

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84984; File No. SR-NYSE-2018-46)

January 15, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Listed Company Manual for Acquisition Companies to Reduce the Continued Listing Standards for Public Stockholders 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

I. Introduction

On October 1, 2018, 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 the Listed Company Manual (“Manual”) for Special Purpose Acquisition Companies³ (“SPACs”) to reduce the minimum number of public stockholders required for continued listing from 300 to 100, and to enable the Exchange to exercise discretion to allow SPACs a reasonable time period following a business combination to demonstrate compliance with the applicable quantitative listing standards. The proposed rule change was published in the Federal Register on October 18, 2018.⁴ The Commission received one comment letter on the proposal.⁵ On November 29, 2018, the Commission extended the time period within which to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Throughout this order, we have used the term “SPAC” or “SPACs.” These terms have the same meaning as “Acquisition Company,” which is the term used by the Exchange in its current proposed rule filing.

⁴ See Securities Exchange Act Release No. 84420 (October 12, 2018), 83 FR 52854 (October 18, 2018) (“Notice”).

⁵ See Letter to Secretary, Commission, dated November 8, 2018, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (“CII Letter”).

approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to January 16, 2019.⁶ This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.⁷

II. Description of the Proposal and Summary of Comment

A. Background on SPACs

A SPAC is a special purpose company whose business plan is to raise capital in an initial public offering (“IPO”) and, within a specific period of time, engage in a merger or acquisition with one or more unidentified companies. Among other things, a SPAC must keep 90% of the gross proceeds of its IPO in an escrow account through the date of a business combination.⁸ The SPAC must complete one or more business combinations, having an aggregate fair market value of at least 80% of the value of the escrow account, within 36 months of the effectiveness of the IPO registration statement.⁹ Additionally, public shareholders who object to a business combination have the right to convert their common stock into a pro rata share of the funds held in escrow.¹⁰ Following a business combination, the combined company must meet the Exchange’s requirements for initial listing of an operating company.¹¹

B. Description of the Proposed Changes to SPAC Listing Standards

⁶ See Securities Exchange Act Release No. 84680 (November 29, 2018), 83 FR 62942 (December 6, 2018).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Section 102.06 of the Manual.

⁹ Id.

¹⁰ See Section 102.06(b) of the Manual.

¹¹ This includes the requirement to maintain a minimum of 400 round lot holders. See Sections 102.01A and 802.01B(ii) of the Manual.

The Exchange has proposed two changes to its SPAC listing requirements. First, the Exchange has proposed to reduce the minimum number of public stockholders required for continued listing of a SPAC, prior to consummation of a business combination, from 300 to 100.¹² According to the Exchange, SPACs have difficulty demonstrating compliance with the 300 public stockholders requirement because there is limited retail investor interest in SPACs, and those who do invest in SPACs tend to hold their shares until a transaction is announced. The Exchange also stated its belief that the number of stockholders is less relevant for SPACs than for operating companies, because “the price of [a SPAC] is based primarily on the value of the funds it holds in trust, and the [SPAC]’s shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the Business Combination.” For these reasons, NYSE asserted that SPACs, historically, “trade close to the value in the trust, even when they have had few shareholders,” and that these “trading patterns suggest that the low number of shareholders has not resulted in distorted prices.”¹³

Second, the Exchange has proposed to provide itself discretion to allow SPACs a reasonable time period following a business combination to demonstrate compliance with the applicable quantitative listing standards for an operating company, rather than requiring SPACs to immediately comply with such standards. These listing standards include: (1) a price per share of at least \$4.00; (2) a global market capitalization of at least \$150,000,000; (3) an aggregate market value of publicly-held shares of at least \$40,000,000; and (4) other quantitative requirements set forth in Section 102.01A of the Manual, including the requirement to maintain a

¹² Public stockholders exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. See Section 802.01B(ii) of the Manual.

¹³ The Exchange also articulated some other arguments including that Exchange Traded Funds are “somewhat similar” and do not have as high a continued listing shareholder requirements as SPACs. See Notice, supra note 4.

minimum of 400 round lot holders and 1,100,000 publicly held shares.¹⁴ The Exchange has proposed to delete the language in Section 802.01B of the Manual requiring the combined entity to meet these listing standards “immediately upon consummation of the Business Combination.” The Exchange represented that the purpose of this proposed amendment is to “allow the Exchange to exercise discretion to allow companies a reasonable period of time following a business combination to demonstrate compliance with the applicable quantitative listing standards, including the shareholders requirement.” According to the Exchange, 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, so companies must seek this information from broker-dealers or their third-party agents. The Exchange stated that the process of identifying shareholders is especially burdensome for SPACs at the time of the business combination, because SPAC shareholders have the right to request redemption of their securities until immediately before consummation of the business combination.

C. Summary of Comment Letter

The Commission received one comment letter on the proposal.¹⁵ The commenter stated it could not support the current proposal as submitted “because it does not provide sufficient information for us to make a determination as to whether our members and the capital markets would benefit from the proposed changes.” The commenter referenced its prior comments on similar proposals from the Exchange and Nasdaq, both of which were subsequently withdrawn.¹⁶

¹⁴ See Section 802.01B of the Manual. See also note 13, supra.

¹⁵ See supra note 5.

