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December 21, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Rule 419 and Rule 3a51-1

We are a law firm regularly engaged by issuers or underwriters in connection with initial public offerings ("IPO") by a type of blank check company referred to as "a 'special purpose acquisition company,' or SPAC, for short."[1] In this capacity, we are requesting the Commission to adopt amendments to rules applicable to SPAC IPOs to permit SPACs to conduct public offerings on a best-efforts basis.

Background

"A SPAC is created specifically to pool funds in order to finance a merger or acquisition opportunity within a set timeframe. The opportunity usually has yet to be identified."[2]

Pursuant to Securities Act Sec. 7(b), the Commission adopted Rule 419, which imposes special rules for registration of offerings by blank check companies that issue "penny stock," as defined in Exchange Act Rule 3a51-1. Subsection (g) of that rule excludes from the definition of penny stock equity securities issued by an issuer with net tangible assets exceeding $5,000,000, "demonstrated by financial statements dated less than 15 months prior to the date of the transaction… ."

In 1993, in Release No. 33-7024; 34-33095, the Commission stated that an issuer that otherwise would be subject to Rule 419 is permitted to aggregate the proceeds of a firm commitment underwriting with its other tangible assets, solely to determine whether the offered security must comply with comply with Rule 419, provided that, promptly after the closing date, the issuer files on Form 8-K an audited balance sheet reflecting net tangible assets exceeding the $5 million threshold set forth in Rule 3a51-1. SPACs, which are capitalized, initially, only with sufficient funds to fund the IPO process and other limited operating expenses, rely on this exception in conducting their registered offerings, but a registered SPAC offering conducted on

[1] https://www.investor.gov/introduction-investing/investing-basics/glossary/blank-check-company . As described below, SPACs generally avoid treatment as a "blank check company," as defined in Securities Act Rule 419.
[2] *Id*.

a best-efforts basis is not covered by the exception. A tabular comparison of a typical SPAC structure with a Rule 419-compliant offering is attached.

Rationale for request

We believe that the SPAC IPOs are very different from the blank-check offerings with which the Commission's 1993 release was concerned. SPAC offerings have become a recognized, legitimate form of financing, in which smaller to the largest investment banks engage. Market participants are very familiar with SPAC structures and economics, which have become essentially standardized, and, with the guidance of Commission staff, uniformly contain robust investor protections. In addition, since 1993, FINRA has clarified the significant due diligence obligations of broker-dealers (*See, e.g.*, FINRA Regulatory Notice 10-22, https://www.finra.org/rules-guidance/notices/10-22), and placement agents in best-efforts offerings are compelled to conduct the same level of due diligence as underwriters in firm-commitment offerings.

Consequently, the SPAC market has matured. SPACs generally list on The New York Stock Exchange or Nasdaq upon completion of their IPOs. According to SPACInsider data, https://spacinsider.com/stats/, between 2009 and 2020, to date, more than $83 billion has been raised in 317 SPAC IPOs. In 2019, 59 IPOs, with average proceeds of $230.5 million, raised a total of $13.6 billion, and, to date, in 2020, $36.2 billion has been raised in offerings averaging $397.5 million. Given the size of the transactions and reputations of SPAC market participants, we believe that the SPAC market is not susceptible to the fraud and manipulation that required adoption of Rule 419 and related rules.

Rule 419 offerings vs. SPAC IPOs

Rule 419(b) requires all securities issued in connection with a blank check offering subject to the Rule to be deposited into escrow, along with the offering proceeds, until an acquisition meeting the requirements of Rule 419(e) is consummated, or, if such an acquisition is not accomplished within 18 months after effectiveness of the initial registration, the offering proceeds must be returned to purchasers. Pursuant to Exchange Act Rule 15g-8, the securities in escrow cannot be sold, except in very limited circumstances.

SPACs generally place 100% of IPO proceeds (and sometimes in excess of 100%) in a trust account for the benefit of the SPACs' public stockholders. In connection with a business combination, all public stockholders can elect to redeem their shares in exchange for their pro-rata portions of the funds held in trust, instead of remaining as stockholders. If a business combination is not completed within a period, typically two years, after the IPO closes, the trust funds are disbursed to the public stockholders.

In a best-efforts, all-or-none offering, no securities would be issued unless a minimum dollar amount of securities are sold within a specified period, *e.g.*, 60 days, following effectiveness, and, pending meeting the threshold or expiration of the offering period, offering proceeds would be held in escrow, pursuant to Exchange Act Rule 15c2-4. If the threshold is met, the offered securities would be released to investors, and the securities would trade pending consummation of, or expiration of the period for completing, a qualifying acquisition.

