



GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Cause No. FSD _____ of 2023

IN THE MATTER OF SECTION 94 OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF VPC IMPACT ACQUISITION HOLDINGS II

PETITION

To: The Grand Court of the Cayman Islands

The Petition of Funicular Funds, LP (the "**Petitioner**") of 2261 Market Street #4307, San Francisco, California, United States, shows that:

- 1 VPC Impact Acquisition Holdings II (the "**Company**") was incorporated as an exempted company with registration number 370137 on 13 January 2021 under the Companies Law (2020 Revision).
- 2 The registered office of the Company is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104.
- 3 The Petitioner is the owner of 2,554,330 Class A ordinary shares in the Company, which is approximately 9.99% of the total outstanding Class A shares.
- 4 It is just and equitable that the Company be wound up on the grounds that:
 - (a) the substratum of the Company has failed; and
 - (b) the Petitioner has justifiably lost trust and confidence in the management of the Company

for the reasons set out below.

THIS PETITION is filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, KY1-9010 Cayman Islands (Ref: LF/70026-26338)

Background

5 The Company was set up as a blank-cheque corporation (also known as a SPAC) by Victory Park Capital Advisors, LLC (“VPC”), an investment adviser headquartered in Chicago. The purpose of the Company was to consummate a merger or similar business combination with one or more businesses or entities, which was to be referred to as an “*initial business combination*”.

6 The Company is operated by its Sponsor, VPC Impact Acquisition Holdings Sponsor II, LLC (“VPCB Sponsor”), an entity created and controlled by VPC and its senior personnel. The Management of the Company is made up of the following individuals, the majority of whom are associated with VPCB Sponsor and VPC:

- (a) Brendan Carroll (Co-CEO);
- (b) Gordon Watson (Co-CEP);
- (c) Carly Altieri (CFO)
- (d) John Martin (Chairman);
- (e) Adrienne Harris (former Director);
- (f) Albert Periu (Director);
- (g) Kai Schmitz (Director); and
- (h) Joseph Lieberman (Director).

7 Class A shares in the company were distributed by way of an initial public offering (the “IPO”). The Company issued 25,578,466 units, each of which comprised one Class A share and one quarter of a warrant, at a cost of US\$10 per unit at the closing of the initial public offering on 9 March 2021.¹ The proceeds of the IPO of US\$255,784,660 were to be held in a trust account pending the completion of an initial business combination (which they would be used to consummate).

8 In addition, the Company issued 6,468,750 Class B ordinary shares to:

- (a) VPCB Sponsor (6,408,750 shares);²
- (b) Adrienne Harris (20,000 shares);

¹ Each full warrant entitled the holder to purchase a Class A share for US\$11.50.

² The beneficial owner of the Sponsor is Richard Levy.

(c) Kai Schmitz (20,000 shares); and

(d) Joseph Lieberman (20,000).

- 9 The Class B shares were initially issued to VPCB Sponsor for US\$0.004 each (for a total consideration of US\$25,000). VPCB Sponsor subsequently transferred the shares listed above to Ms Harris, Mr Schmitz and Mr Lieberman. VPCB Sponsor also purchased 5,127,129 private placement warrants for US\$1.50 each simultaneously with the closing of the IPO, contributing US\$7,690,693 to the capital of the company. Each such warrant entitled VPCB Sponsor to purchase a Class A share for US\$11.50 per share.
- 10 Under the Company's Articles of Association (the "**Articles**") and the IPO Prospectus (the "**Prospectus**") the Company had a period of 24 months from the IPO to consummate an initial business combination, failing which the IPO proceeds were to be returned to the holders of the Class A shares in the Company and the Class B shareholders would receive nothing. If the Company were to successfully complete an initial business combination, the Class B shares would automatically convert into Class A shares on a one-to-one basis.
- 11 The structure set out above was intended to result in the holders of the Class A shares receiving an 80% interest in the combined entity following the initial business combination in exchange for funding the merger or acquisition, with the holders of the Class B shares receiving a 20% interest in exchange for identifying and negotiating the initial business combination with a target company.

The Articles

- 12 The Articles provide, broadly, that the holders of Class A and Class B shares are to be treated alike, save that: i) the appointment of directors is reserved to Class B shareholders; and ii) receipt of the funds held in the trust account is reserved to Class A shareholders. Otherwise, the Articles provide that shareholders in the company are to be treated *pari passu*.
- 13 In particular, Article 17.1 provides that:
- "The rights attaching to the Class A Shares and Class B Shares shall rank pari passu in all respects, and the Class A Shares and Class B Shares shall vote together as a single class on all matters (subject to the Variation of Rights of Shares Article and the Appointment and Removal of Directors Article hereof) with the exception that the holder of a Class B Share shall have the conversion rights referred to in this Article."* [emphasis added]
- 14 Similarly, Article 46.1(b) provides that:

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“if the assets available for distribution amongst the Members shall be more than sufficient to repay the whole of the Company's issued share capital at the commencement of the winding up, the surplus shall be distributed amongst the Members in proportion to the par value of the Shares held by them at the commencement of the winding up subject to a deduction from those Shares in respect of which there are monies due, of all monies payable to the Company for unpaid calls or otherwise.”

