

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): **March 15, 2023**

**Evolv Technologies Holdings, Inc.**

(Exact name of registrant as specified in its charter)

<b>Delaware</b> (State or other jurisdiction of incorporation)	<b>001-39417</b> (Commission File Number)	<b>84-4473840</b> (IRS Employer Identification No.)
<b>500 Totten Pond Road, 4th Floor Waltham, Massachusetts</b> (Address of principal executive offices)		<b>02451</b> (Zip Code)
	<b>(781) 374-8100</b> Registrant's telephone number, including area code  (Former name or former address, if changed since last report.)	

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Class A common stock, par value \$0.0001 per share	EVLV	The Nasdaq Stock Market
Warrants to purchase one share of Class A common stock	EVLVW	The Nasdaq Stock Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 8.01 Other Events.**

On July 15, 2021, Evolv Technologies Holdings, Inc. (the "Company"), then operating under the name NewHold Investment Corp., held a special meeting of stockholders (the "2021 Special Meeting") to approve certain matters relating to its proposed business combination with Evolv Technologies, Inc. (d/b/a Evolv Technology, Inc.) and NHIC Sub Inc., a wholly-owned subsidiary of NHIC. One of these matters was a proposal to adopt the Second Amended and Restated Certificate of Incorporation of the Company (the "New Certificate of Incorporation"), which, among other things, eliminated the Company's Class B common stock, par value \$0.0001 per share ("Class B common stock") and increased the total number of authorized shares of the Company's Class A common stock, par value \$0.0001 per share (the "Class A common stock"), from 45,000,000 shares to 1,100,000,000 shares. The New Certificate of Incorporation was approved by a majority of the shares of Class A common stock and Class B common stock, voting together as a single class, that were outstanding as of the record date for the 2021 Special Meeting. After the 2021 Special Meeting, the business combination was consummated and the New Certificate of Incorporation became effective, and the Company changed its name to Evolv Technologies Holdings, Inc.

A recent decision of the Delaware Court of Chancery (the "Court of Chancery") has created uncertainty as to whether Section 242(b)(2) of the General Corporation Law of the State of Delaware (the "DGCL") would have required the New Certificate of Incorporation to be approved by a separate vote of the majority of the Company's then-outstanding shares of Class A common stock, in addition to a majority of the shares of Class A common stock and Class B common stock voting together.

The Company continues to believe that a separate vote of Class A common stock was not required to approve the New Certificate of Incorporation. However, in light of the recent Court of Chancery decision, on March 14, 2023 the Company filed a petition (the "Petition") in the Court of Chancery pursuant to Section 205 of the DGCL seeking validation of the New Certificate of Incorporation, and the shares issued in reliance on the effectiveness of the New Certificate of Incorporation to resolve any uncertainty with respect to those matters. Section 205 of the DGCL permits the Court of Chancery, in its discretion, to ratify and validate potentially defective corporate acts and stock after

considering a variety of factors. A copy of the Petition filed in the Section 205 proceeding is attached as Exhibit 99.1 to this Current Report on Form 8-K (this "Form 8-K").

On March 15, 2023, the Court of Chancery granted the motion to expedite and set a hearing date for the Petition to be heard. The hearing has been set for March 29, 2023 at 11:40 a.m. Eastern Time at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

This Form 8-K constitutes notice of the hearing. If any stockholder of the Company wishes to express a position on the Petition, such stockholders of the Company may (i) appear at the hearing or (ii) file a written submission with the Register in Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, referring to the case caption, *In re Evolv Technologies Holdings, Inc.*, C.A. No. 2023-0314-LWW in advance of the hearing, and any such written submission should be emailed to the Company's counsel, Kevin Gallagher, Richards, Layton & Finger, P.A., at [gallagher@rlf.com](mailto:gallagher@rlf.com).

