SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63366; File No. SR-NYSEAMEX-2010-103)

November 23, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Amex LLC Company Guide to Adopt Additional Criteria for Listing Special Purpose Acquisition Companies (SPACs) That Have Indicated That Their Business Plan Is To Engage in a Merger or Acquisition with an Unidentified Company or Companies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 12, 2010, NYSE Amex LLC ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex LLC Company Guide (the "Guide") to adopt additional criteria for listing companies that have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies (an "acquisition vehicle") and to provide transparency to the criteria the Exchange will apply in doing so. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Guide to adopt additional criteria for listing companies that have indicated that their business plan is to engage in a merger or acquisition with an acquisition vehicle.[3] The Exchange has permitted certain of such companies to list on the Exchange under Initial Listing Standards 3 or 4, which do not require prior operating history, as long as certain protections were provided to investors in such companies.[4] In order to provide greater transparency to the listing criteria that would be applicable to such companies, the Exchange proposes to adopt new Section 119 of the Guide.[5]

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3 Section 101 of the Guide provides the Exchange with broad discretionary authority over the initial and continued listing of securities in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, even though the securities meet all enumerated criteria for initial or continued listing.

4 As it does with any initial listing, the Exchange will evaluate the reputation of the company's management pursuant to Section 101 of the Guide in determining whether listing is appropriate.

5 New York Stock Exchange LLC ("NYSE") and The Nasdaq Stock Market also have adopted standards for listing acquisition companies. *See* NYSE Listed Company Manual Section 102.06, Nasdaq IM-5101-2. Except where otherwise noted, the new Section 119 standards are the same as Nasdaq's current standards. *See* infra notes 8 and 9.

First, these companies must meet all applicable initial listing requirements. Thus, for initial listing, companies seeking to list on the Exchange must meet NYSE Amex Initial Listing Standard 3 or 4, which require, among other things, a minimum market value of listed securities of $50 million or $75 million, respectively.[6] In addition, the Exchange has determined to impose the following additional criteria for listing a company whose business plan is to complete an initial public offering and engage in a subsequent, unidentified merger or acquisition:[7]

(a) At least 90% of the gross proceeds from the initial public offering and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution," as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act[8] or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account").

(b) Within 36 months of the effectiveness of its initial public offering registration statement, or such shorter period that the company specifies in its registration

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6 *See* Section 101(c) and (d) of the Guide, which sets forth these market capitalization standards as well as other listing standards relating to aggregate market value of publicly held shares, stock price, distribution and other requirements. Note that given the nature of these companies, they will not satisfy the initial listing requirements of Initial Listing Standards 1 and 2 because of the prior operating history requirements of those standards. As noted below, these companies will be required to satisfy the initial listing requirements following subsequent business combinations.

7 These criteria originally were derived from protections the Exchange has observed built into recent transactions and Rule 419 under the Securities Act of 1933, 17 CFR 230.419. *See supra* n. 3 and Securities Exchange Act Release No. 57685 (April 18, 2008), 73 FR 22191 at n. 8 (April 24, 2008) (SR-NASDAQ-2008-013). Rule 419(b)(2)(vi), 17 CFR 230.419(b)(2)(vi), permits the registrant to receive up to 10 percent of the proceeds remaining after payment of underwriting commissions, underwriting expenses and permitted dealer allowances, exclusive of interest or dividends, as those proceeds are deposited into the escrow or trust account.

8 12 U.S.C. 1813(c)(2).

statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriter's fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.

(c) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the company's independent directors.

(d) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered.

(e) Until the company has satisfied the condition in paragraph (b) above, public shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. A company may establish a limit (set no lower than 10% of the shares sold in the initial public offering) as to the maximum number of shares with respect to which any shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act")[9]), may exercise such conversion rights. For these purposes,

[9] 15 U.S.C. 78m(d) and 78n(d).

