Federal regulators will focus more resources on special purpose acquisition companies seeking to go public because the increased frequency of so-called de-SPACing could lead to a jump in improper accounting, financial misstatements and even fraud, according to a former senior enforcement lawyer with the U.S. Securities and Exchange Commission.

Rebecca Fike, who spent the past 10 years at the SEC’s Fort Worth Regional Office prosecuting violators of accounting and financial fraud, said cryptocurrency, corporate governance and de-SPACing are “ripe for potential securities issues” to be investigated by the federal agency.

“The sheer volume of SPAC transactions and the speed with which those companies can enter the market introduces new complexities in trying to uncover potential fraud or misstatements early so they can be corrected quickly to protect investors and market efficiency,” Fike said.

“I think the evolving ways in which companies and individuals can raise funds through investors add additional challenges to an already challenging job for the enforcement attorneys and examiners,” she said.

Fike was a fourth-year associate handling securities and patent litigation at Vinson & Elkins in March 2012 when then-SEC regional director David Woodcock, himself a former V&E partner, hired her at the SEC’s Fort Worth Regional Office. During her decade at the federal agency, Fike was involved in dozens of large enforcement actions against companies and executives, including electric vehicle maker Nikola Corp. and its Chief Executive Officer Trevor Milton.

Fike rejoined V&E last month as a partner in its Dallas office.

“Rebecca is a dynamic attorney with whom I had the pleasure of working as she began her legal career,” said V&E partner John Wander. “The experience she’s gained over the past decade will be of great value to our white collar and government investigations clients, and we are excited to welcome her back to the team.”

In the past 18 months, Fike has interacted regularly with nearly every division and office within the SEC and brought six successful recommendations, including four settlements, under the new administration.

“Vinson & Elkins gave me a fantastic start to my legal career, and while at the SEC I’ve witnessed firsthand the evolution of the firm’s white collar and government investigations team,” Fike said.

The Texas Lawbook interviewed Fike about her time at the SEC and the challenges the federal agency faces.
Rebecca Fike: I was a fourth-year associate in the V&E Austin office trying to do more of the securities litigation work that I loved. Woodcock’s departure to go run the SEC’s Fort Worth Regional Office further reduced my already limited opportunities to work on SEC matters, so when he called to let me know the Fort Worth Regional Office was hiring, I jumped on the offer to interview for a staff position.

I hadn’t worked on nearly as many SEC cases as I assumed the other applicants had, so to prepare for my interview I poured over every SEC reference material I could find – the SEC’s Enforcement Manual, recent Supreme Court cases, law firm publications, securities law blog posts, books published by former staff attorneys. … I worked really hard to be able to play the role of a knowledgeable securities lawyer in my interview, and then, once I got the job, I spent the next decade becoming one.

Lawbook: How did your role change at the SEC over the past decade?

Fike: I loved the hands-on nature of being an investigative attorney and the level of control I had over my cases. It was an enormous leap in responsibility and the best thing I ever did for my career. I loved crafting case strategy, drafting targeted subpoenas to efficiently gather evidence, interacting with defense counsel across the country and uncovering the facts and truth behind whatever allegations or filings were before me. Through different presidential administrations, certain priorities and nuances of the job changed, but the core of my role as an investigative attorney stayed the same.

Lawbook: What do you consider your three or four biggest successes during your 10 years at the SEC?

Fike: I feel like I got to start and end my SEC career with my two biggest successes: the KBR and Nikola cases. The first case I brought was In the Matter of KBR, the commission’s first ever enforcement of Exchange Act Rule 21F-17 adopted as part of the Dodd-Frank Whistleblower Provisions. It was a huge case, not because of the specific conduct or penalty, but because of the shock waves it sent through the corporate and enforcement community. KBR showed the commission was serious about enforcing all of its rules to protect communications between potential whistleblowers and commission staff, even in cases were there was no evidence of retaliation or intimidation. I was proud of the resolution we reached in that case and the resulting changes many companies made to the confidentiality provisions in their standard corporate agreements.

