



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99906; File No. SR-NYSE-2024-18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of 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

April 4, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on March 27, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 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 text of the proposed rule change is set forth in Exhibit 5. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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

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. 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 with a fair market value equal to at least 80% of the net assets held in trust by the SPAC (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust).

Section 102.06e requires the Exchange to promptly commence delisting procedures even for listed SPACs that have entered into a definitive agreement with respect to a Business Combination within three years of their listing date, but that are unable to complete the transaction before the three-year deadline established by 102.06e. As a practical matter, any such NYSE-listed SPAC would need to liquidate, transfer to a market that provides a longer period of time to complete the Business Combination, or face delisting.⁴

⁴ The Exchange notes that the three-year limitation for a SPAC is established solely by Exchange rule, and that many SPACs have been able to extend their lives beyond three years either by shareholder approval or other mechanisms provided under their organizing documents. Even if approved by shareholders, any

The Exchange notes that Nasdaq’s SPAC listing requirements include a three-year limitation that is substantially similar to that included in the Exchange’s SPAC listing standard.⁵ However, 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 a definitive agreement and requests additional time beyond the three years provided by the applicable rule to enable it to consummate its merger.⁶

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 amended, Section 102.06e will provide that the SPAC will be liquidated if it has not (i) entered into a definitive agreement with respect to its Business Combination within (A) the time period specified by its constitutive documents⁷ 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. The Exchange will promptly commence delisting procedures with respect to any SPAC that fails to (i) enter into a definitive agreement with respect to its Business Combination within (A) the time period

extension beyond three years does not circumvent Exchange rules which mandate delisting if a SPAC has not consummated a Business Combination within three years.

⁵ See Nasdaq IM 5101-2.

⁶ See, e.g., Current Report on Form 8-K furnished to the SEC by Brilliant Acquisition Corporation on September 19, 2023: “[T]he Company received a notice from the staff of the Listing Qualifications Department of Nasdaq indicating that, unless the Company timely requested a hearing before the Panel, the Company’s securities (units, ordinary shares, warrants, and rights) would be subject to suspension and delisting from The Nasdaq Capital Market at the opening of business on July 7, 2023 due to the Company’s non-compliance with Nasdaq IM 5101-2, which requires that a special purpose acquisition company complete one or more business combinations within 36 months of the effectiveness of its initial public offering registration statement... The Panel granted the Company’s request for continued listing on Nasdaq, subject to the following: (i) on or before November 27, 2023, the Company must advise the Panel on the status of the vote by shareholders of both the Company and Nukkleus, Inc. (“Nukkleus”) regarding their planned business combination; and (ii) the Company’s completion of the business combination transaction on or before December 23, 2023”.

⁷ The Exchange notes that, on occasion, a SPAC will amend its constitutive documents to extend the time period in which it has to consummate a Business Combination. For example, a SPAC’s constitutive documents may initially specify that it has 24 months to consummate a Business Combination, but such SPAC may subsequently seek shareholder approval to amend its constitutive documents to extend that period to 36 months. In applying the proposed rule, the Exchange will consider the “time period specified in its constitutive documents” to be the time period so specified, as amended by any shareholder vote.

specified by its constitutive documents or by contract or (B) three years, whichever is shorter or (ii) consummate its Business Combination within the time period specified by its constitutive documents or by contract or forty-two months, whichever is shorter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors. The Exchange further 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. 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 is more purely a blind pool investment. Furthermore, 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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

For the foregoing reasons, the Exchange believes that it is consistent with the protection of investors to provide a SPAC that has signed a Business Combination agreement within three years a maximum period of forty-two months from the time of listing to consummate a Business Combination.

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

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange further believes that the proposed rule change will increase competition by increasing the possibility that listed SPACs will be able to complete their Business Combinations before the prospect of delisting. The Exchange also believes that the proposed amendment will increase competition for the listing of SPACs and Business Combinations by enabling SPACs listed on the NYSE additional flexibility in the timing of their Business Combinations that is similar to the timing Nasdaq currently provides to SPACs through discretionary grants of additional time by hearing panels in their delisting process.

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.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email 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.

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 on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,

Assistant Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12).