

CLIENT ALERT

SEC Brings SPAC Enforcement Action against SPAC, Target, and CEOs for Misleading Statements

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On July 13, 2021, the Securities and Exchange Commission announced charges and a settlement involving special purpose acquisition corporation (“SPAC”) Stable Road Acquisition Company (“Stable Road”); its sponsor SRC-NI Holdings, LLC (“SRC-NI”); Stable Road’s CEO and SRC-NI managing member Brian Kabot; the SPAC’s proposed merger target company Momentus Inc. (“Momentus”); and Momentus’s former CEO Mikhail Kokorich for making misleading claims about Momentus’s technology and national security concerns relating to Kokorich.¹ All parties have settled except Kokorich.²

Target and SPAC Background

Founded in 2017, Momentus is a Delaware corporation created to provide “last mile” launch services that place satellites into a custom orbit. Stable Road is a Delaware corporation and SPAC that completed its initial public offering in November 2019 with gross proceeds of \$172.5 million. In connection with entering into the business combination agreement with Momentus, Stable Road secured investor commitments via a PIPE (private investments in public equity) in the amount of \$175 million. It was required by charter to complete the business combination by May 2021. The enterprise valuation, \$1.1 billion on announcement of the deal in October 2020, was reported by Stable Road as \$566.6 million in late June 2021.

¹ The SEC’s settled order is available [here](#).

² The SEC filed its Complaint against Kokorich in the United States District Court for the District of Columbia (case no. 1:21-CV-1869), available [here](#).

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SEC Enforcement

According to the SEC's settled order, Kokorich and Momentus told investors on numerous occasions that Momentus had "successfully tested" its water propulsion technology in space. In reality, the testing failed to meet Momentus's public and internal criteria for success. Momentus and Kokorich also misrepresented the extent to which national security concerns involving Kokorich as a "foreign person" jeopardized Momentus's ability to secure governmental licenses, adhere to the company's launch schedule, and, as a result, meet its revenue projections. The SEC's order finds that Momentus violated scienter-based antifraud provisions of the federal securities laws, and also caused Stable Road's violations.³

The settled order additionally states that Stable Road conducted inadequate due diligence of Momentus in a "compressed timeframe" and "unreasonably failed" in "prob[ing] the basis of Momentus's claims" about its technology and "follow[ing] up on red flags concerning national security and foreign ownership risks," resulting in the dissemination of false information to investors. The order finds that Stable Road violated negligence-based antifraud provisions and reporting and proxy solicitation provisions of the federal securities laws.⁴

The order further finds that Kabot participated in Stable Road's superficial due diligence and in filing its inaccurate registration statements and proxy solicitations,⁵ and that Kabot and SRC-NI caused Stable Road's deceptive "scheme liability" under Section 17(a)(3) of the Securities Act.

Momentus, Stable Road, Kabot, and SRC-NI consented to an order requiring them to cease and desist from future violations. Pursuant to the order, Momentus, Stable Road, and Kabot have agreed to pay civil penalties of \$7 million, \$1 million, and \$40,000, respectively, and Momentus further is required to improve its disclosures, including by creating a disclosure committee and retaining an independent compliance consultant. SRC-NI has agreed to forfeit 250,000 founders' shares that it would have earned upon completion of the business combination. Further, PIPE investors have the right to terminate their subscription agreements prior to the shareholder vote for approval of the business combination.

The SEC's complaint alleges Kokorich's violation of antifraud provisions and aiding and abetting Momentus's violations, and is seeking injunctive relief, civil penalties, disgorgement plus prejudgment interest, and an officer-director bar against him.⁶

³ Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

⁴ Sections 17(a)(2) and (3) of the Securities Act; Section 14(a) of the Exchange Act and Rule 14a-9 thereunder; Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder.

⁵ Section 14(a) of the Exchange Act and Rule 14a-9 thereunder.

⁶ Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Section 17(a) of the Securities Act; Section 20(e) of the Exchange Act; Section 15(b) of the Securities Act.

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SEC Commentary

Commentary by SEC officials is instructive as to the broader implications of the case and settlement:

- *Conflict-of-interest risks are inherent to SPACs.* According to SEC Chair Gary Gensler, “This case illustrates risks inherent to SPAC transactions, as those who stand to earn significant profits from a SPAC merger may conduct inadequate due diligence and mislead investors.” Gensler stated that “Stable Road, a SPAC, and its merger target, Momentus, both misled the investing public.”⁷
- *SPACs must conduct adequate due diligence and cannot rely on target company representations.* Gensler also noted that “[t]he fact that Momentus lied to Stable Road does not absolve Stable Road of its failure to undertake adequate due diligence to protect shareholders. Today’s actions will prevent the wrongdoers from benefitting at the expense of investors and help to better align the incentives of parties to a SPAC transaction with those of investors relying on truthful information to make investment decisions.”⁸
- *Individual accountability is an enforcement priority.* Anita B. Bandy, Associate Director of the SEC’s Division of Enforcement, publicly stated that the “litigation against Kokorich demonstrates [the SEC’s] commitment to holding individuals accountable for their statements to investors, which are of particular concern when they are aimed at improperly capitalizing on public interest in popular investment vehicles such as SPACs.”⁹

⁷ <https://www.sec.gov/news/press-release/2021-124>.

⁸ *Id.*

⁹ *Id.*

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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