



AMERICAN
BANKRUPTCY
INSTITUTE

Winter Leadership Conference

Financially Distressed De-SPAC Companies

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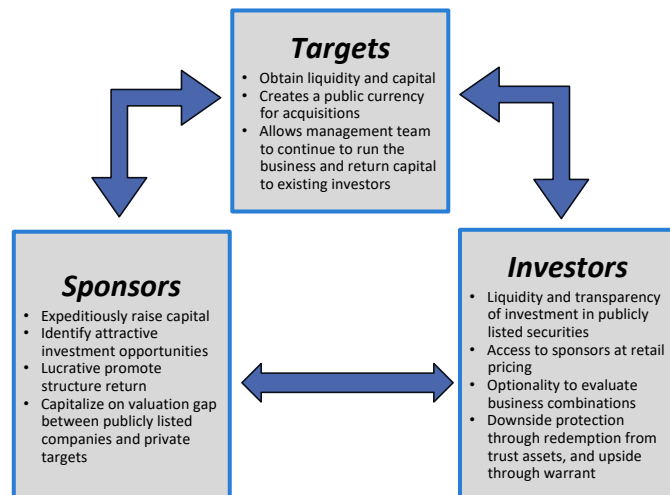
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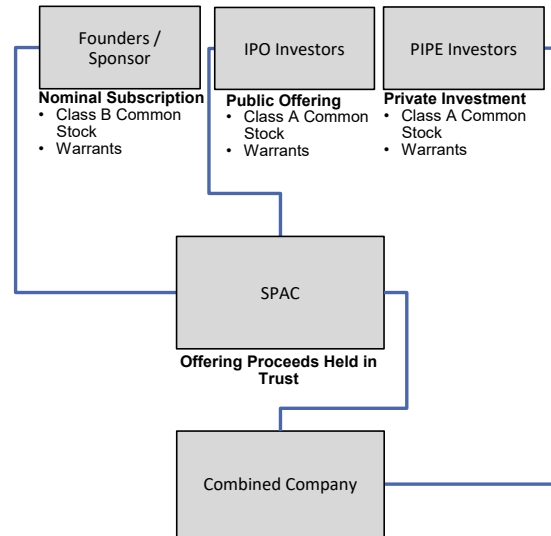
What is a SPAC?

- “Special Purpose Acquisition Company”
- Effectively a shell company that raises money through an IPO with the specific purpose of acquiring a yet-to-be-determined target company
- Usually a SPAC has ~18-24 months to complete an acquisition before it must liquidate, though shareholders can vote to increase that period
- Founders & sponsors invest in a private offering pre-IPO; public investors invest through the IPO; PIPE investors commit to invest post-IPO, pre-acquisition, and actually invest simultaneously with the closing of the business combination (or “de-SPAC”) transaction
- If the SPAC does complete the acquisition, it will merge with the target and generally change its name to the name of the target (though this may change based on transaction structure). The target will then effectively become a public company and will be required to register its shares and comply with all other SEC regulations



Investing in a SPAC

- Pre-IPO, a SPAC will generally sell a class of “Founder Shares” to SPAC founders and/or sponsors
- Founders & sponsors generally sign a lock-up agreement preventing them from selling the private shares until ~1 yr. after the business combination
- Founders & sponsors also usually commit to vote in favor of the acquisition
- Proceeds of the private sponsor warrants are used to pay expenses relating to
- (1) the IPO, *e.g.*, a portion of the underwriter fees, (2) public company expenses pre-business combination, and (3) searching for a target, due diligence costs, etc.
- In the IPO, the SPAC will offer both common stock and warrants
- Between the IPO and the de-SPAC, SPACs often conduct a non-deal roadshow and arrange for Private Investment in Public Equity (“PIPE”) financing, whereby certain investors, sometimes including founders, sponsors and strategic investors, commit to purchase, at the time of the business combination, additional equity in the SPAC to the extent necessary to complete the business combination
- Because SPACs have limited cash, and that cash is generally restricted, target companies will generally receive little financial protection or reimbursement in the event the business combination is not completed



