



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80199; File No. SR-NYSE-2016-72]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Initial and Continued Listing Standards for Special Purpose Acquisition Companies

March 10, 2017

I. Introduction

On December 8, 2016, 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 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend initial listing standards for Special Purpose Acquisition Companies (“SPACs”) to provide an option to hold a tender offer in lieu of a shareholder vote on a proposed acquisition; and amend initial and continued listing standards to, among other things, lower quantitative standards. The proposed rule change was published for comment in the Federal Register on December 29, 2016.³ The Commission received no comments on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79676 (December 22, 2016), 81 FR 96150 (December 29, 2016) (“Notice”).

proposal. On February 10, 2017, the Commission extended the time period for Commission action on the proposal to March 29, 2017.⁴ This order approves the proposed rule change.

⁴ See Securities Exchange Act Release No. 80022 (February 10, 2017), 82 FR 10947 (February 16, 2017) (“Extension”).

II. Description of the Proposal

A. Background

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. In its filing, the Exchange stated that in the 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 unique structure, SPACs do not have any prior financial history, at the time of their listing, like operating companies.

NYSE Listed Company Manual (“Manual”) Section 102.06 sets forth the listing standards that apply to SPACs.⁵ In addition to requiring SPACs to meet certain quantitative standards, Section 102.06 of the Manual provides additional investor protection safeguards for shareholders investing in SPACs. Currently, Section 102.06 of the Manual requires at least 90% of the proceeds raised in a SPAC IPO, and any concurrent sale of equity securities, be placed in a trust account.⁶ Further within three years, or such shorter time period as specified by the SPAC, the SPAC must complete one or more business combinations having an aggregate fair market

⁵ 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 Sections 102.06 and 802.01B of the Manual. See NYSE Listed Company Manual Sections 102.06 and 802.01B.

⁶ See NYSE Listed Company Manual Section 102.06.

value of at least 80% of the value of the trust account.⁷ Until the SPAC has completed a business combination, or a series of business combinations, representing at least 80% of the trust account's aggregate fair market value, the SPAC must, among other things, submit the business combination to a shareholder vote.⁸ Any public shareholders who vote against the business combination have a right to convert their shares of common stock into a pro rata share of the aggregate amount then in the trust account, if the business combination is approved and consummated.⁹ The Manual further states that a business combination cannot be consummated by the SPAC if the public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock exercise their conversion rights.¹⁰

In addition to these safeguards, a SPAC must also meet minimum quantitative initial and continued listing standards to list, and remain listed on the Exchange, as well as specified continued listing standards to remain listed after consummation of a business combination.¹¹

B. Option to Hold a Tender Offer in Lieu of a Shareholder Vote

The Exchange proposes to add an option for the SPAC to conduct a tender offer in lieu of a shareholder vote to complete a business combination. First, under the proposal if a shareholder vote is not held on a business combination for which the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Exchange Act, the SPAC must provide all shareholders with the opportunity to redeem all their shares for cash equal to

⁷ Id. The 80% fair market value is the net assets held in trust net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ See notes 14-16, infra and accompanying text.

their pro rata share of the aggregate amount then in the deposit account pursuant to Rule 13e-4 and Regulation 14E under the Exchange Act.¹² The proposal states that a SPAC using the tender offer option to complete a business combination must file tender offer documents with the Commission containing substantially the same financial and other information about the business combination and the redemption rights as would be required under Regulation 14A of the Exchange Act.

Second, the proposal also specifies that shareholder vote provisions requiring the business combination to be approved by a majority of the shares voting at the meeting only apply to shareholder votes where the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Exchange Act in advance of the shareholder meeting.¹³ This provision would, therefore, require a SPAC, not subject to the Commission's proxy rules, such as a foreign private issuer, to utilize the tender offer option to complete a business combination.

Finally, the Exchange is proposing to eliminate the provision that prevents a business combination if public shareholders owning a threshold amount (not to exceed 40%) of the shares of common stock issued in the IPO exercise their conversion rights in connection with the business combination.

C. Initial and Continued Listing Standards for SPACs Prior to and After Consummation of a Business Combination

The Exchange proposes to amend the quantitative requirements for initial, and continued, SPAC listings. Currently, at the time of its initial listing, a SPAC must demonstrate, among other things, an aggregate market value of \$250 million and a market value of publicly-held

¹² See Notice, supra note 3.

