Invitation to Share Views: SEC Investor Advocate Letter Related to SPAC Listing Standards

On April 21, 2022, Nasdaq received a letter from Rick Fleming, Investor Advocate, U.S. Securities and Exchange Commission. The Investor Advocate sent a substantially similar letter to the NYSE Group on the same day. In his letters, the Investor Advocate recommends that the exchanges "amend their listing standards for Special Purpose Acquisition Companies (SPACs) to prohibit consummation of a business combination when public SPAC shareholders exercise their conversion rights for a majority of the shares." Nasdaq is soliciting views from the public on this request.

Specifically, the letters suggest that both Nasdaq and NYSE adopt a conversion rights threshold of at least 50 percent, such that if 50% or more of the SPAC's shareholders exercise their conversion rights then the business combination cannot be consummated. The Investor Advocate believes that this requirement would "protect public investors from an inherent conflict of interest in the consummation of the SPAC's proposed business combination … because the current rules allow new companies to enter the public markets despite the fact that large majorities of the SPAC's initial investors redeem their shares, indicating their lack of confidence in the prospects of the merged company."

The Investor Advocate notes that NYSE previously required that no more than 40% of the SPAC's shareholders exercise their conversion rights in its listing rules and that market practice in prior deals set the threshold from 20%-40%.

Alternatively, it has also been suggested that each listing market should adopt rules that would prohibit a SPAC from listing if the SPAC allowed a shareholder to redeem their shares at the time of a business combination if the shareholder voted in favor of the business combination. In other words, the only shareholders who would be permitted to redeem their shares would be those that have voted against the business combination. Those suggesting this change believe that such a prohibition would align the interests of the vote on the business combination and the decision of whether to remain invested in the business combination, assuring continued investor interest in the business combination and potentially leading to higher quality business combinations.

Nasdaq invites investors, SPAC sponsors, and industry participants to review the request of the Investor Advocate and to provide comments to Nasdaq both on that request and the alternative proposal described above.

While all comments are welcome, we specifically seek comment on investor and market participants' prior experience with conversion rights thresholds and with practical considerations regarding either proposal. In addition, Nasdaq seeks the views of commenters as to whether there are difficulties arising from the current proxy solicitation process that would make the adoption of either of these proposals unduly burdensome and whether any of those burdens are unique in the context of the de-SPAC process. Finally, are there other potential effects that would arise from the adoption of either of these proposals on the ability of SPACs to consummate business combination transactions. Nasdaq will consider these comments in determining whether to propose additional listing requirements for newly-listing SPACs.

Comments may be submitted by August 5, 2022 to comments@nasdaq.com.

Please note that while Nasdaq has made no determination at this time about whether to propose any new listing requirements, as the Investor Advocate recognized, any change would need to apply across all listing venues and, therefore, we anticipate that any modification to our listing rules would be part of a consolidated regulatory action coordinated by the SEC across all listing venues. If Nasdaq does propose to adopt a rule similar to those described above under this construct, Nasdaq will be required to include the comments we receive in response to this request in our filing with the Securities and Exchange Commission.

Thank you,
Nasdaq Listing Qualifications

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