



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82804; File No. SR-NYSE-2017-53]

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 Special Purpose Acquisition Companies To Lower the Initial Holders Requirement From 300 to 150 Round Lot Holders and To Eliminate Completely the 300 Public Stockholders Continued Listing Requirement, To Require at Least \$5 Million in Net Tangible Assets for Initial and Continued Listing, and To Impose a 30-Day Deadline to Demonstrate Compliance with Certain Initial Listing Requirements Following a Business Combination

March 5, 2018

I. Introduction

On November 16, 2017, 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 listing requirements for Special Purpose Acquisition Companies (“SPACs”)³ by reducing the number of round lot holders required for initial listing from 300 to 150 and eliminating the continued listing requirement for a minimum number of holders, which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that throughout this order we have used the term “SPAC” or “SPACs.” These terms have the same meaning as an “Acquisition Company” or “AC” which is the term used by NYSE in its current rules and the proposed rule filing.

is also currently 300, that applies until a SPAC completes one or more business combinations.⁴ NYSE also proposes to require that a SPAC maintain at least \$5 million in net tangible assets for initial and continued listing. NYSE is proposing to allow companies 30 days to demonstrate compliance with the applicable holder requirements of Section 102.01A in the Listed Companies Manual (“Manual”) following a business combination.⁵ Finally, the NYSE proposes to eliminate certain alternative initial listing distribution criteria for SPACs that list in connection with a transfer or quotation.⁶

The proposed rule change was published for comment in the Federal Register on December 6, 2017.⁷ On January 18, 2018, the Commission extended the time period within which to 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 March 6, 2018.⁸ The Commission received two comments on the proposal.⁹ This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.

⁴ See Section 102.06 of the Listed Company Manual, and infra note 11, and accompanying text, which describes the requirements for the value of the business combination(s).

⁵ Id.

⁶ See Section 102.06 of the Manual.

⁷ See Securities Exchange Act Release No. 82180 (November 30, 2017), 82 FR 57632 (“Notice”).

⁸ See Securities Exchange Act Release No. 82531, (January 19, 2018), 83 FR 3371 (“Extension”).

⁹ See Letters to Brent J. Fields, Secretary, Commission, from Michael Kitlas, dated November 30, 2017 (“Kitlas Letter”) and Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated December 20, 2017 (“CII Letter”).

II. Description of Proposal

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.¹⁰

The SPAC must complete one or more business combinations, having an aggregate market value of at least 80% of the value of the deposit account at the time of the agreement to enter into the initial combination, within 36 months of the effectiveness of the IPO registration statement.¹¹

Additionally, 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.¹² Following each business combination the combined company must meet the Exchange’s requirements for initial listing of an operating company, including the requirement to maintain a minimum of 300 holders.¹³

B. Description of Proposed Changes to SPAC Listing Standards

The Exchange has proposed to reduce the number of round lot holders required for SPACs initially listing on the Exchange from 300 to 150.¹⁴ The Exchange also proposed to completely eliminate the current continued listing requirement that there be a minimum of 300

¹⁰ See Section 102.06 of the Manual.

¹¹ Id. Amounts disbursed to management for working capital purposes and any deferred underwriter fees are excluded when calculating the 80% value of the deposit account.

¹² See Sections 102.06(b) and 102.06(c) of the Manual. If a shareholder vote is taken however, under Section 102.06(b) of the Manual, the right of shareholders voting against a business combination to redeem their shares for cash may be subject to a limit established by the SPAC (that can be set no lower than 10% of the shares sold in the IPO).

¹³ See Sections 102.06 and 802.01B(ii) of the Manual.

¹⁴ See proposed Section 102.06 of the Manual, in Exhibit 5 to NYSE-2017-53.

holders until such time as the SPAC completes one or more business combinations.¹⁵ In support of this proposal, as set forth in more detail in the Notice, the Exchange states that SPACs often have difficulty demonstrating compliance with these initial and continued listing standards. Based on conversations with market participants, NYSE believes this is due to the unique nature of SPACs which limits the number of interested retail investors and encourages owners to hold their shares until an acquisition is announced, which can be as long as three years after the IPO.¹⁶ NYSE believes that these same features limit the benefit to investors of having a holder requirement, the purpose of which, according to NYSE, is “to help ensure that a security has a sufficient number of investors to provide a liquid trading market.”¹⁷ Among other things, NYSE asserted that because “the price of [a SPAC] is based primarily on the value of the funds it holds in trust, and the [SPAC] shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the Business Combination, the impact of the number of shareholders on [a SPAC] security’s price is less relevant than is the case for operating company common stocks.”¹⁸ For these reasons, NYSE states 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 [SPACs’] low number of shareholders has not resulted in distorted prices.”¹⁹ NYSE also notes, that “it can be difficult for a company, once listed, to obtain evidence demonstrating

¹⁵ See proposed Section 802.01B(ii) of the Manual in Exhibit 5 to NYSE-2017-53. Section 802.01B of the Manual currently requires at least 300 public stockholders for continued listing. “Public stockholders” are defined to 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.

