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Ms. Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

To Secretary Countryman:

No regulator or legislator will ever be able to implement rules that prevent investors from buying high and selling low. However, it is a safe bet that regulations can have unintended negative consequences even if they are promulgated with the best of intentions.

Human nature will invariably result in some investors chasing momentum at their peril. That does not mean there was inherent evil in the type of instrument they chased, nor does it mean that any degree of disclosure requirements could prevent such a phenomenon. The proposed regulatory changes for SPACs will make certain requirements for the vehicle more akin to requirements for IPOs. One need only look at a couple of examples of the largest IPOs of year 2021 to be reminded that the nature of that vehicle and its disclosure requirements are not a panacea for potential investor losses.

For example, Didi Global opened for trading at $16.65 per share after the IPO had priced at $14. It traded as high as $18.01 on its first day of trading, but never made further highs and recently touched a low of only $1.37 on May 12, 2022. The IPO of Rivian priced at $78, and then it opened for trading at $106.75. On its fifth day of trading, November 16, 2021, it touched a high of $179.47 per share before a precipitous decline. By definition, someone did pay $179.47 to purchase shares of Rivian, and no regulation governing IPO disclosures prevented that from happening. It traded at a low of $19.25 on May 11, 2022.

With the above examples, it is relevant to also note the large percentage differentials in price as between the IPO prices and where the stocks first opened for trading on an exchange. Individual investors typically do not enjoy equal access to IPO offering prices. The contrasting nature of the SPAC vehicle, with the built-in protection of the trust account, leads to investors in SPACs typically having opportunities and time to purchase near, if not slightly below, the typical $10 per share trust value. In this respect, the SPAC can be the more egalitarian vehicle. If approached responsibly, SPAC investing can provide investors a unique opportunity of having the upside of a call option coupled with built-in downside protection via the option to redeem for a known share in the trust account value.

The positive benefits of the SPAC structure cannot render every possible business combination a good idea or good investment. Just as not everyone should have rushed to California for gold in 1849, not every private company should have rushed to become publicly traded. There was certainly a SPAC rush which did not end well for many, but the market has already self-corrected. SPAC sponsors, investment banks, PIPE investors, and the retail crowd have already pulled back prior to the proposed sweeping regulatory changes. I am reminded of how many companies caused investors to chase up their market valuations in the years 1998 and 1999 simply by adding "dot com" to their names; imagine how bizarre it would have seemed in year 2001 for someone to only then propose massive regulatory changes to protect investors from such misleading name changes.

It is my hope that in addition to the general self-correcting, the free market will have learned invaluable lessons which generate sensible improvements in deal practices. Among these, the number of warrants issued and their dilutive effects must be more responsibly planned for, even beyond the movement that has already occurred in that direction. Valuations agreed to as between the target company, sponsor and PIPE investors must be more sensible to market participants. There should be innovative approaches to prevent lockup expirations from looming as such ominous events (such as requiring classes of shareholders subject to the restrictions to stagger their sales over a greater period of time; i.e. only a percentage of their original position becoming unlocked at any one date). We will not, however, see improvements in practices if the SPAC vehicle is effectively killed by overly prohibitive regulation. Hopefully, the Commission will consider the public comments with great care, tread more gently than the manner proposed, and proceed with an eye towards encouraging sensible practices rather than outright killing of the vehicle.

The Commission proffers 180 enumerated questions in its release. I cannot help but think instead in terms of just two general questions before addressing specifics. First, will the cumulative effect of all the regulation changes, as proposed, likely end, for the most part, the use of SPACs? The answer to this is yes. Second, for the few remaining SPACs under the new rules, would any of the particular newly proposed regulations have unintended negative consequences? Again, yes.

The Commission references its Investor Advisory Committee preliminary recommendations from September 2021 in pointing to "Concerns that the sponsors and targets of SPACs may effectively be conducting regulatory arbitrage… ." However, from reading this proffer by the Advisory Committee[1], it is clear that such was merely an unsupported conclusory assertion. The implication with respect to the safe harbor is that target companies are colluding with SPAC sponsors for the purpose of being able to make dishonest rosy projections to the public in a sort of pump and dump scheme via SPAC as opposed to going the IPO route where such projections would not be publicized. It is a specious suggestion at best that such is why companies actually choose the SPAC route rather than a traditional IPO. I'll offer a more logical suggestion. Companies may not wish to spend millions of dollars pursuing a traditional IPO at the risk of having to eventually pull the offering due to a change in market conditions. The SPAC route can offer a savings in time, money, and arguably more certainty. In an optimal circumstance, the SPAC sponsor can also provide industry expertise.

In its proposed definition changes to what constitutes a "blank check company" made for the purpose of eliminating the safe harbor, the Commission, it appears, is ignoring the potential advantages of having companies make their projections public. There are, without the dramatic change in regulation, plenty of disincentives to companies making severely flawed and unsubstantiated projections. The markets would severely punish those doing so prior to expiration of the lockup period for insiders, and it would be exceptionally difficult for such a company to regain credibility or access the capital markets again. It is arguably much better to have a responsible party issuing projections rather than have a

[1] https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210909-spac-recommendation.pdf

void of such filled by bloggers or posters on social media. Individual investors may be far better served by having the C-suite as an accountable source of information instead of an anonymous chat room. I hope the Commission will keep in mind that the purpose of the PSLRA safe harbor was to encourage companies to share their forecasts with investors, and that shielding the liability risk was necessary to encourage such disclosure.[2]

