

January 26, 2022

Delaware Court of Chancery Issues Its First Fiduciary Duty Opinion on SPACs

“Misalignment of Interests” Between Sponsor and Stockholders a Source of Legal Risk for Directors of SPACs

On January 3, 2021, in *In re MultiPlan Corp. Stockholders Litigation*,¹ the Delaware Court of Chancery denied a motion to dismiss a complaint brought by SPAC stockholders against the SPAC, its sponsor and its directors. Plaintiffs alleged that defendants breached their fiduciary duties in connection with the de-SPAC transaction by issuing a false and misleading proxy statement that failed to disclose the impending loss of the target’s largest customer, which led to a significant drop in stock price following the de-SPAC transaction.

Notably, the Court held that the entire fairness standard of review would apply to assess the sponsor’s and board’s conduct because the SPAC’s structure created a “misalignment of interests” between the controlling sponsor and its hand-picked board on the one hand and the SPAC’s Class A public stockholders on the other.² The structure at issue was fairly typical—the Class A stockholders bought their stock for \$10.00 per share but could redeem it at that price (plus interest) at the time of a de-SPAC transaction, whereas the sponsor and board members received Class B “founder shares” for nominal consideration, which would convert into non-redeemable Class A shares at a one-to-one ratio, but only if the SPAC successfully consummated a de-SPAC transaction within a two-year window.³ The Court reasoned that the structure created an incentive for the sponsor and board to do any deal, even at less than fair value, because their founder shares would be worthless absent a de-SPAC transaction, whereas it only made sense for the Class A stockholders to approve a deal and not redeem if the transaction could provide more than \$10.00 per share in value.⁴ As for whether a breach of fiduciary duty had been pled, the court found that, even though the SPAC transaction documents did not specifically state that the sponsor and board had a fiduciary duty of disclosure, one generally exists under Delaware law and therefore applied absent a specific

SULLIVAN & CROMWELL LLP

rejection of such a duty in the SPAC agreements, which did not exist.⁵ The Court thus concluded that, at the pleading stage—where pleadings are entitled to every benefit of the doubt—it could not state that the disclosure was complete and the de-SPAC transaction entirely fair.⁶

Notably, the Court rejected the defendants' argument that entire fairness should not be triggered and the case dismissed because the SPAC's structure "was not unique to the [a]cquisition," but instead was a "structural feature" of any de-SPAC transaction.⁷ "That this structure has been utilized by other SPACs does not cure it of conflicts."⁸ However, the Court emphasized that the claims survived dismissal because the complaint adequately alleged disclosure deficiencies, "not simply because of the nature of the transaction or resulting conflicts."⁹ "If public stockholders, in possession of all material information about the target, had chosen to invest rather than redeem, one can imagine a different outcome."¹⁰

* * *

ENDNOTES

- 1 2022 WL 24060 (Del. Ch. Jan. 3, 2022).
- 2 *Id.* at *17.
- 3 *Id.* at *3.
- 4 *Id.* at *17–18.
- 5 *Id.* at *14.
- 6 *Id.* at *21.
- 7 *Id.* at *19.
- 8 *Id.*
- 9 *Id.* at *22.
- 10 *Id.*

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.