

SEC Brings Significant SPAC Enforcement Action

Article By:

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On July 13, the SEC announced charges against an array of participants in a de-SPAC transaction.^[1] Among those charged are the SPAC, the SPAC's sponsor, the SPAC's CEO, the merger target, and the merger target's CEO.^[2]

The basic facts are that the SPAC merger target, Momentus Inc., and its CEO allegedly lied to the SPAC about the company's technological capabilities and the national-security risks presented by the CEO. More specifically, the merger target, an early-state space transportation company, and its CEO claimed the company had "successfully tested" its propulsion technology in space. The SEC alleges that, in truth, Momentus's sole in-space test had yielded lackluster results that did not demonstrate commercial viability.

And they also allegedly understated the national-security risks posed by the CEO, Russian national Mikhail Kokorich. By 2018, Kokorich allegedly "faced multiple adverse determinations by U.S. government agencies because of concerns that he posed a risk to U.S. national security."^[3]

This was important because, the SEC alleges, Momentus was unlikely to be allowed to participate in U.S.-based rocket launches because the Department of Defense and other government agencies had the authority to block the company's involvement in such launches for national-security reasons.

The SEC also faulted the SPAC, its sponsor, and the SPAC's CEO for conducting inadequate due diligence. As part of the lax due diligence, they allegedly failed to review the in-space testing results. In addition, they allegedly failed to obtain documents sufficient to assess the national-security risks posed by Kokorich.

SEC Chairman Gary Gensler stated in a press release, "[t]he fact that Momentus lied to [the SPAC] does not absolve [the SPAC] of its failure to undertake adequate due diligence to protect shareholders."^[4]

All of the parties settled with the SEC except Kokorich, who appears to be litigating the matter. The settling parties consented to cease-and-desist orders for violating or causing violations of Section 17(a)(3) of the Securities Act of 1933, which is a negligence-based provision. They have also agreed to pay penalties totaling over \$8 million, and enhance internal controls, create an independent board

committee and retain an internal compliance consultant for two years, among other remedies.

As for Kokorich, the SEC is asserting scienter-based fraud and aiding-and-abetting fraud charges against him (Sections 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5, as well as Section 17(a) of the Securities Act). The SEC seeks a permanent injunction, disgorgement of ill-gotten gains, prejudgment interest, third-tier civil penalties, and an officer-and-director bar against Kokorich.

^[1] For basic background information about SPACs, please see our earlier post available [here](#).

^[2] See SEC Press Release, *SEC Charges SPAC, Sponsor, Merger Target, and CEOs for Misleading Disclosures Ahead of Proposed Business Combination* (July 13, 2021), available [here](#).

^[3] SEC Complaint, *SEC v. Mikhail Kokorich*, Case No. 1:21-CV-1869, (D.D.C. Jul. 13, 2021), available [here](#).

^[4] See footnote 2, *supra*.

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