#### *Forward-Looking Statements*

This Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements may be identified by the use of words such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "targets," "projects," "contemplates," "believes," "estimates," "forecasts," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions are intended to identify forward-looking statements though not all forward-looking statements use these words or expressions. Forward-looking statements involve known and unknown risks that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements, including, without limitation, if the Company is not successful in the Section 205 proceeding, the uncertainty with respect to the Company's capitalization resulting from the Court of Chancery's ruling referenced above could adversely impact the Company's ability to complete equity financing transactions or issue stock-based compensation to its employees, directors and officers until the underlying issues are definitively resolved, which in turn could impair the Company's ability to execute its business plan, attract and retain employees, management and directors, and adversely affect its commercial relationships. These forward-looking statements are not intended to serve as, and must not be relied on by any investor as, a guarantee, an assurance, or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and may differ from these forward-looking statements. In particular, no assurances can be made regarding the outcome or the timing of the Section 205 proceeding. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events or otherwise.

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#### **Item 9.01. Financial Statements and Exhibits.**

##### **(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">99.1</a>	<a href="#">Verified Petition for Relief Pursuant to 8Del. C. § 205</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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#### **SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

##### **Evolv Technologies Holdings, Inc.**

Date: March 17, 2023

By: /s/ Peter George  
Name: Peter George  
Title: Chief Executive Officer

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## IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE EVOLV TECHNOLOGIES HOLDINGS, INC.

) C.A. No. 2023- \_\_\_\_\_ - \_\_\_\_\_  
)VERIFIED PETITION FOR RELIEF PURSUANT TO 8DEL. C. § 205

Petitioner Evolv Technologies Holdings, Inc. (“Evolv” or the “Company”), by and through its undersigned counsel, brings this petition pursuant to 8Del. C. § 205, seeking to have this Court validate a corporate act as follows:

NATURE OF THE ACTION

1. This Petition seeks the Court’s urgent assistance to resolve the current uncertainty surrounding the validity of the Company’s Second Amended and Restated Certificate of Incorporation (the “New Certificate of Incorporation”) and the validity of the Company’s current capital structure effected thereby. The Company petitions this Court seeking similar relief that several other publicly traded companies have recently sought from this Court. Namely, the Company seeks to validate the New Certificate of Incorporation (including the Common Stock Increase Amendment defined below), as well as all shares of the Company’s capital stock issued in reliance on the validity of the New Certificate of Incorporation. Not until this Court’s decision in *Garfield v. Boxed, Inc.*, 2022 WL 17959766 (Del. Ch. Dec. 27, 2022) did the Company have reason to question the validity of the New Certificate of Incorporation or the Company’s capital structure effected thereby.

FACTUAL ALLEGATIONS**A. The Company Incorporates and Goes Public**

2. Evolv is a Delaware corporation originally incorporated as a special purpose acquisition company (“SPAC”) on January 24, 2020, under the name NewHold Investment Corp (“NIC”). The Company is a global leader in AI-based touchless security screening.

3. On August 4, 2020, NIC consummated its initial public offering (“IPO”). In connection with the IPO, NIC filed the Amended and Restated Certificate of Incorporation in effect prior to the Merger (attached hereto as Exhibit A, the “Old Certificate of Incorporation”). Section 4.1 of the Old Certificate of Incorporation set forth the Company’s authorized capital stock as follows:

The total number of shares of all classes of capital stock, each with a par value of \$0.0001 per share, which the Corporation is authorized to issue is 51,000,000 shares, consisting of (a) 50,000,000 shares of common stock (the “*Common Stock*”), including (i) 45,000,000 shares of Class A Common Stock (the “*Class A Common Stock*”), and (ii) 5,000,000 shares of Class B Common Stock (the “*Class B Common Stock*”), and (b) 1,000,000 shares of preferred stock (the “*Preferred Stock*”).