¹³ Id.

shares of \$200 million.¹⁴ The Exchange proposes to lower the initial listing standards for a SPAC to an aggregate market value of \$100 million and market value of publicly-held shares of \$80 million.¹⁵

Currently, once listed but prior to the consummation of a business combination, a SPAC is subject to suspension and delisting if it does not maintain an average aggregate global market capitalization of at least \$125 million, or an average aggregate global market capitalization attributable to its publicly-held shares of at least \$100 million, in each case over 30 consecutive trading days.¹⁶ The Exchange proposes to lower these pre-business combination continued listing standards to require a minimum of \$50 million average aggregate global market capitalization; and \$40 million aggregate global market capitalization attributable to publicly-held shares, in both cases over 30 consecutive trading days.

Currently, the Exchange will notify a SPAC if its average aggregate global market capitalization falls below \$150 million, or if its average aggregate global market capitalization attributable to its publicly-held shares falls below \$125 million. In conjunction with the proposed changes to the continued listing standards noted above, the Exchange proposes to lower these notification standards to \$75 million average aggregate global market capitalization, and to

¹⁴ A SPAC must also comply with the requirements of Section 102.01A of the Manual and have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4.00 at the time of initial listing. See NYSE Listed Company Manual Section 102.06.

¹⁵ See Notice, *supra* note 3.

¹⁶ A SPAC also may be delisted if: (1) Its total stockholders falls to less than 400; or (2) the total stockholders is less than 1,200 and average trading volume is less than 100,000 shares for the most recent twelve months; or (3) the number of publicly-held shares is less than 600,000. See NYSE Listed Company Manual Section 802.01B.

\$60 million average aggregate global market capitalization attributable to its publicly-held shares.¹⁷

Currently, under the Manual, the post-business combination company of a SPAC would be subject to the continued listing standards applicable to operating companies that require \$50 million average global market capitalization along with stockholders' equity of at least \$50 million.¹⁸ The Exchange proposes to add additional continued listing standards for the post-business combination company of a SPAC in addition to changing the listing procedures the SPAC must follow to provide for the listing of the post-business combination company. In addition to continuing to require the post-business combination company to meet all the continued listing requirements set forth in Sections 801 and 802.01 of the Manual, including the market capitalization and stockholders' equity requirements described above,¹⁹ under the proposal, immediately after the business combination, the company must also maintain: (1) A price per share of at least \$4.00; (2) a global market capitalization of at least \$150 million; (3) an aggregate market value of publicly-held shares²⁰ of at least \$40 million; and (4) the requirements with respect to shareholders and publicly-held-shares set forth in Section 102.01A of the Manual

¹⁷ The Exchange proposes that "publicly-held shares" would exclude shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more. See Notice, supra note 3. Further, for a post-business combination the Exchange proposes the same publicly-held shares definition.

¹⁸ See NYSE Listed Company Manual Section 802.01B. Under this provision, to be below compliance, a listed company would have to be below both the \$50 million average global market capitalization and \$50 million shareholders' equity requirements consecutively for 30 trading days. This continued listing standard was formally referred to as the "Earnings Test."

¹⁹ Id.

²⁰ See note 17, supra.

for companies listing in connection with an IPO.²¹ Furthermore, the Exchange proposes that in order to list the post-business combination company the SPAC must submit an original listing application, which must be approved by the Exchange prior to consummation of the business combination.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Exchange Act and the rules and regulations thereunder.²² Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5) of the Exchange Act,²³ 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 standards governing the initial and continued listing 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

²¹ Currently, a company listing in connection with an IPO must have a minimum of 400 holders of 100 or more shares and 1,100,000 publicly-held shares. See NYSE Listed Company Manual Section 102.01A.

²² 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).

²³ 15 U.S.C. 78f(b)(5).

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 interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate 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 approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that security to ensure that it 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. Because of the unique structure of SPACs, investors do not know the ultimate business of the company before a business combination, similar to a blank check company. Therefore, the Commission approved the Exchange's listing standards for SPACs containing certain provisions that were similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act of 1933 ("Securities Act").²⁴ One of the important investor protection safeguards incorporated into the Exchange's listing rules for SPACs is the ability of public shareholders to convert their shares for a pro rata share of the cash held in the trust account if they vote against a business combination. In approving this provision, the Commission noted that the conversion rights will

²⁴ See 17 CFR 230.419. Rule 419 of the Securities Act applies to blank check companies issuing penny stock as defined under Rule 3a51-1(a)(2) of the Exchange Act. See 17 CFR 240.3a51-1(a)(2). See also, Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 at 27599 (May 13, 2008) ("NYSE Order").

