

**Response to SEC Order Regarding Revised
NYSE Listing Rule for Subscription Warrants
March 2022**

The Issues in the SPAC Market Are Due to Poorly-Aligned Incentives

Each participant in a SPAC IPO is highly incentivized, but these incentives are generally not aligned with shareholder interests

- ▶ Sponsors launch SPACs because they receive 20% of company's stock for nominal consideration (usually \$25,000), and if they complete a deal within the ~two-year timeframe, they can make tens or hundreds of millions of dollars
- ▶ Investors buy stock in SPAC IPOs because they receive free detachable shareholder warrants
- ▶ Anchor IPO investors also often receive a portion of founder stock and now demand overfunded trust accounts
- ▶ Investment banks underwrite SPAC IPOs because they receive large underwriting fees (2.0% upfront and 3.5% contingent on merger consummation)
 - Investment banks earn additional fees on SPAC merger transactions and PIPE placements
- ▶ SPAC costs are estimated to be nearly ~50% of the cash proceeds received by the merger partner ⁽¹⁾

These incentives have led to the creation of hundreds of SPACs, which, when combined with enormous frictional costs, make it very challenging for typical SPACs to create shareholder value

How Can the SPAC Market be Improved?

We believe that blank-check companies can be attractive and viable alternatives to IPOs, if their structure and terms are modified to:

- ▶ **Minimize and/or eliminate frictional costs including underwriting fees and shareholder warrants**
- ▶ **Eliminate investors' opportunity cost of capital**
- ▶ **Incentivize sponsors to offer more favorable terms for investors**
- ▶ **Provide shareholders with the reliable information they need to make informed decisions**
- ▶ **Make blank check companies subject to liability for forward-looking statements (outside of the PSLRA safe harbor)**

Key Features of SPARCs and SPARC Warrants (SPARs)

NYSE's proposed listing rule would allow subscription warrants, of which SPARs are one example

- ▶ **Eliminates and/or minimizes opportunity cost of capital for investors – no initial blank-check IPO. No cash is held in trust until deal closure**
 - SPARC warrants are distributed for no consideration to PSTH shareholders
- ▶ **No “shot-clock”**
 - SPARC will have a 10-year term, effectively eliminating any perceived or real negotiating leverage for a transaction counterparty
- ▶ **Minimal frictional costs**
 - No underwriter fees or shareholder warrants
- ▶ **No founder stock**
 - Minimum committed sponsor investment of \$500mm – \$1bn in common stock
 - Out-of-the-money Sponsor Warrant on 4.95% of shares with minimum holding period of three years
- ▶ **Flexible exercise price**
 - Amount of capital raised can be precisely tailored to the requirements of the merger partner, allowing all shareholders to invest on the same terms; no PIPE needed

Key Features of SPARCs (Cont'd)

- ▶ **Provides shareholders with the information they need to make informed decisions**
 - Investors decide whether to opt-in 20 business days after receiving an SEC-approved, post-effective S-1, or they can sell their subscription warrants for fair value on the NYSE or NASDAQ
- ▶ **Eliminates PSLRA's safe harbor protections for forward-looking statements**
 - SPARC's initial business combination will likely require the filing of a post-effective amendment to its initial S-1 rather than an S-4, removing PSLRA protections for forward-looking statements
- ▶ **SPARC remains a private company (none of its common stock is held by the public). The Sponsor, through its 100% ownership of SPARC, assumes all of the company's risks and funds all of its liabilities, including all search and other operating costs unless and until a deal is consummated**

Pershing Square SPARC Holdings, Ltd. – Overview of Key Terms

- ▶ **SPARC will distribute subscription warrants (SPARs) to both PSTH shareholders and warrant holders**
 - 1 SPAR per share of Class A Common Stock of PSTH (200,000,000)
 - 2 SPARs per outstanding Distributable Redeemable Warrant (44,444,444)

- ▶ **SPARC will have a flexible exercise price**
 - \$10.00 initial Minimum Exercise Price
 - Exercise price may be increased at announcement of the proposed IBC, allowing SPARC to raise significantly more capital and increasing the value of the subscription warrants

- ▶ **Pershing Square funds have committed to a large Forward Purchase Agreement**
 - Affiliates of Pershing Square will invest a minimum of \$500mm and up to \$1.0bn at or before the closing of the business combination by purchasing shares of Class A Common Stock (the same stock acquired by public shareholders)