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Timeline & Structure of a SPAC

- **Private Placement.** Prior to the IPO, Sponsors purchase ~20% of the expected post-IPO fully diluted equity of the SPAC for a nominal price
- **IPO.** The SPAC issues units comprised of common stock and a warrant to purchase common stock
- **Trust Account.** 100% of the proceeds from the IPO (and often part of the private placement proceeds) are placed in an interest bearing trust and released only to fund an acquisition, a vote to extend the life of the SPAC, or upon the SPAC's liquidation due to failure to complete a business combination by a set date
- **Approval and Redemption Rights.** Acquisition is subject to SPAC stockholder approval, and stockholders voting for or against the acquisition may cause the SPAC to redeem their shares for a pro rata share of the trust amount
- **Acquisition.** Generally consummated through a merger agreement with S-4, proxy process or tender offer. If no acquisition is approved and completed within the specified period, the SPAC returns the amounts held in trust to its stockholders

Illustrative Timeline



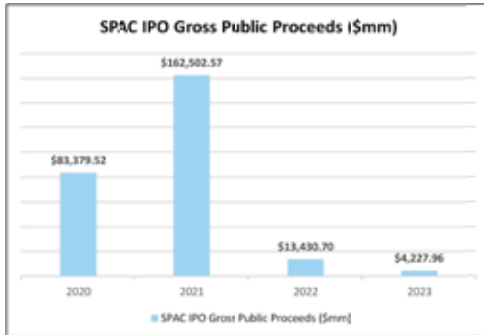
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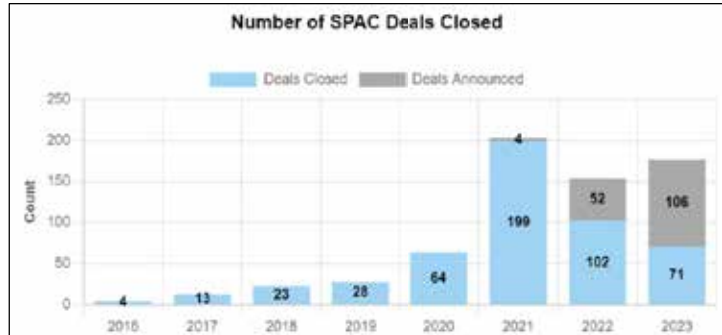
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SPAC IPO Fundraising

- The charts below show the gross public proceeds received from SPAC IPO issuances from 2020 through 2023, and the number of SPAC deals closed from 2016 through 2023
- In 2021, gross proceeds from SPAC IPOs totaled more than \$160 billion; in 2022, gross proceeds dropped to around \$13.4 billion
- During the same time period, the number of de-SPAC transactions that closed dropped from 199 to 102, with the number of announced de-SPAC transactions that *didn't* close rising from 4 to 52



Data Source: SPACInsider as of October 25, 2023



Data Source: SPACResearch as of October 25, 2023

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Pros & Cons of de-SPAC Transactions

- **Access Public Markets.** Companies prepared for an IPO and public company reporting can effectively go public without making arrangements with underwriters, conducting roadshows, or navigating the traditional IPO registration process
- **Valuation Construct.** Ability to negotiate a fixed valuation with SPAC acquirer ("purchase price") usually higher than what the operating company could or would offer
- **Liquidity.** Potential to realize significant cash liquidity for target company via public markets
- **Terms.** Potential to simplify M&A deal terms, using public company style acquisition based on an enterprise value without working capital, cash, debt or transaction expense adjustments
- **Execution Risks and Expenses.** Extensive transaction costs and increased timeline given hybrid M&A/IPO nature of transaction. Simultaneously need M&A deal documents and S-4, financials, and other public filings
- **Lack of Certainty of Funding and Dilution.** Redemption rights leave uncertain how much capital a SPAC will have at closing. Promoter equity may dilute target shareholders' ownership. Deal must be attractive to current private stockholders, public stockholders and PIPE investors
- **Timeline.** Closing may take 6-8 months, based on regulatory approvals, stockholder vote, funding to close, satisfaction of redemption requests
- **Reporting Obligations.** The operating company will be subject to public company reporting obligations



