

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94349; File No. SR-NYSE-2021-45)

March 2, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt Listing Standards for Subscription Warrants Issued by a Company Organized Solely for the Purpose of Identifying an Acquisition Target

I. Introduction

On August 24, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt listing standards for subscription warrants issued by a company organized solely for the purpose of identifying an acquisition target. The proposed rule change was published for comment in the Federal Register on September 10, 2021.³

On September 30, 2021, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 8, 2021, the Commission instituted proceedings under

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92876 (September 3, 2021), 86 FR 50748. Comments received on the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2021-45/srnyse202145.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 93221, 86 FR 55662 (October 6, 2021). The Commission designated December 9, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

On March 1, 2022, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced the proposed rule change as originally filed and superseded such filing in its entirety.⁸ Amendment No. 2 to the proposed rule change is described in Items II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Listed Company Manual (“Manual”) to adopt a new listing standard for the listing of Subscription Warrants. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

III. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 93741, 86 FR 71111 (Dec. 14, 2021).

⁸ Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nyse-2021-45/srnyse202145.htm>. On February 17, 2022, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange withdrew Amendment No. 1 on March 1, 2022.

C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 2 to SR-NYSE-2021-45

The Exchange has previously filed a proposed rule change to permit the listing of Subscription Warrants.⁹ Amendment No. 2 to SR-NYSE-2021-45 proposes to:

- provide that Subscription Warrants with respect to which the exercise price is tendered after execution of an Acquisition Agreement will not actually be exercised until consummation of the company’s business combination;
- state that the Subscription Warrants must provide for a period of at least 20 business days after effectiveness of such post-effective amendment or new registration statement during which holders may elect to exercise Subscription Warrants effective upon closing of the Acquisition, which period may expire prior to the date of consummation of the Acquisition. The terms of the Subscription Warrants must not in any other way limit the ability of holders to exercise such Subscription Warrants in full;
- specify that Subscription Warrants must be issued for no consideration to the securityholders of a previously existing company;
- increase from 1.1 million to 20 million the number of publicly-held Subscription Warrants that must be outstanding at the time of initial listing;

⁹ See SR-NYSE-2021-45. On February 17, 2022, the NYSE submitted Amendment No. 1, which was subsequently withdrawn.

- state that a Subscription Warrant may provide by its terms that the issuer may (1) determine, at issuance, that each Subscription Warrant may be exercisable for a specified number of shares greater than one share; and (2) determine, at the time it enters into an Acquisition Agreement, that the exercise price per share may be increased above the exercise price specified at the time of original issuance;
- provide that the Subscription Warrants must have an opening trading price on the first day of listing of at least \$1.00 per Subscription Warrant;
- provide that the Subscription Warrants may not be tendered for exercise into common stock of a company until after such company has complied with all requirements of the federal securities laws with respect to such exercise, including, as appropriate, the filing and effectiveness of a post-effective amendment to the registration statement filed in connection with the original distribution of the Subscription Warrants or the filing and effectiveness of a new registration statement in connection with the exercise of such Subscription Warrants;
- state that the shares will be issued to the tendering holders of Subscription Warrants and the proceeds released to the issuer by the independent custodian at the time of closing of the Acquisition;
- state that the independent custodian will promptly return the funds tendered in payment of the exercise price of Subscription Warrants to the tendering holders (A) upon termination of the Acquisition Agreement; or (B) if the Acquisition does not close within twelve months from the date of entry into the definitive agreement with respect to the Acquisition or such earlier time as is specified in the operative agreements;

- increase the continued listing requirement with respect to the number of publicly-held Subscription Warrants from 100,000 to five million; and
- provide for the commencement of immediate suspension and delisting procedures when the average trading price of the Subscription Warrants is less than \$0.25 over 30 consecutive trading days

This Amendment No. 2 to SR-NYSE-2021-45 replaces SR-NYSE-2021-45 as originally filed and supersedes such filing in its entirety.

Subscription Warrants

The Exchange proposes to adopt a new subsection of Section 102 of the Manual (to be designated Section 102.09) to permit the listing of Subscription Warrants. For purposes of proposed Section 102.09 a Subscription Warrant is a warrant issued by a company organized solely for the purpose of identifying an acquisition target and is exercisable into the common stock of such company only upon consummation of such acquisition.

Initial Listing Standards for Subscription Warrants

The Exchange will list Subscription Warrants subject to the following requirements:

- (i) The issuer of the Subscription Warrants must be a company formed solely for the purpose of issuing the Subscription Warrants and consummating the acquisition of one or more operating businesses or assets with a value (calculated at the time of entry into the acquisition agreement) equal to at least 80% of the aggregate exercise price of the Subscription Warrants (an "Acquisition"). The Subscription Warrants must be issued for no consideration to the securityholders of another previously existing company.
- (ii) For a transaction to qualify as an Acquisition, the resultant entity must qualify for initial listing on the Exchange and the acquisition agreement must provide that the

transaction will be consummated only if the resultant entity will be listed on the Exchange or another national securities exchange.

(iii) At the time of initial listing, the Subscription Warrants must: (A) have an aggregate exercise price of at least \$250 million; (B) have at least 20 million publicly held Subscription Warrants outstanding, with an aggregate exercise price of at least \$200 million; (C) have at least 400 holders of round lots; (D) have an exercise price per share of common stock of at least \$10.00; (E) have an opening trading price on the first day of listing of at least \$1.00 per Subscription Warrant; and (F) expire in no more than 10 years. For purposes of proposed Section 102.09, public holders of Subscription Warrants do not include those held by directors, officers, or their immediate families and other concentrated holdings of 10 percent.

