



### SEC Staff Limits Use of Form S-3 by Former SPAC

#### Shelf Registration Unavailable to Former Shell Companies for 12 Months

In May 2010, the SEC staff applied an unannounced, recently adopted policy to prohibit a former special purpose acquisition company (SPAC) from conducting an offering on Form S-3. Instead of the abbreviated Form S-3, a company registering securities, within 12 months after completing a business combination with a SPAC, is required to file on Form S-1, which must include comprehensive corporate information and cannot be used for periodic “from-the-shelf” offerings.

A SPAC raises funds in an IPO to acquire an operating business, if the SPAC subsequently finds a suitable target. In the instant case, as is customary, the SPAC’s acquisition of the business the board of directors identified was subject to stockholder approval. In submitting the acquisition for approval, the SPAC was required to file with the SEC and provide to stockholders substantially the same information that the operating business would have been required to include in a Form S-1, if it were selling securities to the public. The staff’s new position will require the company to replicate the information (albeit, updated) provided to stockholders a few months earlier and prevent the company from filing a shelf registration statement on Form S-3, even though current rules appear to permit the company to do so.

Form S-3 is generally available to companies that have been public, *i.e.*, subject to Exchange Act reporting requirements, for at least 12 months and that meet other criteria. However, Form S-3 and a number of other SEC rules have

special provisions relating to “shell companies.” A “shell company” is one with little or no operating assets that has a primary business purpose of engaging in a combination with an operating business. Most shell companies are public companies that maintained Exchange Act reporting status after liquidating a business, but a SPAC also falls within the definition and, accordingly, is a shell company.

In the case at hand, the former SPAC had been public since November 2007, but had been an operating company for only three months, when it filed the Form S-3 registration statement. The staff advised the company, consequently, that it was not yet eligible to use Form S-3. Although debatable by reference to a variety of SEC rules, the staff’s policy is based on the view that Form S-3 should not be available to a company until its current operations have been subject to Exchange Act reporting for at least a year. The staff says that it will screen incoming registration statements in light of the policy, which will be posted on the SEC website, soon.

For further information on the contents of this alert, please contact David C. Fischer at 212.407.4827 or [dfischer@loeb.com](mailto:dfischer@loeb.com).

If you received this alert from someone else and would like to be added to the distribution list, please send an email to [alerts@loeb.com](mailto:alerts@loeb.com) and we will be happy to include you in the distribution of future reports.

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

*This publication may constitute “Attorney Advertising” under the New York Rules of Professional Conduct and under the law of other jurisdictions.*

Circular 230 Disclosure: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachments) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that

may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2010 Loeb & Loeb LLP. All rights reserved.

## Corporate and Securities Group

### New York

#### Partners

DAVID P. ANSEL	DANSEL@LOEB.COM	212.407.4837
NORWOOD P. BEVERIDGE, JR.	NBEVERIDGE@LOEB.COM	212.407.4970
GREGORY J. BLASI	GBLASI@LOEB.COM	212.407.4236
GIOVANNI CARUSO	GCARUSO@LOEB.COM	212.407.4866
MIRIAM L. COHEN	MCOHEN@LOEB.COM	212.407.4103
STEPHEN H. COHEN	SCOHEN@LOEB.COM	212.407.4279
WALTER H. CURCHACK	WCURCHACK@LOEB.COM	212.407.4861
ERIC DOERING	EDOERING@LOEB.COM	212.407.4214
ANGELA M. SANTORO DOWD	ADOWD@LOEB.COM	212.407.4097
KEVIN M. EISENBERG	KEISENBERG@LOEB.COM	212.407.4123
DAVID C. FISCHER	DFISCHER@LOEB.COM	212.407.4827
JEFFREY S. FRIED	JFRIED@LOEB.COM	212.407.4987
SCOTT J. GIORDANO	SGIORDANO@LOEB.COM	212.407.4104
STAN JOHNSON	SJOHNSON@LOEB.COM	212.407.4938
ROBERT B. LACHENAUER	RLACHENAUER@LOEB.COM	212.407.4854
FRANK LEE	FLEE@LOEB.COM	212.407.4825
FRANK J. MARINARO	FMARINARO@LOEB.COM	212.407.4285
COREY N. MARTIN	CMARTIN@LOEB.COM	212.407.4841
BARRY T. MEHLMAN	BMEHLMAN@LOEB.COM	212.407.4812
MITCHELL S. NUSSBAUM	MNUSSBAUM@LOEB.COM	212.407.4159
ANDREW M. ROSS	AROSS@LOEB.COM	212.407.4838
LLOYD L. ROTHENBERG	LROTHENBERG@LOEB.COM	212.407.4937
DAVID S. SCHAEFER	DSCHAEFER@LOEB.COM	212.407.4848
IRA A. SCHREGER	ISCHREGER@LOEB.COM	212.407.4044
FRAN M. STOLLER	FSTOLLER@LOEB.COM	212.407.4935
TAHRA T. WRIGHT	TWRIGHT@LOEB.COM	212.407.4122

#### Senior Counsel

RONIT FISCHER	RFISCHER@LOEB.COM	212.407.4816
---------------	-------------------	--------------

### Los Angeles

#### Partners

MARIA ASPINWALL	MASPINWALL@LOEB.COM	310.282.2377
CURTIS W. BAJAK	CBAJAK@LOEB.COM	310.282.2024
ROBERT S. BARRY, JR.	RBARRY@LOEB.COM	310.282.2258
KENNETH R. BENBASSAT	KBENBASSAT@LOEB.COM	310.282.2340
KARL E. BLOCK	KBLOCK@LOEB.COM	310.282.2225
JENNIFER BOROW	JBOROW@LOEB.COM	310.282.2311
GERALD M. CHIZEVER	GCHIZEVER@LOEB.COM	310.282.2121
ALLAN B. DUBOFF	ADUBOFF@LOEB.COM	310.282.2141
HAROLD A. FLEGELMAN	HFLEGELMAN@LOEB.COM	310.282.2394
CHANNING D. JOHNSON	CJOHNSON@LOEB.COM	310.282.2322
CHRISTOPHER J. KELLY	CKELLY@LOEB.COM	310.282.2263
THOMAS ROHLF	TROHLF@LOEB.COM	310.282.2240
PAUL W. A. SEVERIN	PSEVERIN@LOEB.COM	310.282.2059
MARK A. STREAMS	MSTREAMS@LOEB.COM	310.282.2326
LORETTA THOMPSON	LCTHOMPSON@LOEB.COM	310.282.2331
LAWRENCE VENICK	LVENICK@LOEB.COM	310.282.2318

#### Senior Counsel

MICHAEL ROSNER	MROSNER@LOEB.COM	310.282.2397
----------------	------------------	--------------

### Chicago

#### Partners

JAMES INENDINO	JINENDINO@LOEB.COM	312.464.3148
ELIZABETH L. MAJERS	EMAJERS@LOEB.COM	312.464.3142