

## SEC Brings Enforcement Action Against All Sides of a Proposed SPAC Transaction for Misleading Disclosures

The Securities and Exchange Commission (SEC) continues to scrutinize special purpose acquisition company (SPAC) transactions. On July 13, 2021, the SEC announced its first enforcement action in which all sides of a proposed SPAC transaction were targeted. In this action, the SEC brought charges against the SPAC (Stable Road Acquisition Company), the SPAC sponsor (SRC-NI), the SPAC's CEO (Brian Kabot), the SPAC's proposed merger target (Momentus Inc., an early-stage transportation company), and the merger target's founder and former CEO (Mikhail Kokorich). The action focused on misleading claims about Momentus's technology and about national security risks associated with Kokorich.

The SEC's litigation proceeding against Kokorich is ongoing but the other defendants have settled with the SEC with terms including total penalties of more than \$8 million, tailored investor protection undertakings, and the SPAC sponsor's forfeiture of founder's shares it was expected to receive if the merger (which is scheduled for August 2021) is approved.

According to the SEC's order, Kokorich and Momentus repeatedly told investors that it had "successfully tested" its propulsion technology in space, when its only in-space test had failed to achieve its primary objectives or demonstrate the technology's commercial viability. The SEC also alleged that Momentus and Kokorich misrepresented the extent to which national security concerns involving Kokorich undermined Momentus's ability to secure governmental licenses essential to its operations. The SEC also accused Stable Road, its sponsor, and Kabot of failing to meet their due diligence obligations to investors, which led to filing inaccurate registration statements and proxy solicitations.

According to SEC Chair Gary Gensler: "Stable Road, a SPAC, and its merger target, Momentus, both misled the investing public. The fact that Momentus lied to Stable Road does not absolve Stable Road of its failure to undertake adequate due diligence to protect shareholders." This action illustrates that the SEC will hold SPACs and SPAC sponsors accountable for conducting due diligence in SPAC transactions and ensuring accurate disclosures. SPAC transactions can provide certain advantages over traditional initial public offerings such as a quicker path to becoming a public company and lower costs of marketing. It is important, however, for all involved in SPAC transactions, to exercise due diligence and engage knowledgeable advisers in the process.



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