

Via Email

February 11, 2019

Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

*Re: File Number SR-NYSE-2018-46*

Dear Mr. Secretary:

I am writing on behalf of the Council of Institutional Investors (CII), a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.<sup>1</sup>

The purpose of this letter is to commend the staff of the Securities and Exchange Commission (SEC or Commission) for its thorough review of the New York Stock Exchange LLC (NYSE) proposed rule change to modify the listing standards for Special Purpose Acquisition Companies (SPACs).<sup>2</sup> As indicated in our November 8, 2018 letter, we do not oppose the proposed rule, but rather found that the proposal did 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>3</sup>

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<sup>1</sup> For more information about the Council of Institutional Investors (“CII”), including its members, please visit CII’s website at <http://www.cii.org/members>.

<sup>2</sup> 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, Exchange Act Release No. 84,984, 84 Fed. Reg. 855 (Jan. 15, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-01-31/pdf/2019-00499.pdf>.

<sup>3</sup> Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Securities and Exchange Commission 2 (Nov. 8, 2018), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2018/November%208%202018%20SEC%20NYSE%20SPAC%20letter%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2018/November%208%202018%20SEC%20NYSE%20SPAC%20letter%20(final).pdf).

We believe the five questions the Commission solicits comment on in the release are thoughtful, address the issue raised in our letter,<sup>4</sup> and should lead to additional information that would be helpful in making a determination of whether the proposal would benefit investors and the capital markets.<sup>5</sup>

More broadly, we are concerned about reports that the proposed rule is part of an ongoing multi-year competition by the NYSE and the NASDAQ Stock Market LLC to “lower the bar for what goes in the world of SPACs.”<sup>6</sup> As explained in a January 11, 2019, Bloomberg opinion piece by columnist Stephen Gandel:

[L]ast year, the Securities and Exchange Commission essentially rejected an effort by both exchanges to further relax the SPAC rules. But in October, the NYSE submitted a revision of its latest SPAC proposal that is more likely to pass, with the Nasdaq sure to follow. What’s more, the SEC’s other efforts to encourage IPOs by eliminating regulations and investor protections has boosted SPACs as well. And the uninspired recent performance of SPACs doesn’t seem to have stopped any of this. Bloomberg Intelligence analyst Vincent G. Piazza wrote an article recently calling the current outlook for SPACs deeply concerning.

On top of that, some say that SPACs attract only institutional investors, not individuals, and so should be lightly regulated. But a number of mutual funds, like the Merger Fund, which are marketed to individuals, are regular investors in SPACs. . . . Furthermore, Etalon Capital launched a SPAC index early last year, potentially paving the way for a SPAC exchange-traded fund, which would blindly lead investors into any deal that one of these not-yet-companies propose. This is one of the few instances in which passive investing is a terrible idea.

. . . .

SEC Chairman Jay Clayton has cited a perception that public markets are essentially rigged against “Mr. and Mrs. 401(k)” as a reason for the recent dearth of IPOs. Making markets appear more fair, he has said, will bring them back and bolster economic opportunity. But a Wild West of SPACs is probably not what Clayton should have in mind when he says he’s looking out for the interests of individual investors.<sup>7</sup>

As indicated in the release, “Section 6(b)(5) of the [Securities Exchange Act of 1934] . . . requires, among other things, that the rules of a national exchange be designed to . . . protect

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<sup>4</sup> *Id.* at 3 (“it is not clear from NYSE’s proposal the extent to which [Acquisition Companies] . . . actually have had difficulties complying with the existing minimum number of holders requirements”).

<sup>5</sup> 83 Fed. Reg. at 858.

<sup>6</sup> Stephen Gandel, Why Is This Oil and Gas Company Playing Poker?, Bloomberg, Jan. 11, 2019, <https://www.bloomberg.com/opinion/articles/2019-01-11/spac-why-is-this-oil-and-gas-company-playing-poker>.

<sup>7</sup> *Id.*

investors and the public interest.”<sup>8</sup> CII generally believes that the ongoing competition by the stock exchanges to weaken existing listing standards is in conflict with that requirement.<sup>9</sup>

Thank you for the opportunity comment on the proposed rule. Please contact me with any questions.

Sincerely,



Jeffrey P. Mahoney  
General Counsel

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<sup>8</sup> 83 Fed. Reg. at 857.

<sup>9</sup> *See, e.g.*, Press Release, Investors Petition NYSE, NASDAQ to Curb Listings of IPO Dual-Class Share Companies (Oct. 24, 2018) (describing CII’s most recent efforts to strengthen listing standards), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/FINAL%20Dual%20Class%20Petition%20Press%20Release%20Oct%2024,%202018.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/FINAL%20Dual%20Class%20Petition%20Press%20Release%20Oct%2024,%202018.pdf).