Ex. A at Art. IV, § 4.1 (emphasis in original). Section 4.3(b)(3) of the Old Certificate of Incorporation further provided that:

Except as otherwise required by law or this Amended and Restated Certificate (including any Preferred Stock Designation), for so long as any shares of Class B Common Stock shall remain outstanding, the Corporation shall not, without the prior vote or written consent of the holders of a majority of the shares of Class B Common Stock then outstanding, voting separately as a single class, amend, alter or repeal any provision of this Amended and Restated Certificate, whether by merger, consolidation or otherwise, if such amendment, alteration or repeal would alter or change the powers, preferences or relative, participating, optional or other or special rights of the Class B Common Stock.

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Ex. A at Art. IV, § 4.4(b)(3).

**B. The Company Enters into the Merger Agreement and the Special Meeting is Scheduled**

4. On March 5, 2021, NIC entered into an agreement and plan of merger with various entities (the “Merger Agreement”), including Evolv Technologies, Inc. (“Legacy Evolv”), whereby NIC would acquire Legacy Evolv (“the Merger”). In connection with the Merger, NIC would change its name from NewHold Investment Corp. to Evolv Technologies Holdings, Inc.

5. After entering into the Merger Agreement, NIC scheduled a special meeting of stockholders of the SPAC (the “Special Meeting”). Pursuant to its June 9, 2021 proxy statement (the “2021 Proxy Statement”), a copy of which is attached hereto as Exhibit B, stockholders were set to vote on six proposals at the Special Meeting. Among the proposals was one to adopt the New Certificate of Incorporation, which is attached hereto as Exhibit C. As the 2021 Proxy Statement explained to the stockholders, the New Certificate of Incorporation would effectuate a number of changes to the Old Certificate of Incorporation, including, among other things, eliminating the Class B Common Stock and increasing the aggregate number of authorized shares of Common Stock from 50,000,000 shares to 1,100,000,000 shares (the “Common Stock Increase Amendment”).

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6. The 2021 Proxy Statement explained to the stockholders that the reason for the Common Stock Increase Amendment was that:

[I]t is important for us to have available for issuance a number of authorized shares of common stock and preferred stock sufficient to support our growth and to provide flexibility for future corporate needs (including, if needed, as part of financing for future growth acquisitions). The shares would be issuable as consideration for the merger and the other transactions contemplated by in this proxy statement/prospectus, and for any proper corporate purpose, including future acquisitions, capital raising transactions consisting of equity or convertible debt, stock dividends or issuances under current and any future stock incentive plans.

7. The 2021 Proxy Statement also provided that approval of the New Certificate of Incorporation required “the affirmative vote of holders of a majority of the issued and outstanding shares of common stock.” *Id.* at 81.

**C. The Merger is Approved at the Special Meeting and is Consummated Thereafter**

8. The Special Meeting was held on July 15, 2021.

9. As of the record date for the Special Meeting, June 10, 2021, which determined the Company stockholders entitled to vote on the Merger and adoption of the New Certificate of Incorporation at the Special Meeting, there were an aggregate of 21,562,500 shares of Common Stock outstanding and entitled vote, of which 17,250,000 were shares of Class A Common Stock and 4,312,500 were shares of Class B Common Stock.

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10. At the Special Meeting, 16,727,474 shares, or approximately 77.6% of the then-outstanding shares of the Company’s Common Stock entitled to vote were represented in-person or by proxy, constituting a quorum to conduct business at the Special Meeting. As disclosed in the Company’s July 21, 2021, Form 8-K (the “Results Form 8-K”), attached hereto as Exhibit D, the proposal to approve and adopt the New Certificate of Incorporation, which would effect the Common Stock Increase Amendment, received the affirmative vote of 14,838,871 shares, or approximately 68.8% of the outstanding shares of the Company’s Common Stock.

11. As a result, the Company believed that the New Certificate of Incorporation and the Common Stock Increase Amendment effected thereby had received the requisite stockholder approval.

12. To the best of the Company’s knowledge and belief, all shares of Class B Common Stock represented at the Special Meeting voted in favor of the New Certificate of Incorporation. Accordingly, about 66% of the outstanding shares of Class A Common Stock approved the New Certificate of Incorporation, representing a majority of outstanding shares of Class A Common Stock outstanding.