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Redemption Rights

- If a SPAC does not complete a business combination within the required time period, it must liquidate and redeem the public shares and pay the shareholders their pro rata amount of the trust account funds
- If a SPAC does reach the business combination stage, the SPAC must still offer its public holders the opportunity to redeem their shares. High redemption rates can lead to insufficient funds to close the transaction
- PIPE financing intended to provide additional capital and cover potential redemptions. Founders & sponsors cannot redeem their shares; public warrants are also not subject to redemption
- Most merger agreements condition the closing on the SPAC having a minimum amount of cash and not surpassing the maximum amount of redemptions, so excess redemptions without backstop financing can adversely impact the viability of a de-SPAC transaction



Data Source: BoardroomAlpha as of October 25, 2023

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SPAC Liquidations

- SPACs typically have 18-24 months to consummate a business combination, otherwise the SPAC must liquidate and return its funding to investors if it does not get approval from stockholders for an extension
- This liquidation takes place outside of bankruptcy and under the applicable law of the jurisdiction in which the SPAC is incorporated
- A new 1% federal tax on share repurchases that took effect on December 31, 2022 encouraged many sponsors to liquidate their SPAC deals before year-end, presenting yet another setback for the market
- In December of 2022 alone, 70 SPACs liquidated and returned their money to investors. This was more than the total number of SPAC liquidations in the market's history prior to that date



Data Source: BoardroomAlpha as of October 25, 2023

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De-SPACed Company Bankruptcies

- Most of today's de-SPACed companies are the result of the boom in SPAC fundraisings in 2020 and 2021 – in both years, SPAC IPOs accounted for more than half of all IPOs
- An unprecedented 34% of all 2021 going-public transactions took the form of de-SPAC mergers
- 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
- The contraction of the market for SPACs and the recent challenges de-SPACed companies have encountered have attracted considerable press attention: the stocks of many de-SPACed companies are trading below the SPACs' original IPO price
- 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, as many such companies intended to prioritize rapid expansion over near-term profitability
- The dramatic tightening of capital markets 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

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De-SPACed Company Bankruptcies (cont'd)

- The small number of de-SPAC bankruptcy proceedings completed to date preclude any definitive conclusions
- Notably, there is a trend in the type of bankruptcy filings made by deSPACed companies: most have opted for Chapter 11 proceedings, rather than filing for Chapter 7 liquidation
- 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
- For managers of distressed de-SPACed companies, Chapter 11 offers powerful tools to address unsustainable liabilities and preserve and enhance value for stakeholders

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Ch. 11 De-SPACed Company Bankruptcies

Company	De-SPAC Date	Petition Date	Triggering Events	Goal of Filing
Alta Mesa Holdings, LP	Feb. 9, 2018	Sept. 11, 2019	<ul style="list-style-type: none"> Reduced borrowing base Depressed oil prices, overleveraged balance sheet, liquidity constraints 	363 Sale
Legacy EY Inc. (f/k/a Enjoy Technology Inc.)	Oct. 15, 2021	Jun. 30, 2022	<ul style="list-style-type: none"> High level of redemptions simultaneously with overall tightening of public equities markets Supply chain and manufacturing issues 	363 Sale
Clarus Therapeutics, Inc.	Sept. 9, 2021	Sept. 5, 2022	<ul style="list-style-type: none"> Debt obligations and upcoming note payments COVID-19 pandemic halted marketing & sale of new drug that was debtors' sole source of revenue 	363 Sale
Fast Radius, Inc.	Feb. 2, 2022	Nov. 7, 2022	<ul style="list-style-type: none"> 91% redemptions by SPAC shareholders 	363 Sale
Quanergy Systems, Inc.	Feb. 9, 2022	Dec. 13, 2022	<ul style="list-style-type: none"> Industry-wide equity market challenges Supply chain issues Pending litigation hampered sale efforts 	363 Sale
Core Scientific Holding Co.	Jan. 19, 2022	Dec. 21, 2022	<ul style="list-style-type: none"> Drop in price of bitcoin and increased costs of mining bitcoin Acceleration of debt Celsius Networks LLC bankruptcy filing (owed \$7 million) 	Ch. 11 Plan
Rockley Photonics Ltd	Aug. 12, 2021	Jan. 23, 2023	<ul style="list-style-type: none"> Default under 2020 notes 	Prepack

