

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57785; File No. SR-NYSE-2008-17]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt New Initial and Continued Listing Standards To List Securities of Special Purpose Acquisition Companies

May 6, 2008.

#### I. Introduction

On March 6, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new initial and continued listing standards to list securities of special purpose acquisition companies ("SPACs"). The proposed rule change was published in the **Federal Register** on March 21, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange has proposed to amend its Listed Company Manual ("Manual") to adopt new initial and continued listing standards to list securities of SPACs. In its proposal, NYSE generally described the structure of SPACs.<sup>4</sup> NYSE notes that SPACs raise capital in an initial public offering ("IPO") to enter into future undetermined business combinations through mergers, capital stock exchanges, asset acquisitions, stock purchases, reorganizations or other similar business combinations with one or more operating businesses or assets. In the IPO, SPACs typically sell units consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Further, NYSE notes that the management of the SPAC generally receives a percentage of the equity and may be required to purchase additional shares in a private placement at the time of the IPO. Because of the structure of SPACs, they do not have any prior

financial history, unlike operating companies.

The Exchange proposes to adopt new Section 102.06 of the Manual for the initial listing standards for securities of SPACs. NYSE's existing listing rules require all listed companies to have some operating history prior to listing. The proposed standards, as described below, would allow the listing of securities of SPACs with no prior operating history, a departure from NYSE's current listing requirements.

*The Exchange also proposes to amend the Manual to require that:* (1) Any equity security listing on the Exchange must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4 at the time of initial listing; and (2) convertible debt issuances listed on the Exchange must have an aggregate market value or principal amount of no less than \$10,000,000.

#### A. Initial Listing Standards for Securities of SPACs

As proposed, SPACs would have to meet the same distribution criteria as all other IPOs—400 holders of round lots and 1,100,000 publicly held shares.<sup>5</sup> In addition, SPACs would have to meet all of the Exchange's corporate governance requirements applicable to operating companies. Under the proposal, SPACs would also need to demonstrate an aggregate market value of \$250,000,000 and a market value of publicly held shares of \$200,000,000, as well as meet the new \$4 price requirement applicable to all equity securities listing on the Exchange.<sup>6</sup> Further, SPACs would be required under the proposed rules to keep at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the SPACs' equity securities, in a trust account. An independent custodian would be required to control the trust account until consummation of a business combination in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination, with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets in the trust (minus working

capital and deferred underwriting discount) ("Business Combination").

The proposal would also require that under the terms of the SPAC's constitutive documents or by contract, any SPAC deemed suitable for listing would be subject to the following minimum requirements.

- The Business Combination must be approved by a majority vote of the votes cast by public shareholders at a duly held shareholders meeting.
- Each public shareholder voting against the Business Combination will have the right ("Conversion Right") to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated. SPACs may establish a limit (set no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any public 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)<sup>7</sup> and 14(d)<sup>8</sup> of the Act), may exercise Conversion Rights.<sup>9</sup>
- The SPAC cannot consummate its Business Combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40% by the SPAC) of the shares of common stock issued in the IPO exercise their Conversion Rights in connection with such Business Combination.
- The SPAC would be liquidated if a Business Combination has not been consummated within a specified time period, not to exceed three years. Under the proposal, NYSE must promptly commence delisting procedures with respect to the securities of any SPAC that fails to consummate a Business Combination within (i) the time period specified by its constitutive documents or by contract, or (ii) three years, whichever is shorter.
- The SPAC's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the

<sup>5</sup> See Manual Section 102.01A.

<sup>6</sup> NYSE would exclude shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more in calculating the number of publicly held shares. For SPACs that list securities at the time of their IPOs, if necessary, the Exchange would rely on a written commitment from the underwriter to represent the anticipated value of the offering in order to determine compliance.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 57499 (March 14, 2008), 73 FR 15246.

<sup>4</sup> See *id.*

<sup>7</sup> 15 U.S.C. 78m(d).

<sup>8</sup> 15 U.S.C. 78n(d).