(iv) A Subscription Warrant may provide by its terms that the issuer may (1) determine, at issuance, that each Subscription Warrant may be exercisable for a specified number of shares greater than one share; and (2) determine, at the time it enters into an Acquisition Agreement, that the exercise price per share may be increased above the exercise price specified at the time of original issuance of such Subscription Warrants.

(v) The distribution of the Subscription Warrants and the issuance of the common stock of the issuer upon exercise of the Subscription Warrants must both be registered under the Securities Act.

(vi) The Subscription Warrants may not be tendered for exercise into common stock of a company until after such company has (A) entered into a binding agreement with respect to the Acquisition; and (B) complied with all requirements of the federal securities laws with respect to such exercise, including, as appropriate, the filing and effectiveness of a

post-effective amendment to the registration statement filed in connection with the original distribution of the Subscription Warrants or the filing and effectiveness of a new registration statement in connection with the exercise of such Subscription Warrants.

(vii) Subscription Warrants must provide for a period of at least 20 business days after effectiveness of such post-effective amendment or new registration statement during which holders may elect to exercise Subscription Warrants effective upon closing of the Acquisition, which period may expire prior to the date of consummation of the Acquisition. The terms of the Subscription Warrants must not in any other way limit the ability of holders to exercise such Subscription Warrants in full.

(viii) The proceeds of the exercise of the Subscription Warrants will be held in an interest-bearing custody account controlled by an independent custodian, pending the closing of such Acquisition. The shares will be issued to the tendering holders of Subscription Warrants and the proceeds released to the issuer by the independent custodian at the time of closing of the Acquisition.

(ix) The independent custodian will promptly return the funds tendered in payment of the exercise price of Subscription Warrants to the tendering holders: (A) upon termination of the Acquisition Agreement; or (B) if the Acquisition does not close within twelve months of entry into the definitive agreement with respect to the Acquisition, or such earlier time as is specified in the operative agreements. Such holders will receive cash payments equal to their proportional share of the funds in the custody account, including any interest earned on those funds.

(x) The issuer of the Subscription Warrants will be subject to the same corporate governance requirements under Section 303A hereof as an issuer of listed common stock.

(xi) The Acquisition must be approved by a majority of the independent directors of the issuer of the Subscription Warrants.

Continued Listing Standards for Subscription Warrants

The Exchange will immediately initiate suspension and delisting procedures of an issuer's Subscription Warrants if:

- the number of publicly-held Subscription Warrants is fewer than five million;
- the number of public holders of such Subscription Warrants is fewer than 100;
- the total market capitalization of such Subscription Warrants is below \$15 million over 30 consecutive trading days; or
- the average trading price of the Subscription Warrants is less than \$0.25 over 30 consecutive trading days.

For purposes of the foregoing, public holders of Subscription Warrants do not include those held by directors, officers, or their immediate families and other concentrated holdings of 10 percent.

An issuer of Subscription Warrants will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to the criteria set forth above and any such security will be subject to delisting procedures as set forth in Section 804.00.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

¹⁰ 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of security that will, in turn, enhance competition among market participants, to the benefit of investors and the marketplace.

Furthermore, the Exchange believes that the proposed listing standard is consistent with Section 6(b)(5) of the Act in that it contains requirements in relation to the listing of Subscription Warrants that provide adequate protections for investors and the public interest. In particular, the Exchange believes that the proposed rule provides important investor protections including, but not limited to, providing that: (1) the issuer cannot accept Subscription Warrants for exercise until it has entered into a definitive Acquisition Agreement and filed and obtained effectiveness of a registration statement with respect to such exercise; (2) cash tendered by Subscription Warrant holders in payment of the exercise price will be held in an interest-bearing account controlled by an independent custodian pending closing of the Acquisition; and (3) if the Acquisition is terminated or does not close within 12 months of the date of the Acquisition Agreement, the tendering holders will receive a distribution of their pro rata share of the funds in the custody account.

The Exchange also believes that the proposed quantitative standards for Subscription Warrants are adequate to protect the interests of investors and the public interest. The Exchange notes that the proposed requirements that the Subscription Warrants at the time of initial listing must have an aggregate exercise price of at least \$250 million and that there be publicly-held

Subscription Warrants with an aggregate exercise price of at least \$200 million significantly exceeds the listing requirements for SPACs set forth in Section 102.06 of the Manual, which requires a SPAC to have an aggregate market value of \$100 million and a market value of publicly-held shares of \$80 million.

The Exchange believes that its existing surveillance procedures are adequate to enable it to detect manipulative trading practices with respect to Subscription Warrants. The Exchange notes that the NYSE and other self-regulatory organizations have extensive experience in conducting surveillance of the trading in securities whose value, like that of Subscription Warrants, is substantially dependent on the issuer's future acquisition of a yet-to-be-identified operating asset. Such similar securities include the common stock and warrants of listed special purpose acquisition companies ("SPACs") and options on listed SPAC common stocks. The Exchange also believes that the extensive experience that exists in the trading of these kinds of securities provides evidence that market participants are generally able to arrive at market prices for such securities without excessive volatility and that this experience provides a reasonable basis for understanding how Subscription Warrants are likely to trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule would be available in a non-discriminatory way to any company satisfying its requirements, as well as all other applicable NYSE listing requirements. In addition, the proposed rule change does not impose any burden on the competition with other listing exchanges; any competing exchange could similarly adopt rules to allow the listing of Subscription Warrants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-45 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2021-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-45 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).