

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Monday, July 13, 2020 12:27 PM
To: Sheinberg, Samuel I.
Subject: FW: Question re 802.30

From: Six, Anne
Sent: Wednesday, June 24, 2020 10:44 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Question re 802.30

We view Merger 1 as an acquisition with a backside. As such, the entities are viewed as they exist going into the transaction and Merger 1 is reportable.

From: [REDACTED]
Sent: Wednesday, June 17, 2020 10:36 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Question re 802.30

Dear PNO,

We would like to confirm the applicability of rule 802.30 to the facts below.

SPAC is a “blank check” corporation formed for the purposes of effecting an acquisition or business combination with one or more businesses. The only asset the SPAC holds is cash. As of immediately prior to the time of the proposed acquisition, the SPAC will be its own ultimate parent entity (“UPE”) because no one will hold 50% or more of the voting securities or have the contractual right to appoint 50% or more of the board.

Pursuant to a Merger Agreement, the SPAC plans to acquire a corporation (“Corp. B”) from a limited partnership managed by a private equity holding entity (“Partnership B”). Partnership B is the acquired person in the transaction.

The acquisition involves two mergers. In Merger 1, a merger sub controlled by the SPAC will merge with and into Corp. B with Corp. B surviving as a controlled entity of the SPAC. Merger 1 consideration to Partnership B will consist of cash and voting shares of the SPAC. Prior its first acquisition or business combination only Class B shares of the SPAC will have the right to vote for the board and these Class B shares are all held by an entity established by the founders of the SPAC (“Founder Entity”), and thus the SPAC is not its own UPE prior to the close of the proposed transaction. Once this transaction closes, the Class B shares held by the Founder Entity convert to Class A shares and Class A shares then gain the right to vote for the board. Directly after close of the transaction and as a result of this conversion, the Founder Entity will no longer control the SPAC.

In Merger 2, Corp. B will merge into another controlled entity of the SPAC (“LLC A”) with LLC A surviving as a wholly owned subsidiary of the SPAC. Merger 2 is an exempt transaction under 802.30. Both the size of transaction and size of person thresholds are exceeded in Merger 1. The 802.30 exemption applies to Merger 1 as follows. The acquired person in Merger 1 is Partnership B. As a result of the SPAC share consideration paid to Partnership B, directly following Merger 1 Partnership B will hold more than 50% of the voting shares of the SPAC and thus be the UPE of SPAC. Because Partnership B is both the acquired person and the UPE of the SPAC post-closing the transaction is exempt under 802.30.

If you do agree with the assessment that 802.30 applies to Merger 1 based on the above facts, we also note the following. Directly after closing, Partnership B will distribute the cash consideration to its limited partners, and Partnership B will continue to be the UPE of the SPAC as a result of the SPAC shares that it continues to hold. At some time after the close, Partnership B will distribute the shares of the SPAC it will hold on a pro rata basis to its limited partners and then Partnership B will dissolve. That pro rata distribution will be exempt under 7A(c)(10) and/or 802.10. The share distribution is contemplated but not required by the Merger Agreement, and the plan is to distribute the securities when the Shelf Registration statement is declared effective by the SEC, likely 2 to 3 months after close, after which time the SPAC will again be its own UPE. Can you please confirm that this contemplated future distribution does not impact the application of the 802.30 exemption?

Just for completeness, we understand that the backside transaction (Partnership B acquires cash and shares of SPAC) is exempt under 802.4 (because the SPAC pre-close holds only cash) and/or 7A(c)(1) (because Partnership B will indirectly hold a smaller stake in Corp. B after close than it did before close).

Many thanks,

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