

Northern District of California: Dismissal Denied Where Defendants Touted That a Target Company Founder Would Play a Critical Post-Merger Role When the Founder Was In Fact Marginalized (Securities Law Alert)

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On July 1, 2022, the Northern District of California denied in part a motion to dismiss a securities fraud class action arising out of a reverse merger between a private technology company and a SPAC alleging that the company, certain of its executives and directors, and certain SPAC co-founders/executives made false or misleading statements or omissions that deceived investors into approving the merger and into purchasing company securities at an inflated price. [Moradpour v. Velodyne Lidar, 2022 WL 2391004 \(N.D. Cal. July 1, 2022\) \(Illston, J.\)](#). The court held that plaintiffs adequately alleged that the technology company and two individual defendants misleadingly touted that the technology company's founder would play a key role post-merger when in fact steps were being taken to oust him.^[1]

The reverse merger closed in September 2020. Plaintiffs claimed that defendants made a number of misleading statements about the founder's post-merger role. These included a July 2, 2020 joint press release announcing the merger that stated that the founder would "continue to play a critical role as executive chairman of [the resulting company]" after the merger; a July 2, 2020 conference call in which one defendant (a SPAC co-founder/executive who later became chair of the company's board) discussed the management and engineering talent that the founder "has and will continue to assemble"; a statement in the same conference call by the technology company's President/CEO that the founder "will remain very involved in the engineering and technology vision of the Company"; and a July 2020 preliminary proxy stating that the founder "will serve as the post-combination company's executive chairman and will remain actively involved in the post-combination company's product and technology development strategy." In addition, in January 2021, the company published an FY2020 Release, in which the company's President/CEO stated that "there is no change in our fundamental outlook for the future" despite the impact of COVID-19.

Defendants moved to dismiss. On the issue of the founder's ongoing role, the court concluded that plaintiffs adequately alleged Section 10(b) and Rule 10b-5(c) claims against the technology company, the SPAC co-founder/executive who later became board chair of the resulting company, and the technology company's President/CEO for intentionally touting the founder's continued involvement in the company while taking actions that contradicted the notion of such continued involvement. The court determined that plaintiffs adequately alleged that defendants' various statements were misleading because the board had disregarded the founder's input on corporate governance, strategy,

and financial performance since the merger’s consummation and the founder had already “stepped back from day-to-day management” seven months before the merger. As to the FY2020 Release, the court pointed out that earlier that same day the founder had already tendered his voluntary resignation as Executive Chairman. The court observed that his resignation would qualify as a change to the company’s outlook given his status as founder and as “an industry icon” as described in the July 2020 preliminary proxy.

[1] Plaintiffs also claimed that defendants: (i) misrepresented the company’s revenue and growth trajectory in the run-up to the merger's approval and in the months that followed; (ii) misled shareholders about another company’s continued involvement as a strategic investor and customer; and (iii) misled shareholders about the quality of the company’s corporate governance and internal control over financial reporting. The court determined that plaintiffs failed to allege a violation of Section 10(b) based on these challenged statements.

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