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Ch. 11 De-SPACed Company Bankruptcies

Company	De-SPAC Date	Petition Date	Triggering Events	Goal of Filing
Starry, Inc.	Mar. 29, 2022	Feb. 20, 2023	<ul style="list-style-type: none"> Business challenges, losses & negative cash flows Higher-than-expected redemption levels 	Ch. 11 Plan (sale)
Boxed, Inc.	Dec. 8, 2021	Apr. 2, 2023	<ul style="list-style-type: none"> Business challenges, losses & negative cash flows Failure to attract outside capital or execute sale 	363 Sales + wind-down
Virgin Orbit	Dec. 29, 2021	Apr. 4, 2023	<ul style="list-style-type: none"> Higher-than-expected redemption levels Pricing pressure from competitors 	363 Sale
Kalera Inc.	Jun. 28, 2022	Apr. 4, 2023	<ul style="list-style-type: none"> \$7.5 million deficit from SPAC/de-SPAC expenses 98% redemption rate 	363 Sale
Pear Therapeutics Inc.	Dec. 6, 2021	Apr. 7, 2023	<ul style="list-style-type: none"> De-SPAC transaction raised less than half of expected cash 	363 Sale
QualTek Services, Inc.	Feb. 16, 2022	May 24, 2023	<ul style="list-style-type: none"> De-SPAC transaction provided less liquidity than expected and liquidity raised was interest-bearing debt (not equity) Inclement weather patterns business sub-segment Employee expenses 	Prepack
Cytera Technologies, Inc.	Jul. 30, 2021	Jun. 4, 2023	<ul style="list-style-type: none"> Inflation and rising interest rates Impending maturities under revolving credit facility & term loan facilities 	363 Sale

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Ch. 11 De-SPACed Company Bankruptcies

Company	De-SPAC Date	Petition Date	Triggering Events	Goal of Filing
Lordstown Motors Corp.	Oct. 23, 2020	Jun. 27, 2023	<ul style="list-style-type: none"> Dispute with counterparty leading to loss of capital and operational capabilities Failed pre-petition marketing process 	363 Sale
AppHarvest Productss, LLC	Jan. 9, 2021	Jul. 23, 2023	<ul style="list-style-type: none"> Weather issues, diseased crops Setbacks in construction 	Prepack
Proterra Inc.	Jun. 14, 2021	Aug. 7, 2023	<ul style="list-style-type: none"> Large working capital requirements Unfavorable long-term contracts Inability to raise new capital or sell the company 	363 Sale
UpHealth Holdings, Inc.	Jun. 9, 2021	Sept. 19, 2023	<ul style="list-style-type: none"> Significant litigation against and within the company DOJ investigation Issues with 2020 merger integration & cash flows 	Not stated
Shift Technologies, Inc.	Oct. 13, 2020	Oct. 9, 2023	<ul style="list-style-type: none"> Capital markets tightening simultaneously with large company investments in technology 	363 Sales + wind-down

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Non-Ch. 11 De-SPACed Company Bankruptcies

Company	De-SPAC Date	Petition Date	Triggering Events	Goal of Filing
Electric Last Mile, Inc.	Jun. 25, 2021	Jun. 14, 2022	<ul style="list-style-type: none"> Not available 	Ch. 7 Liquidation
Wejo Group Ltd.	Nov. 18, 2021	May 30, 2022	<ul style="list-style-type: none"> Not available 	Liquidation (United Kingdom)
Pioneer Merger Corp. (in Official Liquidation)	N/A	Oct. 19, 2023	<ul style="list-style-type: none"> SPAC (not de-SPACed company) filed for bankruptcy after termination of merger agreement with proposed target company Shareholder class action against the Sponsor, SPAC, and SPAC directors 	Ch. 15 liquidation (Cayman Islands)
Signa Sports United GmbH / Signa Holding GmbH		Oct. 20, 2023	<ul style="list-style-type: none"> Lack of funds to cover operational financing Termination of equity commitment from parent company – certain subsidiaries filed for insolvency; others filed a notice of intention to appoint an administrator 	Insolvency (Germany)

