

SPAC FEDERAL SECURITIES LITIGATION ANALYSIS

Summary findings of SPAC—
related federal securities
litigation filed between January
2019 and April 2022



About the Author



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David Abel is the Managing Attorney of USMA Law Group. His practice is focused on representing institutional investors in securities litigation and related matters. Mr. Abel has taken his past and current experiences representing institutional investors to help them and other financial companies navigate novel legal services transactions and commence litigation in foreign jurisdictions where collective actions are increasing.

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Mr. Abel began his legal career as a business analysis in the securities litigation practice group for one of the largest plaintiff law firms in the United States. He later became analyst group Director for the law firm, while also practicing as a litigating attorney, where he focused on lead plaintiff motion appointments in securities fraud class actions. In 2016, Mr. Abel co-founded USMA Law Group, a financial markets law firm based in Washington, DC, where he continues his practice.

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While SPAC offerings may have cooled, the litigation has yet to heat up

The following report provides an analysis of the exponential increase in SPAC IPOs, and the litigation that has followed, during the period of between January 2019 and April 2022 (Relevant Period). Highlights from our findings include:

- Newly proposed regulation may have paused SPAC IPOs, but the litigation continues.
- 977 SPAC IPOs took place during the Relevant Period, with the bulk of those occurring in 2021 (613).
- 61 federal securities actions were filed by investors during the Relevant Period, with the bulk of those occurring in 2021 (33).
- Over 85% of the actions remain active and are expected to take several more years to resolve.
- While offerings have tapered, litigation related to the 977 SPAC IPOs during the Relevant Period may continue to grow over the next few years.
- Most of the SPACs subject to federal securities litigation are small cap companies.
- Few mega-settlements are expected. Estimated class-wide damages for many actions do not exceed \$200 million, suggesting relatively limited recoveries for cases that settle.

SPACs Background

A substantial number of private shareholder actions, mainly securities fraud class actions, have been filed against Special Purpose Acquisition Companies (SPAC) and related parties in recent years. The rise in litigation has followed the exponential increase in SPAC entities becoming publicly traded via acquisitions, offerings and/or a de-SPAC merger process (SPAC IPOs). However, recent events have caused a dramatic decline in the number of SPAC entities attempting to become publicly traded. A major factor contributing to the drop has been the Securities Exchange Commission (SEC) sending strong signals that stricter regulations will be imposed on the entities and parties involved in the SPAC IPO process.

On March 30, 2022, the SEC proposed new guidelines to improve public disclosures and investor protections by SPACs and similar business combination transactions involving shell companies.¹ While it was not the first time the SEC had voiced the need for greater SPAC regulation,² the March communication effectively caused major SPAC promoters and bankers to abandon (at least temporarily) the business over liability concerns.³

Before the SPAC industry took pause, however, it had skyrocketed to unprecedentedly levels of activity. Unfortunately, the seemingly insatiable demand for SPAC IPOs allowed many companies with undisclosed problems to go public before the issues were realized by investors. Accordingly, private securities litigation, mainly federal securities fraud class actions began trailing many of the maligned SPAC IPOs even before

¹ See SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies, and Projections, U.S. Securities and Exchange Commission, (Mar. 30, 2022), <https://www.sec.gov/news/press-release/2022-56>.

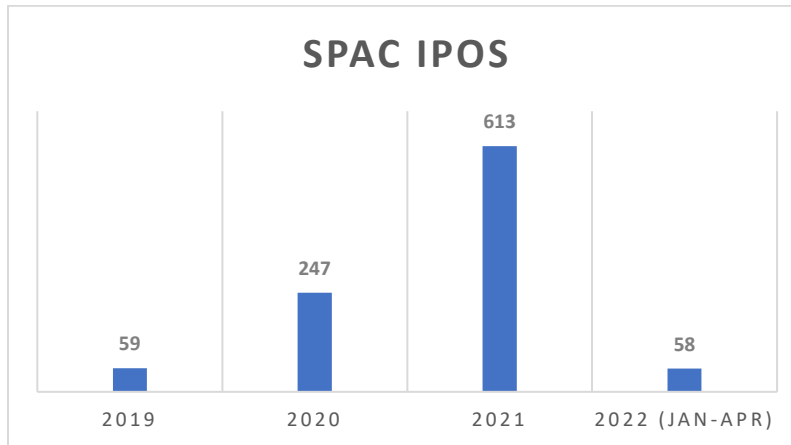
² See CF Disclosure Guidance: Topic No. 11: Special Purpose Acquisition Companies, Division of Corporation Finance, Securities and Exchange Commission, (Dec. 22, 2020), <https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies>.

