

IPO Breaks Drought for New Publicly Traded Public Benefit Corporations

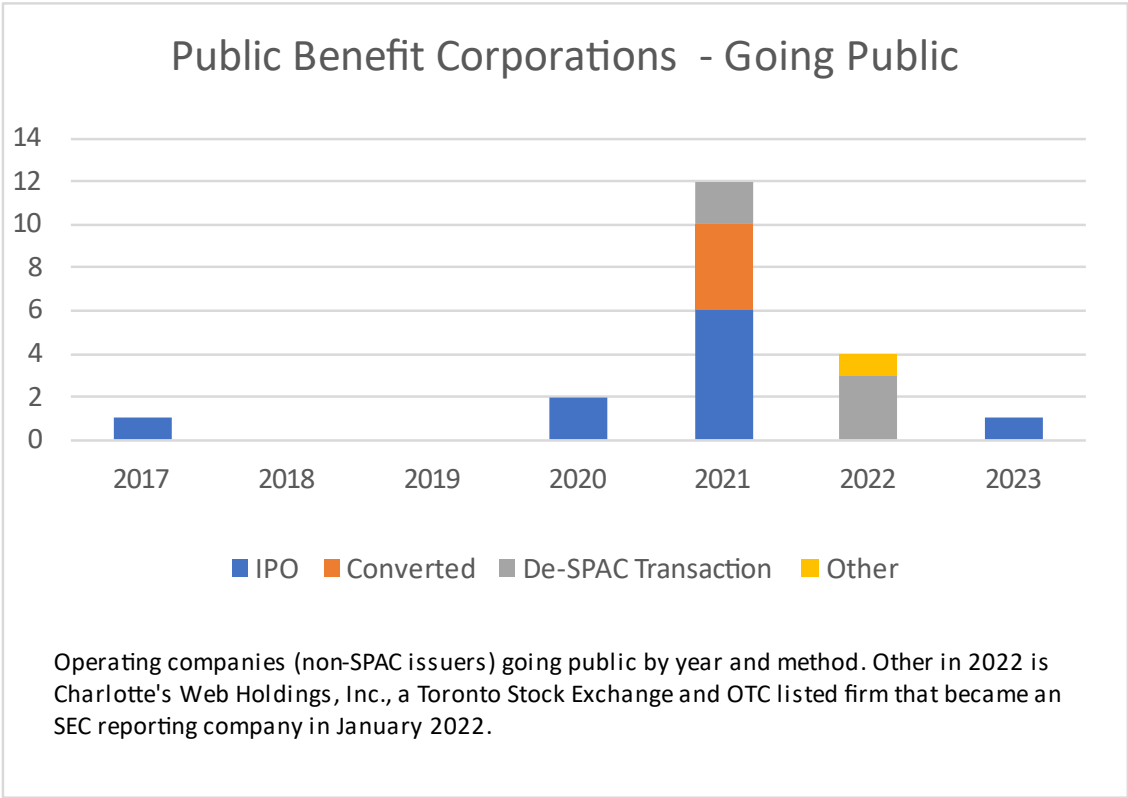
August 31, 2023

PBC IPO Drought Ends

In the latest sign the US IPO market may be emerging from the doldrums, a noteworthy event occurred this month: a public benefit corporation (“PBC”) completed an IPO. Sezzle Inc., which has elected to be a public benefit corporation under Delaware law, priced its IPO and began trading on the Nasdaq exchange on August 16th. Sezzle’s IPO ends what had been a 21-month drought for IPOs completed by PBCs. Prior to Sezzle, the most recent IPO was Allbirds, Inc. in November 2021. The lack of IPOs among PBCs is part of a larger trend of less publicly traded companies opting to be classified as a PBC.