"public shareholder" would be defined to exclude officers and directors of the company, the company's sponsor, the founding shareholders of the company, any family member or affiliate of any of the foregoing persons, and other concentrated holdings of 10% or more.[10] The Exchange proposes to define "family member" as a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.[11]

The Exchange will also review such a company in connection with each acquisition to assure that it remains appropriate to continue to list the company. In that regard, the Exchange will require that the company meet the initial listing requirements upon conclusion of the transaction[12] and will conduct a regulatory review of any individuals that become newly involved with the company as a result of the transaction. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of

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10 Nasdaq currently excludes a beneficial holder of more than 10% of the total shares outstanding from its definition of "Public Holders" in Nasdaq's general listing rules. *See* Nasdaq Rule 5005(a)(34). However, Nasdaq does not exclude concentrated holders from its definition of "public Shareholder" in its acquisition vehicle rule (IM-5101-2) but has proposed to do so by defining public Shareholder to exclude the beneficial holder of more than 10% of the total shares outstanding. *See* Securities Exchange Act Release No. 63239 (November 3, 2010), 75 FR 68846 (November 9, 2010) (SR-NASDAQ-2010-137). The NYSE's acquisition company rule excludes concentrated holdings of 10% or more in calculating the number of publicly-held shares. *See* Section 102.06(A) of the NYSE Listed Company Manual. Similarly, the Exchange proposes to exclude concentrated holdings of 10% or more in calculating the number of publicly-held shares in proposed Section 119(e).

11 The Guide does not currently define the term "family member." The Exchange proposes to adopt the definition of "Family Member" used in Nasdaq's Rules. *See* Nasdaq Rule 5005(a)(17) (referencing Nasdaq Rule 5605(a)(2)) and IM-5101-2.

12 Companies will not be required to pay a new listing fee in connection with such a review. However, if there is a change of legal entity in connection with the business combination, the company will have to pay an original listing fee ($7,500). *See* Section 142(d) of the Guide. If additional shares are issued in the transaction, the company will pay initial listing fees on those shares. *See* Section 142(a) of the Guide.

the requirements set forth above, the Exchange would commence delisting proceedings under Section 1010 to delist the company's securities; the company would not be eligible to follow the procedures to cure deficiencies outlined in Section 1009 of the Guide.[13]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. The Exchange believes the proposed rule change is consistent with these requirements in that it imposes additional requirements on acquisition vehicles, which are designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices on the part of acquisition vehicles and their promoters. The Exchange also notes that the provision of conversion rights for public shareholders that oppose a business combination offers investor protection and is consistent with SEC Rule 419.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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13 This aspect of the proposed rule change is based on Section 802.01B of the NYSE Listed Company Manual.

14 15 U.S.C. 78f(b).

15 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b-4(f)(6)[17] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[18]

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission notes that the proposal is substantially identical to Nasdaq's listing standards for special purpose acquisition companies ("SPACs") and raises no new or novel regulatory issues. The

16 15 U.S.C. 78s(b)(3)(A).

17 17 CFR 240.19b-4(f)(6).

18 The Exchange has satisfied the five-day pre-filing notice requirement.

19 17 CFR 240.19b-4(f)(6)(iii).

Commission notes that the proposal differs from Nasdaq's rules in three respects. First, the proposal's definition of "public shareholder" would exclude any person with concentrated holdings of 10% or more. The Commission notes that this proposed definition is consistent with the Exchange's current definition.[20] Second, the proposal would include a definition of "family member." The Commission notes that while the term "family member" is used in Nasdaq's SPAC rules, it is not specifically defined in those rules because it is defined elsewhere in Nasdaq's rules. The definition of "family member" in the Exchange's proposal, however, is identical to the definition of "family member" as defined in Nasdaq's rules and referenced in Nasdaq's SPAC listing standards.[21] Finally, the proposal would specify that SPACs that do not meet the Exchange's initial listing standards following a business combination or that do not comply with one of the SPAC listing standards in proposed Section 119 of the Guide would not be eligible to follow the cure procedures in Section 1009 of the Guide, which allows listed companies up to 18 months to cure certain continued listing standards deficiencies. Instead, under the proposal, the Exchange would immediately commence delisting proceedings pursuant to Section 1010 of the Guide. The Commission notes that this proposal is identical to NYSE's listing standards for SPACs and helps to ensure that a SPAC unable to meet listing standards will not remain listed for an extended period of time.[22] Accordingly, based on the above, the Commission designates, consistent with the protection of investors and public interest, that the proposed rule change be operative upon filing.[23]

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20 See Section 102 of the Guide; see also supra note 10.

21 See supra note 11.

22 See supra note 13.

23 For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[24]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2010-103 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2010-103. This file number should be included on the subject line if e-mail 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 (http://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

[24] 15 U.S.C. 78s(b)(3)(C).

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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-103 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy
Secretary

[25] 17 CFR 200.30–3(a)(12).