For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91120; File No. SR–NYSE–2020–90]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Requirement Applicable to Special Purpose Acquisition Companies Upon Consummation of a Business Combination Concerning Compliance With the Round Lot Shareholder Requirement

February 12, 2021.

I. Introduction

On October 27, 2020, 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its listing requirements applicable to special purpose acquisition companies (''SPACs'' or ''Acquisition Companies'') upon consummation of a business combination by allowing such companies 15 calendar days following the closing of a business combination to demonstrate compliance with the Exchange's round lot shareholder requirement. The proposed rule change was published for comment in the **Federal Register** on November 16, 2020.[3] On December 21, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to February 14, 2021.[5] The Commission has received no comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

An Acquisition Company or SPAC is a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time.[7] NYSE's listing rules require, among other things, a SPAC to deposit and retain at least 90% of the proceeds from its initial public offering (''IPO'') in an escrow account, complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account within 36 months of the effectiveness of its IPO registration statement, and provide the public shareholders, if a vote is held, who object to the business combination with the right to convert their common stock into a pro rata share of the funds held in escrow.[8]

Following each business combination, the combined company is subject to Section 801 and Section 802.01 of the Manual in its entirety and will be required immediately to meet those requirements, which include: (i) A price per share of at least $4.00; (ii) a global market capitalization of at least $150,000,000; (iii) an aggregate market value of publicly-held shares of at least $40,000,000; and (iv) the requirements with respect to shareholders and publicly-held shares set forth in Section 102.01A for companies listing in connection with an initial public offering, including the round lot shareholder requirement.[9] If the combined company does not meet the requirements of Sections 801 and 802.01 of the Manual following a business combination, Section 802.01B of the Manual provides that a SPAC will be promptly subject to suspension and delisting proceedings.

In its proposal, the Exchange stated that its existing rules require that ''an Acquisition Company must satisfy all initial listing requirements immediately upon consummation of its Business Combination.''[10] The Exchange asserted, however, that Section 802.01B of the Manual does not provide a timetable for the company to demonstrate that it satisfies those requirements. Accordingly, the Exchange proposed to specify that if the SPAC demonstrates that it will satisfy all requirements except the applicable round lot shareholder requirement, then the SPAC will receive 15 calendar days following the closing to demonstrate that it satisfied the applicable round lot shareholder requirement immediately following the transaction's closing.

In addition, the Exchange stated that, when a listed SPAC consummates its business combination, the Exchange also considers whether the business combination gives rise to a ''back door listing'' as described in Section 703.08(E) of the Manual. If the resulting company would not qualify for original listing, including by not meeting the applicable distribution standards, the Exchange will promptly initiate suspension and delisting of the SPAC. The Exchange proposed to modify its rule in relation to business combinations that give rise to a ''back door listing'' to specify that if the SPAC demonstrates that it will satisfy all requirements except the applicable round lot shareholder requirement, then the company will receive 15 calendar days following the closing to demonstrate that it satisfied the applicable round lot shareholder requirement immediately following the transaction's closing.[11]

The Exchange stated that it determines compliance with the round lot shareholder requirement at the time of a business combination by reviewing a company's public disclosures and information provided by the company about the transaction.[12] According to the Exchange, if it cannot determine compliance using public information, it will typically request the company to provide additional information such as registered shareholder lists from the company's transfer agent, data from Cede & Co. about shares held in street name, or data from broker-dealers and third parties that distribute information such as proxy materials for the broker-dealers. If the company can provide information demonstrating compliance before the business combination closes,

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[13] 17 CFR 200.30–3(a)(57).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90382 (November 9, 2020), 85 FR 73121 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90739, 85 FR 85759 (December 29, 2020).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17) (adopting Section 102.06 of the Listed Company Manual (''Manual''). *See also* Notice, supra note 3.

[8] *See* Section 102.06 of the Manual. Under Section 102.06 of the Manual, if a vote is not held on the business combination the company must provide all shareholders with the opportunity to redeem all their shares into a pro rata share of the funds held in escrow pursuant to Rule 13e–4 and Regulation 14E under the Securities Exchange Act of 1934, which regulates issuer tender offers.

[9] *See* Section 802.01B of the Manual. The applicable requirement is 400 holders of round lots.

[10] *See* Notice, *supra* note 3, at 73122.

[11] *See* proposed amendment to Section 802.01B of the Manual. *See also* Notice, *supra* note 3, at 73122.

[12] NYSE states, for example, that the merger agreement may result in the Acquisition Company issuing a round lot of shares to more than 400 holders of the target of the business combination at closing.

the Exchange stated that no further information would be required.

However, the Exchange asserted that in some cases it can be difficult for a company to obtain evidence demonstrating the number of shareholders that the company has or will have following a business combination. The Exchange stated that shareholders in a SPAC may redeem or tender their shares until just before the time of the business combination, and the SPAC may not know how many shareholders will choose to redeem until very close to the consummation of the business combination. The Exchange stated that this could impact its ability to determine compliance before the business combination closes, in cases where the number of round lot shareholders is close to the applicable requirement.