<sup>9</sup> For example, a SPAC which sells 10,000,000 shares in its IPO could limit the exercise of Conversion Rights by any one holder to 10% of that amount, or a maximum of 1,000,000 shares.

underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event the SPAC liquidates prior to the completion of a Business Combination.<sup>10</sup>

If the securities of the SPAC are listed as units, the components of the units (other than common stock) would be required to meet the applicable initial listing standards for the security types represented by the components.<sup>11</sup>

*Under the proposal, the Exchange has discretion to consider these listings on a case-by-case basis, and would consider the following factors in its decision:*

- The experience and track record of management;
- the amount of time permitted for the completion of the Business Combination prior to the mandatory dissolution of the SPAC;
- the nature and extent of management compensation;
- the extent of management's equity ownership in the SPAC and any restrictions on management's ability to sell SPAC stock;
- the percentage of the contents of the trust account that must be represented by the fair market value of the Business Combination;
- the percentage of voting publicly held shares whose votes are needed to approve the Business Combination;
- the percentage of the proceeds of sales of the SPAC's securities that is placed in the trust account; and
- such other factors as the Exchange believes are consistent with the goals of investor protection and the public interest.

#### *B. Continued Listing Standard of SPACs*

The Exchange also proposes to amend Section 802.01B of the Manual for the continued listing standards for securities of SPACs.

##### 1. Prior to a Business Combination

Prior to the consummation of a Business Combination, NYSE would promptly initiate suspension and delisting procedures if:

- The SPAC's average aggregate global market capitalization is below \$125,000,000 or the average aggregate

global market capitalization attributable to its publicly held shares is below \$100,000,000, in each case over 30 consecutive trading days;<sup>12</sup>

- the SPAC's securities initially listed (either common stock or units) fall below the following distribution criteria:

- (1) The number of total stockholders<sup>13</sup> is less than 400; or
  - (2) the number of total stockholders<sup>14</sup> is less than 1,200 and average monthly trading volume is less than 100,000 shares (for the most recent 12 months); or
  - (3) the number of publicly held shares<sup>15</sup> is less than 600,000;<sup>16</sup> or
- the SPAC fails to consummate a Business Combination within the time period specified by its constitutive documents or required by contract, or three years, whichever is shorter.

The continued listing standards set forth in Sections 801 ("Policy"), 802.01C ("Price Criteria for Capital or Common Stock"), 802.01D ("Other Criteria") and 802.01E ("SEC Annual

<sup>12</sup> The Exchange would notify the SPAC if the average aggregate global market capitalization falls below \$150,000,000 or the average aggregate global market capitalization of publicly held shares falls below \$125,000,000, and would advise the SPAC of the delisting standard. A SPAC would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to this criterion (allowing the issuer to establish a plan to cure any deficiencies), and the SPAC would be subject to the delisting procedures in Section 804 of the Manual.

<sup>13</sup> The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

<sup>14</sup> See *id.*

<sup>15</sup> Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly held shares.

<sup>16</sup> If the unit of trading is less than 100 shares, the requirement relating to the number of publicly held shares would be reduced proportionately. Securities of SPACs trading as a unit would be subject to suspension and delisting if any of the component parts does not meet the applicable listing standards. If one or more of the components is otherwise qualified for listing, such component(s) may remain listed. To determine whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts would be counted toward the total numbers required for continued listing of the component. If a component is a warrant, it would be subject to the continued listing standards for warrants set forth in Section 802.01D of the Manual, including a continued distribution requirement of 100 holders. Nevertheless, under the proposal NYSE has broad discretion to consider the delisting of any individual component or unit if the Exchange believes the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. The Exchange would consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue, in reviewing the advisability of the continued listing of an individual component or unit.

Report Timely Filing Criteria") of the Manual would also apply to SPACs, in the same way those provisions apply to other equity securities.

##### 2. At the Time of the Business Combination

After shareholders approve a Business Combination, but prior to its consummation, the Exchange would consider whether the continued listing of the securities of the SPAC, after the consummation of the Business Combination, would be in the best interests of the Exchange and the public interest. NYSE would have the discretion to delist securities of the SPAC prior to consummation of the Business Combination. A SPAC would not be eligible to follow the procedures to cure the deficiencies outlined in Sections 802.02 and 802.03 of the Manual, and would be subject to delisting procedures as set forth in Section 804 of the Manual.