13. On July 16, 2021, the Merger was consummated and the New Certificate of Incorporation was filed with the Delaware Secretary of State.

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14. At the Merger’s closing, each share of the Company’s Class B Common Stock converted into one share of Class A Common Stock and shares of Class A Common Stock were issued to the former stockholders of Legacy Evolv. After giving effect to the Merger and related transactions, the Company had 142,260,102 shares of Class A Common Stock issued and outstanding. The Company’s Class A Common Stock now trades on the Nasdaq Stock Market (the “NASDAQ”) under the symbol EVLV.

15. The number of shares of Class A Common Stock issued and outstanding immediately following the Merger, and at all times through the date hereof, has exceeded the 50,000,000 authorized shares of Class A Common Stock originally provided for under the Old Certificate of Incorporation. As of March 13, 2023, the Company had 147,128,868 shares of Class A Common Stock outstanding.

**D. The *Boxed* Decision**

16. As mentioned above, this Court’s recent decision in *Boxed* calls into question the validity of the Common Stock Increase Amendment and the New Certificate of Incorporation. There, the defendant corporation also sought stockholder approval to amend its certificate of incorporation to increase the number of authorized shares of Class A common stock in connection with its de-SPAC transaction. *Boxed*, 2022 WL 17959766, at \*1. Before the stockholder vote however, the plaintiff in *Boxed* wrote a letter to the company’s board asserting that the voting standard provided for the amendment to the number of authorized shares of Class A common stock violated the voting rights of the Class A common stockholders under Section 242(b). *Id.* The company subsequently chose to amend its merger agreement and supplemented its proxy statement to require the separate vote of the holders of its Class A common stock. *Id.* After the de-SPAC merger was completed, the plaintiff filed an action in this Court seeking attorneys’ fees and expenses for the benefits he allegedly conferred on the company and its stockholders as a result of this change. *Id.*

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17. In *Boxed*, the Court ultimately concluded that the company’s Class A common stock and Class B common stock were separate classes of capital stock, rather than series. *Id.* at \*9. Thus, the Court held, under the “meritorious when filed” standard applicable under the corporate benefit doctrine, that “Class A and Class B are each a class of common stock, not series.” *Id.*

18. While the Court’s discussion in *Boxed* described above is not a final ruling on the merits, the opinion suggests that a reviewing court, if presented with the facts relevant here, may view the Company’s Class A Common Stock and Class B Common Stock as separate classes of capital stock. Under that view, the New Certificate of Incorporation may have required a separate class votes of the Class A Common Stock and Class B Common Stock. The 2021 Proxy Statement did not disclose that a separate vote of the Class A Common Stock and Class B Common Stock was required to approve the New Certificate of Incorporation, although all of the Class B Common Stock represented at the Special Meeting and a majority of the outstanding shares of Class A Common Stock did in fact approve it.

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19. As a result of the uncertainty regarding the issue raised in the *Boxed* decision, the validity of the Common Stock Increase Amendment, the New Certificate of Incorporation, and the shares issued in reliance on the effectiveness of the New Certificate of Incorporation, has become and will remain uncertain absent prompt relief from the Court.

**E. The Court’s Authority Under Section 205(a)**

20. Under Section 205(a)(3), this Court may “[d]etermine the validity and effectiveness of any defective corporate act not ratified . . . pursuant to § 204” and

under Section 205(a)(4), this Court may “[d]etermine the validity of any corporate act or transaction and any stock, rights or options to acquire stock.” 8 Del. C. § 205(a)(3),(4). A “defective corporate act” is defined, in pertinent part, as “any act or transaction purportedly taken by or on behalf of the corporation that is, and at the time such act or transaction was purportedly taken would have been, within the power of a corporation . . . but is void or voidable due to a failure of authorization.” 8 Del. C. § 204(h)(1). Finally, a “failure of authorization” is defined, in pertinent part, as “the failure to authorize or effect an act or transaction in compliance with (A) the provisions of this title, (B) the certificate of incorporation or bylaws of the corporation, or (C) any plan or agreement to which the corporation is a party or the disclosure set forth in any proxy or consent solicitation statement, if and to the extent such failure would render such act or transaction void or voidable.” 8 Del. C. § 204(h)(2).