³ See Bailey Lipschultz, Four SPAC Offerings Aborted as Investors Flee Blank Checks, Bloomberg (Apr. 22, 2022), available at <https://www.bloomberglaw.com/bloomberglawnews/financial-accounting/X6B23DQG000000> (reporting that by late April 2022 at least 56 SPAC offerings had been called off).

regulators stepped in. Further, it is likely that litigation will continue against SPACs that went public during the Relevant Period as more information on the offering process and business operations comes to light.

SPAC IPOs Since 2019

SPAC IPOs were not uncommon in 2019 but increased exponentially during 2021. The frenzy reversed course by April 2022, as reflected in the following chart.

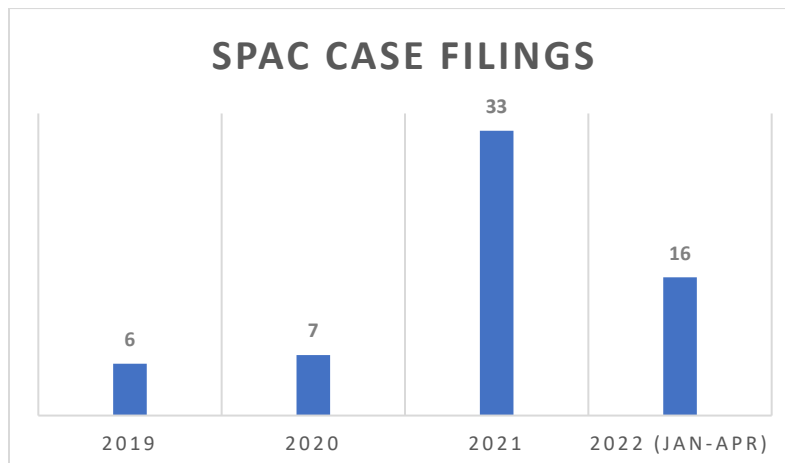


As indicated, there were 59 SPAC IPOs in 2019. SPAC IPOs exploded to 247 during 2020, an over four-fold increase from the prior year. In 2021, there were 613 SPAC IPOs, more than double the amount from the prior year. SPAC IPOs then declined dramatically during the first four months of 2022 to only 58 by the end of April. The 3.3-year period experienced 977 SPAC IPOs in total.⁴

SPAC—Related Federal Securities Litigation Since 2019

Annual Securities Actions Filings - January 2019 to April 2022

Like SPAC IPOs in 2019, federal securities actions involving SPACs were being filed but were not entirely significant to the total number of annual shareholder filings. The litigation then spiked in 2021 and continued at an accelerated rate for the first few months of 2022, as reflected in the following chart.



⁴ Source: SPAC Analytics available at <https://www.spacanalytics.com/>

Only six actions were filed in 2019, and seven actions in 2020. The trend changed in 2021, jumping to 33 securities class action filings, an over four-fold increase from the prior year. Between January 2022 and April 2022, 16 cases were filed, putting filings on pace to substantially exceed those filed 2021. The 3.3-year period saw 61 SPAC–related securities class actions in total.⁵

Type of Claims and Companies Involved in Litigation

We define a SPAC IPO–related action as a lawsuit against a SPAC or related party with allegations that include the SPAC’s formation, filed in federal court asserting claims under the federal securities laws. Most of the SPAC IPO litigation has been filed as a class action asserting securities law violations under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.⁶ Accordingly, the SPAC IPO litigation typically progresses in the same manner as would be expected with any other securities fraud class action. Likewise, false, and misleading statements and/or omissions is a common basis for the claim.

