

From: [James Lapp](#)
To: [Investor Advocate](#)
Subject: Comments and Suggestions on SEC Treatment of SPAC Warrants
Date: Thursday, June 9, 2022 7:04:55 PM
Attachments: [Comments and Suggestions on SEC Treatment of SPAC Warrants Letter dated June 9 2022.pdf](#)

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Dear Office of Investor Advocate,

I am a retail investor who primarily focuses on investing and trading SPACs.

I am writing to inform the Investor Advocate of several challenges that SPAC warrant retail investors face due to (1) unclear standards by the Commission for deSPAC registration statements (2) material errors in SPAC filings on Edgar and (3) repeated breach of contract by deSPACs in regards to their Warrant Agreements and (4) the backlog of deSPAC registration statements. In this letter, I will outline specific examples in each of the above areas.

I hope that this information is useful to the Commission and that it is considered as the Commission formulates policies impacting blank check companies. I would greatly appreciate a response by the Commission to this letter.

Due to the length of this letter, I have also attached a PDF copy of the contents below.

Thank you,

James Lapp

615-983-1567

LETTER:

(1) Unclear Standards for deSPAC Registration Statements

The Commission does not appear to have a clear standard for what constitutes a registration statement covering the shares of Common Stock to be issued upon the exercise of SPAC public warrants. Most SPAC warrant agreements contain terms that the warrants will be exercisable on the later of (a) 30 calendar days after the closing of the deSPAC business combination (b) one year after the SPAC's IPO **provided** that a registration statement covering the shares of Common Stock to be issued upon exercise is effective under the Securities Act.

The majority of SPACs register the shares of common stock underlying the SPAC public warrants on a Form S-4/F-4, which also serves as the definitive proxy for their business combination. Many SPACs also register these shares on a separate Form S-1/F-1 after the closing of the business combination. There is significant variability in whether the deSPAC company views a S-4/F-4 registration as sufficient for the issuance of shares upon the cash exercise of the warrants. Many deSPACs have allowed the cash exercise of shares with only an effective Form S-4/F-4 (and accompanying prospectus) on file with the Commission, while others require an effective S-1/F-1 (even if they also registered the shares underlying the warrants previously on a Form S-4/F-4).

I will provide specific examples. BKKT, DCFC, and DRTS all determined that the Form S-4/F-4 was sufficient for the registration of shares underlying the public warrants and allowed the cash exercise of those warrants beginning thirty days after the closing of their business combinations and prior to any Form S-1/F-1 registration being declared effective (or even filed) with the SEC. For example, I cash exercised 14,400 DCFC Public Warrants on February 14th, receiving 14,400 DCFC Ordinary shares. On the other hand, SPACs such as BRCC, ALLG, NRGV, STRY (and many others) did not allow

the cash exercise of warrants until an S-1/F-1 registering the warrant shares was declared effective by the Commission, even though all of these companies registered the warrant shares on a Form S-4/F-4 with virtually identical language and filing fees as the SPACs which allowed the exercise of warrants based on their Form S-4/F-4 (such as BKKT, DCF, and DRTS).

I am not aware of any way in which an investor can determine whether the shares underlying SPAC warrants are indeed registered on a Form S-4/F-4 for the purposes of issuance, or whether a Form S-1/F-1 is required. Even the company lawyers are confused on the treatment. For example, I was told by BRCC executives on March 3rd 2022 that the shares underlying the BRCC warrants were registered on their Form S-4 declared effective on January 13, 2022 and that the warrants would be exercisable for cash beginning on March 11, which was thirty days after their initial business combination. An officer of the company stated in writing: "The underlying shares ARE registered and will be able to be exercised 30 days post transaction closed. So, those shares are fully registered and will be exercisable starting March 11"; he further stated that this information was based on the opinion of both SBEA (the SPAC) counsel and BRCC counsel. However, on March 11th, when I attempted to exercise the warrants, I was told that the warrants were not exercisable and was offered this explanation by BRCC Counsel: "Any issuance of Class A Common Stock upon exercise of a warrant is a new offering that must be covered by a registration statement, and the S-4 does not cover such exercise because the S-4 does not cover offerings done a continuous basis (i.e. in the future), unlike an S-1. The fact that the Class A Common Stock underlying the warrants are registered on the S-4 does not change anything, because the S-4 does not register continuous (future) exercise of the warrants. That's why we need to wait for the S-1 to be effective for the warrants to become exercisable." Similarly, I was told by ALLG Investor Relations that the public warrants would be exercisable thirty days after their merger and that the shares underlying warrants were indeed registered on the Form F-4. When I asked for confirmation from company counsel that a Form F-4 was sufficient for the registration, the Investor Relations representative told me that "the warrants were registered in connection with the filing of the F-4 so no need for any additional registration statements with respect to the warrants." When I attempted to exercise my warrants on April 15, thirty days after the ALLG business combination and the date I was specifically told by ALLG Investor Relations that the warrants would become exercisable, I was told that the F-4 was not sufficient and that a F-1 was required to register the shares. NRGV and ANGH also initially told me that their Form S-4/F-4 registered the shares underlying the warrants, and both even went so far as sending exercise instructions to brokers. I was able to submit a cash exercise request through my broker to the transfer agent and the warrants were removed from my account. Approximately one week later, the warrants were returned to my account and the instructions at my broker were rescinded because NRGV and ANGH counsel admittedly changed their minds, now taking the position that the S-4/F-4 was not sufficient and that an S-1/F-1 was required. I've attached a screenshot of the rescinded instructions for NRGV, as displayed on my brokerage account.