21. Here, if separate votes of the Class A Common Stock and Class B Common Stock were required to approve the New Certificate of Incorporation under Section 242(b)(2) and the terms of the Old Certificate of Incorporation, while those votes were in fact obtained, the 2021 Proxy Statement did not disclose that such votes were required. This disclosure regarding the required vote could be considered a failure of authorization. As a result, the filing of the New Certificate of Incorporation (which effected the Common Stock Increase Amendment), and all shares of the Company’s Class A Common Stock issued in reliance on the effectiveness thereof, may be invalid and would constitute defective corporate acts under Sections 204 and 205.

22. As such, the Court has the authority under Section 205 to validate the Common Stock Increase Amendment, the New Certificate of Incorporation, and all of the shares of capital stock issued by the Company in reliance on the validity and effectiveness of the New Certificate of Incorporation under Section 205.

**F. The Validation Factors Set Forth in Section 205(d)**

23. The Court may consider the factors set forth in Section 205(d) when determining whether to validate a defective corporate act. Section 205(d) provides:

In connection with the resolution of matters pursuant to subsections (a) and (b) of this section, the Court of Chancery may consider the following:

- (1) Whether the defective corporate act was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this title, the certificate of incorporation or bylaws of the corporation;
- (2) Whether the corporation and board of directors has treated the defective corporate act as a valid act or transaction and whether any person has acted in reliance on the public record that such defective corporate act was valid;
- (3) Whether any person will be or was harmed by the ratification or validation of the defective corporate act, excluding any harm that would have resulted if the defective corporate act had been valid when approved or effectuated;
- (4) Whether any person will be harmed by the failure to ratify or validate the defective corporate act; and
- (5) Any other factors or considerations the Court deems just and equitable.

8 Del. C. § 205(d).

24. Each factor set forth in Section 205(d) supports granting the relief sought in this Petition.

25. **Factor 1: Belief in the New Certificate of Incorporation’s Validity.**

With respect to the factor set forth in Section 205(d)(1), the Company demonstrated its good faith belief that the New Certificate of Incorporation was approved in accordance with Delaware law through the actions the Company took in connection with the Merger. After receiving the affirmative vote at the Special Meeting, the Company consummated the Merger and each of the transactions contemplated by the Merger Agreement. Moreover, in the Results Form 8-K, the Company disclosed that the New Certificate of Incorporation had been approved by the stockholders on July 15, 2021, and the Merger was closed the next day in reliance on that approval. The Company also filed the New Certificate of Incorporation with the Delaware Secretary of State on July 16, 2021, based on the belief that it was validly approved. No one has challenged the validity of the New Certificate of Incorporation, and, until the *Boxed* decision, the Company had no reason to doubt the validity of the New Certificate of Incorporation.

26. **Factor 2: Treatment of the New Certificate of Incorporation as Valid.** With respect to the factor set forth in Section 205(d)(2), the Company has treated the New Certificate of Incorporation as valid and effective, as evidenced by its public disclosures, including the Results Form 8-K and in numerous other public filings since the Merger where the Company has repeatedly represented that it has 1,100,000,000 shares of Class A Common Stock currently authorized under the New Certificate of Incorporation. The Company issued shares of Class A Common Stock to the stockholders of Legacy Evolv as consideration in the Merger in reliance on the validity of the New Certificate of Incorporation.