- ▶ **Pershing Square and SPARC Directors will not receive conventional sponsor incentives**
 - The Sponsor Warrants will be exercisable for 4.95% of the Public Shares on a fully-diluted basis and will have an exercise price equal to 120% of the Final Exercise Price. They cannot be sold, transferred or exercised until their fourth year
 - The Director Warrants will be exercisable for 0.26% of the Public Shares, with identical provisions to the Sponsor Warrants

NYSE's Proposed Rule Ensures High-Quality Sponsors

- ▶ **Sponsors will need to have a sufficient track record and reputation for creating shareholder value in order to meet and maintain the standards required by the NYSE's listing rule requirement**
- ▶ **Tougher standards will reduce the proliferation of SPAC offerings by inexperienced or unethical sponsors**
 - SPAC sponsors will be incentivized to modify their compensation to be more shareholder friendly and aligned
- ▶ **SPARCs with excessive compensation and/or weak sponsors will not be able to meet or maintain the NYSE Subscription Warrant listing thresholds**

Illustrative Timeline for Pershing Square SPARC Holdings, Ltd.

1 Search Period

- ▶ Sponsor searches for a merger partner while subscription warrants trade publicly

2 Deal Announcement

- ▶ Sponsor announces transaction after entry into definitive agreement and sets final exercise price
- ▶ Sponsor hosts public presentation. Subscription warrant holders have opportunity to hear from management and evaluate the transaction's merits

3 Disclosure Period

- ▶ Draft registration statement is filed and amended as necessary. Once declared effective, it is mailed to all subscription warrant holders
- ▶ During this period, we expect investors, research analysts and other industry observers to publish research to help subscription warrant holders evaluate the transaction

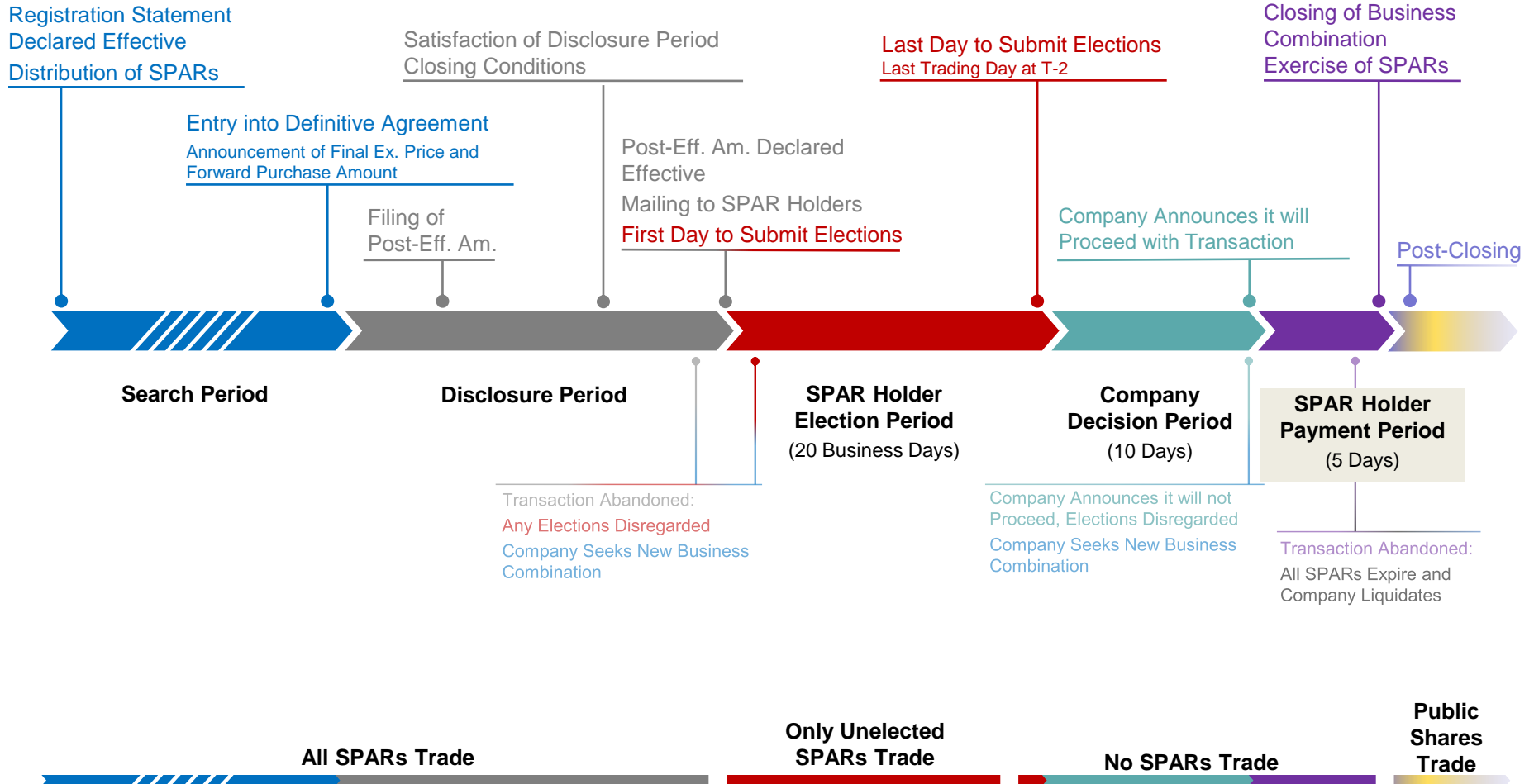
4 Election, Decision, and Payment Period