15 These Articles are unambiguous, and require the directors of the Company to treat the holders of Class A and Class B shareholders on the same basis save where the Articles specifically provide otherwise. They also require that where the assets of the Company (including the funds in the trust account and any other assets) exceed the issued share capital of the company at the commencement of any winding up, that the surplus is to be distributed on a *pari passu* basis among the shareholders of the Company.

16 Relevantly, Article 51.7 provides that:

“In the event that the Company does not consummate a Business Combination by 24 months from the consummation of the IPO, or such later time as the Members may approve in accordance with the Articles, the Company shall:

(a) cease all operations except for the purpose of winding up;

(b) as promptly as reasonably possible but not more than ten business days thereafter, redeem the Public Shares, at a per-Share price, payable in cash, equal to the aggregate amount then on deposit in the Trust Account, including interest earned on the funds held in the Trust Account and not previously released to the Company (less taxes payable and up to US\$100,000 of interest to pay dissolution expenses), divided by the number of then Public Shares in issue, which redemption will completely extinguish public Members' rights as Members (including the right to receive further liquidation distributions, if any); and

(c) as promptly as reasonably possible following such redemption, subject to the approval of the Company's remaining Members and the Directors, liquidate and dissolve,

subject in each case to its obligations under Cayman Islands law to provide for claims of creditors and other requirements of Applicable Law.”

Disclaimer of rights

17 Notwithstanding the Articles set out above, at or around the time of the IPO, VPCB Sponsor and each of the members of the management of the Company set out in paragraph 6 above, save for Mr Periu, entered into a Sponsor Agreement with the Company. Under this agreement, VPCB Sponsor and each of the relevant individuals, referred to as an “Insider” in the Letter Agreement, disclaimed any interest or claim of any kind in or to the monies held in

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the trust account or any other asset of the Company as a result of any liquidation of the Company with respect to any Class B shares they held.

- 18 Likewise, the IPO prospectus for the Company, which the management of the Company approved and distributed, stated that *“the founder shares will be worthless if we do not complete an initial business combination”* and the Insiders *“will lose their entire investment.”*³ These statements record what the Sponsor and the Insiders had agreed: that they had disclaimed any interests they might have had in assets of the Company as holders of Class B shares (as distinct from holders of Class A shares following the conversion of Class B shares on a successful business combination).

Proposed initial business combination

- 19 On 2 August 2021, the Company announced that it had entered into a Business Combination Agreement (the **“Combination Agreement”**) to acquire the holding companies of FinAccel Pte. Ltd (**“FinAccel”**), the parent company of Kredivo, a buy-now-pay-later platform in Southeast Asia. VPC and Kredivo had a long-standing relationship prior to the announcement of the Combination Agreement, with VPC providing an initial \$100 million credit facility to Kredivo in July 2020 and upsizing it to \$200 million in June 2021.
- 20 The Combination Agreement provided for the Company to merge with the holding companies of FinAccel on the basis of a pre-money valuation of Kredivo of US\$2.5 billion, and that this combination was to take place in the first half of 2022.

Failure of the initial business combination

- 21 Notwithstanding that it filed a press release touting the Combination Agreement on 1 March 2022, on 11 March 2022 the Company announced the termination of the Combination Agreement and the replacement of the Combination Agreement with a private placement investment in Kredivo by VPC, cutting out the investors in the Company.
- 22 The Combination Agreement specifically provided that the Company was entitled to *“entitled to seek an injunction or restraining order...to prevent breaches of this Agreement and to seek to enforce specifically the terms and provisions hereof”*. Furthermore, each party expressly agreed that it would *“not oppose the granting of specific performance and other equitable*

³ The term “founder shares” was used to refer to the Class B shares in the IPO documents.

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relief on the basis that the other parties have an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity.”

- 23 For reasons which have never been explained, the Company never sought to enforce the Combination Agreement and complete the initial business combination. Instead, on 11 March 2022, a Termination and Fee Agreement was entered between the Company, the holding companies of FinAccel, and FinAccel pursuant to which FinAccel would pay the Company a break fee of up US\$4 million in reimbursement of specified expenses incurred by the Company. In addition, if the Company does not complete an alternative initial business combination, FinAccel is required to issue a penny Warrant to the Company for the purchase of stock equal to a 3.5% interest in FinAccel (the “**Break Fee**”). The Break Fee is explicitly conditional on the liquidation of the Company’s Trust Account and the distribution of the funds held therein. In certain circumstances, FinAccel is required to pay cash consideration equal to the fair value of the required Warrant, instead of issuing it.