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Faculty

Katherine R. Catanese is an equity partner in the Bankruptcy and Restructuring Group of Foley & Lardner LLP in New York, where she assists troubled companies facing financial distress and restructuring. She assists troubled companies facing critical points in their businesses related to financial distress and restructuring, which can include maximizing the value of their assets through both in- and out-of-court asset sales. Ms. Catanese also focuses her practice on helping creditors solve problems related to all aspects of distressed debt, which has included representing debtors, lenders and strategic buyers in Article 9 sales and assignments for the benefit of creditors. She also represents investors and other parties in fraud-based litigation arising in the insolvency space, including various cross-border fraud matters and representation of investors and managers in hedge funds both onshore and offshore in bankruptcy litigation including involuntary bankruptcies and chapter 15 bankruptcies. Ms. Catanese also has experience in bankruptcy appeals and focuses on for-profit schools and higher education restructuring generally, with an emphasis on fraud investigation and intervention. To that end, she is building a practice focusing on representing higher education institutions, lenders and private-equity funds in all forms of litigation related to their business and financial restructuring of these schools. In addition, Ms. Catanese represents banks and trustees of bank holding companies, including litigation related to procurement of tax refunds and disputes with the FDIC over refund ownership. She further emphasizes her practice on representation of creditors, representations of creditors' committees and indenture trustee representation, including the representation of U.S. Bank and Wilmington Trust as the indenture trustee for certain bonds in the American Airlines, Samson Resources (oil and gas) and Peabody Energy (coal) bankruptcies. Ms. Catanese has experience in the representation of trustees regarding resolution and objection to bankruptcy claims, the pursuit of fraudulent transfer and preference actions, and litigation related to bad-faith bankruptcy filings, Ponzi schemes and § 363 sales. She also has particular knowledge of individual and business chapter 7s and individual chapter 11s, and she is experienced with e-discovery in bankruptcy cases. Ms. Catanese is a member of the Bankruptcy and Health Care Restructuring sub-team at Foley. She also is the women's network coordinator for Foley's Women's Network in the New York office. Prior to joining Foley, Ms. Catanese was an associate at Allard & Fish, P.C., where she represented a chapter 7 trustee and corporate debtors, secured and unsecured creditors, and trustees in all aspects of bankruptcy litigation. She received her B.A. in psychology *summa cum laude* in 2001 and her J.D. *cum laude* in 2004 from Michigan State University. During law school, she clerked for Hon. David L. Jordon.

Anne Eberhardt is a senior director with Gavin/Solmonese LLC in New York City. She has more than 20 years of experience conducting forensic investigations, building financial reporting systems, resolving economic disputes, testing compliance, building and testing financial models, liquidating assets, and strengthening anti-corruption capacity in some of the world's most difficult environments. Ms. Eberhardt's clients include top-tier financial services companies, global pharmaceutical companies, government agencies, and international nongovernmental organizations. She is proficient in Spanish and is a frequent speaker on topics of corporate governance, fraud, anti-corruption and money laundering. Ms. Eberhardt received her B.S. in finance with an emphasis in quantitative methods from Brigham Young University and her M.B.A. from Brigham Young University's Marriott School of Management.