- ▶ Upon mailing of final registration statement, subscription warrant holders have 20 business days to elect to participate in the transaction or sell their subscription warrants

5 Post-Closing

- ▶ Once Sponsor has met all closing conditions, subscription warrants have been exercised and shares have been issued, the post-combination business begins trading

Illustrative Timeline for Pershing Square SPARC Holdings, Ltd.



SEC Response to Proposed Rule Change

On December 8, 2021, the SEC published an order to institute proceedings to determine whether to approve or disapprove of the proposed change to the NYSE's listing rules to allow listing of subscription warrants

- ▶ **The SEC expressed concerns regarding the following issues:**
 - **Numerical Listing Standards:** Rationale and consistency among numerical requirements
 - **Valuation:** Ability of market participants to value subscription warrants
 - **Information:** Availability and reliability of information to inform valuation
 - **Manipulation:** Risk that price of subscription warrants could be manipulated
 - **Securities Act:** Registration and disclosure
 - **Investment Company Act of 1940:** Possible registration requirement

NYSE's Revised Rule Change

On February 17, 2022, the NYSE submitted a revised rule proposal to address the SEC's concerns. In response, the SEC provided until March 29, 2022 to submit additional comments, and extended its final decision date to May 8, 2022

- ▶ **We believe that the revised NYSE rule:**
 - Provides additional investor protection
 - Clarifies the standards that would apply
 - Is compatible with efficient markets and orderly trading
 - Benefits investors by providing a superior alternative to the existing SPAC structure

Numerical Standards

“Further, the Exchange does not explain the rationale for the various numerical standards and criteria set forth in its proposal, or how they together are designed to be consistent with the Exchange Act and the rules and regulations thereunder”

▶ **The revised rule contains revised numerical listing criteria, including:**

- An aggregate exercise price at the time of initial listing of at least \$250 million, of which at least \$200 million must be publicly held
 - SPACs are required to have an initial aggregate market value of at least \$100 million, \$80 million of which must be publicly held
- At least 20 million publicly held subscription warrants outstanding at initial listing, compared to 1.1 million in the original proposed rule (the same requirement as applicable to SPAC shares)
- For continued listing, at least 5 million publicly held subscription warrants, increased from 100,000 in the original rule.
- For continued listing, an average trading price per-warrant of at least \$0.25
 - The original rule proposal included an aggregate market capitalization requirement for continued listing, which the SEC noted could, in certain circumstances, require an unrealistically high price per warrant
 - The revised rule provides a per-warrant trading price requirement, with an implicit aggregate market value requirement

Numerical Standards (Cont'd)

“Further, the Exchange does not explain the rationale for the various numerical standards and criteria set forth in its proposal, or how they together are designed to be consistent with the Exchange Act and the rules and regulations thereunder”

- ▶ **We believe that the numerical listing criteria in the revised rule are robust and realistic, and are now better aligned to support a market in which subscription warrant trading prices can adjust appropriately to reflect changing information and market perceptions**
- ▶ **We believe that these criteria strike an appropriate balance between the risk that delisting may present to investors and the protective effect of delisting securities for which there is not an orderly trading market**
- ▶ **The NYSE has stated its belief that the numerical listing criteria included in the revised rule are “adequate to protect the interests of investors and the public interest”**

Valuation – General

“The valuation of a subscription warrant, if any, would appear to derive primarily from expectations that the sponsor ultimately will offer holders the ability to exercise the warrant on attractive terms once a target company is identified and an acquisition agreement signed”

