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Securities Law

ALERT

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SEC Accepts Loeb Position that SEC Will Not Review Preliminary Proxy Materials of SPAC Issuers that Meet Definition of Foreign Private Issue

The SEC has officially agreed with the position set forth in Loeb's correspondence dated December 4, 2007 that the preliminary proxy materials of a SPAC issuer that meets the definition of a "foreign private issuer" will not be reviewed by the SEC. In the case at hand, a SPAC "foreign private issuer" had to start to file reports as a U.S. domestic issuer after its initial public offering when it discovered it no longer met the "foreign private issuer" eligibility test. After the SPAC filed its preliminary proxy materials with the SEC in August 2007 and received comments from the SEC on such materials, it realized that it again met the definition of a "foreign private issuer." Loeb, in its correspondence to the SEC, took the position that once the SPAC's status became that of a "foreign private issuer," the SEC should no longer review the preliminary proxy materials. The SEC agreed with Loeb that it would not review the preliminary proxy materials of a SPAC meeting the definition of a "foreign private issuer" regardless of whether such change in status occurs during the SEC review process. The SEC's recognition of the benefits of falling within the definition of a "foreign private issuer" for SPACs can shave months off the business combination approval process. This is great news for SPACs in general and those that are approaching time deadlines.

Following this decision, the American Stock Exchange agreed to list the securities of a "foreign private issuer" SPAC under certain circumstances which will be outlined by the Exchange in the weeks to come.

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