

November 1, 2017

Via Electronic Delivery

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-NASDAQ-2017-087: Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Listing Requirements Related to Special Purpose Acquisition Companies Listing Standards to Reduce Round Lot Holders on Nasdaq Capital Market for Initial Listing From 300 to 150 and Eliminate Public Holders for Continued Listing from 300 to Zero, Require \$5 Million in Net Tangible Assets for Initial and Continued Listing, and Impose a Deadline to Demonstrate Compliance with Initial Listing Requirements on All Nasdaq Markets Within 30 Days Following Each Business Combination (the "Proposal")

Dear Mr. Fields:

Akin Gump Strauss Hauer & Feld LLP ("Akin Gump") submits this letter to the Securities and Exchange Commission (the "Commission") to comment on the proposed rule changes filed by the NASDAQ Stock Market ("Nasdaq"). Akin Gump appreciates the continuing efforts of the Commission and Self-Regulatory Organizations to reduce certain regulatory burdens while maintaining investor protections so that sponsors of special purpose acquisition companies ("SPACs") can readily access the public capital markets and underwriters can facilitate the initial public offerings and mergers and acquisitions for these emerging growth companies.

Background

Akin Gump is one of the leading global law firms in representing investors, sponsors, issuers and underwriters in the initial public offerings ("IPOs") of SPACs, as well as parties involved in initial business combination transactions with SPACs. SPACs provide an opportunity for public investors to invest in companies led by experienced management teams that have the potential to spur economic growth by acquiring already existing operating companies and/or conducting asset acquisitions. Public investors may find SPACs attractive because they have certain features which, relative to other equity securities, make them less risky. Public investors in SPACs typically weigh in directly on proposed business combinations, given (i) the right to redeem their shares for a pro rata share of funds held in escrow at the time of a business combination, usually up to 100 percent of funds from a SPAC's IPO and (ii) the right under current market practice to vote on the approval of a proposed business combination. If no

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business combination is made within 36 months,¹ a SPAC must liquidate and public investors automatically receive their pro rata share of the escrow funds. Nasdaq is the leading exchange in listing SPACs and has listed 95 percent of all SPAC IPOs since 2011, amounting to over 90 completed IPOs² and raising over \$15.3 billion in IPO proceeds.³

Round-Lots and Holder Requirements

Nasdaq proposes to reduce the number of round-lot shareholders required in connection with the initial listing of a SPAC and proposes to eliminate the 300 public holders requirement as a continued listing requirement. Current initial listing requirements require 300 round-lot shareholders. A change in the number of round-lot shareholders will remove a significant hurdle for certain SPACs. It can be difficult for SPACs to obtain 300 round-lot shareholders due to the high demand from institutional investors in the IPO allocation process. Despite reducing the initial listing requirement to 150 round-lot shareholders and eliminating the 300 public holders requirement as a continued listing requirement, SPAC investors will not be adversely affected by any liquidity issues because they typically hold their shares until a business combination is announced. SPAC investors have further protection from illiquidity because a SPAC must undergo a business combination within the allotted time period or liquidate and return the pro rata share of the trust assets to public investors. After an IPO, many shareholders hold securities in street name and many take advantage of the Commission's objecting beneficial owner rules, so the existing holder requirement creates a significant administrative burden on SPACs to attempt to uncover shareholder identities through broker-dealers and third parties, without material benefits to investors, but with increased costs to the SPAC which is operating with limited funds outside of the trust account.

Asset-based Test Requirements

Nasdaq proposes to impose a minimum net tangible assets requirement for initial listings and continued listings of at least \$5 million in net tangible assets. This requirement would ensure that SPACs listed after the adoption of the Proposal would not be subject to onerous penny stock regulations under Rule 419 and continue to provide the flexibility to enhance and vary certain

¹ Most SPACs have a 24-month term from the closing of the IPO to consummate a business combination, although Nasdaq Rule IM-5101-2(b) permits a SPAC to take up to 36 months to consummate a business combination.

² Nasdaq Continues Market Leadership in SPACs, Michael Bartels, Nasdaq (Sept. 20, 2017), <http://business.nasdaq.com/marketinsite/2017/Nasdaq-Continues-Market-Leadership-in-SPACs.html>

³ Nasdaq Successfully Lists 90 SPAC IPOs, Raising a Total of \$15.3B, Nasdaq (Aug. 30, 2017), <http://business.nasdaq.com/mediacenter/pressreleases/1611498/nasdaq-successfully-lists-90-spac-ipos-raising-a-total-of-153b>

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terms and features of a SPAC without increasing the Rule 419 regulatory risks. If the changes to the net tangible assets test are approved, Nasdaq will begin publishing a daily list on the Nasdaq Listing Center of all SPACs that are no longer compliant with the \$5 million net tangible asset requirement and do not satisfy any other penny stock exclusion. For SPACs that are already listed on Nasdaq, if and when the Proposal becomes effective, such SPACs need not increase their net tangible assets to comply with the \$5 million requirement, provided that they remain in compliance with the existing continued public holder requirements. The proposed daily list will ensure market participants have access to notice of SPACs that are not in compliance.

Post-Business Combination Transition Period

Nasdaq proposes to implement a short transition period of 30 days from a business combination for compliance with all initial listing requirements, which will significantly benefit the SPAC's ability to consummate and integrate the post-business combination operations of the SPAC while simultaneously protecting public investors. Given the limited time and resources SPACs have to consummate an initial business combination and the multitude of legal, regulatory, business and operational matters that must be coordinated in order to successfully consummate an initial business combination, the proposed rule provides a reasonable amount of flexibility to the SPAC without seeming to add a substantial additional risk for public investors.

Support for Proposed Rule Changes

Akin Gump supports Nasdaq's Proposal. We believe that the proposed rule changes will assist in keeping the U.S. capital markets competitive with other global financial markets. The proposed changes will ensure Nasdaq remains competitive domestically and internationally, while not adversely affecting investor protection. Nasdaq's proposed rule changes address some of the difficulties facing SPACs and their underwriters by relaxing round-lot shareholder requirements, and the resulting administrative burdens on companies that may wish to combine with a SPAC. The changes establish a set timeframe within which Nasdaq seeks compliance with their listing requirements. Furthermore, Nasdaq's proposed changes benefit investors by requiring that SPACs maintain at least a minimum amount of net tangible assets.

Given the unique nature of SPACs, Akin Gump supports the rule changes that Nasdaq has proposed to reduce the burdens on SPACs and underwriters and their business combination counterparties in their efforts to meet initial and continued listing requirements, while preserving necessary protections for investors.

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Akin Gump greatly appreciates the attention paid by the Commission and Self-Regulatory Organizations in considering the approval of the Proposal. If you have any questions concerning Akin Gump's comments, please feel free to contact Alice Hsu at [REDACTED] or [REDACTED].

Regards,

Akin Gump Strauss Hauer & Feld LLP

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