##### 3. Continued Listing Standard Applicable to SPACs After Business Combination

After consummation of a Business Combination, the SPAC would be subject to Sections 801 and 802.01<sup>17</sup> of the Manual in their entirety and would be considered to be below compliance if it does not meet the continued listing standards applicable to operating companies listed under the Exchange's Earnings Test in Section 802.01B of the Manual—if average global market capitalization over a consecutive 30-day period is less than \$75,000,000, and stockholders' equity is less than \$75,000,000.<sup>18</sup>

##### 4. Application of "Back Door Listing" Rule to SPACs Upon Consummation of Business Combination

When a SPAC consummates a Business Combination, the Exchange would consider whether the Business Combination gives rise to a "back door

<sup>17</sup> Section 802.01 of the Manual contains minimum holder, trading volume, and/or number of publicly held shares requirements.

<sup>18</sup> Section 802.01B of the Manual establishes separate continued listing standards for companies that qualified to list under each of the Exchange's four separate initial listing standards for operating companies: (1) The Earnings Test; (2) the Valuation/Revenue with Cash Flow Test; (3) the Pure Valuation/Revenue Test; and (4) the Affiliated Company Test. NYSE noted that since it cannot predict the standard that would be most appropriate to a SPAC after a Business Combination, the Exchange would apply the Earnings Test to all post-Business Combination SPACs. In the event that the post-Business Combination SPAC could not meet the Earnings Test continued listing standards, under Section 802.02 of the Manual, if the SPAC could qualify under another original listing standard, its securities would remain listed on NYSE.

<sup>10</sup> In the event of liquidation, the pro rata share of the trust account to be paid to the holder of each publicly held share would be calculated in accordance with the law of the SPAC's state of incorporation. However, the actual amount paid to the public shareholders could vary depending on a variety of factors as disclosed in the IPO prospectus, such as liquidation expenses, or indemnification obligations.

<sup>11</sup> For example, a component that is a warrant will be subject to the initial listing standards for warrants set forth in Section 703.12 of the Manual.

listing” as described in Section 703.08(E) of the Manual (*i.e.*, whether NYSE believes the transaction constitutes an acquisition of the SPAC by an unlisted company). Under this provision, when a transaction is deemed a backdoor listing, Section 703.08(E) of the Manual would require the resulting company to meet the standards for original listing. If the resulting company could not qualify for original listing, NYSE will refuse to list additional shares of the listed SPAC for the transaction and the SPAC would be delisted.<sup>19</sup>

#### *C. Minimum Closing Price Requirement for New Listings*

The Exchange also proposes to adopt a requirement that any equity security listing on the Exchange must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4 at the time of initial listing.<sup>20</sup>

#### *D. Minimum Value of New Listings of Convertible Debt*

The Exchange also proposes to adopt a requirement that any convertible debt issuance listed on the Exchange must at the time of listing have an aggregate market value or principal amount of no less than \$10,000,000.<sup>21</sup>

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires that an exchange have rules 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, to protect investors and the public interest, and to not permit unfair discrimination

between customers, issuers, brokers, or dealers.<sup>23</sup>

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

As stated at the outset, SPACs are essentially shell companies that raise capital in IPOs, with the purpose of purchasing operating companies or assets within a certain time frame. The proceeds of the IPOs are placed in an escrow account during this period. SPACs usually require a majority of shareholders to approve any Business Combination. If shareholders do not approve a deal within the relevant time frame, shareholders have the option to demand their investment be returned from the escrow account. Management of the SPAC typically invests its own money in the SPAC—generally 2% to 4%—which generally is forfeited if a Business Combination is not consummated. If a Business Combination is consummated, management typically receives up to a 20% interest in the resulting company. The securities sold in the IPO generally consist of a unit made up of one share of common stock and a warrant (or fraction of a warrant) to purchase common stock. The common stock and warrants may be traded separately after the IPO.

As discussed in more detail below, the proposed standards would permit NYSE to list securities of SPACs that meet specified criteria, including market value, distribution, and price requirements, which should help to

ensure that the securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, SPACs would have to meet other investor protection criteria, such as the escrow account requirement, public shareholder approval requirement, public shareholder redemption rights, and public shareholder liquidation preferences, which should further the ability of investors to protect and monitor their investment pending a Business Combination. Finally, SPACs that list securities on NYSE would have to comply with all NYSE corporate governance requirements and distribution criteria applicable to operating companies.