Accordingly, for a SPAC that has demonstrated that it will satisfy all of the initial listing requirements except for the round lot shareholder requirement before consummating the business combination (including the initial listing standards that are applicable in the event that the business combination gives rise to a ''back door listing''), the Exchange has proposed to allow the SPAC 15 calendar days after the closing of the business combination to demonstrate that it also complied with the round lot requirement at the time of the business combination. The Exchange stressed that under its proposal a SPAC must still demonstrate that it satisfied the round lot shareholder requirement immediately following the business combination, and that the proposal merely would give the SPAC 15 calendar days to provide evidence that it did.

The Exchange stated that the proposal ''balances the burden placed on the Acquisition Company to obtain accurate shareholder information for the new entity and the need to ensure that a company that does not satisfy the initial listing requirements following a Business Combination enters the delisting process promptly.'' [13] The Exchange further stated that if the company does not evidence compliance within the proposed time period, Exchange staff would immediately commence suspension and delisting proceedings with respect to the company.

[13] The Exchange stated that shareholders of the SPAC would be harmed if NYSE issued a delisting determination at a time when the company did, in fact, satisfy all initial listing requirements but could not yet provide proof.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2020–90 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [14] 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.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act, and in particular, Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.'' [16]

The Commission has consistently recognized the importance of the minimum number of holders and other similar requirements in exchange listing standards. Among other things, such listing standards help ensure that exchange listed securities have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[17]

As discussed above, the Exchange proposed to provide a SPAC 15 calendar days following the closing of a business combination to demonstrate that it satisfied the applicable round lot holder requirement immediately following the closing. The Exchange asserted that it can be difficult for a SPAC to obtain evidence demonstrating the number of holders it will have following the business combination because SPAC shareholders have the right to redeem or tender their shares until just before the time of such business combination. The Exchange, however, has provided no data or other evidence to support its position that SPACs have particular difficulties demonstrating compliance with the minimum number of holders requirements. For example, the Exchange has not provided any data showing the extent to which SPACs have been unable to meet the applicable minimum number of holders requirement immediately following the business combination, or the extent to which this was due to last minute redemptions by SPAC shareholders. The Exchange also has provided no data or other evidence showing how long it has taken SPACs that have been unable to meet the applicable minimum number of holders requirement, whether or not due to last minute shareholder redemptions, to come into compliance with such requirements.

Further, the Exchange has not explained how providing a SPAC an additional 15 days following the closing of the business combination simply to demonstrate that it complied with the applicable minimum number of holders requirement immediately following the closing, would address the substantive compliance concerns associated with last minute shareholder redemptions by SPACs that are close to the minimum requirement. The Exchange also has not addressed the risk that, by waiting for SPACs to demonstrate compliance with the minimum number of holders requirements until after the closing of the business combination, non-compliant companies could be listed on the Exchange despite not meeting initial listing standards or those relating to a ''back door listing,'' and have their securities continue to trade until the delisting process has been completed. As a result, a SPAC could complete a business combination and very soon thereafter be subject to delisting proceedings, and during such time its securities may trade with a number of holders that is substantially less than the required minimum. The Exchange has not addressed the impact this could have on SPAC shareholders and other market participants, or explained why subjecting them to these risks is

[14] 15 U.S.C. 78s(b)(2)(B).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] *See, e.g.,* Securities Exchange Act Release Nos. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17) (stating that the distribution standards, which includes exchange holder requirements ''. . . should help to ensure that the [SPAC's] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets''); 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (SR–Nasdaq–2008–013) (approving a proposal to adopt listing standards for SPACs); and 86117 (June 14, 2018), 84 FR 28879 (June 20, 2018) (SR–NYSE–2018–46) (disapproving a proposal to reduce the minimum number of public holders continued listing requirement applicable to SPACs from 300 to 100).

consistent with the protection of investors and the public interest, and the other requirements of Section 6(b)(5) of the Act.

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.'' [18] 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, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[19]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act 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 views, data, 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 proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[20]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 12, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 26, 2021. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2020–90 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.

All submissions should refer to File Number SR–NYSE–2020–90. 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 (*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 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–90 and should be submitted by March 12, 2021. Rebuttal comments should be submitted by March 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91119; File No. SR–CBOE–2020–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend the Automated Price Improvement Auction Rules in Connection With Agency Order Size Requirements

February 12, 2021.

I. Introduction

On June 11, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change permitting the Exchange to impose a maximum size requirement for an agency order submitted into the Automated Price Improvement Mechanism (''AIM'') and the Complex Automated Price Improvement Mechanism (''C–AIM'') in S&P 500® Index Options (''SPX''). The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 23, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 27, 2020,

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[18] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[19] *See id.*

[20] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[21] 17 CFR 200.30–3(a)(57).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89058 (June 12, 2020), 85 FR 36918. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-051/srcboe2020051.htm.*

[4] In Amendment No. 1, the Exchange: (1) Amended its proposal to modify the proposed maximum size requirement for AIM and C–AIM agency orders in SPX to ten contracts rather than a size determined by the Exchange of up to 100 contracts, specify that this size requirement would apply to all agency orders in SPX, and make related conforming changes to its proposed rule text; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission's

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