- ▶ **The SEC’s observation is true for all acquisition companies. Valuation for all acquisition company securities is driven primarily by the expected value of a business combination**
- ▶ **Prior to entering into a definitive agreement, the valuation of an acquisition company reflects expectations regarding:**
 - The Sponsor’s ability to identify a value-creating business combination (i.e., track record)
 - The disclosed investment criteria and target deal size, and the number of potential acquisition targets that meet this criteria
 - The amount and nature of the acquisition company’s frictional costs including deferred underwriting fees
 - The estimated time remaining for a transaction to be consummated
- ▶ **Following entry into a definitive agreement, the valuation of an acquisition company reflects market expectations of the proposed transaction**
- ▶ **The valuation inputs for subscription warrants are substantially identical to those for SPAC securities**

Valuation – General (Cont'd)

“The Exchange does not explain how market participants would effectively value this novel listed security, or how it would be expected to trade consistent with fair and orderly markets and the protection of investors and the public interest”

- ▶ **Valuations of subscription warrants and of SPAC shares are primarily based on the same factors**
 - SPAC shares are equivalent to (i) a put option at \$10.00 per share and (ii) a call option representing the expected value of the opportunity to invest in a business combination
 - Subscription warrants consist of only the call option component

- ▶ **Valuation of subscription warrants is comparable to the valuation of SPAC warrants**
 - SPAC warrants are distributed at essentially no cost, have an exercise price set 15% out-of-the-money, and have a variable term (the shorter of the SPAC deadline or five years after the IBC)
 - Subscription warrants are distributed at no cost, have an exercise price set at the cash NAV per share, and have a variable term (the shorter of the 10-year deadline or the date of the IBC)
 - In both cases, valuation primarily reflects market expectations regarding the expected value of the merger to warrant holders

Valuation – General (Cont’d)

“The Exchange does not explain how market participants would effectively value this novel listed security, or how it would be expected to trade consistent with fair and orderly markets and the protection of investors and the public interest”

- ▶ **Subscription warrants are inherently lower risk than SPAC warrants**
 - SPAC warrants, due to their shorter initial term and out-of-the-money strike price are inherently more speculative and riskier than subscription warrants
 - SPAC warrants compared with subscription warrants have substantially greater risk and volatility due to their relatively short remaining term

Valuation – General (Cont’d)

“The Exchange does not explain how market participants would effectively value this novel listed security, or how it would be expected to trade consistent with fair and orderly markets and the protection of investors and the public interest”

- ▶ **Market Participants are able to value listed options on SPAC shares**
 - There is an active trading market for listed options on SPAC shares, which require valuation of the inputs described above, as well as typical option valuation inputs
 - With initial terms as short as one week, and potentially far out-of-the-money strike prices, listed options on SPAC shares are inherently more speculative and riskier than both SPAC warrants and subscription warrants
- ▶ **Unlike SPACs which have an active short-dated speculative option market, there will be no options market for subscription warrants**
- ▶ **The NYSE, in its submission of the revised rule, notes its belief that “the extensive experience that exists in the trading of these kinds of securities provides evidence that market participants are generally able to arrive at market prices for such securities without excessive volatility and that this experience provides a reasonable basis for understanding how Subscription Warrants are likely to trade”**

Valuation and Market Information

“The Exchange does not address... the types of market information that could create a positive value for subscription warrants, the reliability and availability of such information, or whether such information could support fair and efficient trading of an Exchange-listed security for a period as long as ten years”

- ▶ **Prior to announcing a transaction, SPACs generally do not provide market disclosure regarding their specific activities regarding the identification of a business combination, apart from what investors might glean from expenditures reported in their periodic financial statements**
- ▶ **We do not believe that the up-to-10-year duration of a SPARC is meaningfully different from the up-to-three-year duration of a SPAC in this regard**
 - To the extent that market participants believe that inadequate information is available, the available liquidity and the trading price will be negatively impacted. Market participants would be protected by the delisting standards.
 - While the shorter lifespan of a SPAC is designed to assure investors they will recoup their investment if no deal is consummated, subscription warrant holders retain their capital until a deal is identified – this additional time period only reduces risk and increases value for warrant holders

Valuation and Market Information (Cont'd)

“The Exchange does not address... the types of market information that could create a positive value for subscription warrants, the reliability and availability of such information, or whether such information could support fair and efficient trading of an Exchange-listed security for a period as long as ten years”