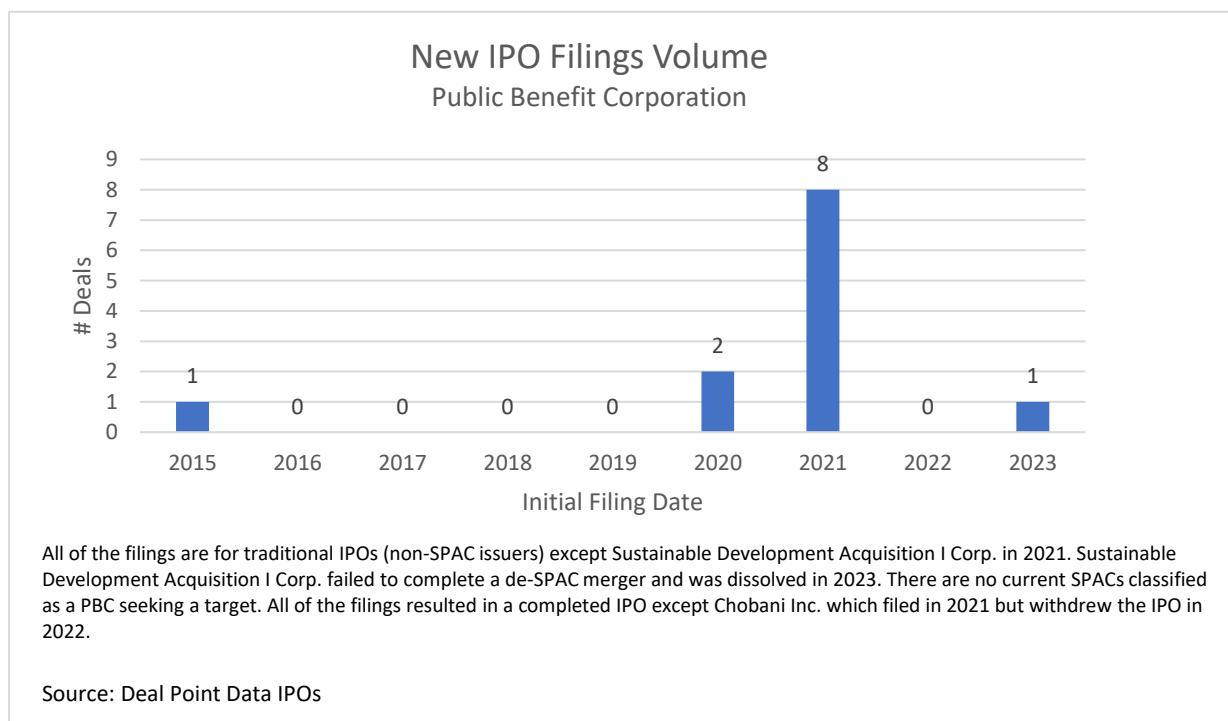
What is a Public Benefit Corporation?

A PBC is a form of corporate structure that requires a company to consider not only stockholder interests but the interests of other stakeholders or social good identified by the company as well. Several states including Delaware have adopted PBC statutes. While there are numerous private and subsidiary companies structured as PBCs, only a limited number of publicly traded corporations have gone public or converted to a PBC to date. Twenty publicly traded corporations have elected to be classified as PBCs since Deal Point Data began tracking this activity on January 1, 2017. All but one are incorporated in Delaware, with Colorado-based Charlotte's Web Holdings, Inc. incorporated in British Columbia.



The Delaware General Corporation Law was amended in 2013 to allow corporations to form as or convert to a PBC and defines them as a “for-profit corporation organized under and subject to the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible and

sustainable manner” and “shall be managed in a manner that balances the stockholders’ pecuniary interests, the best interests of those materially affected by the corporation’s conduct, and the public benefit or public benefits identified in its certificate of incorporation”. Changes to Delaware’s PBC statutes in 2020 (including eliminating the supermajority requirement to opt-in or opt-out of a PBC statute) and changing attitudes among stockholders on the purpose of a corporation at the time led to a sizeable increase in the number of companies either going public as a PBC or converting to a PBC, including as part of de-SPAC M&A transaction. The number of new public operating (i.e., non-SPAC) PBCs jumped from two in 2020 to twelve in 2021. Four additional publicly traded operating companies became PBCs in the first half of 2022 before new PBC activity ground to a halt.



ESG and Anti-ESG

The growing controversy surrounding the consideration of ESG factors by investors, increased calls by anti-ESG activists for corporations to focus on profitability and anti-ESG legislation attempts at both the state and federal level have all contributed to a heightened anti-ESG environment, perhaps giving pause to potential issuers. ESG activists promoting the use of PBCs via 14a-8 stockholder proposals have also pivoted to other issues after these proposals failed to gain meaningful traction in terms of support by other investors (i.e., winning only 3% of the votes cast on average). A proposal requesting a company adopt or evaluate becoming a PBC was first submitted in 2020. The number of these proposals appearing in corporate proxy statements or no-action letters increased to 19 in 2021 but fell to 8 in 2022. No PBC related stockholder proposal has appeared on a corporate ballot so far in 2023.