The Commission also proposes a myriad of new disclosure requirements with a focus on potential conflicts by sponsors. Generally, these did not strike me as things I found to be absent when reading through SPAC filings. The Commission asks whether investors would benefit from many new disclosure requirements being presented in tabular form. I would suggest only one easy number to be provided as a simplified piece of information not only for investors but for the target company to consider as a reference… a break-even average share price for the sponsor. In other words, if a sponsor were to eventually liquidate its entire interest in the post-combination entity, and calculate an average price per share of all such sales to exit its full position, what would the average price of all those sales need to be for the sponsor to have recouped exactly all funds invested and expended. This will be a simple numerical representation of the effective cost basis of the sponsor and can be used to ascertain the extent to which a sponsor's position differs from that of other investors. In fairness to the sponsor, it should be highlighted that they have undertaken a special risk by expending millions of dollars with a plausible downside to zero for their investment; thus it must be expected that they would have an opportunity for significant upside return upon successful completion of a business combination, otherwise there would be no SPAC sponsorship.

The Commission proposes new disclosures related to fairness and as to whether an outside opinion on fairness was received. The Commission is not expressly requiring an outside opinion be obtained. However, the resulting liability concerns will render getting one an absolute must. As written, this will be such an explosive litigation lightning rod that obtaining such an outside opinion will be not only necessary but prohibitively expensive. Some of the qualified firms who you would like to see providing such assessments for the protection of

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[2] Rose, Amanda M., SPAC Mergers, IPOs, and the PSLRA's Safe Harbor: Unpacking Claims of Regulatory Arbitrage (May 19, 2021). Available at SSRN: https://ssrn.com/abstract=3945975 or http://dx.doi.org/10.2139/ssrn.3945975

investors will not be willing to do so at any price. Other firms, who may not be as qualified, may fill that void for an exorbitant fee. SPAC sponsors are already at great risk of their entire investment going to zero should they fail to successfully close a de-SPAC transaction. For that privilege, their costs will greatly increase if the proposed regulations are adopted, and even when they successfully close a de-SPAC transaction they can be assured heightened litigation risk shall remain. This will have a chilling effect on SPAC sponsorship. For the fewer SPACs that will go forward even under the new regulatory regime, there will likely be fewer firms competing to participate as bankers[3], and such reduced competition may not be optimal for investor protection.

The Commission proposes adding hard deadlines of, respectively, 18-months and 24-months, for SPACs to reach an agreement with a target company and to close on the transaction. Although this new proposal will only impose shorter periods upon relatively few SPACs than that which occurs in practice, this must be addressed under the category of changes that will have unintended negative consequences in some cases. Of the various possibilities the Commission asks about with a variety of questions around this proposal, the Commission is most on target with a logical approach in its question No. 140 which contemplates allowing an extension with shareholder approval. I would humbly suggest, however, that shareholders be permitted to approve up to a 12-month extension for a 36-month total as the absolute limit. Shareholders will not vote in favor of an extension absent good reason and a sweetener provided by the sponsor, and extensions will not be endless. Nothing in such a scenario is inconsistent with the Investment Company Act.

Consider a realistic hypothetical where a sponsor finds an attractive target after more than a year has elapsed, and then enters into negotiations that take significant time. With the deadline approaching, the due diligence process can feel a bit rushed and pressured. The sponsor at this juncture has a strong disincentive to allow anything to prevent the deal from closing. Is it really in the best interests of investors to have the sponsor facing such an absolute deadline as it completes this process? What if the sponsor encounters or uncovers something unexpected at that late point which might make pursuing an alternate target a better idea for all concerned? What if such a discovery occurs with only 6-8

[3] https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-spacs-go-splat-i-banks-refuse-to-write-blank-checks

months remaining or even less? A sponsor facing an absolute deadline must then decide if it is worth the risk of whether the better alternative deal can be completed on time. It would seem to only help investors to allow parties the flexibility to agree on an extension in such cases where doing so would make the most sense for all.

A last topic I'd like to mention is one involving a hypothetical scenario that is expected to be rare, but the Commission's extensive proposals do not seem to address it at all. A SPAC that does not end with a new business combination and dissolves, returning trust account holdings, is ordinarily not expected to have accumulated any assets of significance as there would have been no operations. Typically, at dissolution, only a small amount of remaining cash that the sponsors had provided for working capital would be left, and no one would object to the sponsor recovering any such remainder while the public shareholders have redeemed for the trust account funds. But, consider the real possibility of an unexpected windfall. What if the SPAC had entered into a merger agreement with an identified target company only to have the target company breach that agreement? What if the breach resulted in millions of dollars in damages either already recovered by a settlement agreement or judgment, or potential damages exist as an asset in the form of a pending litigation claim?

I suggest for consideration by the Commission that such an asset (i.e. unexpected litigation windfall) should be for the benefit of all classes of shareholders. If a target commits such a breach, the public shareholders would be among those who were wronged by such breach and should be among those who recover. However, absent regulation addressing such windfall situations, a SPAC prospectus will have likely provided the absolute limitation to redemption of the investor's share in the trust account. In such a scenario, while negotiating settlement of any such litigation claims against a breaching target company, the SPAC sponsor may certainly have a direct conflict with other investors. While this is not expected to be a common scenario, litigation possibilities should not be ignored, and I hope the Commission can provide for fairness to all investors in such circumstances.

Respectfully submitted,
/s/
Jonathan Kornblatt