

August 3, 2021

Ms. Vanessa Countryman
Secretary
United States Securities and Exchange Commission
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Washington, DC 20549-1090

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Re: Comments on Proposed Rule Change to Modify Listing Rule IM-5101-2
Release No. 34-92344; File No. SR-NASDAQ-2021-054

Dear Ms. Countryman:

We are writing to provide comments on the proposal by Nasdaq to modify Listing Rule IM-5101-2 (the “Proposed Rule Change”) reflected in the “Notice of Filing of Proposed Rule Change to Modify Listing Rule IM-5101-2 to Permit an Acquisition Company to Contribute a Portion of its Deposit Account to Another Entity in a Spin-off or Similar Corporate Transaction” of the U.S. Securities and Exchange Commission (the “Commission”).

As attorneys who have advised on hundreds of special purpose acquisition company (“SPAC”) initial public offerings (“IPOs”) and business combinations since 2005, we have been part of the evolution of the SPAC from a niche product to the popular capital markets alternative it is today. The stock exchange listing rules for SPACs are largely based on the SPAC structure as it existed when the rules were originally adopted more than a decade ago, with limited changes made in the intervening years. Given the significant role that SPACs currently play in US capital markets, it is important that stock exchange listing rules continue to evolve to allow for improvements that benefit all constituent parties to SPAC transactions, in a manner that is consistent with the protection of investors and the public interest.

We support the Proposed Rule Change because, as described in more detail below, it permits a more efficient SPAC structure by allowing a SPAC to rightsize the capital available to it for its initial business combination and spin off one or more new SPACs to its shareholders in certain circumstances, while maintaining all of the investor protections in the current IM-5101-2.¹

Shortcomings of the Current SPAC Structure

When a SPAC conducts its IPO, it raises an amount of capital that it estimates will be the amount necessary to finance a subsequent business combination with its ultimate target. However, because a SPAC cannot select its business combination target at the time of its IPO, the amount raised in its IPO often is suboptimal for the needs of the

¹ We currently are representing Spinning Eagle Acquisition Corp., a SPAC that has filed with the Commission a Registration Statement on Form S-1 in which it discloses its intention to be able to conduct a spin-off in the manner described in the Proposed Rule Change.

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target that ultimately is selected. Under the SEC staff's interpretation of current IM-5101-2, there is no way for a SPAC to allocate a portion of the proceeds held in its trust account for one target in its initial business combination, and then utilize the balance of the proceeds to acquire another target in a second, unrelated business combination.

This challenge has led to the inefficient current practice of SPAC sponsors raising multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target's needs. This practice has the unintended consequence of creating potential conflicts of interest between the multiple SPACs (each of which has different shareholders) and still fails to optimize the amount of capital to benefit the SPAC's public shareholders and business combination target that ultimately is selected.

The Spin-Off Permitted by the Proposed Rule Change

The Proposed Rule Change addresses the above issue by permitting a SPAC to rightsize itself for the benefit of its shareholders and the target in its initial business combination, and utilize the balance of the proceeds in its trust account for one or more additional business combinations. Under the Proposed Rule Change, in the event that a SPAC determines that it does not require all of the cash held in its trust account for its initial business combination, the SPAC can allocate the excess cash in its trust account to the trust account of a new SPAC ("SpinCo") that it will spin off. Following the spin-off, the original SPAC will proceed to complete its initial business combination utilizing the amount remaining in its trust account, and SpinCo will seek to identify and complete its own initial business combination. SpinCo will be required to comply with IM-5101-2 just like the original SPAC. The ability to conduct a spin-off (and for the SpinCo potentially to conduct its own spin-off) avoids the issues arising from raising multiple, separate SPACs at the same time, while also allowing for the optimal amount of capital to be put to use in each business combination.

The Proposed Rule Change is Consistent with the Protection of Investors and the Public Interest

We believe that the Proposed Rule Change is consistent with the protection of investors and the public interest because both the initial SPAC and the SpinCo are required to comply with the requirements of IM-5101-2. In particular, the proceeds of the original SPAC's IPO always remain in a trust account of the SPAC or SpinCo for the benefit of the public shareholders, and public shareholders have the right to redeem their shares of the original SPAC and SpinCo for their pro rata portions of their respective trust accounts. Indeed, under the Proposed Rule Change, a SPAC conducting a spin-off advances a portion of the redemption opportunity for public shareholders, because the public shareholders are afforded the opportunity to redeem a portion of their public shares in connection with the spin-off, which is before the time this opportunity would be available in a traditional SPAC. This accelerated redemption opportunity would be followed by a subsequent opportunity for the public shareholders to redeem the balance of their shares in connection with the consummation of the SPAC's initial business combination like a traditional SPAC. Accordingly, public shareholders would still have the same opportunity to redeem their full pro rata portion of the trust account prior to the consummation of the initial business combination; the full redemption right would just now be bifurcated into two separate opportunities, one of which would be accelerated as compared to a traditional SPAC.

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Conclusion

We believe that the Proposed Rule Change is a positive evolution of the SPAC structure that maintains all of the investor protections of the current rule. Accordingly, we support the Proposed Rule Change.

We appreciate the opportunity to provide our comments on the Proposed Rule Change. We would be pleased to discuss any questions the Commission or its staff may have about this letter or our view of the Proposed Rule Change generally. Any questions may be directed to either Joel Rubinstein or Jonathan Rochwarger at [REDACTED].

Sincerely,

A handwritten signature in blue ink that reads "White & Case LLP". The signature is written in a cursive, flowing style.

White & Case LLP