27. **Factor 3: No Harm Arising from Validation.** With respect to the factor set forth in Section 205(d)(3), the Company has no reason to believe that any person would be harmed by validation of the New Certificate of Incorporation and all of the Company’s outstanding shares of Class A Common Stock issued in reliance upon the validity thereof. Rather, the purpose of the validation is to provide certainty to the capital structure of the Company by ensuring that each person who currently believes they own shares of Class A Common Stock does in fact own such shares.

28. **Factor 4: Harm will Result if the New Certificate of Incorporation is not Validated** Indeed, with respect to the factor set forth in Section 205(d)(4), there are many parties that would be harmed if the Company’s capital structure is not validated by the Court as requested in this Petition.

29. As a result of the uncertainty with respect to the validity of the New Certificate of Incorporation, and the Common Stock Increase Amendment effected thereby, it is not clear how many shares the Company is currently authorized to issue. The continued uncertainty as to the Company's capital structure could potentially cause market disruption, disturb the Company's commercial relationships, impact the Company's ability to offer competitive compensation, adversely affect strategic acquisitions or partnership opportunities and could ultimately lead to consequent loss of value for the Company's stockholders and loss of eligibility to remain listed on the NASDAQ.

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30. Furthermore, the Class A Increase Amendment was necessary to increase the number of authorized shares of Class A Common Stock to a number sufficient to permit the Company to issue shares of Class A Common Stock to the stockholders of Legacy Evolv in the Merger. If the New Certificate of Incorporation is not valid, the shares of Class A Common Stock issued in the Merger may not be valid and stockholders of Legacy Evolv who received the shares will not have received stock with the attributes they bargained for in the Merger (including the ability to issue up to 1.1 billion shares of Class A Common Stock and the various governance and other changes to the Old Certificate of Incorporation effected by the New Certificate of Incorporation).

31. The uncertainty regarding the Company's capital structure also threatens to jeopardize the Company's current and potential financing arrangements, as well as the Company's current and future operational matters. The Company may be restrained from raising additional capital to execute its business plan and continue day-to-day operations. The uncertainty regarding the validity of the Class A Common Stock would likely prevent the Company from raising additional capital through the sale of additional security. Moreover, the Company is required to file an annual report on Form 10-K by March 31, 2023 (the "Annual Report"). Because there now exists uncertainty regarding the validity of the New Certificate of Incorporation and the shares issued, or to be issued, in reliance thereon, there is likewise uncertainty as to the statements and representations the Company is required to make in its Annual Report. This could in turn impact the ability of the Company's auditors to provide their required consent for the filing of the Annual Report. The Company also currently intends to hold its annual meeting on May 30, 2023 (the "Annual Meeting"). The Company needs confirmation of the validity of the New Certificate of Incorporation in order to determine, with precision, the stockholders entitled to vote at the Annual Meeting and the outcome of any vote taken at the Annual Meeting. Absent clarity from this Court, the Company's stockholders may be disenfranchised by the uncertainty.

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32. **Factor 5: "Other Factors" Support Relief Sought** With respect to the factor set forth in Section 205(d)(5), several "other factors" support granting the relief sought in this Petition.

33. *First*, "self-help" ratification by the Company's stockholders under Section 204 may not be an effective alternative available to the Company. To the extent that the vote on the Common Stock Increase Amendment required the approval of the Class A Common Stock voting as a separate class, it is no longer feasible for the Company to obtain that vote through a Section 204 ratification. The Company no longer has Class B Common Stock and is only authorized to issue one class of Class A Common Stock under the New Certificate of Incorporation. Furthermore, the Company issued shares of Class A Common Stock in the Merger that exceeded the number of shares of Class A Common Stock authorized under the Old Certificate of Incorporation. As a result, those shares may be invalid. Countless shares of Class A Common Stock have traded in the open market since the closing of the Merger such that it may be difficult or impossible to determine which stockholders (if any) currently hold valid shares that would be entitled to vote on a ratification under Section 204. Moreover, even if the self-help remedy available through Section 204 was available to the Company, the process would entail significant expense and delay, to the detriment of the Company and its stockholders. Additionally, the Company would be required to file a certificate of validation with the Delaware Secretary of State to effectively ratify the New Certificate of Incorporation. 8 *Del. C.* § 204(e)(3). While the certificate of validation is being processed, the Company would not be able to obtain certificates of good standing, pay its annual franchise taxes, or make any other filings with the Delaware Secretary of State.