In term terms of profile, companies in the Consumer Cyclical and Technology sectors were subject to the most litigation, as summarized in the following table. As might be expected, many of the lawsuits involved trending issues of electric vehicle manufacturing and/or autonomous transportation.

Sector	Count of SPAC Defendants
Consumer Cyclical	12
Technology	11
Healthcare	8
Financial	7
Services	7
Capital Goods	5
Basic Materials	4
Conglomerates	4
Consumer Non-Cyclical	2
Energy	1
Total	61

Status of SPAC–Related Filings

Most of the 61 SPAC–related securities class actions filed since 2019 are still active. As shown in the following table, 53 actions (over 85%) remain active, eight have been dismissed and only one⁷ has settled.

⁵ While this report does not include an analysis of state law claims, it is worth noting that substantial shareholder litigation was filed against SPAC entities in state courts during the Relevant Period. Much of the state court litigation is taking place in the Delaware Chancery and New York where breach of fiduciary duty claims and derivative actions are common.

⁶ It is worth noting that a few of the SPAC IPO–related cases involved allegations that SPAC defendants operated as Investment Companies and violated certain requirements under the Investment Company Act of 1940.

⁷ Akazoo S.A. announced in April 2021 that it had reached a partial settlement for \$35 million in the class action filed against in April 2020.

SPAC–Related Actions Status

	2019	2020	2021	2022 (Jan-Apr)	Total
Active	2	3	32	15	52
Dismissed	4	3	1	0	8
Settled	0	1	0	0	1
Total	6	7	33	15	61

The status of these cases is typical for securities fraud class actions. Internal research shows that the average recently settled securities class actions took approximately three years to resolve (between the case filing and settlement announcement). Moreover, a substantial number of such cases can take more than five years to conclude.

Possible Resolution Outcomes and Continued Litigation Risk

Looking ahead, impacted investors and corporations might consider the following about the volume of SPAC litigation and their possible outcomes:

- The overall outcome for the large group of cases filed in 2021 is not likely to be known until after 2024.
- Increased securities litigation followed exponential increases in SPAC IPOs. The same principle might be expected in the future, and perhaps with even more frequency of litigation, if regulators increase disclosure requirements and SPAC entities return to a high volume of offerings.
- The number of lawsuits filed against SPACs could temporarily increase even if most SPAC IPOs remain on pause. Generally, the statute of limitations for securities fraud claims is five years. If investors learn of further misconduct over the next few years, they may still have the opportunity to file lawsuits against the SPAC entities that went public since 2019. Factors such as declining economic conditions and continued regulatory scrutiny could be catalysts in bringing undisclosed securities violations to light.
- Securities litigation over a SPAC–related entity will not necessarily occur in the same year as its IPO. Instead, litigation is often reflective of SPAC offerings that occurred months, if not years, prior to the filing date. Accordingly, as the following table shows, the 2020 spike in IPOs contributed to the 2021 spike in securities class action filings. Similarly, the seemingly disproportionate number of cases filed in early 2022, is propped up by alleged misconduct of SPACs that went public in 2021 and earlier. This sequence is likely to hold with any as new securities litigation filings.

	2019	2020	2021	2022 (Jan-Apr)	Total
IPOs	59	247	613	58	977
Class Actions	6	7	33	16	61

Market Capitalization of SPAC Defendant Corporations

A review of current market capitalization for the primary corporate defendant in the SPAC–related federal securities actions showed that most traded⁸ as a small-cap stock (less than \$2 billion in market capitalization).

⁸ As of May 15, 2022.

The following table summarizes market capitalization of the primary SPAC defendants in the 61 actions filed between 2019 and early 2022.