- ▶ **The revised rule requires that the issuance of common stock upon exercise of subscription warrants be registered under the Securities Act, and that all applicable securities laws must be complied with, including the filing and effectiveness of such registration statement before shares may be issued**
 - Holders cannot elect to exercise subscription warrants until the registration statement for the shares to be issued has been declared effective
 - The registration statement must provide comprehensive disclosure regarding the proposed business combination, at least equivalent to the disclosure SPACs must provide in connection with a merger proxy statement or redemption tender offer
 - Such materials must be disseminated to subscription warrant holders
 - This filing could take the form of a post-effective amendment to the initial registration statement, or a new registration statement filed by the SPARC or another party to the transaction

- ▶ **The NYSE also noted that the revised rule includes significant investor protections, including the requirement that investor funds are held in a trust account, which is intended to be a very brief period, and that all funds must be returned if the acquisition does not close within 12 months of entry into the definitive agreement**

Price Manipulation

“The Exchange also does not explain how it would effectively address the risk the price of subscription warrants could be manipulated, or how its proposal otherwise would be designed to prevent fraudulent and manipulative acts and practices. For example, the price of subscription warrants would appear to be particularly susceptible to rumors about potential acquisition targets and the terms of potential transactions...Because subscription warrants may trade at a very low price, they may permit a bad actor to efficiently manipulate these securities with little upfront cost”

- ▶ **A subscription warrant would be no more susceptible to illegal activity than other securities that are traded on the NYSE**
 - The disclosure and market manipulation rules and regulations of securities laws would provide warrant holders with the same protections afforded to holders of other securities
- ▶ **Subscription warrants are inherently less speculative than SPAC warrants or listed options on SPAC shares due to their substantially longer-term and at-the-money (rather than out-of-the-money) strike price**
- ▶ **The number of subscription warrants outstanding, the longer-term, less speculative nature, and robust listing requirements will substantially reduce the risk of market manipulation**
 - The revised rule proposes a minimum of 20 million subscription warrants outstanding, compared to 1.1 million shares for SPACs, and a minimum price of \$0.25
 - The number of outstanding SPAC warrants and listed options on SPAC shares is substantially lower, and such securities are traded at similarly low prices, without the same continued listing requirements

Price Manipulation (Cont'd)

“The Exchange also does not explain how it would effectively address the risk the price of subscription warrants could be manipulated, or how its proposal otherwise would be designed to prevent fraudulent and manipulative acts and practices. For example, the price of subscription warrants would appear to be particularly susceptible to rumors about potential acquisition targets and the terms of potential transactions...Because subscription warrants may trade at a very low price, they may permit a bad actor to efficiently manipulate these securities with little upfront cost”

- ▶ **For Pershing Square SPARC, the initial distribution will be to the stockholders of PSTH**
 - PSTH stockholders are already familiar with the Sponsor and its strategy, have already received disclosure about how subscription warrants work and will receive a registration statement, and have an opportunity to hear from management prior the warrants becoming exercisable
 - The majority of these stockholders are sophisticated institutional investors, less likely to engage in or be susceptible to market manipulation
- ▶ **The NYSE’s revised rule submission states its belief that its “existing surveillance procedures are adequate to enable it to detect manipulative trading practices with respect to Subscription Warrants,” and further notes that “NYSE and other self-regulatory organizations have extensive experience in conducting surveillance of the trading in securities whose value, like that of Subscription Warrants, is substantially dependent on the issuer’s future acquisition of a yet-to-be-identified operating asset”**

Investment Company Act

“[I]t is unclear under the Exchange’s proposal whether the company would meet the definition of investment company under the Investment Company Act of 1940 (“1940 Act”). If so, the company may need to register under the 1940 Act, which would require a new listing rule, proposed by the Exchange and approved by the Commission, that contemplates the company’s status under the 1940 Act”

- ▶ **The Order contemplates a scenario in which subscription warrants would be offered for value, resulting in the company raising proceeds upon the issuance of warrants, and holding these proceeds for a period of time. We note that the Staff has considered the applicability of the 1940 Act to the investment of such funds in short-term U.S. Treasurys**
 - The revised rule requires that subscription warrants be distributed at no cost to stockholders of another, previously existing company

- ▶ **In addition, unlike SPACs, the SPARC structure does not contemplate holding investor funds, except or a brief period immediately prior to the closing of the business combination**
 - During this brief period, investor funds could be held in a short-term, interest-bearing bank account, rather than being invested

Disclaimer

Some of the statements contained in this comment response letter may constitute “forward-looking statements” for purposes of the federal securities laws. These statements include, but are not limited to, statements regarding our or our expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements in this prospectus may include, for example, statements about:

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