

August 27, 2021

Over 60 of the Nation's Leading Law Firms Respond to Investment Company Act Lawsuits Targeting the SPAC Industry

Recently a purported shareholder of certain special purpose acquisition companies (SPACs) initiated derivative lawsuits asserting that the SPACs are investment companies under the Investment Company Act of 1940, because proceeds from their initial public offerings are invested in short-term treasuries and qualifying money market funds.

Under the provision of the 1940 Act relied upon in the lawsuits, an investment company is a company that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

SPACs, however, are engaged primarily in identifying and consummating a business combination with one or more operating companies within a specified period of time. In connection with an initial business combination, SPAC investors may elect to remain invested in the combined company or get their money back. If a business combination is not completed in a specified period of time, investors also get their money back. Pending the earlier to occur of the completion of a business combination or the failure to complete a business combination within a specified timeframe, almost all of a SPAC's assets are held in a trust account and limited to short-term treasuries and qualifying money market funds.

Consistent with longstanding interpretations of the 1940 Act, and its plain statutory text, any company that temporarily holds short-term treasuries and qualifying money market funds while engaging in its primary business of seeking a business combination with one or more operating companies is not an investment company under the 1940 Act. As a result, more than 1,000 SPAC IPOs have been reviewed by the staff of the SEC over two decades and have not been deemed to be subject to the 1940 Act.

The undersigned law firms view the assertion that SPACs are investment companies as without factual or legal basis and believe that a SPAC is not an investment company under the 1940 Act if it (i) follows its stated business plan of seeking to identify and engage in a business combination with one or more operating companies within a specified period of time and (ii) holds short-term treasuries and qualifying money market funds in its trust account pending completion of its initial business combination.¹

None of the firms subscribing to this document intends hereby to give legal advice to any person. Any person seeking legal advice should consult with an attorney.

¹ Certain of these lawsuits also claim that personnel of the SPAC sponsor are acting as unregistered investment advisers under the Investment Advisers Act of 1940 by advising on the SPAC business combination (which the plaintiff incorrectly asserts constitutes advice as to investing in, purchasing, or selling securities). The law firms listed herein also view this claim as without legal basis and do not believe that such personnel or the SPAC sponsor are unregistered investment advisers.

Akin Gump Strauss Hauer & Feld LLP

Alston & Bird LLP

Arnold & Porter

Baker & McKenzie LLP

Baker Botts LL

Blank Rome LLP

Cadwalader, Wickersham & Taft LLP

Cleary Gottlieb Steen & Hamilton LLP

Clifford Chance US LLP

Cooley LLP

Covington & Burling LLP

Cravath, Swaine & Moore LLP

Crowell & Moring LLP

Davis Polk & Wardwell LLP

Debevoise & Plimpton LLP

DLA Piper LLP (US)

Ellenoff Grossman & Schole LLP

Eversheds Sutherland (US) LLP

Faegre Drinker Biddle & Reath LLP

Fenwick & West LLP

Freshfields Bruckhaus Deringer US LLP

Fried, Frank, Harris, Shriver & Jacobson LLP

Gibson, Dunn & Crutcher LLP

Goodwin Procter LLP

Graubard Miller

Greenberg Traurig, LLP

Hogan Lovells US LLP

Hughes Hubbard & Reed LLP

Katten Muchin Rosenman LLP

King & Spalding LLP

Kirkland & Ellis LLP

Kramer Levin Naftalis & Frankel LLP

Latham & Watkins LLP

Loeb & Loeb LLP

Mayer Brown LLP

McDermott Will & Emery LLP

Milbank LLP

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Morgan, Lewis & Bockius LLP

Morrison & Foerster

Nelson Mullins Riley & Scarborough LLP

Nixon Peabody LLP

Orrick, Herrington & Sutcliffe LLP

Paul Hastings LLP

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Perkins Coie LLP

Proskauer Rose LLP

Reed Smith LLP

Ropes & Gray LLP

Schiff Hardin LLP

Schulte Roth & Zabel LLP

Shearman & Sterling LLP

Sidley Austin LLP

Simpson Thacher & Bartlett LLP

Skadden, Arps, Slate, Meagher & Flom LLP

Sullivan & Cromwell LLP

Vinson & Elkins LLP

Wachtell, Lipton, Rosen & Katz

Weil, Gotshal & Manges LLP

White & Case LLP

Willkie Farr & Gallagher LLP

Wilmer Cutler Pickering Hale and Dorr LLP

Winston & Strawn LLP