

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81079; File No. SR-NYSE-2017-11)

July 5, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Listing Standards for Special Purpose Acquisition Companies to Modify the Initial and Continued Distribution Requirements

I. Introduction

On March 20, 2017, the 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 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend listing standards for Special Purpose Acquisition Companies (“SPACs”) to modify the initial and continued distribution requirements, and to make other minor changes. The proposed rule change was published for comment in the Federal Register on April 6, 2017.³ The Commission received no comments on the proposal. On May 19, 2017, the Commission designated a longer period for Commission action until July 5, 2017.⁴ On May 23, 2017, NYSE filed Amendment No. 1 to the proposal. On June 19, 2017, NYSE withdrew Amendment No. 1 and filed Amendment No. 2 to, among other things, revise the proposed continued listing distribution standard from a requirement of 300 total stockholders to a requirement of 300 public

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80358 (March 31, 2017), 82 FR 16865 (April 6, 2017) (“Notice”).

⁴ See Securities Exchange Act Release No. 80735 (May 19, 2017), 82 FR 24173 (May 25, 2017) (“Extension”).

stockholders.⁵ The Commission is publishing this notice of Amendment No. 2 and approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 2

A. General Background on SPACs

A SPAC is a special purpose company that raises capital in an initial public offering (“IPO”) to enter into future undetermined business combinations through mergers, capital stock exchanges, assets acquisitions, stock purchases, reorganizations or similar business combinations with one or more operating businesses or assets. The Exchange represented that in an IPO, a SPAC typically sells units consisting of one share of common stock and one or more warrants (or fraction of a warrant) to purchase common stocks. The units are separable at some point after the IPO. The Exchange also noted that management of the SPAC typically receives a percentage of the equity at the outset and may be required to purchase additional shares in a private placement at the time of the IPO. Due to their different structure, SPACs do not have any prior financial history, at the time of their listing, like operating companies.

B. Proposed Changes to Round Lot Holders in Initial Listing Standards

NYSE Manual Section 102.06 sets forth the initial listing standards that apply to SPACs.⁶ Currently, in order to list on the Exchange, a SPAC is required to meet, among other standards,

⁵ In Amendment No. 2, the Exchange replaced the proposal in its entirety. Amendment No. 2, in addition to changing the proposed distribution standard to 300 public stockholders, rather than 300 total stockholders as originally proposed, specifies that NYSE Listed Company Manual (“Manual”) Section 802.01A does not apply to SPACs, defines the term “public stockholders,” and corrects typographical errors. Text of Amendment No. 2 is available as a comment letter to this filing.

⁶ The Commission notes that throughout this order we have used the term “SPAC” or “SPACs”, but these terms have the same meaning as “Acquisition Company” or “Acquisition Companies” which are the terms used for listing, and continued listing, in Section 102.06 of the Manual.

initial distribution requirements including having at least 400 round lot holders.⁷ The Exchange proposes to lower the initial distribution requirements of round lot holders from 400 to 300 for a SPAC listing either in connection with an IPO or a transfer from another exchange or a quotation listing.⁸

C. Proposed Changes to Total Stockholders in Continued Listing Standards

NYSE Manual Section 802.01B sets forth the continued listing standards that apply to SPACs. Currently, a SPAC is deemed below the continued listing standards if, among other things, the SPAC's total number of stockholders is less than 400. The Exchange proposes to change this continued distribution requirement to 300 public stockholders.⁹ In connection with the amendment, the Exchange proposes to define "public stockholders" to exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more.¹⁰

⁷ See NYSE Manual Section 102.01A.

⁸ The other alternative distribution criteria that currently apply to transfers and quotation listings will remain unchanged but is being moved so that all the criteria for listing SPACs will be contained in Section 102.06 of the Manual. See Notice, supra note 3 and discussion below.

⁹ See Amendment No. 2, supra note 5 and accompanying text. As with the initial standards, the alternative shareholder and other distribution continued listing standards will remain unchanged.

¹⁰ The Exchange represents that it primarily relies on the beneficial ownership disclosure included in the issuers' registration statements and annual meeting proxy statements in calculating publicly held shares and public stockholders, but also refers to other SEC filings where appropriate and its determinations are made in accordance with Rule 13d-3 under the Act. The Exchange stated that this is its practice under all of its rules where these calculations must be made. The Exchange also stated that this is the practice of NYSE MKT and the Exchange believes that its approach is generally consistent with that of the NASDAQ Stock Market.

D. Technical Changes

The Exchange also has proposed four technical changes to its initial and continued listing standards on SPACs. First, the Exchange proposed to consolidate the SPAC initial listing standards in Section 102.06 of the Manual, rather than referring to Section 102.01A of the Manual, which applies for operating companies. Second, the Exchange proposed to move a sentence in Section 102.06 of the Manual that details the minimum price per share for a SPAC at the time of initial listing from the end to the beginning of the same paragraph. Third, the Exchange proposed to delete an incorrect reference to footnote (A) that is included following the aggregate market value requirement in Section 102.06 of the Manual.¹¹ Finally, the Exchange proposed to add language to the continued listing criteria applicable to SPACs set forth in Section 801.01B of the Manual clarifying that the distribution standards in Section 802.01A of the Manual do not apply to SPACs.¹²

¹¹ The Exchange also proposes correct two instances of a typographical error included in the original filing by adding a second “or” to the phrase “Number of holders of 100 shares or more or of a unit of trading...” in Section 102.06 of the Manual. See Amendment No. 2.