#### *A. Initial Listing Standards for SPACs*

The Commission believes that the Exchange's proposed initial listing standards to list SPAC securities are consistent with the requirements of the Act, including the protection of investors and the promotion of fair and orderly markets. SPACs that list securities on the NYSE would need to deposit at least 90% of the IPO proceeds in a trust account controlled by an independent custodian. Under the listing standards, the proceeds would be under control of the independent custodian until consummation of a Business Combination with one or more operating companies that, among other things, have a fair market value equal to at least 80% of the net assets held in trust.<sup>24</sup> Public shareholders must vote to approve the Business Combination, and the listing standards contain, for those public shareholders voting against the Business Combination, certain Conversion Rights for the return of their initial investment on a pro rata basis (net of certain expenses). Some of the NYSE's proposed requirements, such as the Conversion Rights, are similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act of 1933 with respect to blank check companies.<sup>25</sup> SPACs that list securities on NYSE would also need to demonstrate sufficient market value and liquidity of the securities. The Commission believes that these standards should help to ensure that a sufficient market, with adequate depth

<sup>19</sup> Section 703.08(E) of the Manual also states: “In applying the above policy, consideration will be given to all factors including changes in ownership of the listed company, changes in management, whether the size of the company being ‘acquired’ is larger than the listed company and whether the two businesses are related on a horizontal or a vertical basis. All circumstances will be considered collectively and weight may be given to compensating factors.”

<sup>20</sup> See *infra* note 30.

<sup>21</sup> See *infra* note 31.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>24</sup> This amount is net of amounts disbursed to management for working capital purposes and excludes the amount of any deferred underwriting discount held in trust.

<sup>25</sup> See 17 CFR 230.419. Rule 419 applies to blank check companies issuing penny stock as defined under Rule 3a51-1(a)(2) of the Act. See 17 CFR 240.3a51-1(a)(2). Rule 419 is not applicable to securities traded on the NYSE.

and liquidity, would exist for listed SPAC securities.

Further, the proposed initial listing standards require additional protections for public shareholders. The Commission believes that these protections, such as requiring a majority of public shareholders to approve a Business Combination, the right of public shareholders voting against a Business Combination to exercise Conversion Rights to redeem their investment, a prohibition on the consummation of a Business Combination if a certain percentage of public shares are voted against a Business Combination, and the right of shareholders to receive liquidation rights if no Business Combination is consummated within a specified period of time not to exceed three years, would help to ensure that public shareholders approve management's decision with respect to a Business Combination, and have remedies if they disagree.

Moreover, the proposed initial listing standards impose requirements on management of the SPAC. First, management of a SPAC would have to consummate a Business Combination within three years or less, or else investors would be entitled to liquidation rights, and NYSE would delist the securities of the SPAC. Second, the founding shareholders of the SPAC (including but not limited to management) must waive their liquidation rights. Third, NYSE will consider the management's experience, record, compensation, equity ownership, and restriction on sales, when considering whether to list the securities.<sup>26</sup> The Commission believes that these requirements should help to ensure that management of the SPAC, among other things, is incented to actively seek out a Business Combination and has requisite experience.

The Commission believes that these safeguards should help to ensure that SPACs that list securities on NYSE will have taken certain additional steps to address investor protection and other matters. In this regard, the Commission expects NYSE to thoroughly review potential listings of SPAC securities to ensure that its listing standards have been met. Based on the foregoing, the Commission finds the proposed initial listing standards are consistent with the requirements of the Act.

<sup>26</sup> Under its rules, NYSE has the discretion to consider the listing of the securities of SPACs on a case-by-case basis. The NYSE stated in its filing that it will not necessarily list the securities of every SPAC that meets the proposed minimum listing requirements.

#### *B. Continued Listing Standard of SPACs*

The Commission believes that the Exchange's proposed continued listing standards for SPACs are consistent with the requirements of the Act and the protection of investors. Due to its nature, a SPAC's financial condition will vary depending on where it is in the acquisition process. For example, immediately after listing, a SPAC would essentially be a shell company with funds to seek an acquisition of an operating business. Once the SPAC has announced a proposed acquisition, the SPAC would be in the midst of a potential Business Combination. Finally, if the Business Combination is consummated, the SPAC would begin operating a new business. NYSE is proposing continued listing standards for all three situations.

