Pershing Square Capital Management, L.P.
787 Eleventh Avenue, 9th Floor
New York, NY 10019

September 26, 2021

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington D.C. 20549

Re: Notice of Filing of Proposed Rule Change Proposing to Adopt Listing Standards for Subscription Warrants Issued by a Company Organized Solely for the Purpose of Identifying an Acquisition Target (SR-NYSE-2021-45)

Dear Ms. Countryman,

On behalf of Pershing Square Capital Management, I am writing in support of the New York Stock Exchange's ("NYSE") proposed rule change captioned above (the "Proposed Rule"), which would allow an acquisition company to list subscription warrants that would become exercisable for common stock in connection with a specific business combination. While the Proposed Rule makes relatively minor technical changes to existing listing rules, these changes are critically important because they permit the creation of a blank check company, which we refer to as a special purpose acquisition rights company, or "SPARC," with features that are without exception substantially more favorable and protective of investors than those of traditional special purpose acquisition companies ("SPACs").

To provide context, I begin with a brief summary of the problems of the current SPAC structure, and then discuss the benefits offered by NYSE-listed Subscription Warrants to address these concerns. I believe that the new Subscription Warrant approach to SPACs will greatly improve investor protection while also providing superior and lower-cost public market access for private companies, and therefore better returns for all shareholders of the newly public company.

Background on SPACs

SPACs offer an alternative means of access to the equity capital markets for private companies. Inherently, this is good for the capital markets as the traditional IPO process is less than ideal, and competition for conventional IPOs is therefore a welcome development for private companies seeking to go public, and for investors interested in investing in newly issued companies.

Unfortunately, however, the SPAC structure in its current form is highly problematic. Founder stock dilution of 20% and very high 5.5% underwriting fees coupled with dilution from warrants make it extremely difficult for a SPAC to complete a transaction that creates value for its common stockholders who have paid the IPO price or more for their shares. This is particularly true if there are hundreds of other SPACs looking for targets at the same time, and today there are more than 400 SPACs competing to find deals.

The enormous windfall from founder stock – e.g., a sponsor will receive $100 million of founder stock in a $400 million SPAC if he or she completes a transaction, or alternatively will lose a few million dollars of mostly other people's money (most sponsors syndicate so-called sponsor risk capital) if they fail to do so – creates the incentive for the sponsor to complete any deal regardless of its terms or quality by the typical two-year expiration of the SPAC's term.

The incentives for sponsors of conventional SPACs have led to a large number of SPAC mergers of early-stage, highly-speculative, and even pre-revenue companies that are difficult to value. At the time of announcement, sponsors are often highly promotional about the target, its prospects, and its potential revenues and cash flows many years in the future. These future projections would never be made in an IPO transaction in light of the litigation risk to the company, but since SPAC transactions are structured as a merger with an existing company, the sponsor takes the position that their projections and forward guidance are protected from liability. This is a loophole in the regulations that should be closed.

[A brief note on the above: SPACs that issue promotional guidance are relying on the forward-looking statement exemption from liability of the Private Securities Litigation Reform Act (PSLRA) of 1995 that gives public company officers the ability to provide forward-looking guidance for statements made in good faith. The PSLRA does not apply, however, to private companies that are in the process of going public, which is why it is rare for companies doing IPOs to give forward-looking projections.

Since SPACs at the time of a merger are already public companies, they are relying on the liability protection of PSLRA when giving their projections. As SPACs are simply cash shells, particularly when 100% of shareholder capital can be redeemed when a transaction is announced, it doesn't seem right or proper that SPACs get liability protection and companies that do conventional IPOs do not.]

SPAC sponsors likely make highly promotional projections many years into the future in an attempt to drive up the SPAC's stock price above the typical $10 IPO/redemption price so that shareholders do not exercise their redemption rights. As it will be years before anyone knows whether the newly merged company will meet these projections, the sponsor likely will have sold their founder stock well before judgment day, leaving less sophisticated investors holding the bag.

Some SPAC shareholders do not even realize that they have a redemption right, and they therefore invest by default in bad deals, which are made even worse as they lack adequate capital since the more sophisticated and knowledgeable investors redeem. Even in transactions where the SPAC's stock price is substantially below the redemption price, many and perhaps most shareholders do not read the several-hundred-page S-4 merger proxy, do not know how to redeem, and are otherwise unaware that they could redeem at $10 rather than continue to own shares that trade for $6.

Pershing Square Tontine Holdings, Ltd.

We created Pershing Square Tontine Holdings, Ltd. to address many of the above issues. PSTH has no founder stock, promotes or advisory fees, nor does not it pay any other form of compensation to the sponsor. The Pershing Square funds have committed a minimum investment of $1 billion on the same terms as PSTH's IPO investors, and have also invested $65 million (the fair market value of the PSTH sponsor warrants as determined with the assistance of a third-party valuation firm) at the time of the IPO to purchase a 20% out of the money warrant on 5.95% of the newly merged company's shares if a transaction is consummated.

