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As Use Of SPACs Increase $8 Million Settlement Cautions Due Diligence

July 21, 2021

Highlights

Special Purpose Acquisition Companies obtain investor funds and then merge with a privately held company and take it public

The popularity of SPACs has increased exponentially over the past two years as a means of obtaining significant financial windfalls

As these transactions continue, executives and compliance professionals should consider conducting due diligence, following the SEC's recent settlement agreement with Stable Road Acquisition Company, and other entities and individuals, for more than $8 million

The Securities and Exchange Commission (SEC) announced, on July 13, that it reached a settlement agreement with Stable Road Acquisition Company and its CEO Brian Kabot, and Momentus, Inc. for more than $8 million in connection to a proposed merger and misleading claims about Momentus' technology. The SEC is continuing an action in the U.S. District Court for the District of Columbia against Momentus, Inc. former CEO Mikhail Kokorich.

This agreement highlights the need for proper due diligence and truthful statements to investors and the SEC, particularly as the use of SPACs as investment vehicles continues to increase.

Stable Road is a special purpose acquisition company, more commonly referred to as a SPAC or a “blank check company.” SPACs are created for the sole purpose of merging with a privately held company, which is then taken public with the expectation of investors achieving a significant financial windfall.

The SEC believed that Momentus and its former CEO, Kokorich, had made false statements about the company’s capabilities to provide space cargo services. The SEC found a number of additional irregularities in both companies’ disclosures, as well as in information provided by Kabot and Kokorich.

Through the settlement agreement – at the time of which Stable Road had raised $150 million – Stable Road agreed to pay $1 million, Momentus has agreed to pay $7 million, and Kabot has agreed to pay $40,000. The merger is still scheduled to occur in August 2021, subject to additional regulatory and other approvals.

“This case illustrates risks inherent to SPAC transactions, as those who stand to earn significant profits from a SPAC merger may conduct inadequate due diligence and mislead investors,” said SEC Chairman Gary Gensler in a rare public statement about the case and the settlement agreement.

The popularity of SPACs is at record levels. From slightly more than $13 billion raised from investors in all of 2019 to more than $110 billion to this point in 2021, SPACs are anticipated to continue grow in popularity. As the volume of such transactions increases, this particular case stands as an important reminder to company executives and compliance professionals that they should consider conducting thorough due diligence and ensuring the accuracy of statements made for purposes of soliciting investor funds.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Ron Miller at ronnie.miller@btlaw.com or 202-408-6923 or Brian Weir-Harden at brian.weir-harden@btlaw.com or 317-231-6424.