help to ensure that public shareholders who disagree with management’s decision with respect to a business combination have adequate remedies.²⁵

The proposal would provide an option for the SPAC to hold a tender offer in lieu of a shareholder vote on a proposed business combination. The Exchange noted that certain hedge funds and other activist investors have sometimes employed a strategy of acquiring an interest in a SPAC and then using their ability to vote against a proposed business combination to obtain additional consideration not available to other shareholders in a practice known as “greenmail.”²⁶

The Commission notes that shareholders will receive redemption rights and comparable financial and other information about the business combination irrespective of whether the SPAC’s business combination is consummated through a tender offer or a shareholder vote. The Commission believes that shareholders who are not in favor of a business combination should continue to have an adequate remedy under the Exchange’s proposal if they disagree with management’s decision with respect to a business combination, and that the Exchange’s SPAC rules will continue to have safeguards to address investor protection, while at the same time allowing the greenmail abuses noted by the Exchange to be addressed. Based on the above, the

²⁵ The Commission also noted, among other things, that the Exchange would, immediately prior to consummation of a business combination, consider whether the listing of the post-business combination company would be in the best interest of the Exchange and the public interest and would have authority to suspend and delist the SPAC under this standard. This provision will continue to apply to all business combinations, whether approved through a shareholder vote or conducted through a tender offer, under the proposed rule change. See NYSE Order, 73 FR at 27600. See also, NYSE Listed Company Manual Section 802.01B. In addition, the Exchange will also continue to consider whether the business combination gives rise to a “back-door listing” as set forth in Section 703.08(e) of the Manual, irrespective of the method used to complete the business combination. See NYSE Listed Company Manual Section 802.01B.

²⁶ See Notice, note 3, supra.

Commission finds that this proposal is consistent with the requirements of the Act and in particular the investor protection standards under Section 6(b)(5) of the Exchange Act.

The Exchange is also proposing to add language to Section 102.06 of the Manual which concerns the shareholder voting requirements applicable to business combinations of SPACs. Under this change if a SPAC holds a shareholder vote to approve a business combination, the provisions only apply when the SPAC must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Exchange Act in advance of the shareholder meeting. This change, viewed together with the changes discussed above, allowing a SPAC to consummate a business combination through a tender offer rather than a shareholder vote, mean that certain SPACs that are not required under the Federal securities laws to comply with the Commission's proxy solicitation rules when soliciting proxies, will have to follow the tender offer provisions under the Exchange's rules.²⁷ Under this provision, the tender offer documents are specifically required to contain substantially the same financial and other information about the business combination and redemption rights, as would be required under the proxy rules in Regulation 14A of the Exchange Act. The Commission notes that this proposal would clarify the manner in which a shareholder vote is held and the information that would be required by the SPAC to send to shareholders. Further, it ensures that all investors will be receiving the same information about a proposed business combination whether it is holding a vote and required by law to follow the proxy rules or conducting a tender offer under the conditions set forth in the Exchange's rules. This provision also does not preclude a SPAC that does not have to comply with the Federal proxy rules when soliciting proxies from having a shareholder vote, but merely

²⁷ For example, registered securities of foreign private issuers are exempt from the proxy rules. See Section 3(a)12-3 of the Exchange Act.

ensures, through the tender offer process, that the SPAC will be required to provide comparable information. Based on the above, the Commission finds that this portion of the proposal is consistent with the requirements of the Exchange Act, and in particular, the investor protections requirements under Section 6(b)(5) of the Act.²⁸

Further, the Exchange has also proposed to eliminate the provision that a business combination cannot be consummated by the SPAC if the public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock exercise their conversion rights. The Commission notes that we have approved SPAC listing rules on other markets that do not contain a similar requirement. If a SPAC wants to adopt such a provision, however, it will still be permitted to do so. Based on the above, it is reasonable to allow the Exchange to not mandate such a requirement. The Commission, therefore, finds this change is consistent with the requirements of Section 6(b)(5) of the Exchange Act.²⁹

The proposal would also lower the initial listing standards applicable to SPACs from an aggregate market value of least \$250 million to \$100 million and market value of publicly-held shares of at least \$200 million to \$80 million. Under the proposal, a SPAC would be promptly suspended from trading and delisted if, over any 30 day consecutive trading period, its average aggregate global capitalization falls below \$50 million or its average aggregate global market

²⁸ The Commission notes that it has previously approved a substantially similar rule concerning this portion of the Exchange's proposal for other national securities exchanges. See Securities Exchange Act Release No. 63366 (November 23, 2010), 75 FR 74119 (November 30, 2010) (NYSEAmex-2010-103) and Securities Exchange Act Release No. 63607 (December 23, 2010), 75 FR 82420 (December 30, 2010) (Nasdaq-2010-137).

