow; tightening of financing environment
- Larger-than-expected redemptions by SPAC shareholders ahead of de-SPAC merger

Purpose and outcome of bankruptcy filing:

- **Purpose:** Equitization of funded debt subject to superior bids solicited in connection with sale of assets
- **Outcome:** Not available; confirmation hearing scheduled for May 24, 2023

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Boxed

Industry: Retail/E-commerce
De-SPAC: December 8, 2021
Chapter 11: April 2, 2023

Debt:

- **Total funded debt outstanding:** \$147.1 million
 - \$41.5 million in first lien term loan
 - \$43 million in second lien term loan
 - \$62.6 million in senior unsecured convertible notes

Triggering events:

- Business challenges; losses and negative cash flows
- Failure to attract outside capital or execute successful sale

Purpose and outcome of bankruptcy filing:

- **Purpose:** Sale of software and technology arm to pre-petition first lien secured lenders; wind down remaining business
- **Outcome:** Not available; first day hearing occurred April 4, 2023

Virgin Orbit

Industry: Aerospace
De-SPAC: December 29, 2021
Chapter 11: April 4, 2023

Debt:

- **Total funded debt outstanding:** \$72.9 million
 - \$70.9 million in five series of secured convertible notes
 - \$2 million in unsecured notes
- **Other debt:** \$106 million

Triggering events:

- Business challenges, losses and negative cash flow
- Larger-than-expected redemptions by SPAC shareholders at the time of the de-SPAC
- Tightening of financing environment
- Pricing pressure from well-capitalized competitors

Purpose and outcome of bankruptcy filing:

- **Purpose:** 363 sale
- **Outcome:** Not available; first day hearing occurred April 5, 2023

Kalera Inc.

Industry: Agricultural technology
De-SPAC: June 28, 2022
Chapter 11: April 4, 2023

Debt:

- **Total funded debt outstanding:** up to \$31 million
 - \$20 million term loan note (unclear how much of this was drawn)
 - \$11 million revolving loan (of which approximately \$500,000 was drawn from as of the petition date)
- **Other debt:** \$10 million general unsecured debt

Triggering events:

- \$7.5 million deficit as a result of expenses relating to the de-SPAC (including approximately 98% redemptions) and additional subsequent operating losses

Purpose and outcome of bankruptcy filing:

- **Purpose:** Obtain new liquidity through DIP financing, pursue other potential sources of financing and pursue a sale of all of the company's assets or equity
- **Outcome:** Not available; case commenced on April 4, 2023

Chapter 7

Electric Last Mile, Inc.

Industry: Automotive/Electric vehicle
De-SPAC closing date: June 25, 2021
Chapter 11 petition date: June 14, 2022

Debt at petition date:

- Not available

Triggering events:

- Not available

Purpose and outcome of bankruptcy filing:

- **Purpose:** Liquidation
- **Outcome:** Asset sale approved October 13, 2022