The Trevor Milton/Nikola investigation resulted in two of the last actions I filed at the commission: Our settled action In the Matter of Nikola Corp. and our litigated action against the company’s founder and former CEO and executive chairman, SEC v. Trevor Milton. Nikola was a complex SPAC investigation spanning several years, multiple private fundraising rounds, a de-SPAC transaction and a publicly traded time period. It was the largest and most intense investigation I worked on while at the SEC, and I learned more than I ever wanted to know about hydrogen fuel production. Through lots of night and weekends, unending document review, scores of witness interviews (all conducted by video from a corner of my bedroom during Covid while communicating with my three temporarily homeschooling children via sticky notes) we built a strong case against Milton and negotiated a $125 million settlement with the company.

Lawbook: During your 10 years at the SEC, you worked for David Woodcock, Shamoil Shipchandler and now David Peavler. How does Peavler operate the regional office differently than his predecessors?

Fike: I think the regional director position is possibly the least-defined at the commission and therefore the most subject to the interpretation and personality of the office holder. Each regional director has been able to put their stamp on the Fort Worth Regional Office. I feel Woodcock approached the office like he did at the firm – with lots of enthusiasm (particularly for accounting cases), attention to the details and being present by walking the halls and checking in on the staff. With Shamoil, we got a former prosecutor’s perspective that I think was really helpful in thinking critically about a case and potential charges early on in an investigation. Peavler was the associate director for my first many years at the FWRO, so it’s been fun having him back in the regional director spot. He is really good at spotting cases early. Overall, I feel like each regional director has brought a new perspective and worked to advance the Fort Worth office.

Lawbook: What are one or two things you learned about the SEC that will surprise most corporate GCs and business leaders?

Fike: One thing that surprised me was how much the work of the SEC relies on the dedication and hard work of the staff. Prior to joining the commission, I envisioned some sort of all-seeing portal that would find securities violations for staff to investigate. And while I don’t want to diminish the mystery of the agency, I can tell you that the work – the opening of investigations, digging through thousands of documents, identifying witnesses, piecing together the truth among a myriad of emails and spreadsheets – is done by the attorneys and accountants with limited resources and often a team of one.

Lawbook: What do you think are the biggest challenges for the SEC’s regional office in Fort Worth over the next year or two?

Fike: In some ways, the main challenge never changes: to quickly investigate past behavior for potential violations of the federal securities laws with limited staff and limited resources, often in the face of dated conduct and unlimited resources opposing you. But as the market evolves, certain types of cases add additional challenges. For example, the sheer volume of SPAC transactions and the speed...
with which those companies can enter the market introduces new complexities in trying to uncover potential fraud or misstatements early so they can be corrected quickly to protect investors and market efficiency. Cryptocurrency is another area that is ripe for potential fraud and very challenging to investigate. Generally, I think the evolving ways in which companies and individuals can raise funds through investors add additional challenges to an already challenging job for the enforcement attorneys and examiners.

Lawbook: What do you see as the Fort Worth Regional Office’s priorities or focuses right now and going forward that you think business leaders need to know about?

Fike: Specifically, I see SPACs as an area of focus. The sheer number of companies going public via de-SPAC transaction lends itself to the greater possibility some may involve fraud, misstatements, or deficient accounting and governance, particularly when coupled with the short timeline of a de-SPAC transaction and the incentives to get a deal done so the founders’ shares and warrants can be sold. Which is not to say that SPACs are inherently problematic, but the increase in the number of SPAC transactions combined with the high valuations of many targets makes them ripe for potential securities issues.

Relatedly, I think corporate governance will remain a priority, with staff focusing on internal accounting and disclosure control failures, from their design to evaluation to effectiveness. The focus on corporate governance goes hand-in-hand with the uptick in SPAC transactions as oftentimes the companies going public via the quicker timeline offered by a SPAC are unprepared to operate as a public company, particularly in the area of compliance.