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Secretary (rule-comments@sec.gov)
Securities and Exchange Commission
100 F Street
NE
Washington
DC 20549-1090

December 31st, 2021

File number: SR-NYSE-2021-45

Dear Secretary,

I am writing in my position as Fund Manager at Odey Asset Management LLP, which, through funds under its discretionary management, at December 31st, 2021, held a position equivalent to 189,260 common stock of Pershing Square Tontine Holdings "PSTH", a Special Purpose Acquisition Company or "SPAC", and 523,062 warrants of PSTH[1]. I write to you also as the manager of the Odey Special Situations Fund which is the fund owning the PSTH position, and as a specialist in merger and acquisition situations including such situations as those likely to be targeted by the PSTH SPAC and the prospective PSTH Special Purpose Acquisition Right Company or "SPARC".

The purpose of this letter is to provide you with our response to the announcement by the Securities and Exchange Commission on December 8th 2021, inviting the written views of interested persons concerning Section 6(b)(5)39 of the Exchange Act, and regarding proceedings to determine whether to approve or disprove a proposed rule change to adopt listing standards for subscription warrants issued by a company organised solely for the purpose of identifying an acquisition target.

In summary, our contention and as detailed in this letter is that a rule change in favour of subscription warrants will improve investor protection and the public interest relating to situations where a corporate is seeking an equity market listing and in comparison to the alternative routes to market listing which, as detailed, may have significantly greater conflicts of interest. On the same basis, we would furthermore add that the rule change should lead to a beneficial increase in the competitive advantage held by US securities markets relative to their international peers.

Whilst we would advocate that the rule change does include provisions for the requirement for a registration statement, a minimum market capitalisation, and a minimum sponsor subscription commitment – all provisions designed to further protect investors and the public interest; our contention is that the rule change, complete with these provisions, should be allowed.

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The reasoning that has led to our conclusion is detailed in the remainder of this letter and is structured into two sections.

Section 1 summarises how the subscription warrant structure that has been proposed, in our view, remedies many of the inefficiencies and conflicts embedded within the other routes to market for a corporate seeking listing and to which the subscription warrants must be compared, namely the IPO route and the SPAC route.

Section 2 responds to each of the three primary concerns laid out in the SEC announcement, relating to whether the proposed rule change is sufficiently designed to:

- prevent fraudulent and manipulative acts and practices,
- promote just and equitable principles of trade, and
- protect investors and the public interest,

as required by Section 6(b)(5) of the Exchange Act, and are each addressed in turn.

Section 1. The subscription warrant proposal as a remedy to many of the inefficiencies and conflicts embedded within the other routes to market listing

1a. Both the IPO and the orthodox SPAC routes to market listing contain inefficiencies within their design features that potentially incentivise manipulative or unequitable acts

With regard to the protection of investors and the public interest it is instructive to note that both the orthodox IPO and SPAC routes to market listing contain inefficiencies within their design features that potentially incentivise manipulative or unequitable acts, and therefore a new route to market listing – namely the proposed subscription warrants – must be considered in comparison to these alternatives.

Regarding the IPO route to an equity market listing, public disclosures have revealed the traditional IPO process as being structured such that underwriters may conceal their incentive to under-price the listing company, because what the underwriter loses in their direct underwriting fee from a lower priced offering the underwriter can then gain through demanding increased trading commissions from those clients it privileged with an allocation to the lowly priced offering[2]. To put it another way, the common significant upward "pop" in a share price post an IPO event is not necessarily a desirable outcome from the perspective of the corporate that has just listed, because it indicates they could have sold equity at a significantly too low valuation. This outcome may however be a desirable scenario for the underwriting investment bank, because it can demand increased trading commissions from those clients it granted the IPO allocation to.

SPACs, whilst offering corporates an alternative to the conflicts within the IPO process, also however come with their own collection of handicaps, and handicaps that may potentially incentivise manipulation. For the SPAC structure, before announcing a transaction, capital must first be raised and held in a listed trust, and as such this initial SPAC listing is an IPO event. The initial SPAC IPO faces the standardised costs in terms of a roadshow to investors, preparation of the IPO filing documentation, and the IPO fee for a SPAC listing is normally 5.5% of the value of the total monies raised. SPAC subscribers to the IPO also receive a redemption right normally at the same price of their IPO subscription. That the SPAC as such offers its holders a scenario for redemption of monies raised by the IPO means that the costs of the IPO, which are, as noted, 5.5% of the capital raised, cannot be borne by

the IPO proceeds as, if they were, only 94.5% of the monies raised at the IPO could be returned to subscribers and the premise of the SPAC would then fail.

Therefore, the funding for the 5.5% IPO expense needs to come from the SPAC's sponsor, and to remunerate the sponsor for this up-front cost the SPAC structure provides to the sponsor, sponsor warrants, which, in the scenario the proposed merger is voted through and the share price rises, can be highly accretive. The problem with this structure from the perspective of the corporate is that the equity dilution from the sponsor warrants can go as high as 15%-25% of the SPAC monies raised versus the comparable listing fees of 5%-7% for a regular corporate IPO[2]. The SPAC sponsor's outsize possession of warrants through this structure also incentivises the sponsor to target the acquisition of higher risk business models, with more volatile equity, an incentivisation that may lead to manipulative or unequitable outcomes for the public market investor and a conflict of interest which is often not clearly explained in SPAC disclosures.