The PSTH sponsor warrant cannot be sold or transferred for three years after the merger further aligning PSTH's sponsor with the longer-term outcome of its shareholders. PSTH's total underwriting fees are

equal to 1.8% of PSTH's minimum $5 billion of capital versus 5.5% for nearly every other SPAC. As a result of these structural features, lower costs, and other benefits, PSTH has vastly superior alignment with its shareholders than other SPACs, and substantially less frictional costs in completing a deal, making a good deal easier to do, but by no means guaranteed.

While PSTH's structure is much more favorable than a typical SPAC, it continues to have two principal drawbacks:

First, as in other SPACs, PSTH investors were required to invest their capital upfront at the time of the IPO, and their $4 billion is invested in short-dated U.S. Treasurys and U.S. Treasury money market funds that generate a *de minimis* return. As a result, investors in PSTH, as in all other SPACs, suffer the opportunity cost of the loss of the use of their capital while PSTH seeks to complete a transaction.

Second, at its inception, PSTH had two years to identify a transaction and an additional six months to close it. While this 30-month period is longer than most other SPACs, it still creates time pressure on the sponsor to close a deal, particularly as PSTH's first attempted transaction did not obtain regulatory approval, and it now has only 10 months remaining to identify an alternative transaction.

Since SPAC's are holding investor capital while they search for a deal, it makes sense for the sponsor to have a finite period in which to complete a transaction. Unfortunately, however, this fast ticking "shot clock" puts pressure on the sponsor to complete a transaction, and creates perceived and/or real negotiating leverage for the SPAC's transaction counterparty. This time pressure is highly negative for SPAC shareholders and sponsors, and has been a contributing factor to bad SPAC deals, particularly those that have been negotiated in the latter months of a SPAC's term.

At PSTH, we will never do a transaction unless we believe it will create substantial shareholder value. Our minimum billion-dollar plus sponsor investment in a PSTH transaction puts our money with our mouth is, aligning our interests with those of other PSTH's shareholders. Even so, the above structural issues remain a negative for PSTH and for our shareholders.

Pershing Square SPARC Holdings, Ltd. ("SPARC")

Several months ago we formed and capitalized SPARC as a private company. We created SPARC to address the remaining negative issues of SPACs that we have described above. We have filed and have received comments from the SEC on a draft S-1 registration statement that, if approved along with the NYSE's proposed Subscription Warrant rule, would enable SPARC to issue NYSE-listed SPARC warrants to PSTH shareholders.

If this new rule and SPARC's S-1 are approved by the SEC, SPARC will be a highly superior structure for investors, and, as importantly, a better method for private companies to go public. While I present the benefits of the SPARC structure below that are enabled by the NYSE Subscription Warrant rule, these benefits are not unique to SPARC. Any SPAC sponsor could adopt this proposed structure. For the sake of the SPAC industry and greatly improved investor protection, we hope they do.

Unlike in a typical SPAC where capital is raised in an IPO, SPARC's initial warrant holders do not invest upfront capital, as they will receive the SPARC warrants for no consideration. SPARC is currently a private company 100% owned by the sponsor, and will remain 100% owned by the sponsor until a de-SPAC transaction is completed.

As the owner of SPARC's sponsor, the Pershing Square funds are funding SPARC's start-up costs. Through the purchase of additional common or preferred stock of SPARC or loans, the Pershing Square

funds will also provide SPARC with the capital it needs to cover ongoing costs including legal and director fees, and deal search and other transaction costs unless and until a transaction is completed.

Once SPARC has identified a transaction, completed due diligence, negotiated the transaction terms, signed a definitive agreement, and its independent directors have approved the transaction, SPARC will file a post-effective amendment to its initial S-1 which will describe the target company in detail, provide detailed risk factors, audited financial statements and footnotes, MD&A, and all of the other disclosures that one would find in a traditional IPO prospectus. The SEC would then have the opportunity to comment upon and approve the final form of this document.

Once SPARC's post-effective S-1 is approved by the SEC and distributed to warrant holders, they will have an appropriate period to review the materials. The warrant holders will then have the option to exercise their warrants to purchase common stock in the newly merged company, or alternatively sell their NYSE-listed warrants to someone who is more interested in the transaction.

Since the SPARC warrants will be traded on the NYSE, investors in SPARC warrants will be able to observe the trading price of the warrants after all of the public information about the transaction and the company have been disseminated and approved by the SEC, which will give warrant holders an early indication of the market's view of the transaction.

If at the time of exercise, the SPARC warrants are trading for nominal value, then the market is suggesting that the transaction is not a good one. If the warrants are trading for substantial value, then the market is indicating that the transaction creates value for SPARC shareholders. In the latter event, investors can either exercise or sell the warrants to receive their fair market value, which represents the market's assessment of the initial value of the transaction in excess of SPARC's cash per share. Since the SPARC warrants can be sold on the NYSE, investors can get the benefit of the initial value of the transaction without being required to make a substantially larger investment to exercise their warrant.

