

Assad et al. v. E.Merge Technology et al.

COURT: United States District Court for the Southern District of New York
CASE NUMBER: 1:21-cv-07072
CASE LEADERS: Mark Lebovitch, Gregory V. Varallo
CASE TEAM: Daniel Meyer

On August 20, 2021, BLB&G filed a stockholder derivative complaint (the “Complaint”) in the Southern District of New York, on behalf of nominal defendant E.Merge Technology Acquisition Corp. (“E.Merge” or the “Company”), a special purpose acquisition company, or “SPAC.” The defendants include the sponsor of the E.Merge SPAC (the “Sponsor”), members of E.Merge’s board of directors (the “Board”), and several managers of the Sponsor (the “Advisor Defendants”). In this effort BLB&G has partnered with co-counsel including former SEC Commissioner Robert Jackson and Yale Law Professor John Morley.

The Complaint alleges that the defendants violated the Investment Company Act of 1940 (“ICA”). The ICA requires that companies whose primary business is investing in or trading securities must register and make certain disclosures. Registration requires payment of fees and that the entity be structured in a way that meets norms for standardization and transparency in order to protect the investing public.

E.Merge did not register under the ICA, despite the fact that its primary business is and has been investing in securities. As a SPAC, E.Merge raised \$522 million from the public in its August 2020 initial public offering. These funds were invested in U.S. government securities and money market funds, where they have since remained. As a result, the Company has invested nearly all of its assets in securities.

The Complaint alleges that, in so doing, E.Merge is an investment company not in compliance with the ICA. The Complaint also allege that E.Merge has not been taking the steps under the ICA necessary to protect investors. Moreover, the compensation paid to the Board and the Sponsor also violates the ICA, since it is excessive and not the product of arm’s-length bargaining.

The parties are currently preparing for motion to dismiss briefings.

Case Documents

- August 20, 2021 - E.Merge Complaint