

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80542; File No. SR-NYSE-2017-18)

April 27, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt an Annual Fee Cap for Acquisition Companies

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 14, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt an annual fee cap for Acquisition Companies. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to adopt an annual fee cap for Acquisition Companies.

Acquisition Companies (commonly referred to in the marketplace as “special purpose acquisition companies” or “SPACs”) are listed pursuant to Section 102.06 of the NYSE Listed Company Manual (the “Manual”). Acquisition Companies typically sell units in their initial public offering, consisting of a common equity security and a whole or fractional warrant to purchase common stock.<sup>4</sup> Holders of Acquisition Company units typically have the right to separate the units shortly after the IPO and the Exchange lists the common equity securities and the warrants (in addition to the units) upon separation.

Currently, Section 902.11 of the Manual specifies that the common shares listed as part of an Acquisition Company unit offering are subject to the annual fee schedule for common stock set forth in Section 902.03 of the Manual and the warrants are subject to the annual fee schedule set forth in Section 902.06 for short-term warrants to purchase equity securities.<sup>5</sup> The Exchange proposes to retain this annual fee structure, but proposes to establish a limit of \$85,000 on the aggregate of all annual fees payable by an Acquisition Company with respect to its listed common shares and warrants in any calendar year.

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<sup>4</sup> The number of warrants included in the units sold in an Acquisition Company IPO varies. Sometimes there is a warrant to purchase one common share included as part of each unit. Recently the units sold in some Acquisition Company IPOs have included a fractional warrant to purchase a share. In order to exercise these fractional warrants or trade them separate from the units, an investor would need to acquire sufficient warrants to be able to exercise them for whole numbers of shares.

<sup>5</sup> Section 902.03 requires listed companies to pay annual fees of \$0.00105 per share for common stock, subject to a minimum of \$59,500. Section 902.06 requires a fee of \$0.00105 per warrant, subject to a \$5,000 annual cap. All of the fees payable on both a company’s common stock and warrants are subject to the overall annual cap on listing fees of \$500,000 set forth in Section 902.02.

An Acquisition Company's listing often lasts for a brief period of time. Under the Acquisition Company structure, the company's charter provides that it must either enter into a business combination within a specified limited period of time (typically two years or less, but no longer than three years is permitted under Section 102.06) or return the funds held in trust to the company's shareholders and dissolve the company. Acquisition Company business combinations do not always result in a continued listing of the post-business combination entity, as the resultant entity may be a private company or list on another exchange or the Acquisition Company may be acquired by another company that is already listed. In contrast to an Acquisition Company, an operating company that lists on the Exchange will typically remain listed for many years.

Acquisition Companies do not have the same right to receive services from the Exchange under Section 907.00 as operating companies do. An Acquisition Company is not deemed eligible for the services provided to an Eligible New Listing at the time of its initial listing, but becomes eligible for those services at such time as it has completed one or more business combinations having an aggregate fair market value of at least 80% of the value of the trust account as specified in Section 102.06 if it remains listed after meeting that requirement. As discussed above, many Acquisition Companies either liquidate or do not remain listed after their business combination is consummated. Consequently, many Acquisition Companies would never become eligible for services under Section 907.00.<sup>6</sup> Consequently, the Exchange believes it is reasonable to limit the amount of annual fees a listed Acquisition Company must pay, as the ineligibility of Acquisition Companies to receive services under Section 907.00 means that the

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<sup>6</sup> Moreover, an Acquisition Company that remains listed after its business combination will be subject to the higher annual fees charged to operating companies commencing with its first full year of listing after consummation of its business combination.

cost of servicing an Acquisition Company listing would be generally lower than the cost to the Exchange of servicing the listing of an operating company of comparable size.

The Exchange does not expect the financial impact of the proposed amendment to be material in terms of the level of listing fees collected from issuers on the Exchange. Specifically, the Exchange notes that Acquisition Companies represent a relatively small number of potential listings and therefore anticipates that only a limited number of Acquisition Companies will list. In addition, the Exchange does not anticipate that the annual fees payable by all Acquisition Companies would exceed the proposed cap, so the reduction in revenue would not be relevant to all listed Acquisition Companies. Accordingly, the Exchange believes that the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>8</sup> of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, in particular 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 and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

public interest.

The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange notes that the proposed amendment is not unfairly discriminatory as Acquisition Companies frequently have a much shorter period of listing on the Exchange than operating companies and they are ineligible to receive services from the Exchange that are generally available to newly-listed operating companies.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to limit the amount a listed Acquisition Company pays in annual listing fees and should therefore increase competition for Acquisition Company listings by making the Exchange a more attractive listing venue.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-18 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2017-18. 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

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<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-18 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.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).