¹⁶ See Notice at 57633.

¹⁷ Id.

¹⁸ Id. See also, supra note 12, and accompanying text, that refer to possible limits on the amount of shares that can be redeemed on a pro rata basis.

¹⁹ Id.

the number of its shareholders because many accounts are held in street name” and that this process “is particularly burdensome for [SPACs] because most operating expenses are typically borne by the [SPAC’s] sponsors due to the requirement that the gross proceeds of the initial public offering remain in the trust account until the closing of the business combination.”²⁰

The Exchange also proposed to add a new requirement for SPACs to list, and remain listed, that would require SPACs to maintain at least \$5 million in net tangible assets.²¹ This requirement is being proposed by NYSE as an alternative exception to the Commission’s penny stock rule, Rule 3a51-1 under the Act, because NYSE’s proposed changes to the minimum number of holders would result in SPACs listed on NYSE no longer qualifying for the current penny stock rule exception that requires listed companies to have 300 round lot holders.²² The \$5 million net tangible assets requirement is an alternative exception to the penny stock rule. As of the date the Exchange filed its proposal, (November 16, 2017) the Exchange stated that “all [SPACs] currently listed satisfy this alternative.”²³ If a SPAC does not meet the net tangible assets requirement then it would be subject to immediate suspension and the delisting procedures set forth in Section 804 of the Manual and would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual.²⁴

²⁰ Id.

²¹ Net Tangible Assets is defined as total assets less intangible assets and liabilities. See proposed Section 102.06 of the Manual.

²² Rule 15g-1 through 15g-9 under the Act impose certain disclosure and additional requirements on brokers and dealers when effecting transactions in penny stocks. See 17 CFR 240.15g-1 to 15g-9. Rule 3a51-1 includes an exception from the definition of penny stock for securities registered on a national securities exchange that has initial listing standards, among others, that requires at least 300 round lot holders. Rule 3a51-1 also has an exception from the penny stock definition if a company has \$5 million in net tangible assets. See 17 CFR 240.3a51-1(a) and 17 CFR 240.3a51-1(g).

²³ See Notice at 57634.

²⁴ Id.

Finally, the Exchange proposed to allow a company 30 days to demonstrate that it has met the holder requirement following a business combination. The Exchange noted that, under its existing rules, following a SPAC business combination, the resulting company must satisfy all initial listing requirements, including the minimum number of shareholders as set forth in Section 102.01A of the Manual.²⁵ According to the Exchange, the proposed additional 30 days for a post business combination SPAC to demonstrate compliance with the holder requirement is intended to address delays related to obtaining information about the number of shareholders holding shares in ‘street name’ accounts.²⁶ If the SPAC has not demonstrated that it meets the holder requirement within 30 days following a business combination, then the SPAC would be subject to immediate suspension and delisting procedures set forth in Section 804 of the Manual.²⁷

III. Summary of Comments

The Commission received two comment letters on the proposal.²⁸ One commenter stated that the proposed rule change is consistent with the Act.²⁹ The other commenter stated that it did not support the proposed rule change, noting that “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 rule changes.”³⁰

²⁵ See Notice at 57634. See also Section 802.01B(iv) of the Manual.

²⁶ See Notice at 57634

²⁷ A SPAC not meeting this requirement would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual. See Notice at 57634.

²⁸ See supra note 9.

²⁹ See Kitlas Letter (stating, in full, “[t]he proposed rule change is consistent with the Act.”).

³⁰ See CII Letter at 1.

This commenter believed more evidence was necessary in several areas to support the proposed changes including: (1) the assertion that price distortions or illiquidity are a lesser concern for SPACs; (2) the assertion that SPACs trade close to the redemption value of the assets held in trust; (3) the number of companies constrained by existing listing standards; (4) the difficulties demonstrating compliance with determining the number of shareholders, including the frequency and length of delays; and (5) why having more listed SPACs would benefit investors or the capital markets.³¹

Further, the commenter raised questions regarding the necessity and operation of the proposed \$5 million net tangible assets requirement and the lack of monitoring SPACs that no longer meet the penny stock rules.³² The commenter also raised speculation that the lack of evidence in support of this proposal closely mirrors a similar proposal by NASDAQ Stock Market LLC (“Nasdaq”).³³ This commenter stated that, “we believe it is a mistake for NYSE to follow the actions of other exchanges in an effort to compete based on reduced standards around public listings.”³⁴

IV. Proceedings to Determine Whether to Approve or Disapprove SR-NYSE-2017-53 and Ground 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.³⁵ Institution of such

³¹ See CII Letter at 2-3.

³² See CII Letter at 3.