The Subscription Warrant approach has the following benefits:

- The rule change and the SEC's approval of SPARC's S-1 would allow PSTH to return its $4 billion of capital held in trust (subject to the vote of PSTH's shareholders which is a near certainty to be obtained). This will end the opportunity cost of capital for PSTH shareholders. Importantly, it will also provide a roadmap for other SPACs who adopt this approach, the opportunity to return their cash in trust to their shareholders. A return of the approximately $100 billion of cash held in trust by SPACs which have not yet completed a business combination would be an enormous positive for the capital markets and SPAC shareholders.

- SPARC has no underwriting costs, which eliminates the typical 5.5% of capital expense that SPAC's incur.

- SPARC is distributing SPARC warrants for no consideration to PSTH shareholders so they will have no upfront investment in the warrants. Investors who thereafter purchase SPARC warrants will have a modest amount of capital at risk, i.e., the price paid for the SPARC warrants. For the price paid which represents warrant premium, they will own a long-dated warrant which gives them the right to invest in SPARC's initial business combination at its $20 cash per share NAV, greatly minimizing the upfront investment required compared to typical SPACs.

- The premium paid by the SPARC warrant buyer is similar to that of an investor who purchases a SPAC at a premium to NAV. In this case, however, the upfront investment is substantially lower as it represents the option to invest in a de-SPAC merger without the upfront funding of the SPAC's cash-in-trust per share. Because the SPARC warrants will have a much longer-term than a typical SPAC, the SPARC warrants are also inherently less speculative and much less capital intensive than if one were to pay a premium to NAV for a traditional SPAC that has a much shorter remaining term.

- SPARC will be distributing new SPARC distributable warrants in exchange for the 22.2 million PSTH distributable warrants that are currently outstanding. These warrants will have the same $23 strike price and a new five-year term that begins at the time of SPARC's initial business combination. The exchange of SPARC distributable warrants for PSTH distributable warrants will protect these warrant holders from the loss they would normally incur when PSTH returns its cash in trust to shareholders and winds up its operations.

- SPARC's initial business combination will require the filing of a post-effective amendment to its initial S-1 rather than an S-4 so there will be no PSLRA protection from liability for any forward-looking statements or projections. This will eliminate this loophole in SPAC security regulations, and discourage aggressive and/or fraudulent projections from SPAC's that adopt the Subscription Warrant structure.

- SPARC warrants have a proposed 10-year term. While it is our intent to complete a high quality, shareholder-value-creating transaction for SPARC as promptly as practicable, the 10-year term will effectively eliminate any perceived or real negotiating leverage for a transaction counterparty compared with the two-year shot clock of the typical SPAC. By improving SPARC's negotiating leverage, the longer-term actually assists the sponsor in completing a transaction more promptly and on better terms.

- With the Subscription Warrant structure, there is no risk of an investor inadvertently investing in a transaction in which they did not intend to invest, as the decision to exercise the warrant will require affirmative action on the part of the warrant holder. In other words, to participate in the deal, warrant holders must opt in. This approach is far superior to the traditional SPAC where the default is for investors cash to be released from the trust and invested in the deal. If a shareholder doesn't open their mail, dies, or is otherwise unaware, their capital is automatically committed to the deal regardless of its quality or the trading price of the SPAC's shares. In other words, in the current SPAC structure, shareholders must opt out and take affirmative steps to get their money back. This greatly more favorable opt in versus opt out structure of the Subscription Warrants is a highly important investor protection feature, particularly for less sophisticated investors.

- SPARC's superior structure will provide better competition for the traditional IPO, improving the competitiveness of U.S. equity markets and capital formation.

- Since SPARC warrants are distributed for no consideration, there is no need to "induce" investors (often favored hedge funds and other arbitrageurs who buy SPAC IPOs, who, once the warrants trade separately, thereafter sell the SPAC common stock to create "free" warrants) to buy stock in a SPAC IPO by giving free warrants to IPO investors. Furthermore, SPAC warrants increase the dilution of a de-SPAC merger which makes SPACs less attractive transaction counterparties.

SPACs that take the Subscription Warrant approach can eliminate shareholder warrants in their capital structure as they do not need to "bribe" investors with warrants to buy stock in their IPOs. When combined with no underwriting fees, this makes SPACs that use the Subscription Warrant approach a highly attractive alternative to an IPO or direct listing.

- In light of the requirement for a minimum $15 million market capitalization for Subscription Warrants and an aggregate minimum exercise price of $200 million for publicly held Subscription Warrants, the Subscription Warrant approach cannot not be used by any sponsor. 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. These tougher standards will reduce the proliferation of SPAC offerings by inexperienced or unethical sponsors, and importantly encourage SPAC sponsors to improve the economic terms of their compensation, as SPARCs with excessive compensation and/or weak sponsors will not be able to meet or maintain the NYSE Subscription Warrant listing thresholds. The more challenging standards of the rule will thereby greatly improve the quality of SPAC sponsors, their compensation structures, and the resulting outcomes for SPAC shareholders.

For all of the above reasons, we encourage the SEC to approve the NYSE Subscription Warrant rule as promptly as practicable so that SPAC sponsors can return the capital they hold in trust to shareholders while giving shareholders the opportunity to invest in a SPAC's future initial business combinations using the superior structural and investor protection features of the SPARC structure.

Sincerely,

William A. Ackman