BRCC's explanation that a continuous offering, such as a warrant exercise, cannot be registered on a Form S-4/F-4 because a Form F-4/S-4 is not maintained also conflicts with treatment of several other SPACs. For example, BKKT updated its S-4 several times to maintain its effectiveness (File #: 333-254935), as did DRTS (File #: 333-258915) and CTOS (File #: 333-230817) among dozens of others.

I ask that the Commission publish specific rules as to the definition of an "effective registration statement covering the shares of Common Stock to be issued upon exercise of the warrants under the Securities Act." Some deSPACs claim that a S-4/F-4 does not meet this definition (and that an S-1/F-1 is required), while others clearly rely on only an S-4/F-4 for the issuance of shares upon the cash exercise of warrants. The ability to exercise a warrant for cash significantly impacts its market value, but there is no way to determine which warrants are exercisable based on a Form S-4/F-4 and which require a Form S-1/F-1. This decision is seemingly up to the whims of company counsel, who in my experience often change their minds.

(2) Material errors in SPAC filings on EDGAR

There are material errors in SPAC securities filings on EDGAR for warrant terms. Specifically, the terms of the warrants described in the Prospectus (Form 424b4) filed at the SPAC IPO commonly and materially differ to the terms in the Warrant Agreement. In all cases in which I have the contacted

the companies identifying these differences, I was told that the prospectus was incorrect and that the Warrant Agreement controls. However, the Form 8-K containing the SPACs' Warrant Agreement is usually not filed on Edgar until two trading sessions after the SPACs IPO. Therefore, any investor who (a) participated in the SPAC IPO (b) purchased units in the open market the day of the IPO and/or (c) purchased units in the trading session following the SPAC IPO was relying on materially incorrect information in the Prospectus when making their investment decision. I offer two examples below, and I will note that there are dozens more.

The warrant agreement for ROCR (now QTEK) dated March 2, 2021 and the prospectus dated March 4th 2021 had conflicting language that caused me to incur losses on an investment in the warrants. Like most SPAC warrants, the ROCR Public Warrants contained a "crescent term" which adjusted the exercise price of the warrants if the Company raised dilutive financing as part of the deSPAC transaction. This is described in Section 4.6 of the Warrant Agreement and on Page 11 of the Prospectus. As part of the ROCR/QTEK merger, all three conditions of the crescent term were met based on the Prospectus, but not the Warrant Agreement. This was due to the fact that Warrant Agreement had a different definition of "Market Price" than the Prospectus. The Warrant Agreement defined this term as "For purposes of this Section 4.6, the "Market Price" shall mean the volume weighted average reported last sale price of the shares of Common Stock for the 20 trading days **ending** on the trading day prior to the date of the completion of the Business Combination" (emphasis added). The prospectus described the Market Price as "the volume weighted average trading price of our shares of common stock during the 20 trading day period starting on the trading day **prior** to the day on which we consummate our initial business combination (such price, the "Market Price")" (emphasis added). The difference ("ending" vs. "prior") is very important. Because SPACs have a redemption option prior to the business combination, it is virtually impossible for a crescent term to trigger according to the terms of the ROCR Warrant Agreement (but not the Prospectus, which is the standard language in SPAC Warrant Agreements). An investor reading the prospectus would be falsely led to believe that the warrants contained investor-friendly terms protecting against dilution, but the warrants in fact did not contain such a term. I personally purchased the warrants with the understanding that the crescent term would be triggered but unfortunately relied on the Prospectus and not the Warrant Agreement and thus suffered losses. Several other SPACs, including two other SPACs sponsored by Roth Capital, have similar conflicts between the prospectus and Warrant Agreement.

