

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

**COURT:** Delaware Court of Chancery

**CASE NUMBER:** 2021-0842

**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”), and was seeking approval of a de-SPAC transaction. As part of that de-SPAC transaction, the Company was 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 did not do so.

The Complaint asserted 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 Complaint asserted that inclusion of the Founder Shares in the vote breached §242(b)(2), and would harm the Class A stockholders with invalidly approved dilution. Indeed, if the Founder Shares were included in the vote, the dilutive Share Increase Amendment would pass with just a 37.5% vote of Class A stockholders, as opposed to the 50% vote proscribed by 242(b)(2).

The Company agreed to change the vote structure to comply with §242(b)(2)—providing Class A stockholders the right, on their own, to approve or reject the Share Increase Amendment—and the firm received a mootness fee.

### Case Documents

- September 30, 2021 - CM Life Sciences Complaint