Prior to a Business Combination, a SPAC would need to maintain average aggregate global market capitalization of at least \$125,000,000 or average aggregate global market capitalization of publicly held shares of at least \$100,000,000, in each case over 30 consecutive trading days. NYSE would delist securities of SPACs that fall below such requirements immediately and the SPACs could not use the time period to cure deficiencies afforded to other operating companies.<sup>27</sup> In addition, the continued listing standards would require SPACs to maintain certain distribution criteria and would require a Business Combination within three years or less.

Immediately prior to consummation of a Business Combination, NYSE would consider whether listing of the combined entity would be in the best interest of the Exchange and the public interest. Under this provision, NYSE would have broad discretion to delist the securities of the SPAC prior to the consummation of a Business Combination that would not be in the interest of investors or the public. In addition, NYSE would consider whether a Business Combination could result in a back door listing, and if so, would delist securities of the SPAC. The Commission believes that this requirement will help to ensure that companies that would not otherwise qualify for original listing could not list on NYSE through a backdoor listing in violation of Section 703.08 of the Manual.

After consummation of a Business Combination, NYSE would require the SPAC to meet the continued listing distribution criteria for common stock<sup>28</sup> and the continued listing Earnings Test

<sup>27</sup> See Section 802.02 of the Manual.

<sup>28</sup> See Section 802.01A of the Manual.

numerical criteria.<sup>29</sup> For continued listing, the Earnings Test requires average global market capitalization over a consecutive 30 trading-day period of at least \$75,000,000 and total stockholders' equity of at least \$75,000,000. After consummation of a Business Combination, SPACs would be treated by NYSE as other operating companies.

Taken as a whole, the Commission believes that the proposed continued listing standards are consistent with the requirements of the Act. SPACs would be subject to different continued listing standards, depending on whether a Business Combination has been consummated, that are designed to, among other things, protect investors and promote fair and orderly markets. The Commission expects NYSE to actively monitor compliance by listed SPACs with these listing standards.

#### *C. Minimum Closing Price Requirement for New Listings*

The Commission notes that the proposed change to require a company to have a closing price or an IPO price of at least \$4 per share meets the criteria from the definition of penny stock contained in Rule 3a51-1 under the Act.<sup>30</sup> The Commission finds that this proposal is consistent with the requirements of the Act.

#### *D. Minimum Value of New Listings of Convertible Debt*

The Commission notes that the proposed change to require convertible debt issue to have an aggregate market value or principal amount of no less than \$10,000,000 meets the criteria from the definition of penny stock contained

<sup>29</sup> See Section 802.01B of the Manual. See also note 18 *supra*.

<sup>30</sup> See 17 CFR 240.3a51-1(a)(2)(i)(C). The Commission notes that the NYSE is adopting a minimum bid price so that securities listed on the NYSE meet the exception from the definition of penny stock in Rule 3a51-1(a)(2). Securities currently listed on the NYSE are included in the "grandfather" exception to the definition of penny stock in Rule 3a51-1(a)(1) for securities registered or listed "on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992 \* \* \* and \* \* \* has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004." By adopting a listing standard for SPACs, NYSE's listing standards would no longer be included in the "grandfather" exception. Further, the Commission notes that for existing companies, other national securities exchanges generally require those companies to meet the minimum bid price for certain consecutive trading days prior to listing. See, e.g., Nasdaq Rule 4310(c)(2) and NYSE Arca Rule 5.2(c)(ii). The Commission still generally believes that for companies transferring from another marketplace, to assess suitability for trading, it is important and useful to ensure the bid test is sustainable based on some period of time prior to listing.

in Rule 3a51-1 under the Act.<sup>31</sup> The Commission finds that this proposal is consistent with the requirements of the Act.

#### E. Conclusion

Based on the above, the Commission believes the proposed rule change is reasonable and should provide for the listing of SPACs with baseline investor protection and other standards.<sup>32</sup> The Commission believes that, as discussed above, NYSE has developed sufficient standards to allow the listing of SPACs on the NYSE, consistent with the requirements set forth under the Act and in particular, Section 6(b)(5).<sup>33</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-NYSE-2008-17) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Nancy M. Morris,**  
Secretary.