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34. *Second*, as evidenced by the numerous recent filings of petitions for relief pursuant to Section 205, this issue is not isolated to the Company. Rather, this Petition provides an opportunity to the Court to provide guidance as to whether current or potential stockholders of a similar company can rely on such company's capital structure. Granting the Petition may offer other SPACs a solution to a widespread problem. Crafting a sensible, equitable, and prompt solution would be in keeping with both this Court's and the State of Delaware's reputations as the United States' preeminent caretakers of corporate law and governance.

35. The Company therefore respectfully requests that this Court enter an order, validating and declaring effective the New Certificate of Incorporation and all of the shares of capital stock of the Company issued or to be issued in reliance on the effectiveness of the New Certificate of Incorporation.

#### **COUNT ONE**

##### **(Validation of Defective Corporate Act and Putative Stock Pursuant to 8~~Del. C.~~ § 205)**

36. The Company repeats and reiterates the allegations set forth above as if fully set forth herein.

37. The Company is authorized to bring this Petition under 8~~Del. C.~~ § 205, which provides that this Court may determine the validity and effectiveness of any corporate act, defective corporate act and any putative stock.

38. The Company consummated the Merger and filed the New Certificate of Incorporation, which effected the Common Stock Increase Amendment, in the good faith belief that the New Certificate of Incorporation was adopted in compliance with Delaware law.

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39. The Company has since treated the New Certificate of Incorporation as valid and has treated all acts in reliance on the New Certificate of Incorporation as valid.

40. The Company issued shares of Class A Common Stock in reliance on the effectiveness of the New Certificate of Incorporation, and has reflected those shares as issued and outstanding in all of its SEC filings, financial statements, and third party agreements requiring it to indicate the number of authorized shares of Common Stock since the time they were issued.

41. The Company's stockholders, directors, and employees, as well as the Company's commercial partners, have relied on the effectiveness of the New Certificate of Incorporation and have treated all acts in reliance of the New Certificate of Incorporation as valid.

42. The Company has no reason to believe that any person would be harmed by the validation of the New Certificate of Incorporation and the shares of the Class A Common Stock issued to date in reliance on the New Certificate of Incorporation.

43. The results of the Special Meeting and the filing of the New Certificate of Incorporation, including the Common Stock Increase Amendment, were all disclosed publicly, and actions have been taken in reliance thereon.

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44. As previously noted, the Company, its stockholders, and its future commercial prospects may be irreparably and significantly harmed absent urgent relief from this Court.

**PRAYER FOR RELIEF**

WHEREFORE, the Company respectfully requests that this Court enter an order as follows:

A. Validating and declaring effective the New Certificate of Incorporation (and the Common Stock Increase Amendment effected thereby), including the filing and effectiveness thereof, as of the date and time that the New Certificate of Incorporation was originally filed with the Delaware Secretary of State;

B. Validating and declaring effective any and all shares of the capital stock of the Company issued at or after the filing of the New Certificate of Incorporation, including the 142,260,102 shares of Class A Common Stock issued by the Company in connection with the Merger, in reliance on the effectiveness of the New Certificate of Incorporation, in each case as of the date and time of the original issuance of such shares of capital stock; and

C. Granting such other and further relief as this Court deems proper.

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*/s/ Kevin M. Gallagher*

Kevin M. Gallagher (#5337)  
Edmond S. Kim (#6835)  
Richards, Layton & Finger, P.A.  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7700

*Attorneys for Petitioner Evolv Technologies Holdings, Inc.*

Dated: March 14, 2023

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