1b. The proposed subscription warrant structure potentially reduces the conflicts of interest inherent in both the IPO and SPAC routes to market listing

The significant attraction of the subscription warrant structure is that it reduces the conflicts of interests embedded within the traditional IPO process, and that it also reduces the magnitude of the corporate equity dilution trajectory that handicaps the SPAC listing process.

It is because successor subscription warrants will be issued at no cost to current subscription warrant holders that there is an evergreen structure with no continuing "IPO cost"[3], apart from initial listing, that would otherwise need to be clawed back through the excessive and additional warrant dilution characteristics of the equivalent SPAC listing process.

This increased financial efficiency means that the subscription warrants, acting also as a standalone entity that is not part of a larger investment bank offering other services such as trading, should additionally not suffer from the conflict embedded within the traditional IPO process. The conflict within the traditional IPO process is its structure is such that underwriters may conceal their incentive to under-price the listing company because what the underwriter loses in their direct underwriting fee from a lower priced offering the underwriter can then gain through other services such as increased trading commissions from those clients it privileges with allocation.

In comparison to the SPAC listing route, the proposed subscription warrants also offer significant other efficiency improvements including – no up front capital requirement, no timeline limitation, and no deal size rigidity (through a subscription warrant's variable subscription amount once a deal is announced)[4], all of which, by lowering the frictional cost within the structure, should commensurately lower the incentivisation for the types of manipulation that can impair investor protection and the public interest.

In the case of Pershing Square's subscription warrant proposal, there will still be an award to Pershing Square, as sponsor, on consummation of a merger transaction, yet it is fixed at 4.95% of the subscription monies raised[5]. This is a transparent cost which aligns Pershing Square's outcomes to the public market investor holding the subscription warrant. This cost is also lower than both other routes to a market listing.

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Section 2. The subscription warrant proposal in relation to each of the three primary concerns laid out in the SEC announcement

2a. Regarding the stated concern in the SEC announcement that a rule change in favour of subscription warrants and may incentivise manipulative acts and practices

The SEC announcement states that the proposed rule change does not explain how the risk that the price of subscription warrants could be manipulated would be addressed. The announcement also notes in this regard that the price of subscription warrants would appear to be particularly susceptible to rumors about potential acquisition targets and the terms of potential transactions.

We agree with the premise of the concern, that, whilst attempts to manipulate securities involved in mergers and acquisitions would be an example of market abuse, which is already prohibited under Section 9(a)(2) of the Securities Exchange Act of 1934, the design of new financial market securities should not heighten the incentivization for bad actors to breach the provisions of this act.

However, as so far detailed in this letter, our observation is that the design of subscription warrants reduces incentives for manipulation and investor harm in comparison to the alternative routes to market listing namely the IPO route and the SPAC route.

With regard to the specific concern as to the manipulation of securities prospectively involved in mergers and acquisitions – this potential for manipulation exists for many security types, including, in cases where manipulation may have high magnitude outcomes: common stock in emergent technology companies, common stock in highly leveraged companies, common stock in companies emerging from bankruptcy restructuring, and for the existing case of warrants relating to SPACs. Whilst it may be the case that subscription warrants could also targeted by bad actors attempting manipulation, that subscription warrants may be targeted in this way would not make them unique, and likewise a proposed rule change should not receive a unique dismissal on the basis of possessing a non-unique attribute.

2b. Regarding the stated concern in the SEC announcement that a rule change in favour of subscription warrants should not exclude the requirement for a registration statement

Regarding the stated concern in the SEC announcement that a rule change in favour of subscription warrants should also not exclude the requirement for a registration statement at the time of deal announcement, we would agree that this requirement should be imposed.

In practice, given the subscription warrant structure is “opt-in” in nature requiring holders to vote in favour of a transaction in order for their capital to be subscribed, the absence of a registration statement would most likely lead to the failure to raise funds for the transaction, given without registration, investors will not have the protections of the private liability provisions of the Securities Act.

Nevertheless, the critical and advantageous feature of the subscription warrants, in comparison to the SPAC, is that its more efficient financial design is coincident with other features that lower conflicts of interest. However, the remaining features of the SPAC process of listing, including shareholder protections such as registration statements, should remain unchanged. In other words the evolution from SPAC to subscription warrants should be only through the addition of the subscription warrant’s features that benefit investors and the public interest, and without removal of features whose removal would work against investors and the public interest.

2c. Regarding the stated concern in the SEC announcement that a rule change in favour of subscription warrants should not create an asset that investors have difficulty in valuing

An additional concern identified by the SEC announcement is how market participants would effectively value subscription warrants, and therefore whether they would trade consistent with fair and orderly markets and the protection of investors and the public interest.

