

# Comparing a Reverse Merger and a SPAC Business Combination

The following chart is intended to compare and contrast in summary form some of the considerations for a private company (referred to below as “Private Co”) considering merging into an existing public operating company (referred to below as “Pub Co”) in a reverse merger (“RM” in the chart) or entering into a business combination with a special purpose acquisition company (“SPAC”). In particular, reverse mergers into operating companies with failed clinical programs have become common for private life sciences companies as an alternative to undertaking traditional IPOs. The chart is intended to be only a summary.

	RM	SPAC
<b>DILIGENCE</b>	Private Co will need to undertake rigorous diligence of Pub Co	Private Co diligence of SPAC will be quite limited given SPAC has no operating business
<b>CONTINGENT LIABILITIES</b>	Private Co will need to consider any Pub Co litigation, threatened litigation or similar claims	Unlikely for there to be any litigation or other similar concerns affecting the SPAC prior to an initial business combination
<b>MANAGEMENT AND EMPLOYEE MATTERS</b>	Private Co may need to address Pub Co legacy employees, handle reductions in force or severance arrangements, as well as navigate board transitions, replacing Pub Co legacy directors	Usually there will be a very limited SPAC team in place prior to the initial business combination. Management of Private Co will comprise the leadership of combined company. SPAC sponsor often will want some minority representation on board of directors for some time
<b>DOCUMENTATION AND DISCLOSURE REQUIREMENTS</b>	M&A agreement with disclosure schedules to be negotiated  Proxy or S-4 required to be prepared and filed by Pub Co. Disclosures required of Private Co will be similar to those required if Private Co had undertaken a traditional IPO, and similar to the disclosures required in connection with a proxy prepared to seek stockholder approval in connection with a SPAC initial business combination	M&A agreement with disclosure schedules to be negotiated. Process of negotiating the business combination will likely be simpler than negotiating a reverse merger with a Pub Co  Proxy or S-4 will be required in order to seek stockholder approval from the SPAC stockholders for the initial business combination  Disclosure similar to that required of Private Co had it undertaken a traditional IPO or a reverse merger
<b>CASH BALANCE</b>	No redemption risk; the merger may be accompanied by a concurrent PIPE transaction that will provide additional capital	SPAC stockholders may choose to request redemption. This redemption risk may be mitigated by agreements entered into between SPAC and SPAC sponsor affiliates pursuant to which they agree not to redeem and to support the initial business combination. A PIPE transaction may also be undertaken concurrent with the initial business combination in order to provide additional capital, whether to address redemptions or to provide additional capital for future growth
<b>PERCEPTION</b>	More historical successes	Shorter history/track record, especially for the life sciences sector
<b>SHELL COMPANY STATUS FOR SECURITIES LAW PURPOSES</b>	Pub Co will not be considered a shell company. This means Pub Co can use FWPs and rely on other communications safe harbors under the securities laws	A SPAC is a shell company, even following the completion of the initial business combination, the company will continue to be considered an “ineligible issuer” for three years following the filing of the Form 10 information (usually through the filing of the “super 8-K”)  As a shell company and an ineligible issuer, the company cannot use a free writing prospectus and cannot rely on certain other communications safe harbors (i.e., the research safe harbors)
<b>AVAILABILITY OF RULE 144 TO STOCKHOLDERS</b>	Generally, stockholders of Pub Co will be able rely on Rule 144 for resales of restricted or control securities	Generally, Rule 144 will not be available until the one-year anniversary of the filing of the Form 10 information and thereafter Rule 144 will be available only if the issuer is current in its Exchange Act filing obligations