

Via E-Mail

November 8, 2018

Secretary
Securities and Exchange Commission
100 F Street NE,
Washington, DC 20549-1090

Re: File Number SR-NYSE-2018-46

Dear Mr. Secretary:

I am writing in response to the Securities and Exchange Commission's (SEC) solicitation of comments on New York Stock Exchange LLC (NYSE) proposed rule change to amend the listing requirements related to "Acquisition Companies" (Proposed Rule).¹ We note that on March 26, 2018² and December 20, 2017,³ we provided comments to the SEC in response to a similar NYSE proposal entitled: "To Amend the Listed Company Manual for Special Purpose Acquisition Companies To Lower the Initial Holder Requirement From 300 to 150 Round Lot Holders and To Eliminate Completely the 300 Public Stockholders Continued Listing Requirement, To Require at Least \$5 Million in Net Tangible Assets for Initial and Continued Listing, and To Impose a 30-Day Deadline To Demonstrate Compliance With the Initial Listing Requirements Following a Business Combination" (2017 NYSE Proposal).⁴

¹ Notice of Filing of Proposed Rule Change To Amend the Listed Company Manual for Acquisition Companies To Reduce the Continued Listing Standards for Public Holders From 300 to 100 and To Enable the Exchange to Exercise Discretion to Allow Acquisition Companies a Reasonable Time Period Following a Business Combination To Demonstrate Compliance With the Applicable Quantitative Listing Standards, Exchange Act Release No. 84,420, 83 Fed. Reg. 52,854 (Oct. 12, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-10-18/pdf/2018-22682.pdf>.

² Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Securities and Exchange Commission (Mar. 26, 2018), [https://www.cii.org/files/issues_and_advocacy/correspondence/2018/March%2026%202018%20SPAC%20letter%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2018/March%2026%202018%20SPAC%20letter%20(final).pdf).

³ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Brent J. Fields, Secretary, Securities and Exchange Commission (Dec. 20, 2017), [https://www.cii.org/files/issues_and_advocacy/correspondence/2017/December%2020,%202017%20SEC%20NYS%20SPAC%20letter.docx%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2017/December%2020,%202017%20SEC%20NYS%20SPAC%20letter.docx%20(final).pdf).

⁴ Notice of Filing of Proposed Rule Change To Amend the Listed Company Manual for Special Purpose Acquisition Companies To Lower the Initial Holder Requirement From 300 to 150 Round Lot Holders and To Eliminate Completely the 300 Public Stockholders Continued Listing Requirement, To Require at Least \$5 Million in Net Tangible Assets for Initial and Continued Listing, and To Impose a 30-Day Deadline To Demonstrate Compliance With the Initial Listing Requirements Following a Business Combination, Exchange Act Release No. 82,180, 82 Fed. Reg. 57,632 (Dec. 6, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-12-06/pdf/2017-26220.pdf>.

We also note that on October 25, 2017,⁵ we provided a comment letter to the SEC in response to a proposal similar to the 2017 NYSE Proposal submitted by the NASDAQ Stock Market LLC (Nasdaq Proposal).⁶ Like the Nasdaq Proposal⁷ and the 2017 NYSE Proposal,⁸ we cannot support the Proposed Rule in its current form because it does not provide sufficient information for us to make a determination as to whether our members and the capital markets would benefit from the proposed changes.

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.⁹

Reduction in Number of Holders

The Proposed Rule would “reduce from 300 holders to 100 holders the minimum total number of [sic] holders required on a continued listing basis.”¹⁰ The statutory basis for this change states that it is “consistent with the investor protection provisions of the [Securities Exchange Act of 1934] . . . because other protections help assure that market prices will not be distorted by any potential resulting lack of liquidity, which is the underlying purpose of the shareholder requirement.”¹¹ Those “other protections” include “the ability of a shareholder to redeem shares for a pro rata share of the trust [helping to assure that Acquisition Companies] . . . will trade close to the value of the assets held in trust.”¹²

While the proposed reduction in the number of holders required on a continued listing basis from 300 to 100 is a far more modest change than eliminating the 300-holder continued requirement

⁵ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Securities and Exchange Commission 1 (Oct. 25, 2017), http://www.cii.org/files/issues_and_advocacy/correspondence/2017/October%2025,%202017%20SEC%20letter.pdf.