Subsequent events

- 24 The Company has not identified an alternative initial business combination. On 3 March 2023, the Company announced that it will redeem its outstanding Class A shares on 21 March 2023, as it will not complete an initial business combination within the time period set out in its Articles.
- 25 The Company’s announcement stated that following the redemption of the Class A shareholders and distribution of the Trust Account the Company would appoint voluntary liquidators, whose role will include *“determining the next steps for liquidating and/or distributing the Company’s remaining assets, including, without limitation, assets to which the Company is entitled under the Termination and Fee Agreement”*.

Failure of substratum

- 26 The Company was formed for a single purpose: to consummate an initial business combination within 24 months of the date of its IPO. This purpose was reflected in the Articles of the Company, as well as its IPO Prospectus, which provided that the assets of the Company would be returned to the Class A shareholders in the event that this purpose was not achieved. It is evident from the announcements made by and on behalf of the Company that it has failed to achieve this purpose, and that there is now no prospect that it will do so.

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27 In the circumstances, the Company's substratum has unquestionably been lost, and for this reason the court should order that it be wound up on the just and equitable ground pursuant to section 92(e) of the *Companies Act*.

Loss of trust and confidence in management

28 As set out above, VPCB Sponsor and the management of the Company:

- (a) Established the Company for the sole purpose of completing an initial business combination;
- (b) Marketed the Company on the bases that:
 - (i) they would receive 20% of the combined entity in the event of an initial business combination, and nothing otherwise; and
 - (ii) the assets of the Company would be returned to the Class A shareholders in the event that no initial business combination was consummated;
- (c) In support of the above, expressly disclaimed any right to assets of the Company on a liquidation;
- (d) Negotiated an initial business combination with FinAccel, which has a longstanding relationship with VPC;
- (e) Caused the Company not to take steps necessary to consummate the agreed initial business combination;
- (f) Caused the Company not to take steps available to it enforce the Combination Agreement against FinAccel, agreeing instead that VPC would lead a private placement investment in Kredivo and FinAccel would pay the Company the Break Fee in lieu performing its obligations, diverting the benefit of investing in FinAccel from the Company to VPC;
- (g) Despite the entitlement of Class A shareholders under the Articles to a *pari passu* share of the assets of the Company, determined to pay them the monies in the trust account and no other amounts; and
- (h) In addition to the matters set out above, determined to divert the Break Fee to themselves, by agreeing that the Break Fee Warrant be issued only after redemption of the Class A shareholders.

29 As set out in more detail below, this course of action by VPCB Sponsor and the management of the Company is in clear breach of:

- (a) the Articles;
- (b) the Letter Agreement; and
- (c) the fiduciary duties of the directors of the Company.

- 30 In addition, there is a clear and irreconcilable conflict of interest between the Company and those directors who: i) are Class B shareholders themselves; or ii) have any economic interest in, or duties to, VPCB Sponsor or VPC.
- 31 The directors are required to exercise their power to manage the affairs on the Company only for proper purposes in the interests of the Company. In circumstances where the Company is solvent, the interests of the Company are the interests of the shareholders of the Company considered as a whole. The directors are also strictly prohibited from entering into arrangements in which they have a personal interest which conflicts with the interests of those to whom they owe their duties (in this case, the shareholders of the Company considered as a whole), or from making any profit from their position without the informed consent of the shareholders.
- 32 The course of conduct by the directors set out above entails them:
- (a) causing the Company to make distributions other than in accordance with the Articles;
 - (b) intentionally advancing the interests of the Class B shareholders at the expense of the Class A shareholders, by failing to enforce the Company's contractual rights under the Letter Agreement; and
 - (c) diverting both the investment opportunity in FinAccel/Kredivo and the windfall to the Company in the form of the Break Fee, which represents the sole profit it has made in its two years of existence, to VPC and to themselves as the only Class B shareholders respectively.
- 33 In these circumstances, the Petitioner has justifiably lost trust and confidence in the management of the Company. In particular, it is evident that the Petitioner cannot trust the management of the Company to adhere to the Articles, their duties to the shareholders of the Company as a whole, or to a contract they entered with the Company. Management are instead diverting assets of the Company to themselves in clear breach of all of these.

Conclusion

- 34 In light of the above, the Company is liable to be wound up on the just and equitable basis without delay. In the circumstances, it is imperative that this winding up be conducted by an independent professional, and under the supervision of this honourable court.

AND THE PETITIONER HUMBLY PRAYS AS FOLLOWS:

- (1) The Company may be wound up by the Court under the provisions of the Companies Act;

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- (2) Angela Barkhouse and George Kimberley Leck of Quantuma (Cayman) Ltd. be appointed as Joint Official Liquidators of the Company with power to act jointly and severally (the “JOLs”);
- (3) The JOLs shall not be required to give security for their appointment;
- (4) The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, and staff whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties;
- (5) The JOLs be at liberty to apply generally;
- (6) The Petitioner’s costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company, to be taxed on the indemnity basis if not agreed with the JOLs;
- (7) Such other orders and directions may be made as the Court thinks fit.

Dated: 17 March 2023



CAMPBELLS LLP

Attorneys-at-Law for the Petitioner

Note: It is intended to serve this Petition on:

- 1) The Company at its registered office.

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