²⁹ Id.

capitalization of publicly-held shares falls below \$40 million.³⁰ As noted above, current rules set these dollar limits at \$125 million and \$100 million, respectively. The proposal would further lower the threshold for Exchange notification of the SPAC if aggregate global market capitalization falls below \$75 million, as opposed to \$150 million under the current rule, and aggregate global market capitalization attributable to publicly-held shares falls below \$60 million, as opposed to \$125 million under the current rule. The Commission notes that, despite the fact that the proposed reduction to SPAC listing and continued listing standards are significant on a percentage basis, the proposed requirements remain higher than comparable listing standards on other markets that list and trade SPACs and should be sufficient to promote fair and orderly markets.³¹

Lastly, the Exchange proposes to add additional continued listing standards after the consummation of a business combination in connection with the lowering of the initial listing standards for a SPAC. These new standards, as noted above, will be in addition to the existing continued listing standards that currently apply to the post-business combination company.³² The Commission notes that the additional requirements should strengthen the continued listing

³⁰ The Commission notes that the current distribution standards and other continued listing standards applicable to pre-business combination SPAC will remain unchanged. See NYSE Listed Company Manual Section 801 and 802.

³¹ For example, initial listing standards on Nasdaq's Global Market and NYSE MKT require, among other things, a market value of listed securities of \$75 million and a market value of publicly-held shares of at least \$20 million. See Nasdaq Rule 5405 and Section 101(d) of NYSE MKT Company Guide. The continued listing standards for Nasdaq Global Market and NYSE MKT require, among other things, at least \$50 million in market value and \$15 million market value in publicly-held shares. See Nasdaq Rule 5450 and Section 1003(a) of NYSE MKT Company Guide. The Exchange's other quantitative standards for SPACs to list, and continue to be listed, such as, for example, the holder requirements, will also continue to be comparable to Nasdaq Global Market standards with the changes being approved in this order.

³² See note 18, supra and accompanying text.

standards applicable to the post-business combination company by requiring, in order to remain listed on the Exchange, such company to meet at least a price per share of \$4 and the initial listing distribution standards set forth in Section 102.01A of the Manual³³ as well as have sufficient market capitalization and market value of publicly-held shares to ensure adequate depth and liquidity.³⁴ The proposed standards would also require a SPAC that is planning to consummate a business combination to submit an original listing application that must be approved by the Exchange prior to the listing of the post-business combination company. The Commission believes the additional requirement for the SPAC to submit, and receive Exchange approval of its, listing application to continue to list on the Exchange as a post-business combination company should allow the Exchange to reevaluate whether the newly formed operating company is suitable for continued listing and will have sufficient market depth and liquidity for continued trading.³⁵ The new requirements also make the continued listing process for a post-business combination company more similar to the process for any new listing applicant, which is consistent with the unique characteristics of a SPAC that lists with the intention to find a business combination with an operating company.

Based on the foregoing, the Commission finds that the proposed changes to listing standards are consistent with the requirements of the Exchange Act.

³³ The distribution standards of Section 102.01A of the Manual set forth minimum standards for the number of round lot shareholders and number of publicly-held shares required for initial listing. See NYSE Listed Company Manual Section 102.01A.

³⁴ The Exchange proposes to require at a minimum \$150 million of global market capitalization and \$40 million of aggregate market value of publicly-held shares. See proposed NYSE Listed Company Manual Section 802.01B.

³⁵ The continued application of the back-door listing provisions should also help ensure that a company not otherwise qualified for original listing could get listed on the Exchange through a business combination with a SPAC. See NYSE Listed Company Manual Section 802.01B of the Manual. See also note 25, supra and accompanying text.

IV. Conclusion

IT IS THEREFORE ORDERED THAT pursuant to Section 19(b)(2) of the Exchange Act³⁶ that the proposed rule change (SR-NYSE-2016-72) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Eduardo A. Aleman,

Assistant Secretary.

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-3(a)(12).