Shana A. Elberg is a partner in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP, where she concentrates on corporate and business reorganizations and bankruptcy matters, including cross-border representations. She has experience advising the full range of parties-in-interest in a variety of distressed situations and restructuring transactions. Ms. Elberg has represented companies, creditors, equityholders, lenders, investors, sellers and purchasers in matters including prepackaged and prearranged bankruptcies, traditional chapter 11 cases and out-of-court workouts and acquisitions. She has experience working across a wide variety of industries, including pharmaceuticals, energy, financial services, sports, shipping and retail. Ms. Elberg also has significant M&A, capital markets and general corporate experience. Additionally, she has been involved in more than 20 de-SPAC transactions, representing SPACs, targets and placement agents. Ms. Elberg received the Burton Award for Legal Writing and has been recognized by *Turnarounds & Workouts* as an Outstanding Young Restructuring Lawyer. She also has been selected for inclusion in *Chambers USA* for her work in bankruptcy and restructuring. Ms. Elberg serves on Skadden's Policy Committee (the firm's governing body) as well as its Diversity, Hiring and Summer Associate committees, and she chairs the New York office's Diversity Committee. She also served on the steering/planning committee for Focus on Gender Diversity, a corporate restructuring-focused gender equity initiative. In addition, she is a member of the UJA-Federation of New York's Next Generation Bankruptcy Leadership Group and a member of the Practical Law Bankruptcy Advisory Board, and she is a co-author of the *Chambers International Insolvency Guide*. Ms. Elberg received her B.S. in 1998 from Cornell University and her J.D. in 2001 from Cornell Law School.

Cullen A. Drescher Speckhart is chair of Cooley LLP's business restructuring & reorganization practice and partner in charge of its Washington, D.C., office. She is a top advocate in corporate restructuring and financial litigation, with a diverse practice spanning a range of industries, including health care, life sciences, technology, energy and retail. Ms. Speckhart regularly represents debtors, creditors' committees, trustees and foreign representatives in significant bankruptcy matters throughout the U.S. Having led some of the largest and most significant restructuring engagements in a multitude of jurisdictions, she has deep experience in complex insolvency litigation. Her recent practice experience includes serving as lead restructuring counsel to official creditor constituencies in Mallinckrodt, LTL Management (Johnson & Johnson), Endo International, Le Tote, 24 Hour Fitness and White Stallion Energy. Ms. Speckhart also acts as lead restructuring counsel to companies seeking to reorganize in and out of court and provides business risk management and strategic advice to entities across such industries as technology, life sciences, cyber services and cryptocurrency. Her company-side practice involves representation of public and private debtors in chapter 11 cases, and she often confronts complex emerging legal issues and matters of public importance. Her current work on behalf of companies in bankruptcy includes representing Ascena Retail Group (Ann Taylor, Loft, Lane Bryant), as well as serving as lead restructuring counsel to Enjoy Technology, NS8, Phase-Bio Pharmaceuticals, Quanergy Systems and Lucira Health in chapter 11 proceedings. Ms. Speckhart is a frequent speaker on corporate insolvencies, restructuring in life sciences and technology, career and professional development, advocacy and leadership. In 2015, she co-authored the ABI's manual on Chapter 15, and in 2017, she was selected as a member of ABI's inaugural "40 Under 40" class. In 2021, on account of exemplary practice performance and leadership, she was named Restructuring Lawyer of the Year at the Global M&A Network's 13th Annual Turnaround Atlas Awards. Ms. Speckhart serves on the advisory board of the Institute for Restructuring Studies at the University of Pennsylvania, and her career, practice and leadership experiences have been covered by numerous national media outlets. As part of her work on issues related to diversity, equity and inclusion and

women's initiatives, she led a team in designing and delivering a bespoke leadership training program for Cooley professionals seeking development in confidence, public speaking and personal branding. Before entering private practice, Ms. Speckhart clerked for then-Chief Judge Stephen C. St. John of the US Bankruptcy Court for the Eastern District of Virginia. During law school, she was the first prize winner of the ABI's inaugural Bankruptcy Law Student Writing Competition and the first law student ever to receive the Thatcher Prize for Excellence, an award presented annually to a William & Mary graduate student of outstanding scholarship, leadership, service and character. Ms. Speckhart received her B.A. in politics and economics from Georgetown University and her J.D. from the College of William & Mary, Marshall-Wythe School of Law.