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

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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

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- 1 Certain of these lawsuits 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. ^

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