¹⁶ See SR-NYSE-2017-53 (proposal to, among other things, lower the initial holders requirement from 300 to 150 round lot holders and to eliminate the continued holders requirement from 300 public stockholders to zero, and to impose a 30-day deadline to demonstrate compliance with certain initial listing requirements following a business combination). The Exchange filed the proposal on November 16, 2017. The Exchange

The commenter noted that the proposed reduction in the minimum number of holders from 300 to 100 is far more modest than eliminating it outright, as was proposed in the prior proposals, but believed that additional information would be helpful in determining whether the proposal would benefit investors.¹⁷

IV. Proceedings to Determine Whether to Approve or Disapprove SR-NYSE-2018-46 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.¹⁸ Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act¹⁹ and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

withdrew the proposal on June 21, 2018, after the Commission instituted proceedings to determine whether to approve or disapprove the proposal. See Securities Exchange Act Release Nos. 82180 (November 30, 2017), 82 FR 57632 (December 06, 2017); 82531 (January 18, 2018), 83 FR 3371 (January 24, 2018); 82804 (March 05, 2018), 83 FR 10530 (March 09, 2018); 83355 (May 31, 2018), 83 FR 26331 (June 06, 2018); and 83570 (June 29, 2018), 83 FR 31628 (July 6, 2018). See also SR-Nasdaq-2017-087, Order Instituting Proceedings, Securities Exchange Act Release No. 82478 (January 9, 2018), 83 FR 2278 (January 16, 2018)

¹⁷ See CII Letter at 2-3.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

¹⁹ 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of free and open market and a national market system, and, in general, to protect investors and the public interest.²⁰

The Commission has consistently recognized the importance of the minimum number of holders and other similar requirements in exchange listing standards. For example, the Commission has repeatedly stated in approving exchange listing requirements, including NYSE's original SPAC listing standards, that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to financial markets and the investing public.²¹ Among other things, such listing standards help ensure that exchange listed securities have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.

NYSE proposes to lower the minimum number of holders required for continued listing of a SPAC, in the period prior to consummation of a business combination, from 300 public holders to 100 public holders. In support of its proposal, NYSE asserts, among other things, that SPACs often have difficulty demonstrating compliance with the minimum number of holders requirements because there is limited retail investor interest in them, and that this requirement is less relevant for SPACs because they historically trade close to the value of the funds held in trust. The Commission, however, notes that NYSE has not provided any supporting evidence that SPACs have more difficulty complying with the existing minimum number of holders requirements than other listed companies. Further, the Commission does not believe that it is clear from NYSE's proposal how the historic SPAC trading patterns cited by NYSE bear on the

²⁰ Id.

²¹ See, e.g., Securities Exchange Act Release Nos. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (stating that the distribution standards, which includes exchange holder requirements "... should help to ensure that the [SPACs'] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets); 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008).

role of the minimum number of holders requirements in maintaining fair and orderly markets, particularly since NYSE's observation was made when the current minimum number of holder requirements were in place.

The Exchange also proposes to provide itself discretion to allow SPACs a reasonable time period following a business combination to demonstrate compliance with the applicable quantitative listing standards for an operating company, rather than requiring SPACs to immediately comply with such standards. While the NYSE's current listing standards require a SPAC to have at least 300 public holders prior to the business combination, NYSE's proposal would reduce that requirement to as few as 100 public holders. Following consummation of the business combination, the SPAC would be required to have at least 400 round lot holders. It is not clear from NYSE's proposal that such a structure is workable, or how a listed SPAC would ensure it is in a position to sufficiently increase its number of holders, even within the "reasonable time period" contemplated by NYSE. Finally, the Exchange offered no explanation as to why SPACs require additional time, following consummation of the business combination, to meet the all of the other applicable quantitative listing standards for operating companies, including those relating to share price, global market capitalization, and the market value of publicly-held shares.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the self-regulatory organization ['SRO'] that proposed the rule change."²² The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with

²² Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²³ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.²⁴

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

V. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provisions of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's

²³ See id.

²⁴ See id.

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Congr., 1st Sess. 30 (1975).

submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment, including where relevant, any specific data, statistics, or studies, on the following:

1. Would the proposal ensure that a sufficient liquid market exists for the shares of SPACs on the Exchange? Why or why not?
2. With a lower requirement of 100 public stockholders, would the shares of SPACs still trade close to their redemption value as the Exchange has stated? If yes, would that trading pattern continue after an announcement of a business combination?
3. With a lower requirement of 100 public stockholders, could shares of SPACs be more prone to manipulation, either post-IPO or at the time of the business combination announcement (but before consummation of the business combination)?
4. Is there additional support for the claims that SPACs trade consistently as stated in the proposal? If so, what specific data should be provided, reviewed, and analyzed? How many SPACs have not been able to meet the Exchange's minimum number of public stockholders requirement pre- business combination, and how many stockholders did these SPACs have? How many SPACs have not been able to meet the applicable minimum number holders and other requirements immediately upon consummation of the business combination, and how were they

deficient? How many of these SPACs have been delisted for failing to meet the applicable listing standards, and how long did they trade on the Exchange prior to delisting?

5. The Exchange asserts that obtaining evidence demonstrating the number of shareholders after a business combination is “especially burdensome for [SPACs].” The Commission notes that the process of obtaining the number of shareholders is similar for all listed companies. Do commenters think SPACs are particularly burdened by this process and, if so, why?

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.²⁶

Eduardo A. Aleman
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(57).