U.S. Authorities Double Down on SPAC-Related Investigations

August 20, 2021

After a banner year in 2020, 2021 has already seen a record-breaking expansion of the use of special purpose acquisition companies ("SPACs")—"blank check" companies that raise funds from investors and aim to take a "target" company public via a reverse merger—over 400 SPAC IPOs raising approximately $120 billion to date. As SPACs continue to draw investors and companies seeking an alternative to the traditional IPO process, U.S. authorities have made clear that SPACs' non-traditional structures will not insulate them from regulatory enforcement, but rather may invite even more scrutiny.

Edward Kim
vCard

Henry Ross
vCard

Changing of the Guard

Since former Chair Jay Clayton's departure in December 2020, the SEC has maintained its focus on SPACs, and in particular, on the transparency of SPAC-related public disclosures. In April 2021, John Coates, Acting Director of the SEC's Division of Corporation Finance, issued a statement cautioning that "[a]ny simple claim about reduced liability exposure for SPAC participants is overstated at best," and that, "in some ways, liability risks for those involved [in SPACs] are higher, not lower, than in conventional IPOs." In testimony before a congressional subcommittee in May, recently-appointed Chair Gary Gensler stated that the SEC's "foremost" policy question regarding SPACs is whether investors are being provided adequate information. Gensler

emphasized that SEC staff would be "closely looking at each stage" of SPAC transactions—including blank-check IPOs, PIPE financings, and reverse-mergers—in order "to ensure that investors are being protected." The threat of potential enforcement consequences for alleged misrepresentations to investors was unmistakable.

Recent Enforcement Activity

The SEC gave teeth to these pronouncements last month, announcing charges against Stable Road Acquisition Company, a SPAC; Stable Road's CEO; Stable Road's sponsor; Momentus, Inc., a space exploration company taken public by Stable Road; and Momentus' former CEO. According to a settlement order resolving claims against several parties, Momentus misled investors regarding tests of its propulsion technology and misrepresented the difficulty of securing governmental licenses, while Stable Road failed to conduct sufficient due diligence on these issues, causing it to repeat Momentus' misleading statements. In a press release announcing the action, the SEC emphasized that Momentus' misrepresentations to Stable Road did not "absolve" Stable Road of liability under the securities laws for its failure to undertake adequate due diligence.

Two weeks later, the first federal criminal charges against an individual in connection with a SPAC transaction provided another glimpse of what form future enforcement actions might take. The former CEO of Nikola, the electric truck company that went public via a SPAC in June 2020, was charged by the U.S. Attorney's Office for the Southern District of New York ("SDNY") with securities fraud and wire fraud for making false statements to retail investors regarding Nikola's product and technology development. SDNY is also known to be investigating another SPAC-acquired electric-vehicle startup, Lordstown Motors, for potentially misleading statements to investors regarding pre-orders of its vehicles and its SPAC acquisition. The SEC is investigating both Lordstown and a third SPAC-acquired electric-vehicle startup, Canoo Inc., for potential violations of the securities laws.

* * *

Individuals and entities engaging in SPAC-related transactions should take special care to avoid triggering enforcement scrutiny. As illustrated by recent enforcement actions, target companies should ensure that they are providing accurate materials to SPACs in connection with the diligence process, and SPACs should ensure that their due diligence processes are fulsome and robust. In addition, SPAC and target company executives should bear in mind that any representations made in connection with public

disclosures may well be subject to intense enforcement focus.

About KKL

KKL is a boutique firm with a global practice. KKL represents clients – domestically and abroad – in high-stakes U.S. and cross-border matters involving civil and criminal disputes and investigations. We provide exceptional advocacy and counselling – from the courtroom to the boardroom.

Our founding partners – graduates of Harvard and Yale Law Schools – are veteran federal prosecutors who served for years in senior roles at the Justice Department and FBI. We have conducted and supervised dozens of federal criminal investigations and trials involving some of the highest profile and most sensitive matters prosecuted by the United States government. We have personally led and overseen numerous cutting-edge investigations, involving complex criminal, cyber, and cross-border matters. And we have directly counseled Cabinet-level officials regarding issues of national importance.

We leverage these experiences in order to offer advocacy of the highest quality and innovative solutions to the most challenging issues our clients face.

Visit our website

The content of this email provides information about legal issues and developments of interest to our clients and friends. It should not be construed as legal advice regarding any matter, specific facts, or circumstances. The distribution of this content is not intended to create, and receipt of it does not create, an attorney-client relationship.

© 2021 Krieger Kim & Lewin LLP. Attorney Advertising. Prior results do not guarantee a similar outcome.

Krieger Kim & Lewin LLP | 500 5th Avenue, 34th Floor, New York, NY 10110
212.390.9550 | **Info@KKLllp.com**