³³ See CII Letter at 4. See also Securities Exchange Act Release No. 81816 (October 4, 2017), 82 FR 47269 (October 11, 2017) (“Nasdaq Proposal”) and Securities Exchange Act Release No. 82478 (January 9, 2018), 83 FR 2278 (January 16, 2018) (“Nasdaq Order Instituting Proceedings”).

³⁴ See CII Letter at 4.

³⁵ 15 U.S.C. 78s(b)(2)(B).

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 Act³⁶ 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 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.³⁷

The Commission has consistently recognized the importance of the minimum number of holders and other similar requirements in exchange listing standards.³⁸ Among other things, such listing standards help ensure that exchange listed companies have sufficient public float,

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ Id.

³⁸ 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. See e.g., Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (stating also that the distribution standards, which include 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"); Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008).

investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.³⁹

NYSE proposes to lower the minimum number of holders required for initial listing of a SPAC from 300 to 150, and to eliminate the continued listing requirement to have a minimum number of holders until the SPAC completes a business combination. In support of its proposal, NYSE asserts that SPACs often have difficulty demonstrating compliance with the minimum number of holders requirements because many accounts are held in street name, so that this information must be obtained from broker-dealers and other third parties. NYSE states that this effort is particularly burdensome for SPACs because most of the expenses incurred in determining the number of holders must be borne by the SPAC's sponsors. The Commission notes that the vast majority of shares of most listed companies are held in street name, and it is not clear from NYSE's proposal how the burdens on SPACs in determining the number of holders are different than for listed companies generally, other than the fact that the SPAC's sponsor bears most of the costs. In addition, as noted by a commenter, it is not clear from NYSE's proposal the extent to which SPACs actually have had difficulties complying with the existing minimum number of holders requirements.⁴⁰

NYSE also takes the position that the benefits of the minimum number of holders requirements are less with SPACs because their value is based primarily on the value of the funds held in trust. NYSE notes that SPACs historically have traded close to the value of the

³⁹ Id. The Commission has further stated that once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue 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. See e.g., Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) also stating that the continued listing standards for SPACs, which include the holder requirements, protect investors and promote fair and orderly markets.

⁴⁰ See CII Letter at 2.

funds held in trust, and concludes that a lack of shareholders has not resulted in distorted prices and the associated concerns. The Commission, however, does not believe it is clear from NYSE's proposal how these historic trading patterns bear on the role of the minimum number of holders requirements in maintaining fair and orderly markets, particularly since NYSE's observations were made while the current minimum number of holder requirements were in place.

Finally, NYSE proposes to allow a listed SPAC 30 days following a business combination to demonstrate compliance with the initial holder requirement. NYSE states that, following a SPAC's business combination, the resulting company must meet all initial listing requirements for operating companies, including the requirement to have a minimum of 300 holders. The Commission notes that initial listing standards, absent an explicit exception, apply upon initial listing. Further, the Commission notes that, because the same number of holders today (i.e., 300) applies to SPACs listed on NYSE before and after a business combination,⁴¹ the issue of a post-combination transition period has not been raised. NYSE proposes to eliminate the continued listing requirement for SPACs, so that a listed SPAC with very few holders may need to have at least 300 holders a short time after a business combination. The Commission does not believe it is 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.

V. Commission's Solicitation of Comments

⁴¹ The Commission recognizes that the initial holder requirement is 300 round lot holders while the continued listing requirement is 300 public shareholders. Therefore, when a SPAC transitions to listing as an operating company after a business combination, it should have at least 300 public shareholders, many of which may also be round lot holders.

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 provision 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.⁴²

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 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?

⁴² Section 19(b)(2) of the Exchange 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 Cong., 1st Sess. 30 (1975).

2. Without any continued listing holder requirement, 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. Without any continued listing holder requirement, 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. Has the Exchange demonstrated with specific data, analysis, and studies that the shares of SPACs trade consistently as stated in the proposal, and does the analysis support the proposed reductions in the holder initial and continued listing standards? If not, what data should be reviewed and analyzed? How many SPACs have not been able to meet the Exchange's initial or continued listing applicable holder requirements? In the Exchange's examination of SPACs that were below the continued public holder listing requirement, if any, how few holders did these SPACs have?
5. The Exchange asserted that it is time consuming and burdensome for a SPAC to obtain a list of holders to demonstrate the number of holders, because many shares are held in street name with broker-dealers. The Commission notes that the process of obtaining number of holders is similar for all listed companies. Do commenters think SPACs are particularly burdened by this process and the costs? Is the fact the costs are usually borne by the sponsors relevant?

6. Under its proposal, should the Exchange monitor SPACS that fall below the \$5 million net tangible assets standard to assist broker-dealers in complying with the penny stock rules, including during any period when immediate suspension under Section 804.00 of the Manual has not been imposed?

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-2017-53 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-2017-53. 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 such 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-2017-53 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.⁴³

Eduardo A. Aleman,
Assistant Secretary.

⁴³ 17 CFR 200.30–3(a)(12).

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