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<sup>31</sup> See 17 CFR 240.3a51-1(a)(2)(i)(F). The Commission notes that the NYSE is adopting a minimum value for convertible debt so that securities listed on the NYSE meet the exception from the definition of penny stock in Rule 3a51-1(a)(2). As noted in footnote 30, *supra*, securities listed on the NYSE are included in the "grandfather" exception to the definition of penny stock in Rule 3a51-1(a)(1) for securities registered or listed "on a national securities exchange that has been continuously registered as a national securities exchange since April 20, 1992...and...has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on that exchange on January 8, 2004." By adopting a listing standard for SPACs, NYSE's listing standards would no longer be included in the "grandfather" exception.

<sup>32</sup> The Commission notes that under the proposal, the Exchange has the discretion to consider initial listing of securities of SPACs that otherwise meet NYSE's listing standards, on a case-by-case basis, and the Exchange has broad discretion to delist the securities of SPACs at the time of the Business Combination if the Exchange believes it is not in the best interest of the Exchange and the public interest.

<sup>33</sup> 15 U.S.C. 78s(b)(5). The staff of the Division of Trading and Markets would not recommend enforcement action to the Commission under Rules 15g-2 through 15g-9 under the Act if broker-dealers treat equity securities listed pursuant to the initial listing requirements set forth in the Manual as meeting the exclusion from the definition of penny stock contained in Rule 3a51-1 under the Act pursuant to paragraph (a)(2) thereof.

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57792; File No. SR-NYSE-2008-36]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Reserve Order Pilot Program Currently Operating in 100 Securities Traded on the Exchange To Include All Equity Securities Traded on the Exchange

May 7, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 6, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 is proposing to expand the Reserve Order pilot program currently operating in 100 securities traded on the NYSE<sup>5</sup> to include all equity securities traded on the Exchange. The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, and the Commission's Public Reference Room.

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

In its filing with the Commission, NYSE 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 these statements may be examined at the places specified in Item IV below. NYSE has prepared

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

Through this proposed rule change, the Exchange seeks to expand the Reserve Order pilot program currently operating pursuant to Exchange Rule 13. On April 23, 2008, the Exchange implemented a new order type that allows off-Floor participants the ability to enter reserve interest into Exchange systems ("Reserve Order").<sup>6</sup>

The Reserve Order is a limit order for which a portion of the order is to be displayed and a portion of the order, at the same price, is not displayed (*i.e.*, is held in "reserve").<sup>7</sup> Market participants that choose to enter Reserve Orders must enter specified order information in relation to the price and size of the order and the amount to be displayed. The displayed portion of a Reserve Order is published in NYSE OpenBook<sup>®</sup><sup>8</sup> and is available to the specialist on the Floor. Both the displayed and the non-displayed portion are available for automatic execution against incoming contra-side orders. Displayed and non-displayed interest of Reserve Orders is available for manual executions as well.<sup>9</sup>

To afford the Exchange and its customers the ability to gain systemic experience with the new Reserve Order type, the Exchange implemented the amendment to Exchange Rule 13 allowing off-Floor participants to enter Reserve Orders on a pilot basis. The pilot currently operates in 100 securities traded on the Floor of the Exchange.

<sup>6</sup> See *id.*

<sup>7</sup> The Exchange represents that this functionality is equivalent to the functionality currently available to Floor brokers and specialists with respect to entry of reserve interest. In order for Floor brokers' reserve interest not to be visible by the specialists, a Floor broker must designate his or her reserve interest as "Do Not Display" interest. Reserve Orders in contrast are never shown to the specialist except when included in aggregate quantities for manual executions.

<sup>8</sup> NYSE OpenBook<sup>®</sup> provides aggregate limit order volume that has been entered on the Exchange at price points for all NYSE-traded securities.

<sup>9</sup> See Reserve Order Notice, *supra* note 5, for a detailed description of Reserve Orders and their functionality; see also NYSE Information Memo No. 08-24 (April 22, 2008) (both documents are available on the Exchange's Web site at <http://www.nyse.com>). The Exchange will issue a revised Information Memo to the Floor providing notice of the expansion of the Reserve Order pilot to include all equity securities traded on the Exchange.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 57688 (April 18, 2008), 73 FR 22194 (April 24, 2008) (SR-NYSE-2008-30) ("Reserve Order Notice").