

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100480; File No. SR-NYSE-2024-18)

July 9, 2024

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

On March 27, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposal to amend Section 102.06 of the NYSE Listed Company Manual (“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. The proposed rule change was published for comment in the Federal Register on April 10, 2024.⁴ On May 22, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ The Commission has not received any comments on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 99906 (Apr. 4, 2024), 89 FR 25291 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 100220 (May 22, 2024), 89 FR 46527 (May 29, 2024). The Commission designated July 9, 2024, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of Proposed Rule Change

SPACs are special purpose acquisition companies whose business plan is to raise capital in an initial public offering (“IPO”) and within a specified period of time, engage in a merger or acquisition with one or more unidentified operating companies.⁸ Section 102.06 of the Manual sets forth the listing requirements applicable to SPACs. Section 102.06 requires, among other things, that a SPAC must keep 90% of the gross proceeds of its IPO in a trust account until the completion of a Business Combination⁹ meeting the rule’s requirements. The SPAC also must complete one or more Business Combinations, having an aggregate fair market value of at least 80% of the value of the trust account, within a period of time not to exceed 3 years of the listing of the SPAC.¹⁰ Section 102.06e of the Manual provides that the Exchange will promptly commence delisting procedures with respect to any listed SPAC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter.

The Exchange proposes to amend Section 102.06e to extend the period for which a SPAC can remain listed if it has signed a definitive agreement with respect to a Business Combination. As proposed, Section 102.06e would provide that a SPAC will be liquidated, and the Exchange will promptly commence delisting procedures, if the SPAC has not: (i) entered into a definitive

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See, e.g., Securities Act Release No. 11265 (Jan. 24, 2024), 89 FR 14158, 14160 (Feb. 26, 2024).

⁹ For purposes of Section 102.06, a “Business Combination” is defined as a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets.

¹⁰ See Section 102.06 of the Manual.

agreement with respect to its Business Combination within (A) the time period specified by its constitutive documents or by contract or (B) three years, whichever is shorter; or (ii) consummated its Business Combination within the time period specified by its constitutive documents or by contract or forty-two months, whichever is shorter.¹¹

In support of the proposed rule change, the Exchange states that it believes that a SPAC represents a significantly different investment after it enters into a definitive agreement for a Business Combination, as investors who continue to hold the SPAC's securities or acquire them after that agreement is executed have knowledge about the operating asset the SPAC intends to own and can be assumed to own the securities because they want to have an ownership interest in the post-Business Combination entity.¹² As such, the Exchange believes that a SPAC that has signed a definitive merger agreement to acquire an identified business does not present the same investor protection concerns as a SPAC before signing such an agreement, which it describes as more purely a blind pool investment.¹³ In addition, the Exchange states that delisting a SPAC that has signed a definitive merger agreement when it reaches the three-year deadline may be contrary to the interests of the SPAC's public shareholders at that time.¹⁴

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSE-2024-18 and Grounds for Disapproval under Consideration

¹¹ See Notice, 89 FR at 25292.

¹² Id.

¹³ Id.

¹⁴ Id. The Exchange also states that Nasdaq's SPAC listing requirements include a three-year limitation that is substantially similar to that included in the Exchange's existing SPAC listing standard. See Nasdaq IM 5101-2. However, the Exchange states that Nasdaq appeal panels have granted additional time to SPACs that appeal their delisting for failure to consummate a Business Combination within three years in circumstances where the SPAC has entered into a definitive agreement within such three-year period. See Notice, 89 FR at 25291-92. See also, infra note 20, concerning a recently submitted Nasdaq proposed rule change on SPACs.

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹⁵ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5)¹⁷ of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁸

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ Id.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Id.

exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.¹⁹

The Exchange has proposed a fundamental change to the well-established requirement that a SPAC's Business Combination must be consummated within three years or face delisting, and is 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.²⁰ In support of the proposed change, the Exchange states that once a definitive agreement is entered into, a SPAC "represents a significantly different investment" because more information will be available to investors about the operating asset the SPAC intends to own.²¹

The three-year limit, however, was put in place to provide protection for public shareholders by restricting the time period a SPAC could retain shareholder funds without consummating a Business Combination.²² The Exchange does not address how the proposal

