

Franchi et al. v. CM Life Sciences et al.

COURT: Delaware Court of Chancery
CASE NUMBER: 2021-0842
CASE LEADERS: Mark Lebovitch
CASE TEAM: Andrew Blumberg

On September 30, 2021, BLB&G filed a direct complaint (the “Complaint”) in the Delaware Court of Chancery against CM Life Sciences III Inc. (the “Company”) and members of its board. The Company is a special purpose acquisition company (“SPAC”), currently seeking approval of a de-SPAC transaction. As part of this de-SPAC transaction, the Company is seeking stockholder approval of a charter amendment to increase the number of Class A shares (the “Share Increase Amendment”).

Delaware General Corporation Law Section 242(b)(2) (“§242(b)(2)”) gives holders of a particular class of stock the right to a separate class vote on amendments to the charter to increase the amount of authorized shares in that class. This is because stockholders can be harmed through dilution. §242(b)(2) therefore protects a class of stock by ensuring a vote of it—and only it—can authorize dilutive issuances. While a charter can opt out of Section 242(b)(2), the Company has not done so here.

The Complaint asserts that the defendants violated §242(b)(2) by conditioning the Share Increase Amendment on the affirmative vote of *both* Class A shares and Founder Shares. The inclusion of the Founder Shares in the vote breaches §242(b)(2), and will harm the Class A stockholders with invalidly approved dilution. Indeed, if the Founder Shares are included in the vote, the dilutive Share Increase Amendment will pass with just a 37.5% vote of Class A stockholders, as opposed to the 50% vote proscribed by 242(b)(2).

Plaintiff is currently waiting for defendants to answer or otherwise respond to the Complaint.

Case Documents

- September 30, 2021 - CM Life Sciences Complaint