



8011-01P

SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-86117; File No. SR-NYSE-2018-46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Disapproving a Proposed Rule Change to Amend the Listed Company Manual for Special Purpose 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 Special Purpose Acquisition Companies a Reasonable Time Period Following a Business Combination to Demonstrate Compliance with the Applicable Quantitative Listing Standards

June 14, 2019.

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” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the NYSE Listed Company Manual (“Manual”) for Special Purpose Acquisition Companies (“SPACs”)<sup>3</sup> to reduce the minimum number of public holders 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 for comment in the Federal Register on October 18, 2018.<sup>4</sup> The Commission received

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission notes that 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 the Manual.

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

one comment letter on the proposal.<sup>5</sup> On November 29, 2018, the Commission designated a longer 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.<sup>6</sup> On January 15, 2019, the Commission issued an order instituting proceedings (“OIP” or “Order Instituting Proceedings”) under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission received one additional comment letter, from the same commenter, on the OIP.<sup>8</sup> On April 15, 2019, the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.<sup>9</sup> This order disapproves the proposed rule change.

## II. Description of the Proposal

### A. Background on SPACs

A SPAC is a special purpose acquisition 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 until the date of a business combination.<sup>10</sup> The SPAC must complete one or more business combinations, having an

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

<sup>6</sup> See Securities Exchange Act Release No. 84680 (November 29, 2018), 83 FR 62942 (December 8, 2018).

<sup>7</sup> See Securities Exchange Act Release No. 84984 (January 15, 2019), 84 FR 0855 (January 31, 2019).

<sup>8</sup> See Letter to Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated February 11, 2019 (“CII Letter II”).

<sup>9</sup> See Securities Exchange Act Release No. 85644 (April 15, 2019), 84 FR 16299 (April 18, 2019). The date was extended until June 15, 2019.

<sup>10</sup> See Section 102.06 of the Manual. Section 102.06 also contains additional quantitative requirements to list a SPAC.

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.<sup>11</sup> 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.<sup>12</sup> Following a business combination, the combined company must meet the Exchange’s requirements for initial listing of an operating company.<sup>13</sup>

B. Description of the Proposed Changes to SPAC Listing Standards

The Exchange has proposed two changes to its SPAC listing requirements. First, the Exchange has proposed to reduce the number of public stockholders required for continued listing of a SPAC, prior to consummation of a business combination, from 300 to 100.<sup>14</sup> According to the Exchange, SPACs have difficulty demonstrating compliance with the 300 public stockholders continued listing 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 a Business Combination.” For these reasons, NYSE asserted that SPACs, historically “trade close to the value in the trust, even

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<sup>11</sup> See id.

<sup>12</sup> See Section 102.06(b) of the Manual.

<sup>13</sup> This includes the requirement to maintain a minimum of 400 round lot holders. See Sections 102.01A and 802.01B of the Manual.

<sup>14</sup> 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 “Criteria for Acquisition Companies” of the Manual.

when they have had few shareholders,” and that these “trading patterns suggest that the low number of shareholders has not resulted in distorted prices.”<sup>15</sup>

Second, the Exchange has proposed to give 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 minimum of 400 round lot holders and 1,100,000 publicly held shares.<sup>16</sup> 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.” 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.

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<sup>15</sup> The Exchange also articulated other arguments, including that Exchange Traded Funds are “somewhat similar” and do not have as high of a continued listing shareholder requirement as SPACs. See Notice, supra, note 4.

<sup>16</sup> See Section 802.01B of the Manual.

### III. Summary of Comments

The Commission received one comment letter on the proposal and an additional comment letter, from the same commenter, in response to the OIP.<sup>17</sup> The commenter stated that it could not support the 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.”<sup>18</sup> The commenter referenced its prior comments on similar proposals from the Exchange and Nasdaq, both of which were subsequently withdrawn.<sup>19</sup> 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.

In response to the OIP, the commenter expressed concerns broadly that competition between the Exchange and Nasdaq was weakening listing standards, “lower[ing] the bar for what

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<sup>17</sup> See supra notes 5 and 8.

<sup>18</sup> See supra note 5.

<sup>19</sup> 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 requirements following a business combination). The proposal was withdrawn on June 21, 2018 after the Commission institute proceedings to determine whether to approve or disapprove the proposal. See Notice of Withdrawal, Securities Exchange Act Release No. 83570 (June 29, 2018), 83 FR 31628 (July 6, 2018). See also SR-Nasdaq-2017-87 (proposal to reduce round lot holders on Nasdaq Capital Market for initial listing From 300 to 150 and eliminate public holders for continued listing from 300 to zero, and impose a deadline to demonstrate compliance with initial listing requirements within 30 Days following each business combination). The proposal was withdrawn on June 1, 2018 after the Commission instituted proceedings to determine whether to approve or disapprove the proposal. See Notice of Withdrawal, Securities Exchange Act Release No. 83383 (June 5, 2018), 83 FR 27055 (June 11, 2018).

goes in the world of SPACs,”<sup>20</sup> and is in conflict with the Exchange Act requirement that exchange rules be designed to protect investors and the public interest. With respect to the Exchange’s proposal, the commenter stated that it did not believe the Exchange provided sufficient information to determine whether the commenter’s members and the capital markets would benefit from the proposed changes.