¹² The Exchange represented that the proposed rule change would not affect the status of NYSE listed securities under Rule 3a51-1(a) of the Act (“Penny Stock Rule”)¹² because the proposed standards will satisfy the requirements of Rule 3a51-1(a)(2) under the Act.¹² While the proposed requirements do not include a requirement that newly-listed SPACs have at least \$5 million in stockholders’ equity as required by Rule 3a51-1(a)(2)(i)(A)(1) under the Act,¹² the Exchange represented that the current requirement for a SPAC to place at least 90% of its offering proceeds in trust upon consummation of its IPO would ensure that all SPACs meet the Penny Stock Rule’s requirement. To be considered for listing, the Exchange requires SPACs to demonstrate, among other things, an aggregate market value of \$100,000,000 and a market value of publicly-held shares of \$80,000,000. See NYSE Listed Company Manual Sections 102.06.

III. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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-2017-11 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-2017-11. 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 will also 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 publicly available. All submissions should refer to File Number SR-NYSE-2017-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 2, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder.¹³ Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of adequate listing standards governing the initial and continued distribution of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an IPO, will have, sufficient public float, investor base, and trading

¹³ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

interest to provide the depth and liquidity necessary to promote fair and orderly markets.

Adequate listing standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been distributed, maintenance criteria allow an exchange to monitor the status and trading characteristics of that security to ensure that the security continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

As noted above, SPACs are companies that raise capital in IPOs, with the purpose of purchasing existing operating companies or assets within a certain time frame. One of the important investor protection safeguards incorporated into the Exchange's listing standards for SPACs is the right of public shareholders¹⁵ to convert their shares for a pro rata share of the cash held in the trust account, provided that the business combination is approved and consummated.¹⁶ The Exchange noted that the securities of SPACs typically have a trading price very close to their liquidation value. The Exchange stated its belief that due to this trading characteristic, liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree.

The Exchange proposes to amend the initial and continued distribution requirement for a SPAC listing. For initial distribution, either in connection with an IPO or a transfer from another

¹⁵ Section 801.01B of the Manual defines public shareholders would exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more.

¹⁶ See NYSE Listed Company Manual Sections 102.06(b). If a shareholder vote is not held on a Business Combination for which the company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act, the company must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account, pursuant to Rule 13e-4 under the Act (which regulates issuer tender offers). See NYSE Listed Company Manual Sections 102.06(c).

exchange or a quotation listing, the Exchange proposes to lower the round lot holders requirement from at least 400 round lot holders to at least 300 round lot holders. For continued distribution, the Exchange proposes to change the stockholders requirement from 400 total stockholders to 300 public stockholders. The Commission notes that Nasdaq Capital Market has similar distribution requirements, and unlike the stockholders of many operating companies, public stockholders of a SPAC have a cash conversion right in certain limited circumstances related to the SPAC's business combination.¹⁷ The Commission has previously stated that the conversion right is an important part of the investor protection mechanism for SPAC stockholders.

In support of its proposal, the Exchange stated that the stockholder requirements are important because the existence of a significant number of stockholders can be an indicia of a liquid trading market which helps to support price discovery. The Exchange further represented, in contrast to operating companies, that the securities of a SPAC trade very close to their liquidation value. The Exchange concludes that because the pricing of a SPAC is related to its liquidation value there is less reliance on stockholder requirements when listing SPACs, as opposed to operating companies, to assure appropriate price discovery.

The Commission believes that the conversion right and the nature of SPAC securities pricing support the proposed amendment to treat securities of SPACs and operating companies differently. In approving the NYSE's proposal, the Commission notes that we are doing so only in the narrow context of SPACs based on the NYSE's representations that the added liquidity and price discovery that additional shareholders can provide to the market place is less important in

¹⁷ If the tender offer option is used all shareholders must be provided an opportunity to redeem their shares for cash. See note 16, supra.

the context of a SPAC due to the price discovery issues noted above. As NYSE also notes in its filing, once the SPAC becomes an operating company it will have to meet the higher 400 round lot holder requirement to remain listed and the 400 total stockholders continued listing standard requirement, which is the same standard for any operating company. As noted earlier, the Exchange proposed to make a number of technical amendments. The Commission finds these technical changes should clarify the Exchange's rules, as well as help to avoid confusion on which continued distribution standards apply, and are consistent with the requirements of the Act. Based on the foregoing, the Commission finds that the proposed changes to SPAC listing standards are consistent with the requirements of the Act.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁸ for approving the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after publication of Amendment No. 2 in the Federal Register. Amendment No. 2 revises the proposed continued listing distribution standards from a requirement of 300 total stockholders to a requirement of 300 public stockholders, specifies that Section 802.01A does not apply to SPACs, defines the term “public stockholders”, and corrects typographical errors. The Commission notes that the other changes proposed in the rule change are not being amended and was subject to a full notice-and-comment period and no comments were received.¹⁹ The revisions in Amendment No. 2 align the proposal more closely to Nasdaq Capital Market with respect to the public stockholders continued distribution requirement and definition of the term, adds clarity to the proposal, and does not raise any novel regulatory concerns. Accordingly, the

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ See note 5, supra.

Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED THAT pursuant to Section 19(b)(2) of the Act²⁰ that the proposed rule change, as modified by Amendment No. 2, (SR-NYSE-2017-11) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman
Assistant Secretary

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Id.

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17 CFR 200.30-3(a)(12).