⁶ Notice of Filing of Proposed Rule Change to Modify the Listing Requirements Related to Special Purpose Acquisition Companies, Exchange Act Release No. 81,816, 82 Fed. Reg. 47,269 (Oct. 10, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-10-11/pdf/2017-21814.pdf>.

⁷ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Securities and Exchange Commission at 1 (Oct. 25, 2017) (“We cannot support the Proposed Rule in its current form because it does not provide sufficient information for us to make a determination as to whether our members and the capital markets would benefit from the proposed changes.”).

⁸ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Secretary, Securities and Exchange Commission at 1 (Mar. 26, 2018) (“we do not oppose the proposed rule, but rather found that the proposal did not ‘provide sufficient information for us to make a determination as to whether our members and the capital markets would benefit from the proposed changes’”).

⁹ For more information about the Council of Institutional Investors (“CII”), including its members, please visit CII’s website at <http://www.cii.org/members>.

¹⁰ 83 Fed. Reg. at 52,855.

¹¹ *Id.* at 52,856.

¹² *Id.*

as was included in the 2017 NYSE Proposal, the Proposed Rule fails to answer some of the same questions that CII¹³ or the SEC¹⁴ raised in response to the 2017 NYSE Proposal. For example, CII and the SEC had indicated, “it is not clear from NYSE’s proposal the extent to which [Acquisition Companies] . . . actually have had difficulties complying with the existing minimum number of holders requirements.”¹⁵ The Proposed Rule does not appear to provide any new information on this issue.

While the Proposed Rule raises far fewer questions than the 2017 NYSE Proposal, we believe additional information in response to some of the still relevant issues CII and the SEC have previously identified would be helpful in determining whether the proposed changes would benefit investors.¹⁶

Thank you for consideration of our views. If we can answer any questions or provide additional information on this matter, please do not hesitate to contact me at 202.822.0800 or jeff@cii.org.

Sincerely,



Jeffrey P. Mahoney
General Counsel

¹³ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Brent J. Fields, Secretary, Securities and Exchange Commission at 2-3 (Dec. 20, 2017).

¹⁴ Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change To Amend the Listed Company Manual for Special Purpose Acquisition Companies Listing Standards To Lower the Initial Holders Requirement From 300 to 150 Round Lot Holders and To Eliminate Completely the 300 Public Stockholders Continued Listing Requirement, To Require at Least \$5 Million in Net Tangible Assets for Initial and Continued Listing, and To Impose a 30-Day Deadline To Demonstrate Compliance With Certain Initial Listing Requirements Following a Business Combination, Exchange Act Release No. 82,804, 83 Fed. Reg. 10,530, 10,532-33 (Mar. 5, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-03-09/pdf/2018-04713.pdf>.

¹⁵ *Id.*; see Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, to Brent J. Fields, Secretary, Securities and Exchange Commission at 2 (Dec. 20, 2017) (“Moreover, the Proposed Rule includes no estimate whatsoever of the number of companies that have been unable to use the SPACs option because of the 300 round-lot holder requirement, and does not even indicate how large were the number of companies that received some form of deficiency notifications from failing to meet the requirement.”).

¹⁶ See, e.g., *Susquehanna Int’l Grp., LLP v. SEC*, No. 16-1061, at 2; 13-14 (D.C. Cir. Aug. 8, 2017) (describing the kind of “reasoned decisionmaking” required of the Securities and Exchange Commission when approving a proposed rule change by the Options Clearing Corporation), <https://cases.justia.com/federal/appellate-courts/cadc/16-1061/16-1061-2017-08-08.pdf?ts=1502204457>.