A second example of material differences in SPAC Warrant Agreements and the Prospectus terms is BRCC (formerly SBEA). Page 17 of the SBEA Prospectus dated March 1st 2021 states that "**Once the warrants become exercisable**, we may redeem the outstanding warrants" (emphasis added), the Company may redeem the warrants on a cashless basis in accordance with the terms of described herein. The Warrant Agreement dated February 25 2021 (and not available on EDGAR until the third trading session after the SBEA IPO) does not contain a limitation that the warrants must be exercisable prior to be redeemed on cashless basis. This difference was extremely important because it caused significant losses to BRCC warrant holders. On April 4th, BRCC announced the redemption of the public warrants on a cashless basis. At this time, the warrants were not exercisable in any way (neither for cash nor on a cashless basis in accordance with Section 7.4.1 of the warrant agreement). During the Redemption Period, the BRCC share price reached \$34.00. If the warrants were exercisable as described in the Prospectus, warrant holders would have received \$22.50 of value per warrant (\$34.00 share price less the \$11.50 warrant exercise price). Instead, warrant holders were forced to accept either \$0.10 per warrant or 0.361 shares per warrant, which equates to \$12.24 in value per warrant (at a share price of \$34.00). Investors who relied upon the prospectus once again were subject to material misinformation that had significant adverse economic consequences. I'll note that there are several other errors in the BRCC prospectus. For example, Per Section 6.3 of the Warrant Agreement, Reference Value is defined as "the closing price of the Common Stock for **any twenty (20) trading days within the thirty (30) trading-day period ending on the third trading day prior to the date** on which the Company sends a notice of the redemption to the Registered Holders." However, Page 136 of the Prospectus contains conflicting language and states that the warrants may be redeemed on a cashless basis [emphases added]: "if, and only if, the closing price of our Class A common stock equals or exceeds \$10.00 per public share

(as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Anti-Dilution Adjustments”) **on the trading day prior to the date** on which we send the notice of redemption to the warrant holders.” In short, the warrant agreement required that the stock \geq \$10.00 per share for 20 of 30 trading days prior to being redeemed under the cashless clause, while the Prospectus only required a single trading day. While this difference did not result in economic losses for Warrant Holders, it could have and is another example of material errors in the Prospectus.

(3) Repeated breach of contract by deSPACs in regards to their Warrant Agreements

I will provide two specific examples which, I believe, are breach of contract by SPACs of their Warrant Agreements.

RDBX (formerly SGAM) voluntarily suspended the registration statement covering the shares underlying the public warrants in early May 2022. Given that RDBX is non-accelerated filer, the registration statement was current when suspended. No notice was provided to warrant holders that the registration statement was suspended. When I attempted to cash exercise my warrants and was unable to do so, I contacted the Company. Company Counsel stated “The Company suspended the use of the prospectus set forth in the Registration Statement on Form S-1 (Registration No. 333-261428) (the “Registration Statement”) pursuant to provision 3.1.1 of the Amended and Restated Registration Rights Agreement, dated October 22, 2021 (the “Agreement”).” Provision 3.1.1 of the Amended and Restated Registration Rights Agreement provides the Company the right to a Suspension Event if maintaining the Registration Statement would result in an Adverse Disclosure. However, neither warrant holder nor the Warrant Agent are parties to the Amended and Restated Registration Rights Agreement, and no such right to a Suspension Event exists in the Warrant Agreement. The parties to the Amended and Restated Registration Rights Agreement are the New Holders, which including various PIPE subscribers and Selling Security Holders, but not Public Warrant holders. Because the S-1 included both the shares held by these parties and the shares underlying the public warrants, Suspension Event removed the ability for warrant holders to exercise their warrants. Warrant holders therefore were “guilty by association” and had significant economic value removed from them due to an agreement of which they were not a party. Additionally, Provision 3.1.1 of the Amended and Restated Registration Rights Agreement provided the New Holders “prompt written notice of such action”. No notification was provided to public warrant holders. As an investor in RDBX warrants, I lost a significant amount of money because I could not exercise my public warrants; additionally, I would not have purchased the warrants if the company had notified warrant holders or publicly stated the occurrence of a Suspension Event.

