# Over 55 of the Nation's Leading Law Firms Respond to Investment Company Act Lawsuits Targeting the SPAC Industry

**August 30, 2021**

Recently a purported shareholder of certain special purpose acquisition companies (SPACs) initiated derivative lawsuits asserting that the SPACs are investment companies under the Investment Company Act of 1940, because proceeds from their initial public offerings are invested in short-term treasuries and qualifying money market funds.

Under the provision of the 1940 Act relied upon in the lawsuits, an investment company is a company that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

SPACs, however, are engaged primarily in identifying and consummating a business combination with one or more operating companies within a specified period of time. In connection with an initial business combination, SPAC investors may elect to remain invested in the combined company or get their money back. If a business combination is not completed in a specified period of time, investors also get their money back. Pending the earlier to occur of the completion of a business combination or the failure to complete a business combination within a specified timeframe, almost all of a SPAC's assets are held in a trust account and limited to short-term treasuries and qualifying money market funds.

Consistent with longstanding interpretations of the 1940 Act, and its plain statutory text, any company that temporarily holds short-term treasuries and qualifying money market funds while engaging in its primary business of seeking a business combination with one or more operating companies is not an investment company under the 1940 Act. As a result, more than 1,000 SPAC IPOs have been reviewed by the staff of the SEC over two decades and have not been deemed to be subject to the 1940 Act.

The undersigned law firms view the assertion that SPACs are investment companies as without factual or legal basis and believe that a SPAC is not an investment company under the 1940 Act if it (i) follows its stated business plan of seeking to identify and engage in a business combination with one or more operating companies within a specified period of time and (ii) holds short-term treasuries and qualifying money market funds in its trust account pending completion of its initial business combination.[1]

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[1] Certain of these law suits also claim that personnel of the SPAC sponsor are acting as unregistered investment advisers under the Investment Advisers Act of 1940 by advising on the SPAC business combination (which the plaintiff incorrectly asserts constitutes advice as to investing in, purchasing, or selling securities). The law firms listed herein also view this claim as without legal basis and do not believe that such personnel or the SPAC sponsor are unregistered investment advisers.

Akin Gump Strauss Hauer & Feld LLP
Arnold & Porter
Baker & McKenzie LLP
Baker Botts LLP
Blank Rome LLP
Cadwalader, Wickersham & Taft LLP
Cleary Gottlieb Steen & Hamilton LLP
Clifford Chance US LLP
Cooley LLP
Covington & Burling LLP
Cravath, Swaine & Moore LLP
Crowell & Moring LLP
Davis Polk & Wardwell LLP
Debevoise & Plimpton LLP
DLA Piper LLP (US)
Ellenoff Grossman & Schole LLP
Eversheds Sutherland (US) LLP
Fenwick & West LLP
Freshfields Bruckhaus Deringer US LLP
Fried, Frank, Harris, Shriver & Jacobson LLP
Gibson, Dunn & Crutcher LLP
Goodwin Procter LLP
Graubard Miller
Greenberg Traurig, LLP
Hogan Lovells US LLP
Hughes Hubbard & Reed LLP
Katten Muchin Rosenman LLP
King & Spalding LLP
Kirkland & Ellis LLP
Kramer Levin Naftalis & Frankel LLP
Latham & Watkins LLP
Loeb & Loeb LLP
Mayer Brown LLP
McDermott Will & Emery LLP
Milbank LLP
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Morgan, Lewis & Bockius LLP
Nelson Mullins Riley & Scarborough LLP
Orrick, Herrington & Sutcliffe LLP
Paul Hastings LLP
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Perkins Coie LLP
Proskauer Rose LLP
Reed Smith LLP
Ropes & Gray LLP
Schiff Hardin LLP
Shearman & Sterling LLP
Sidley Austin LLP
Simpson Thacher & Bartlett LLP
Skadden, Arps, Slate, Meagher & Flom LLP
Sullivan & Cromwell LLP
Vinson & Elkins LLP
Wachtell, Lipton, Rosen & Katz
Weil, Gotshal & Manges LLP
White & Case LLP
Willkie Farr & Gallagher LLP
Wilmer Cutler Pickering Hale and Dorr LLP
Winston & Strawn LLP



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