Broadly speaking, investors should value subscription warrants using a similar methodology to that used for their SPAC predecessors, with the only difference that the SPAC valuation would be capital held by trust + value of the SPAC warrant if capital is not redeemed (and so capital which is thereby subscribed), whereas the subscription warrant valuation would solely be the warrant value in the scenario that capital is subscribed.

Therefore, because the valuation approach required for the subscription warrants is already a component of the valuation approach used by investors in valuing a SPAC, it would be reasonable to contend that the introduction of subscription warrants would not present a meaningful new valuation challenge to investors.

2c(i). The option component of the subscription warrant valuation approach

A Black Scholes modelling approach will be applied by most market participants in considering the option value present for both a SPAC or subscription warrant valuation. An important differentiator of the subscription warrants from their predecessor SPAC warrants however is that the subscription warrants have a much longer duration than SPAC warrants and this significantly accretes upward the subscription warrant valuation.

For example, a change in the duration from the 6 months remaining in the case of the PSTH SPAC warrant, to the 10 years indicated for the PSTH subscription warrant, uplifts the warrant value by approximately 7x, according to Odey modelling and assuming other standardised Black Scholes inputs.

A further adjustment to value the subscription warrants is required because in comparison to the SPAC structure which is “one off” in nature, the subscription warrants are evergreen in nature – in that once the first transaction is announced the sponsor can issue a new successor warrant for free to existing warrant holders in lieu of the next transaction.

As such the subscription valuation needs to include the valuation of a stream of successor warrants, and an assumption is therefore required of time period between each deal (conservatively the Odey modelling design assumes 3 years, in comparison to the traditional SPAC timeline of 2 years) and an annual discount factor to represent both the time value of money and the execution risk of a multi-year series of identifying and consummating merger transactions (conservatively we assume an annual discount factor of 15%). These additional valuation inputs uplift the subscription warrant valuation further.

So long as clear disclosures are made as to the design of the subscription warrant structure, we would not envisage that market participants would be handicapped by a valuation challenge any more than they would be by other warrants such as the SPAC warrants already listed on financial market exchanges.

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2c(ii). The deal accretion component of the subscription warrant valuation approach

An additional variable when considering the valuation approach for the subscription warrant, similar to the valuation approach used for a SPAC, is a judgement as to whether the sponsor of the subscription warrant is likely to be able to conduct an accretive deal. The impact of an accretive deal can be combined with Black Scholes modelling to uplift the estimated post-deal announcement trading price that the underlying option refers to.

In context of this valuation aspect and in order to raise the quality of the subscription warrant's corporate sponsor and further reduce scenarios of market manipulation, we would support several provisions of the subscription warrant design. Firstly, and as is already proposed, we would advise in favour of not only a minimum market capitalisation but also a maximum share count and that this is struck at a level that would disallow "penny trading" levels of the subscription warrants (by inference, because the combination of both a market capitalisation requirement and maximum share count will also define a minimum price for the subscription warrants).

Additionally, we would recommend that there is a minimum mandatory and significant subscription requirement by the sponsor once the subscription warrant announces a transaction. This second feature would disincentivise those non-blue chip sponsors with more speculative business approaches from targeting subscription warrants as an investment security type for sponsorship, as they would face a significant capital commitment requirement themselves.

With such measures in place, in particular a minimum market capitalisation and a minimum sponsor capital commitment, subscription warrant sponsors will be more likely to be established investment groups with publicly disclosed track records.

For example, Pershing Square's long term track record, as disclosed by its listed trust Pershing Square Holdings, reveals an attractive capital allocation competency in delivering returns of 16.9% annualised net of fees over 16 years[6]. The presence of such a track record not only lowers the need for the subscription warrant public markets investor to rely on speculative assumptions, but also thereby also lowers the probability of the public markets investor being exploited by bad actors targeting manipulation.

Please note these views reflect those of the manager of the Odey Special Situations Fund and should not be ascribed to those held by the Odey Asset Management LLP or its affiliated companies.

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Footnotes

1. Odey holdings as at month end December 2021. Source, Odey internal systems

2. Listing fees are 5-7% of monies raised for a regular corporate IPO [link]

3. "*People get the current warrant for free and then a successor warrant in addition to the potential value of the next transaction. So, we think really interesting structure.. the benefit of this structure is we'll always have an evergreen entity that we can use to complete a transaction*." Bill Ackman, Pershing Square Holdings conference call transcript, November 18th 2021

4. "*At $10, that means we'd raise $2.4 billion from the public. At $20, we'd raised $4.8 billion from the public.. we [actually] have total flexibility to pursue transactions of really any size. So, no underwriting fees, no upfront costs, no opportunity cost of capital, the ability to tailor-make the transaction size, and we think this will make for a very, very interesting entity..*" Bill Ackman, Pershing Square Holdings conference call transcript, November 18th 2021

5. Pershing Square SPARC Holdings, S-1 Registration Statement [link]

6. Pershing Square's long term track record 16.9% annualised net of fees over 16 years [link]