Another example is DCFC. As mentioned in Section 1) above, DCFC allowed the exercise of the public warrants for cash based on an F-4 registration statement. They allowed the exercise of warrants for cash beginning on February 14th 2022 and ending in early April 2022 (a date unknown at this time since no notice was provided). I exercised a significant number of warrants during this approximately two month period. On April 27th, when I attempted to exercise additional warrants, I was unable to do so. No notice was provided to me or to my broker that the warrants were no longer exercisable. When I contacted the Company, I was told that the F-4 registration statement covering the shares underlying the warrants was suspended as of 4/1/2022 because the financial statements therein became “stale” as of that date. While this is not a violation of the Warrant Agreement itself, the following two actions by the Company may have been. First, the Warrant Agreement requires that the “Company shall use its best efforts to cause the same to become effective and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration of the Warrants.” The company has made no effort to update the F-4 registration statement and willfully has let it lapse. The company now states that the F-4 cannot be relied upon for the issuance of shares underlying the warrants (the issue described in Section 1) above). Instead, the Company now claims that an F-1 is required. The Company filed an F-1 on 2/11/2022 but has made no effort to update the F-1 with current financials. As a result, warrant holders have been deprived of their right to cash exercise the warrants for over two months, a period that represents a not-insignificant portion of the warrant’s life. Secondly, the Company’s claim that the F-4 could not be relied upon for the exercise of warrants beginning on 4/1 is suspicious because warrant holders were indeed able to cash exercise and receive shares of DCFC on/after this date (I have evidence of

this). Therefore, the Company wrongfully issued securities while relying on a “stale” F-4. In DCFC’s case, I also incurred substantial losses when I could not cash exercise my warrants, which traded at a discount to their intrinsic value.

There are several other examples of breach of contract in regards to SPAC Warrant Agreements; I have listed the above two examples because these are ones which resulted in losses for me.

(4) The backlog of deSPAC registration statements

As you know, after a merger, former SPACs generally file a Form S-1/F-1 shortly after the SPAC merger is completed to register additional shares including the PIPE shares, shares underlying warrants, and shares for other Selling Securityholders (such as management, SPAC sponsor, etc.). According to my records, between January 2020 and February 2022, the median days from the initial filing of this registration statement to the EFFECT granted by the Commission was 13 calendar days. Since late February 2022, the time between filing and EFFECT is seemingly unbounded, with many deSPACs waiting 2-4 months for effectiveness while others which filed S-1s in February are still awaiting EFFECT.

While I appreciate the Commission’s efforts to more thoroughly review these registration statements, I wish to note that the recent delays have deleterious effects on the value of warrants.

First, the delay in EFFECT prevents the exercisability of warrants for deSPACs which require an S-1/F-1 prior to exercise (and do not allow exercise based on an S-4/F-4). Warrants which are not exercisable often trade at a substantial discount, including at a discount to their intrinsic value when the stock trades above the exercise price.

Second, the delays commonly result in severe price distortion of the stock, which negatively impact warrant holders and often enrich company insiders. As a result of redemptions at the SPAC merger, the public share float of the SPAC can be reduced dramatically. With many SPACs having 95-99% of their trust redeemed, this has created many instances in which the deSPAC shares have experienced extreme volatility. ISPO, FRGE, SKYH, BRCC, SST, CPTN, ALLG, SOUN amongst many others are examples from the past few months. While low-float SPAC volatility is nothing new, previous examples had a short life before price discovery was restored because the S-1/F-1 EFFECT was usually imminent, given that the SEC typically granted requests for accelerated effectiveness. The increase in share float as a result of S-1/F-1 EFFECT was the mechanism to restore price discovery. With the SEC delaying EFFECT, the distortion of low-float SPACs is sustained, sometimes for several months.