Market Capitalization of SPAC Defendants

Small-Cap < \$2 billion	Mid-Cap \$2 billion - \$10 billion	Large-Cap > \$10 billion
45	7	3

Current market capitalization was available for 55 of the 61 SPAC entities. Of these, 45 companies, or more than 42%, have current market capitalizations under \$2 billion (post alleged fraud revelation price declines). Seven companies were classified as Mid-Cap (\$2 billion-\$10 billion) and only two companies were classified as Large-Cap (greater than \$10 billion). The median market capitalization was \$535 million.

Market Capitalization Losses of SPAC Defendant Corporations

Class-wide damages are not expected to exceed \$200 million for many of the actions in this study. Theoretical maximum possible class-wide damages for a securities fraud class action can be estimated by multiplying the price decline due to an alleged fraud revelation and the number of impacted class shares traded (i.e., float) during the relevant period. Using this methodology, class-wide market capitalization losses were able to be calculated for 54 of the 61 SPAC-related securities class action filings. A summary of market capitalization losses is provided in the following table.

Market Capitalization Losses of SPAC Defendants

< \$200 million	> \$200 million and < \$1 billion	> \$1 billion
23	20	11

The calculations revealed that for 23 of the filings, more than 42% of the actions, market capitalization losses were less than \$200 million.⁹ Similarly, the median market capitalization loss for the 54 cases is \$228 million. Twenty of the actions had market capitalization losses between \$200 million and \$1 billion and 11 actions had market capitalization losses greater than \$1 billion. For 17 of the 54 measurable actions, market capitalization losses exceeded the respective company's current market capitalization.

Potential Settlement Outcomes and Continued Litigation Risk

Looking ahead, impacted investors and corporations might consider the following about potential damages recoveries for the SPAC-related securities litigation filed between 2019 and early 2022:

- The relatively small size of most of the primary corporate defendants, and subsequent amount of market capitalization losses, suggest there will be few mega-settlements. Internal research shows that approximately half of all securities fraud class actions are dismissed. For those that lead to successful class settlements, recoveries for investors typically amount to cents on the dollar for recognized losses. For example, if class-wide damages are \$200 million, the parties might settle for \$20 million. In this

⁹ Market capitalization losses are calculated based on the respective complaint's alleged fraud-caused price decline(s) multiplied by the relevant float (affected shares).

scenario, the risk-recovery analysis might be reasonable but only provide a modest return for the average investor in a class of hundreds or thousands of members.

- A few SPAC corporations in this analysis may not survive long enough to settle. This might be a particular risk for the 17 entities whose market capitalization losses exceed their current market capitalization.
- Any new regulatory scrutiny against the entities in the study, particularly investigation findings and fines by the SEC, could help the respective lawsuits resolve more favorably for investors.

About Us

U.S. Market Advisors Law Group PLLC

U.S. Market Advisors Law Group PLLC (“USMA Law Group”) represents financial market participants in complex litigation.

The attorneys and professionals of USMA Law Group have deep experience in civil litigation and financial markets. Principals of the firm have worked for large class action law firms, business and capital market focused law firms, market regulators, risk & compliance advisory firms and have created financial technology companies to facilitate trading and regulatory compliance on global financial markets.

Our practice focuses on guiding clients through the legal landscape of significant and complex US class actions and to navigate global collective action strategies for investment recovery.

Battea Global Litigation Research, Inc.

Battea Global Litigation Research, Inc., (“BGLR”) provides specialized Securities and Antitrust Litigation and Settlement Research for investor Class and Collective Actions taking place in the United States and Internationally.

The Company’s analysts and experts have distilled content, collected, and performed statistical outcome analysis across several thousand litigation cases, settlements, and settlement implementations. The Company is actively tracking all current litigations and settlements.

Combining academic and seasoned practitioners expertise on financial market operations, market structure, trading, economics, finance with significant insight and research of litigations and settlements, Battea Class Action Litigation Research Inc., is one of the world’s most proficient analysts within its field.

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