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# The SEC Approves the NYSE's Proposed Rule Change To Allow Listing of SPACs


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In March 2008, shortly after the NASDAQ made a similar proposal, the New York Stock Exchange ("NYSE") proposed a rule change that aims to allow the listing of special purpose acquisition companies ("SPACs"). On May 6, 2008, the Securities and Exchange Commission ("SEC") approved the NYSE's proposed rule change, and the new rule is now in effect.

SPACs, also known as blank-check companies, are companies without business operations that raise money through an initial public offering ("IPO") to have their shares publicly traded for the sole purpose of seeking out one or more business combinations with operating businesses. Their business plans are presented to potential investors in the IPO without identifying a specific business combination. Once a SPAC locates an opportunity for a specific business combination, they present the opportunity to their shareholders for approval.

Until recently, U.S. SPACs were confined to trading on the OTC Bulletin Board and the American Stock Exchange. Recently, SPACs have grown in stature because of the increase in their deal size and the growing prominence of their management teams. Moreover, SPACs have been one of the few bright spots in the recent IPO market. As a result, the NYSE sought entry into this market and the NYSE is now able to list this financial product on its exchange.

## Initial Listing

Before the SEC approved the rule change, the NYSE did not have a financial listing standard under which a SPAC could list.[1] The NYSE filed the proposed rule change with the SEC in March 2008 that contained a new listing standard specifically for SPACs, and the SEC approved the proposal on May 6, 2008. Under new Section 102.06 of the NYSE Listed Company Manual ("NYSE Manual"), a SPAC seeking to list needs to demonstrate an aggregate market value of $250 million and a market value of publicly held shares of at least $200 million (excluding shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent of more), as well as meet a new rule requiring an IPO price per share of at least $4 at the time of initial listing.[2] Unlike the NYSE Manual's other listing standards, Section 102.06 does not require SPACs to have a prior operating history.

Section 102.06 subjects SPACs seeking to list on the NYSE to, among other things, the following minimum requirements:

- At least 90 percent of the proceeds from the SPAC's IPO and other concurrent sales of its equity securities must be held in a trust account controlled by an independent custodian until consummation of the SPAC's business combination;
- The SPAC's business combination must be with one or more operating businesses or assets with a fair market value equal to at least 80 percent of the net assets held in trust (minus working capital and any deferred underwriting discount);
- The SPAC's business combination must be approved by a majority of the votes cast by public shareholders at a shareholders meeting;
- Each public shareholder voting against the SPAC's business combination has a conversion right to convert its shares of common stock into a pro rata portion of the aggregate amount then on deposit in the trust account (net of taxes payable and amounts disbursed to management for working capital purposes);
- The SPAC cannot consummate a business combination if public shareholders owning in excess of a threshold amount (no higher than 40 percent) of the shares of common stock exercise their conversion rights;
- The SPAC will be liquidated if a business combination cannot be consummated within a specified time period not to exceed three years; and
- The SPAC's founding shareholders, in the event of liquidation, must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned prior to the IPO or purchased in any private placement in conjunction with the IPO. In addition, the IPO underwriters must waive their rights to any deferred underwriting discount deposited in the trust account.

Furthermore, if the securities of the SPAC are listed as units, the components of the units that are not common stock (*e.g.*, warrants) are required to meet the applicable initial listing standards of the securities to which such components belong.

The NYSE does not intend to list every SPAC that meets the minimum requirements discussed above. Instead, it will exercise *broad discretion* and consider proposed SPAC listings on a case-by-case basis, after considering factors such as the management's experience, record, equity ownership and restriction on sales.

## Continued Listing

After a SPAC is listed, all of the NYSE's corporate governance requirements applicable to operating companies are applicable to the listed SPAC. Prior to a business combination, the amended Section 802.01B of the NYSE Manual requires a listed SPAC to maintain average aggregate global market capitalization of at least $125 million, or average aggregate global market capitalization of publicly held shares of at least $100 million, in each case more than 30 consecutive trading days. Moreover, the SPAC's listed securities (either common stock or units) must not fall below certain distribution criteria.[3] If a listed SPAC falls below such requirements, the NYSE will suspend and delist such SPAC's securities promptly. The SPAC will not have the opportunity to correct any deficiencies before delisting.

After shareholders of a SPAC approve a business combination, the NYSE will consider whether the listing of the combined business would be in the best interest of the NYSE and the public interest, and the NYSE has the discretion to suspend and delist securities of the SPAC prior to the consummation of the business combination.

Finally, after the consummation of a business combination, the combined business will be required to meet the continued listing requirements applicable to listed companies.[4]

### Special Concern regarding Back Door Listings

The amended Section 802.01B also contains a section emphasizing the NYSE's policy with regard to "back door listings" as outlined in Section 703.08(E) of the NYSE Manual. In a back door listing, a listed company (in this instance a SPAC) is acquired by an unlisted company. Typically in such a situation, the unlisted company is the larger entity and frequently the unlisted company will be treated as the acquiror for accounting purposes. The NYSE determines whether a business combination constitutes a back door listing by considering a number of factors. If a business combination is deemed to be a back door listing, the NYSE will delist the resulting company if it does not qualify for original listing. On the other hand, if a business combination is deemed not to be a back door listing, the resulting company only needs to meet the continued listing standards.

### Impact

The approval and adoption of the NYSE's new rule now allows the NYSE to participate in the SPAC listings market. Furthermore, the ability to list SPACs on the NYSE reflects their growing stature in the eyes of the NYSE and the SEC. This new development is expected to stimulate larger SPAC IPOs and additional merger and acquisition activity.

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[1] Before this new rule became effective, all of the NYSE's previous quantitative listing standards require some period of operations prior to listing, which SPACs by definition do not have.

[2] Section 102.01B of the NYSE Manual.

[3] Under Section 802.01B of the NYSE Manual, such securities must not fall below the following distribution criteria: (1) the number of total stockholders must not be less than 400; (2) the number of total stockholders must not be less than 1,200 and average monthly trading volume must not be less than 100,000 shares (for the most recent 12 months); or (3) the number of publicly held shares must not be less than 600,000.

[4] The combined business must not fall below the continued listing distribution criteria for common stock under Section 802.01A of the NYSE Manual: (1) the number of total stockholders must not be less than 400; (2) the number of total stockholders must not be less than 1,200 and average monthly trading volume must not be less than 100,000 shares (for the most recent 12 months); or (3) the number of publicly held shares must not be less than 600,000. In addition, the combined business must comply with the numerical criteria for common stock under Section 802.01B applicable to companies listed under the "earnings test" set forth therein. In other words, the average global market capitalization of a consecutive 30 trading-day period cannot be less than $75 million, and, at the same time, stockholders' equity cannot be less than $75 million. Notwithstanding the foregoing, Section 802.01B provides that the NYSE will promptly initiate suspension and delisting procedures if a company is determined to have average global market capitalization of less than $25 million over a consecutive 30 trading-day period.