The Rule 419 escrow requirement applies to both firm commitment and best-efforts offerings, s*ee, e.g.*, Note 1 to Rule 419(e). Accordingly, we believe that there is no reason to distinguish between a best-efforts SPAC offering and a firm-commitment SPAC offering or a Rule 419-compliant offering based upon when trading in the securities begins.

Conclusion

Given the maturity and strength of the SPAC market, we believe it unnecessary to restrict or prevent trading in SPAC securities following the closing of a best-efforts offering, as would be required in the case of either a best-efforts or firm-commitment Rule 419-compliant offering. Rather, following closing of a SPAC best-efforts IPO, the SPAC's securities should be allowed to trade in the same manner as if they had been sold in a firm commitment underwriting, as there would be no difference between the operations of SPACs that have gone public via either form of offering.

Mitchell Nussbaum, Loeb & Loeb LLP, mnussbaum@loeb.com, 212-407-4159, or Giovanni Caruso, Loeb & Loeb LLP, gcaruso@loeb.com, 212-407-4866 would be pleased to discuss the subject of this petition if the Commission so wishes.

Cordially,

Loeb & Loeb LLP

	Terms of the Offering	Terms Under a Rule 419 Offering
Escrow of offering proceeds	Generally 100% of the net offering proceeds are deposited into a trust account.	90% of the offering proceeds, after expenses, would be required to be deposited into either an escrow account with an insured depositary institution or in a separate bank account established by a broker-dealer in which the broker-dealer acts as trustee for persons having the beneficial interests in the account.
Investment of net proceeds	The net offering proceeds are only invested in United States government treasury bills, bonds or notes with a maturity of 185 days or less or in money market funds meeting the applicable conditions under Rule 2a-7 promulgated under the Investment Company Act of 1940 and that invest solely in United States government treasuries.	Proceeds could be invested only in specified securities such as a money market fund meeting conditions of the Investment Company Act of 1940 or in securities that are direct obligations of, or obligations guaranteed as to principal or interest by, the United States.
Limitation on fair value or net assets of target business	The initial target business must have a fair market value equal to at least 80% of the balance in the trust account net of taxes payable at the time of the execution of a definitive agreement.	The target businessmust have a fair value of at least 80% of the maximum offering proceeds.
Trading of securities issued	The units may commence trading on or promptly after the date of the prospectus. The shares of common stock and warrants comprising the units generally begin to trade separately prior to the 90th day after the date of the prospectus.	No trading of the units or the underlying securities is permitted until the completion of a business combination. During this period, the securities must be held in an escrow or trust account.
Exercise of the warrants	The warrants cannot be exercised until the completion of a business combination and, accordingly, will be exercised only after the trust account has been terminated and distributed.	The warrants could be exercised prior to the completion of a business combination, but securities received and cash paid in connection with the exercise would be deposited in the escrow or trust account.
Election to remain an investor	Stockholders would be given (1) the opportunity to vote on the business combination or (2) the opportunity to sell their public shares to the SPAC in a tender offer for cash equal to their *pro rata* share of the aggregate amount	A prospectus containing information required by the SEC would be sent to each investor. Each investor would be given the opportunity to notify the company, in writing, within a period of no less than 20 business days and no more than 45 business days from the

	then on deposit in the trust account, less taxes.	effective date of the post-effective amendment, to decide whether he or she elects to remain a stockholder of the company or require the return of his or her investment. If the company has not received the notification by the end of the 45th business day, funds and interest or dividends, if any, held in the trust or escrow account would automatically be returned to the stockholder. Unless a sufficient number of investors elect to remain investors, all of the deposited funds in the escrow account must be returned to all investors and none of the securities will be issued.
Business combination deadline	Generally, SPACs have up to 24 months from the consummation of the offering to complete a business combination, after which funds held in the trust or escrow account would be returned to investors.	If an acquisition has not been consummated within 18 months after the effective date of the initial registration statement, funds held in the trust or escrow account would be returned to investors.
Interest earned on the funds in the trust account	Generally SPACs can have released to them prior to a business combination out of interest earned on the funds in the trust account (i) amounts needed to pay its tax obligations and (ii) a certain amount of funds to meet the SPACs working capital requirements. The remaining interest earned on the funds in the trust account may not be released until the earlier of the completion of a business combination and our entry into liquidation upon failure to effect a business combination within the allotted time.	All interest earned on the funds in the trust account will be held in trust for the benefit of public stockholders until the earlier of the completion of a business combination and our liquidation upon failure to effect a business combination within the allotted time.
Release of funds	Except for interest earned on the funds held in the trust account as described above, the proceeds held in the trust account will not be released until the earlier of the completion of a business combination and the liquidation of the trust account upon failure to effect a business combination within the allotted time.	The proceeds held in the escrow account would not be released until the earlier of the completion of a business combination or the failure to effect a business combination within the allotted time.