This distorted share price can enrich management of deSPACs (and occasionally the SPAC sponsor as well). Many company insiders have share earn-outs based on the deSPAC share price performance; the most common is the granting of incentive earn-out shares when the deSPAC shares trade at or above \$12.50 or \$15 for 20/30 trading days (or some variation thereof). In the past, during timely grants of EFFECT by the Commission, low-float pumps were not sustained and therefore earn-outs such as these were not achieved. That is not the case any longer. As a result of the distorted and sustained increase in share price due to a low float, company management (and occasionally the SPAC sponsor) are vesting earn-out shares. For example, four SST directors vested hundreds of thousands of shares in April due to the stock price performance. BRCC management and directors vested over \$400M worth of stock (at the time of grant) in April as well. The stock price appreciation in these cases was not due to the underlying business performance but due to the nature of low float stocks. It is highly likely that these earn-outs would not have occurred had the SEC granted EFFECT on a timely basis. Once the S-1s were declared effective, SST and BRCC share prices fell dramatically and now trade below their \$10.00 IPO price.

The distorted share price also allows companies to extract value from warrant holders. One example is noted above with BRCC, which was able to redeem warrants prior to exercisability. Another example occurred today with FRGE. FRGE was a “low float” SPAC which traded as high as \$47.5 after its business combination in March. The low float caused the share price to trade above \$18 for 20/30 days, which allowed the company to meet the terms required to redeem their warrants for cash (provided that the warrants were exercisable, which required an effective S-1). On the same

day the S-1 was declared effective (June 9), the company announced the redemption of all public warrants. As a result of the increase in the free float of the stock, the effectiveness of the S-1 caused the share price to immediately fall ~40%, and below the exercise price of the warrants. The warrants, which will be redeemed for a penny if not exercised within 30 days, were rendered virtually worthless. Importantly, the Private Warrants held by the sponsor were not subject to the redemption. The sponsor and other company insiders who hold the Private Warrants will continue to enjoy the economic benefit of these securities for their remaining ~4.75 year term, while public warrant holders will only have 30 days for their warrants to “pay off”.

While there may not be an easy solution to the low float phenomenon described above, one potential solution to ensure that SPAC warrant holders are not aggrieved is to provide explicit guidance that an S-4/F-4 can be used to register shares underlying SPAC warrants, allowing them to be exercised thirty days after the merger (per the terms of the warrant agreement). The Commission could also go as far as to allow the SPAC warrants to be exercisable immediately upon the deSPAC transaction. This treatment of warrants would align with non-SPAC IPOs; for all non-SPAC IPOs with warrants which I have researched and/or in which I have participated, the warrants are exercisable immediately upon the IPO. The fact that a retail investor can hold a warrant to receive an unregistered security, as is the case with many SPAC warrants, seems to be against the spirit of Securities Act and other Commission regulations.

Thank you for taking the time to read my letter and allow me to share my concerns as a SPAC warrant investor.

June 9, 2022

RE: Comments and Suggestions on SEC Treatment of SPAC Warrants

Dear Office of Investor Advocate,

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There are material errors in SPAC securities filings on EDGAR for warrant terms. Specifically, the terms of the warrants described in the Prospectus (Form 424b4) filed at the SPAC IPO commonly and materially differ to the terms in the Warrant Agreement. In all cases in which I have contacted the companies identifying these differences, I was told that the prospectus was incorrect and that the Warrant Agreement controls. However, the Form 8-K containing the SPACs’ Warrant Agreement is usually not filed on Edgar until two trading sessions after the SPACs IPO. Therefore, any investor who (a) participated in the SPAC IPO (b) purchased units in the open market the day of the IPO and/or (c) purchased units in the trading session following the SPAC IPO was relying on materially incorrect information in the Prospectus when making their investment decision. I offer two examples below, and I will note that there are dozens more.

