

Via E-Mail

July 18, 2024

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

*Re: File No. SR-NYSE-2024-18.*

Dear Madam Secretary:

I am writing on behalf of the Council of Institutional Investors (CII). CII is a nonprofit, nonpartisan association of United States (U.S.) 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 of approximately \$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, including public pension funds with more than 15 million participants – true “Main Street” investors through their pension funds. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$40 trillion in assets under management.<sup>1</sup>

This letter is in response to the Securities and Exchange Commission’s (SEC) solicitation of comments on the “Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Section 102.06 of the [New York Stock Exchange LLC (NYSE)] NYSE Listed Company Manual To Provide That a Special Purpose Acquisition Company [SPAC] Can Remain Listed Until Forty-Two Months From Its Original Listing Date if It Has Entered Into a Definitive Agreement With Respect to a Business Combination Within Three Years of Listing” (SR-NYSE-2024-18).<sup>2</sup>

CII believes SR-NYSE-2024-18 should be disapproved because it is inconsistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (Act)<sup>3</sup> and the rules and regulations thereunder.

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

<sup>2</sup> Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Section 102.06 of the NYSE Listed Company Manual To Provide That a Special Purpose Acquisition Company Can Remain Listed Until Forty-Two Months From Its Original Listing Date if It Has Entered Into a Definitive Agreement With Respect to a Business Combination Within Three Years of Listing, Exchange Act Release No. 100,480, 89 Fed. Reg. 57,436 (July 12, 2024), <https://www.federalregister.gov/documents/2024/07/15/2024-15411/self-regulatory-organizations-new-york-stock-exchange-llc-order-instituting-proceedings-to-determine>.

<sup>3</sup> See National Securities Exchanges § 6(b)(5), 15 U.S.C. § 78(f)(b)(5) (2010), available at <https://www.law.cornell.edu/uscode/text/15/78f> (“The rules of the exchange are designed to prevent fraudulent and

More specifically, as described by the SEC staff, SR-NYSE-2024-18 proposes “a fundamental change to the well-established requirement that a SPAC’s Business Combination must be consummated within three years or face delisting, [by] . . . seeking to extend this time requirement to allow up to 42 months for a SPAC to complete its Business Combination if the SPAC has entered into a ‘definitive agreement’ to consummate its Business Combination.”<sup>4</sup> And we share the SEC staff’s concerns that NYSE “does not address how [SR-NYSE-2024-18] . . . would affect shareholder protection or why it is appropriate for a SPAC to retain shareholder funds past the current maximum time period of three years and how that would be consistent with the investor protection and public interest requirements of Section 6(b)(5) of the Act.”<sup>5</sup>

We also note that in a July 15, 2024, filing with the SEC, the Nasdaq Stock Market LLC (NASDAQ) proposes amendments to its listing standards for SPACs (Amendments).<sup>6</sup> Those Amendments would, among other changes, eliminate the existing stay of the suspension of a SPAC’s securities from trading when the SPAC has failed to complete one or more business combinations “within 36 months of the effectiveness of its registration statement.”<sup>7</sup> In describing the statutory basis for the Amendments, the NASDAQ stated, among other reasons, that the changes were “designed to protect investors and the public interest.”<sup>8</sup>

We also believe SR-NYSE-2024-18 should be disapproved because of the poor governance practices that have been endemic to many SPAC structures. We note that CII’s membership-approved corporate governance policies include the following best practices for independent boards and director compensation:

### Independent Boards

At least two-thirds of the directors should be independent; their seat on the board should be their only non-trivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer.<sup>9</sup>

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manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange”).

<sup>4</sup> 89 Fed. Reg. at 57,437.

<sup>5</sup> *Id.*

<sup>6</sup> See Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Procedures Related to the Suspension and Delisting of Acquisition Companies, Exchange Act Release No. 100,538 (proposed July 15, 2024), <https://www.sec.gov/files/rules/sro/nasdaq/2024/34-100538.pdf>

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> Council of Institutional Investors, Corporate Governance Policies, § 2.3 Independent Board (updated Mar. 6, 2023), [https://www.cii.org/corp\\_gov\\_policies](https://www.cii.org/corp_gov_policies).

### Director Compensation

Policy issues related to director compensation are fundamentally different from executive compensation. Director compensation policies should accomplish the following goals: (1) attract highly qualified candidates, (2) retain highly qualified directors, (3) align directors' interests with those of the long-term owners of the corporation and (4) provide complete disclosure to shareowners regarding all components of director compensation including the philosophy behind the program and all forms of compensation.

To accomplish these goals, director compensation should consist solely of a combination of cash retainer and equity-based compensation. The cornerstone of director compensation programs should be alignment of interests through the attainment of significant equity holdings in the company meaningful to each individual director. CII believes that equity obtained with an individual's own capital provides the best alignment of interests with other shareowners. However, compensation plans can provide supplemental means of obtaining long-term equity holdings through equity compensation, long-term holding requirements and ownership requirements.

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Although non-employee director compensation is generally immaterial to a company's bottom line and small relative to executive pay, director compensation is an important piece of a company's governance. Because director pay is set by the board and has inherent conflicts of interest, care must be taken to ensure there is no appearance of impropriety. Companies should pay particular attention to managing these conflicts.<sup>10</sup>

We have observed that many SPACs appear to have challenges in following these two related corporate governance principles, both of which are critically important for the fair and optimal use of disinterested SPAC investors' capital. While we applaud the SEC's new requirements to provide greater transparency regarding those challenges,<sup>11</sup> we believe that their continued existence has significant implications for the protection of investors and the public interest and, in our view, provide an additional basis for the disapproval of SR-NYSE-2024-18.

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<sup>10</sup> *Id.* § 6.1 Introduction.

<sup>11</sup> *See, e.g.*, Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Act Release No. 11,265, Exchange Act Release No. 99,418, Investment Company Act Release No. 35,096, 89 Fed. Reg. 14,158, 14,318 (Feb. 23, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-02-26/pdf/2024-01853.pdf> (requiring disclosure in connection with a de-SPAC transaction of “any actual or potential material conflict of interest, including any material conflict of interest that may arise in determining whether to proceed with a de-SPAC transaction and any material conflict of interest arising from the manner in which the special purpose acquisition company compensates . . . directors or the manner in which a SPAC sponsor compensates its . . . directors, between: on one hand, the SPAC sponsors, their affiliates, SPAC officers, SPAC directors, or promoters, target company officers or target company directors; and, on the other hand, unaffiliated security holders of the SPAC.”).

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Thank you for your consideration of CII's views. If we can answer any questions or provide additional information regarding this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeffrey P. Mahoney  
General Counsel