¹⁹ For example, the Commission has repeatedly stated in approving exchange listing requirements 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 Nos. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (NYSE-2017-31); 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR-NYSE-2008-17); 58228 (July 25, 2008), 73 FR 44794, 44796 (July 31, 2008) (SR-NASDAQ-2008-013). In addition, the Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., Securities Exchange Act Release Nos. 90768 (Dec. 22, 2020), 85 FR 85807, 85811 n.55 (Dec. 29, 2020) (SR-NYSE-2019-67); 82627 (Feb. 2, 2018), 83 FR 5650, 5653 n.53 (Feb. 8, 2018) (SR-NYSE-2017-30); 87648 (Dec. 3, 2019), 84 FR 67308, 67314 n.42 (Dec. 9, 2019) (SR-NASDAQ-2019-059); 88716 (Apr. 21, 2020), 85 FR 23393, 23395 n.22 (Apr. 27, 2020) (SR-NASDAQ-2020-001).

²⁰ See Notice, 89 FR at 25292. On July 8, 2024, Nasdaq filed a proposed rule change that would, among other things, eliminate the discretion of Nasdaq appeals panels to grant such additional time to a SPAC. (SR-Nasdaq-2024-038).

²¹ See Notice, 89 FR at 25292.

²² See Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008). At the time the NYSE listing standards for SPACs were initially approved, the Commission stated that those standards provided additional protections and safeguards to address investor protection including, among others, the requirement that a SPAC consummate a Business Combination within a specified period of time not to

would affect shareholder protection or why it is appropriate for a SPAC to retain shareholder funds past the current maximum time period of three years²³ and how that would be consistent with the investor protection and public interest requirements of Section 6(b)(5) of the Act.²⁴

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest and whether the Exchange has provided an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

In addition, the proposal raises concerns under the Investment Company Act of 1940. The Commission recently noted that a SPAC whose assets and income are substantially composed of, and derived from, securities raises concerns that it may be an investment company when it operates beyond certain timelines, including the one-year and eighteen-month timelines established under Rule 3a-2 of the Investment Company Act of 1940 and Rule 419 of the Securities Act of 1933, respectively.²⁵ The Commission also noted that these concerns increase as the departure from these timelines lengthens.²⁶ If such a SPAC meets the definition of an

exceed three years or else investors would be entitled to liquidation rights, and the security would be delisted. Id. at 27600.

²³ SPAC sponsors have incentives to complete a business consummation or “de-SPAC.” The SPAC sponsor receives compensation in the form of discounted SPAC shares that generally only have value if a business consummation occurs. See Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Act Release No. 11265 (Jan. 24, 2024), 89 FR 14158, 14160 (Feb. 26, 2024) (“SPAC Adopting Release”). Thus, “[t]he SPAC sponsor’s compensation structure creates incentives to complete a de-SPAC transaction. These incentives may induce a SPAC sponsor and others to compel the SPAC to complete the de-SPAC transaction on unfavorable terms to avoid liquidation of the SPAC at the expiry of this period.” Id. at 14176.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See generally, SPAC Adopting Release, 89 FR at 14260 (describing a SPAC’s duration as one relevant consideration in evaluating whether a SPAC is an investment company); Section 3(a)(1) of the Investment Company Act of 1940 (defining an investment company).

²⁶ Id.

investment company, it would have to register as an investment company and this would raise issues of its continued listing as a SPAC.

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 [‘SRO’] that proposed the rule change.”²⁷ 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,²⁸ and any failure of an SRO to provide this information may result in the Commission not having sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rule and regulations.²⁹

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act³⁰ to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, 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 proposed rule change is consistent with the Act, and the rules and regulations thereunder. Although there do not appear to be any issues

²⁷ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

²⁸ See id.

²⁹ See id.

³⁰ 15 U.S.C. 78s(b)(2)(B).

relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,³¹ any request for an opportunity to make an oral presentation.³²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [insert date 21 days after 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 after 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,³³ in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2024-18 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.

³¹ 17 CFR 240.19b-4.

³² Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to 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 Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³³ See Notice, supra note 3.

All submissions should refer to file number SR-NYSE-2024-18. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSE-2024-18 and should be submitted by [insert date 21 days after the date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days after date of publication in the Federal Register].

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

J. Matthew DeLesDernier,

Deputy Secretary.

³⁴ 17 CFR 200.30-3(a)(57).