The warrant agreement for ROCR (now QTEK) dated March 2, 2021 and the prospectus dated March 4th 2021 had conflicting language that caused me to incur losses on an investment in the warrants. Like most SPAC warrants, the ROCR Public Warrants contained a “crescent term” which adjusted the exercise price of the warrants if the Company raised dilutive financing as part of the deSPAC transaction. This is described in Section 4.6 of the Warrant Agreement and on Page 11 of the Prospectus. As part of the ROCR/QTEK merger, all three conditions of the crescent term were met based on the Prospectus, but not the Warrant Agreement. This was due to the fact that Warrant Agreement had a different definition of “Market Price” than the Prospectus. The Warrant Agreement defined this term as “For purposes of this Section 4.6, the “Market Price” shall mean the volume weighted average reported last sale price of the shares of Common Stock for the 20 trading days **ending** on the trading day prior to the date of the completion of the Business Combination” (emphasis added). The prospectus described the Market Price as “the volume weighted average trading price of our shares of common stock during the 20 trading day period starting on the trading day **prior** to the day on which we consummate our initial business combination (such price, the “Market Price”)” (emphasis added). The difference (“ending” vs. “prior”) is very important. Because SPACs have a redemption option prior to the business combination, it is virtually impossible for a crescent term to trigger according to the terms of the ROCR Warrant Agreement (but not the Prospectus, which is the standard language in SPAC Warrant Agreements). An investor reading the prospectus would be falsely led to believe that the warrants contained investor-friendly terms protecting against dilution, but the warrants in fact did not contain such a term. I personally purchased the warrants with the understanding that the crescent term would be triggered but unfortunately relied on the Prospectus and not the Warrant Agreement and thus suffered losses. Several other SPACs, including two other SPACs sponsored by Roth Capital, have similar conflicts between the prospectus and Warrant Agreement.

A second example of material differences in SPAC Warrant Agreements and the Prospectus terms is BRCC (formerly SBEA). Page 17 of the SBEA Prospectus dated March 1st 2021 states that “**Once the warrants become exercisable**, we may redeem the outstanding warrants” (emphasis added), the Company may redeem the warrants on a cashless basis in accordance with the terms of described herein. The Warrant Agreement dated February 25 2021 (and not available on EDGAR until the third trading session after the SBEA IPO) does not contain a limitation that the warrants must be exercisable prior to be redeemed on cashless basis. This difference was extremely important because it caused significant losses to BRCC warrant holders. On April 4th, BRCC announced the redemption of the public warrants on a cashless basis. At this time, the warrants were not exercisable in any way (neither for cash nor on a cashless basis in accordance with Section 7.4.1 of the warrant agreement). During the Redemption Period, the BRCC share price reached \$34.00. If the warrants were exercisable as described in the Prospectus, warrant holders would have received \$22.50 of value per warrant (\$34.00 share price less the \$11.50 warrant exercise price). Instead, warrant holders were forced to accept either \$0.10 per warrant or 0.361 shares per warrant, which equates to \$12.24 in value per warrant (at a share price of \$34.00). Investors who relied upon the prospectus once again were subject to material misinformation that had significant adverse economic consequences. I’ll note that there are several other errors in the BRCC prospectus. For example, Per Section 6.3 of the Warrant Agreement, Reference Value is defined as “the closing price of the Common Stock for **any twenty (20) trading days within the thirty (30) trading-day period ending on the third trading day prior to the date** on which the Company sends a notice of the redemption to the Registered Holders.” However, Page 136 of the Prospectus contains conflicting language and states that the warrants may be redeemed on a cashless basis [emphases added]: “if, and only if, the closing price of our Class A common stock equals or exceeds \$10.00 per public share (as adjusted for adjustments to the number of shares issuable upon exercise or the exercise price of a warrant as described under the heading “— Anti-Dilution Adjustments”) **on the trading day prior to the date** on which we send the notice of redemption to the warrant holders.” In short, the warrant agreement required that the stock \geq \$10.00 per share for 20 of 30 trading days prior to being redeemed under the cashless clause, while the Prospectus only required a single trading day. While this difference did not result in economic losses for Warrant Holders, it could have and is another example of material errors in the Prospectus.

(3) Repeated breach of contract by deSPACs in regards to their Warrant Agreements

I will provide two specific examples which, I believe, are breach of contract by SPACs of their Warrant Agreements.

RDBX (formerly SGAM) voluntarily suspended the registration statement covering the shares underlying the public warrants in early May 2022. Given that RDBX is non-accelerated filer, the registration statement was current when suspended. No notice was provided to warrant holders that the registration statement was suspended. When I attempted to cash exercise my warrants and was unable to do so, I contacted the Company. Company Counsel stated “The Company suspended the use of the prospectus set forth in the Registration Statement on Form S-1 (Registration No. 333-261428) (the “Registration Statement”) pursuant to provision 3.1.1 of the Amended and Restated Registration Rights Agreement, dated October 22, 2021 (the “Agreement”).” Provision 3.1.1 of the Amended and Restated Registration Rights Agreement provides the Company the right to a Suspension Event if maintaining the Registration Statement would result in an Adverse Disclosure. However, neither warrant holder nor the Warrant Agent are parties to the Amended and Restated Registration Rights Agreement, and no such

