

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84420; File No. SR-NYSE-2018-46)

October 12, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend the Listed Company Manual for Acquisition Companies to Reduce the Continued Listing Standards for Public Holders from 300 to 100 and to Enable the Exchange to Exercise Discretion to Allow Acquisition Companies a Reasonable Time Period Following a Business Combination to Demonstrate Compliance with the Applicable Quantitative Listing Standards

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 1, 2018, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 amend the Listed Company Manual (the “Manual”) to revise its continued listing standards for Acquisition Companies..[sic] 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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

1. Purpose

Section 102.06 of the Manual sets forth initial listing requirements applicable to a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (an “Acquisition Company” or “AC”).⁴ Section 102.06 requires, in part, that an Acquisition Company: (i) deposit into and retain in an escrow account at least 90% of the gross proceeds of its initial public offering through the date of its Business Combination; (ii) complete the Business Combination within 36 months of the effectiveness of the IPO registration statement; and (iii) provide the public shareholders who object to the Business Combination with the right to convert their common stock into a pro rata share of the funds held in escrow.⁵ Following the Business Combination, the combined company must meet the Exchange’s requirements for initial listing.

Section 802.01B of the Manual sets forth the continued listing standards for ACs. The Exchange proposes to change its initial and continued listing standards for Acquisition Companies as follows:

⁴ Section 102.06 provides that an Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (the “Business Combination”) within 36 months of the effectiveness of its IPO registration statement.

⁵ Section 102.06 also requires that each proposed business combination be approved by a majority of the company’s independent directors.

- Reduce the 300 total [sic] holders continued listing requirement to 100 total [sic] holders.
- Amend the rule text in Section 802.01B to enable the Exchange to exercise discretion to allow companies a reasonable period of time following the Business Combination to demonstrate compliance with all applicable quantitative listing standards.

Proposal to Reduce Continued Listing Requirement With Respect To Number of Holders

Acquisition Companies often have difficulty demonstrating compliance with the 300 total [sic] shareholder requirement for continued listing. The shareholder requirement is designed to help ensure that a security has a sufficient number of investors to provide a liquid trading market.⁶ Based on conversations with marketplace participants, including the sponsors of Acquisition Companies and lawyers and bankers that advise these companies, the Exchange believes that the difficulties Acquisition Companies have in demonstrating compliance with the shareholder requirement are due to intrinsic features of Acquisition Companies, which limit the number of retail investors interested in the vehicle and encourage owners to hold their shares until a transaction is announced, which can be as long as three years after the initial public offering. These same intrinsic features of Acquisition Companies also limit the benefit to investors of a shareholder requirement.

In addition, because the price of an Acquisition Company is based primarily on the value of the funds it holds in trust, and the Acquisition Company's shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the Business

⁶ See, e.g., Rocky Mountain Power Company, Securities Exchange Act Release No. 40648 (November 9, 1998) (text at footnote 11).

Combination, the impact of the number of shareholders on an Acquisition Company security's price is less relevant than is the case for operating company common stocks. For this reason, Acquisition Companies, historically, trade close to the value in the trust, even when they have had few shareholders. These trading patterns suggest that Acquisition Companies' low number of shareholders has not resulted in distorted prices.

The Exchange believes that an Exchange Traded Fund ("ETF") is somewhat similar to an Acquisition Company in this regard in that an arbitrage mechanism keeps the ETF's price close to the value of its underlying securities, even when trading in the ETF's shares is relatively illiquid. The initial listing requirements for ETFs do not include a shareholder requirement and only 50 shareholders are required for continued listing after the ETF has been listed for one year.

Accordingly, given the short life of an Acquisition Company, the trading characteristics of Acquisition Companies, and the requirement to meet the initial listing standards at the time of the Business Combination, the Exchange proposes to reduce from 300 holders to 100 holders the minimum total number of [sic] holders required on a continued listing basis for Acquisition Companies.⁷

Period for Company to demonstrate that it Satisfies Initial Listing Requirements

Section 802.01B of the Manual currently states that:

After consummation of its Business Combination, a company that had originally listed as an AC will be subject to Section 801 and Section 802.01 in its entirety and will be required immediately upon consummation of the Business

Combination to meet the following requirements:

⁷ The Exchange notes that any Acquisition Company listed on the NYSE will be allocated to a Designated Market Maker. As a result, the Exchange does not expect that the proposed change will result in illiquidity or other problems trading the securities of Acquisition Companies.