#### IV. Discussion and Commission Findings

Under Section 19(b)(2)(B) of the Act,<sup>21</sup> the Commission shall approve a proposed rule change by a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to such organization.<sup>22</sup> The Commission shall disapprove a proposed rule change if the Commission does not make such a finding.<sup>23</sup> 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 that proposed the rule change,” and a “mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.”<sup>24</sup>

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient

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<sup>20</sup> See supra note 8.

<sup>21</sup> See 15 U.S.C. 78s(b)(2)(C).

<sup>22</sup> See 15 U.S.C. 78s(b)(2)(C)(i).

<sup>23</sup> See 15 U.S.C. 78s(b)(2)(C)(ii).

<sup>24</sup> 17 CFR 201.700(b)(3).

basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>25</sup>

For the reasons discussed below, the Commission is disapproving the proposed rule change because the information before the Commission is insufficient to support a finding that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> Specifically, the Commission concludes that it does not have sufficient information to determine that the proposed rule change is consistent with Section 6(b)(5) of the Act, and in particular the requirements that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>27</sup>

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.<sup>28</sup> Among other things, such listing standards help

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<sup>25</sup> See id.

<sup>26</sup> In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>27</sup> See 15 U.S.C. 78f(b)(5).

<sup>28</sup> See, e.g., Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (stating that the distribution standards, which include exchange holders requirements "...should help to ensure that the [SPACs'] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets"). See also Securities Exchange Act Release No. 58228, (July 25, 2008) 73 FR 44794 (July 31, 2008) (approving Nasdaq initial and continued listing standards for SPACs).

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.<sup>29</sup>

NYSE has proposed 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, and without distorted prices, even when they have few shareholders. NYSE, however, has provided no evidence (such as, for example, information about the number of SPAC delisting proceedings as compared to the number of delisting proceedings for other types of listed companies) that SPACs in fact have difficulty complying with the existing minimum number of holders requirements. In addition, to support its position that the minimum number of holders requirements are less relevant for SPACs, NYSE made certain representations about the current trading characteristics of SPACs when they have few shareholders. The Commission notes, however, that NYSE's observations were made when the current minimum number of holders requirements were in place, and NYSE has provided no evidence that the same observations would be repeated if these requirements were substantially reduced, as proposed. In the OIP, the Commission asked several questions relating to this aspect of the proposal, including whether it would ensure a sufficient liquid market for NYSE-listed SPACs, whether SPACs would still trade close to their redemption value or be more prone to manipulation (both before and after the business combination announcement), and whether there was any data to

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Id.

support NYSE's assertions about the nature of SPAC trading or the difficulties faced by SPACs in meeting existing listing standards. NYSE offered no additional response, arguments or data in response to these questions or in support of its proposal, nor did any other commenter.

NYSE also has proposed to provide itself discretion to allow SPACs a reasonable time period following a business combination to demonstrate compliance with the minimum number of holders and other applicable quantitative listing standards for an operating company, rather than requiring SPACs to immediately comply with such standards. NYSE, however, has provided no supporting evidence (such as, for example, information about the number of SPAC delisting proceedings as compared to the number of delisting proceedings for other types of listed companies) that SPACs have particular difficulties demonstrating compliance with these important requirements. In addition, the Commission notes that, while 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. In the OIP, the Commission questioned whether such a structure would be workable, and how a listed SPAC would ensure it is in a position to sufficiently increase its number of holders from the proposed 100 public holder threshold (as opposed to the current 300 threshold), even within the "reasonable time period" contemplated by NYSE. The Commission further noted that the Exchange offered no explanation as to why SPACs require additional time, following the consummation of a business combination, to meet 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 the publicly-held shares. However, as with the other concerns raised by the Commission in the OIP, NYSE offered no additional response,

arguments or data in response to these concerns or in support of its proposal, nor did any other commenter.

For the reasons discussed above, the Commission concludes that the record before it does not provide a basis to conclude that the Exchange has met its burden under the Act and the Commission's Rules of Practice to demonstrate that its proposed rules change is consistent with Section 6(b)(5) of the Act.<sup>30</sup>

V. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.<sup>32</sup>

IT IS THEREFORE ORDERED THAT, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> the proposed rule change (SR-NYSE-2018-46) be, and it hereby is, DISAPPROVED.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

Vanessa A. Countryman,  
Acting Secretary.

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<sup>30</sup> See 15 U.S.C. 78f(b)(5).

<sup>31</sup> See 15 U.S.C. 78s(b)(2).

<sup>32</sup> See 15 U.S.C. 78f(b)(5).

<sup>33</sup> See 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

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