right to a Suspension Event exists in the Warrant Agreement. The parties to the Amended and Restated Registration Rights Agreement are the New Holders, which including various PIPE subscribers and Selling Security Holders, but not Public Warrant holders. Because the S-1 included both the shares held by these parties and the shares underlying the public warrants, Suspension Event removed the ability for warrant holders to exercise their warrants. Warrant holders therefore were “guilty by association” and had significant economic value removed from them due to an agreement of which they were not a party. Additionally, Provision 3.1.1 of the Amended and Restated Registration Rights Agreement provided the New Holders “prompt written notice of such action”. No notification was provided to public warrant holders. As an investor in RDBX warrants, I lost a significant amount of money because I could not exercise my public warrants; additionally, I would not have purchased the warrants if the company had notified warrant holders or publicly stated the occurrence of a Suspension Event.

Another example is DCFC. As mentioned in Section 1) above, DCFC allowed the exercise of the public warrants for cash based on an F-4 registration statement. They allowed the exercise of warrants for cash beginning on February 14th 2022 and ending in early April 2022 (a date unknown at this time since no notice was provided). I exercised a significant number of warrants during this approximately two month period. On April 27th, when I attempted to exercise additional warrants, I was unable to do so. No notice was provided to me or to my broker that the warrants were no longer exercisable. When I contacted the Company, I was told that the F-4 registration statement covering the shares underlying the warrants was suspended as of 4/1/2022 because the financial statements therein became “stale” as of that date. While this is not a violation of the Warrant Agreement itself, the following two actions by the Company may have been. First, the Warrant Agreement requires that the “Company shall use its best efforts to cause the same to become effective and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration of the Warrants.” The company has made no effort to update the F-4 registration statement and willfully has let it lapse. The company now states that the F-4 cannot be relied upon for the issuance of shares underlying the warrants (the issue described in Section 1) above). Instead, the Company now claims that an F-1 is required. The Company filed an F-1 on 2/11/2022 but has made no effort to update the F-1 with current financials. As a result, warrant holders have been deprived of their right to cash exercise the warrants for over two months, a period that represents a not-insignificant portion of the warrant’s life. Secondly, the Company’s claim that the F-4 could not be relied upon for the exercise of warrants beginning on 4/1 is suspicious because warrant holders were indeed able to cash exercise and receive shares of DCFC on/after this date (I have evidence of this). Therefore, the Company wrongfully issued securities while relying on a “stale” F-4. In DCFC’s case, I also incurred substantial losses when I could not cash exercise my warrants, which traded at a discount to their intrinsic value.

There are several other examples of breach of contract in regards to SPAC Warrant Agreements; I have listed the above two examples because these are ones which resulted in losses for me.

(4) The backlog of deSPAC registration statements

As you know, after a merger, former SPACs generally file a Form S-1/F-1 shortly after the SPAC merger is completed to register additional shares including the PIPE shares, shares underlying warrants, and shares for other Selling Securityholders (such as management, SPAC sponsor, etc.). According to my records, between January 2020 and February 2022, the median days from the initial filing of this registration statement to the EFFECT granted by the Commission was 13 calendar days. Since late

February 2022, the time between filing and EFFECT is seemingly unbounded, with many deSPACs waiting 2-4 months for effectiveness while others which filed S-1s in February are still awaiting EFFECT.

While I appreciate the Commission's efforts to more thoroughly review these registration statements, I wish to note that the recent delays have deleterious effects on the value of warrants.

First, the delay in EFFECT prevents the exercisability of warrants for deSPACs which require an S-1/F-1 prior to exercise (and do not allow exercise based on an S-4/F-4). Warrants which are not exercisable often trade at a substantial discount, including at a discount to their intrinsic value when the stock trades above the exercise price.

Second, the delays commonly result in severe price distortion of the stock, which negatively impact warrant holders and often enrich company insiders. As a result of redemptions at the SPAC merger, the public share float of the SPAC can be reduced dramatically. With many SPACs having 95-99% of their trust redeemed, this has created many instances in which the deSPAC shares have experienced extreme volatility. ISPO, FRGE, SKYH, BRCC, SST, CPTN, ALLG, SOUN amongst many others are examples from the past few months. While low-float SPAC volatility is nothing new, previous examples had a short life before price discovery was restored because the S-1/F-1 EFFECT was usually imminent, given that the SEC typically granted requests for accelerated effectiveness. The increase in share float as a result of S-1/F-1 EFFECT was the mechanism to restore price discovery. With the SEC delaying EFFECT, the distortion of low-float SPACs is sustained, sometimes for several months.