- (i) A price per share of at least \$4.00;
 - (ii) a global market capitalization of at least \$150,000,000;
 - (iii) an aggregate market value of publicly-held shares of at least \$40,000,000*;
- and
- (iv) the requirements with respect to shareholders and publicly-held shares set forth in Section 102.01A for companies listing in connection with an initial public offering.⁸

* Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares.

Section 802.01B also provides that an Acquisition Company failing to meet these requirements will be promptly subject to suspension and delisting proceedings.

The Exchange notes that it can be difficult for a company, once listed, to obtain evidence demonstrating the number of its shareholders because many accounts are held in street name and shareholders may object to being identified to the company. As a result, companies must seek information from broker-dealers and from third-parties that distribute information such as proxy materials for the broker-dealers. This process is especially burdensome for Acquisition Companies at the time of their Business Combinations, because Acquisition Company shareholders typically have the right to request redemption of their securities until immediately before consummation and it is therefore impracticable for companies to identify the number of round-lot holders immediately to demonstrate their qualification for initial listing.

⁸ The applicable requirement is 400 holders of round lots (i.e., 100 shares).

The Exchange proposes to amend Section 802.01B to provide that “[f]ollowing consummation of its Business Combination, a company that had originally listed as an [Acquisition Company] will be subject to” the quantitative listing standards set forth above. This change is consistent with rule text in Nasdaq’s IM-5101-2 and is intended in particular to address the delays described above associated with obtaining information about the number of shareholders holding shares in “street name” accounts. By amending Section 802.01B, an Acquisition Company would not need to meet the shareholder distribution requirements immediately upon consummation of its Business Combination, but may do so at some point following closing of that transaction. The purpose of the proposed amendment is to allow the Exchange to exercise discretion to allow companies a reasonable period of time following the Business Combination to demonstrate compliance with the applicable quantitative listing standards, including the shareholders requirement. If the company is unable to demonstrate that it meets the applicable quantitative requirements after such reasonable time period, the Exchange would commence delisting proceedings and immediately suspend trading in the company’s securities.

These proposed changes will be effective upon approval of this rule by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,¹⁰ 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

⁹ 15 U.S.C. 78f(b).

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. While the change would allow Acquisition Companies to maintain their continued listing status with fewer shareholders, this proposed change is consistent with the investor protection provisions of the Act because other protections help assure that market prices will not be distorted by any potential resulting lack of liquidity, which is the underlying purpose of the shareholder requirement. In particular, the ability of a shareholder to redeem shares for a pro rata share of the trust helps assure that the Acquisition Company will trade close to the value of the assets held in trust.

Thus, this change will remove impediments to and perfect the mechanism of a free and open market by removing listing requirements that prohibit certain companies from remaining listed without any concomitant investor protection benefits.

The proposal to allow Acquisition Companies to demonstrate that they meet the applicable quantitative requirements following a Business Combination is intended in particular to address the difficulty companies have in identifying the number of holders they have immediately upon consummation of their Business Combination. Acquisition Company shareholders typically have the right to request redemption of their securities until immediately before consummation and it is therefore impracticable for companies to identify the number of round-lot holders immediately to demonstrate their qualification for initial listing. This proposed change is consistent with the protection of investors and the public interest, as it does not alter the substantive quantitative requirements a company must meet to remain listed.

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 purpose of the proposed rule is to adopt continued listing standards for Acquisition Companies that better reflect the characteristics and trading market for Acquisition Companies. While the rule may permit more Acquisition Companies to list, or remain listed, on the Exchange, other exchanges could adopt similar rules to compete for such listings. As such, the Exchange does not believe it imposes any burden on competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-NYSE-

2018-46 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-2018-46. 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-2018-46 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

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).