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Via Email: rule-comments@sec.gov
Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549-1090

Re: Release No. 34-61414; File No. S7-04-10

Dear Ms. Murphy:

We hereby respectfully submit our concerns with respect to the proposal by the Securities and Exchange Commission ("SEC" or "Commission") to extend the "merger exclusion" period as prescribed under Rule 10b-18 ("Rule 10b-18") as it relates only to SPACs (the "SPAC Merger Exclusion Extension"). The proposed SPAC Merger Exclusion Extension would add a provision to Rule 10b-18 that extends the time in which the safe harbor is unavailable in connection with a SPAC acquisition until the completion of the vote by the SPAC shareholders rather, than as currently provided for all other M&A activity of public companies, to apply only up until the time of the target's shareholder vote. The intended impact of the proposed rule, however, would be to preclude SPACs from the current statutory privileges of the safe harbor of Rule 10b-18 in connection with open market purchases designed to facilitate a business combination, but which purchases would have little, if any, potentially manipulative effect or undue influence on the market valuation of a SPAC's common stock. Therefore, as Rule 10b-18 focuses on open market purchases designed to manipulate the market valuation of an issuer's common stock, and not activity designed to facilitate the consummation of a business combination where the market valuation of an issuer's common stock is not being manipulated, we believe that the Commission's proposal to amend Rule 10b-18 to incorporate the SPAC Merger Exclusion Extension would limit the application of the merger exclusion beyond its intended application.

While we certainly accept the SEC's observations that the proposed rule change to Rule 10b-18 would have minimal practical impact on the SPAC acquisition process, we nonetheless do not agree with the contextual framework for the rule change nor the policy considerations for enacting a time period extension exclusive to SPACs. As support for the proposal for the SPAC Merger Exclusion Extension, the Commission cites the 1982 Adopting Release that "Rule 10b-18's safe harbor conditions are designed to minimize the market impact of the issuer's purchases, thereby allowing the market to establish a security's price based on independent market forces without undue influences by the issuer." As the Commission noted in its proposed release, the primary purpose of 10b-18 purchases by a SPAC and/or its affiliates is not designed to manipulate the price of the SPAC's common stock but to facilitate the proposed business combination by transitioning (i.e. purchasing) the shares of a holder disinclined to support the transaction, who simply is seeking to have a return of capital, to a new holder who is prepared to make a more fundamental investment. The only purchasing activity we have been made aware of by a SPAC or an affiliate during our years of involvement in SPAC acquisitions, including the pre-arranged 10b5-1 plans, have been designed to either (i) demonstrate further SPAC and/or sponsor financial commitment to the transaction, or (ii) enhance the likelihood of an approved business combination for the benefit of all constituents (i.e. the shareholders, the sponsors and the targets) -- and not to manipulate the price of stock.

As support for the SPAC Merger Exclusion Extension, the Commission points out that due to structural realities of a SPAC, both the sponsor of a SPAC and its underwriter, are incentivized to cause a business combination to be achieved, otherwise the sponsor's equity is worthless and the underwriter will not be entitled to certain deferred compensation. We acknowledge that the primary purpose of the structure of a SPAC is designed with the intention of incentivizing the constituent parties to close a business combination. Where we differ is whether there is actual causation between the structural incentives of a SPAC and any concern for price manipulation. We believe that the SPAC acquisition process is meaningfully different from the situation referenced by the Commission with respect to its concerns relating to Paragraph (a)(13)(iv). In those situations it would seem that the original policy considerations of Rule 10b-18 were implicated, as "the Commission adopted this modified provision of Rule 10b-18 out of concern for issuer activity designed to facilitate a merger, which had been highlighted by news articles suggesting that banks repurchased their respective securities in order to boost their stock price to enhance the value of their competing merger proposals. At that time, the concern about issuer's facilitating corporate actions was on raising the market price of an issuer's stock in order to facilitate the merger or acquisition in a contested takeover." Different than in those situations where the economic terms of the transaction may be directly impacted, most 10b-18 purchases by a SPAC or its affiliates would be to cause the actual voting tally to change and not to manipulate the price of the SPAC's stock as a means to alter the business terms of the transaction.

Given the unique trust mechanics of all SPACs, whereby nearly all **(98%+)** of the original IPO proceeds are invested in United States Treasuries on behalf of the public shareholders pending a business combination, our understanding of the trading activity of SPACs for the last few years during the period subsequent to announcement of the proposed business combination and up to and through the shareholder vote of the SPAC has shown modest comparative trading ranges unlike most other public companies. Since investors know what the liquidation value of the trust is, there is no reason for the stock (which is merely a proxy for the pro rata entitlement of the shareholder), to trade meaningfully differently from or at a discount to that amount, particularly with the introduction of "exploding charters"[1] which get the return of funds back into the hands of investors more quickly. Interestingly though, if the common stock of the SPAC were to trade up on the announcement of the proposed transaction, then there wouldn't be a need for the SPAC or its affiliates to avail themselves of Rule 10b-18 in all likelihood.

While we understand the Commission's desire to update certain portions of Rule 10b-18 to reflect market developments regarding purchasing conditions, we believe that SPACs should not be excluded from the safe-harbor of Rule 10b-18 regarding open market purchases if such purchases have no manipulative effect on the market valuation of a SPAC's common stock. We recommend that the SEC reconsider the proposal, especially the SPAC Merger Exclusion Extension, in light of the reasons we have offered.

Very truly yours,

Ellenoff, Grossman & Schole LLP

[1] An "exploding charter" is a mechanism used by SPACs to limit their corporate existence. A SPAC's charter document will typically provide that the SPAC has a finite period of time (generally 12 to 36 months) following the consummation of its initial public offering to close a business combination. If the SPAC is unable to close upon its business combination during the finite period, its corporate power will terminate and the SPAC will be required to liquidate the proceeds of its trust account to its public holders.