This distorted share price can enrich management of deSPACs (and occasionally the SPAC sponsor as well). Many company insiders have share earn-outs based on the deSPAC share price performance; the most common is the granting of incentive earn-out shares when the deSPAC shares trade at or above \$12.50 or \$15 for 20/30 trading days (or some variation thereof). In the past, during timely grants of EFFECT by the Commission, low-float pumps were not sustained and therefore earn-outs such as these were not achieved. That is not the case any longer. As a result of the distorted and sustained increase in share price due to a low float, company management (and occasionally the SPAC sponsor) are vesting earn-out shares. For example, four SST directors vested hundreds of thousands of shares in April due to the stock price performance. BRCC management and directors vested over \$400M worth of stock (at the time of grant) in April as well. The stock price appreciation in these cases was not due to the underlying business performance but due to the nature of low float stocks. It is highly likely that these earn-outs would not have occurred had the SEC granted EFFECT on a timely basis. Once the S-1s were declared effective, SST and BRCC share prices fell dramatically and now trade below their \$10.00 IPO price.

The distorted share price also allows companies to extract value from warrant holders. One example is noted above with BRCC, which was able to redeem warrants prior to exercisability. Another example occurred today with FRGE. FRGE was a "low float" SPAC which traded as high as \$47.5 after its business combination in March. The low float caused the share price to trade above \$18 for 20/30 days, which allowed the company to meet the terms required to redeem their warrants for cash (provided that the warrants were exercisable, which required an effective S-1). On the same day the S-1 was declared effective (June 9th), the company announced the redemption of all public warrants. As a result of the increase in the free float of the stock, the effectiveness of the S-1 caused the share price to immediately fall ~40%, and below the exercise price of the warrants. The warrants, which will be redeemed for a penny if not exercised within 30 days, were rendered virtually worthless. Importantly, the Private Warrants held by the sponsor were not subject to the redemption. The sponsor and other company

insiders who hold the Private Warrants will continue to enjoy the economic benefit of these securities for their remaining ~4.75 year term, while public warrant holders will only have 30 days for their warrants to “pay off”.

While there may not be an easy solution to the low float phenomenon described above, one potential solution to ensure that SPAC warrant holders are not aggrieved is to provide explicit guidance that an S-4/F-4 can be used to register shares underlying SPAC warrants, allowing them to be exercised thirty days after the merger (per the terms of the warrant agreement). The Commission could also go as far as to allow the SPAC warrants to be exercisable immediately upon the deSPAC transaction. This treatment of warrants would align with non-SPAC IPOs; for all non-SPAC IPOs with warrants which I have researched and/or in which I have participated, the warrants are exercisable immediately upon the IPO. The fact that a retail investor can hold a warrant to receive an unregistered security, as is the case with many SPAC warrants, seems to be against the spirit of Securities Act and other Commission regulations.

Thank you for taking the time to read my letter and allow me to share my concerns as a SPAC warrant investor.

Exhibit: Withdrawn NRGV Warrant Exercise Instructions

Offer terms

Latest Update:04/04/2022 9:22 AM ET

The warrant exercise is currently unavailable and in preliminary status. Agent is still waiting a legal review to allow these warrants to be available for exercise.

03/17/2022 10:16 AM ET

You may request to exercise your ENERGY VAULT INC., Warrants, at any time up to the expiration date of the Warrants.

Each one (1) ENERGY VAULT HLDGS INC. Warrants will entitle you to receive one (1) share of common stock, CUSIP 29280W109, at an exercise price of 11.50 per whole share, subject to adjustment.

All exercises of warrants will be irrevocable.

As a condition for submitting "WARR" instructions, participants are required to acknowledge the following conditions:

- 1) That the common stock issued from the warrant exercise shall not exceed beneficial ownership limitations, as defined in the governing documents of the security; and
- 2) that the instruction is being submitted at the beneficial owner level.

Next steps

This event has been withdrawn

You did not provide instructions for this offer, which has been withdrawn by the offering company.