



SEC Pokes Holes in NYSE's Proposed Rule Change to Extend SPAC Merger Deadline

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On July 9, 2024, the U.S. Securities and Exchange Commission (SEC) issued an order instituting proceedings to determine whether to approve a rule previously proposed by the New York Stock Exchange (NYSE) concerning the timeframe in which a NYSE-listed special purpose acquisition company (SPAC) must complete a business combination before it must be delisted. You can read our initial coverage of the NYSE's proposed rule [here](#).

THE CURRENT RULE

Currently, Section 102.06(e) of the NYSE Listed Company Manual (Rule 102.06(e)) requires the NYSE to promptly commence delisting procedures if a SPAC has not completed a business combination within (a) three years of the SPAC's initial listing date or (b) the timeframe provided by the SPAC's constitutive documents, whichever is shorter. This rule, as currently applied, does not provide an exception for SPACs that have entered into a definitive agreement for a business combination by the aforementioned deadline but have not yet consummated the transaction.

THE PROPOSED RULE

The NYSE's proposed rule, if adopted by the SEC, would permit SPACs that have signed a definitive business combination agreement within 36 months of their initial listing date up to 42 months from their initial listing date to complete a business combination before the NYSE commences delisting procedures. If a SPAC is required by its constitutive documents or by contract to enter into a definitive business combination agreement or complete a business combination within a shorter time period than 36 months and 42 months, respectively, such shorter time period will apply.

INSTITUTION OF PROCEEDINGS

The SEC has not yet reached any conclusions with respect to the NYSE's proposed rule. Rather, the SEC's order indicates that it has concerns about the NYSE's proposed rule, and the SEC is now fielding comments from interested parties to help inform its review of the proposed rule and its ultimate decision on whether to approve it.

NYSE RATIONALE FOR THE PROPOSED RULE CHANGE

The NYSE's proposed rule aims to align its listing standard with that of Nasdaq. While Nasdaq's rule also imposes a 36-month deadline for SPACs to complete a business combination, hearing panels, as part of Nasdaq's delisting process, have granted SPACs with signed agreements additional time to complete their business combinations. The NYSE also stated that it believes the proposed rule would increase competition among exchanges for SPAC listings. Additionally, the NYSE noted that delisting a SPAC that has signed a definitive merger agreement before reaching the 36-month deadline may be contrary to the interests of the SPAC's public shareholders at that time.

SEC CONCERNS

In its order regarding the NYSE's proposed rule, the SEC noted several issues that ultimately may serve as grounds for rejecting the proposed rule. The SEC noted that the NYSE bears the burden of demonstrating that its proposed rule change is consistent with the Securities Exchange Act of 1934 (the Exchange Act) and the rules and regulations thereunder, and the SEC believes that it is questionable whether the NYSE sufficiently addressed concerns related to [Section 6\(b\)\(5\)](#) of the Exchange Act (Section 6(b)(5)) and the Investment Company Act of 1940 (ICA).

Section 6(b)(5)

The SEC calls into question the consistency of the proposed rule with Section 6(b)(5), particularly Section 6(b)(5)'s mandate that national securities exchanges implement rules designed to, among other things, protect investors and the public interest. The SEC states that the current three-year limit on completing a business combination was designed to protect public investors by limiting the time in which their funds can be held by a SPAC while the SPAC has yet to complete a business combination. The SEC's order notes that the NYSE has failed to explain how the proposed extension from up to 36 months to up to 42 months would (1) affect shareholder protection and (2) be consistent with the need to protect investors and the public interest.

ICA

The SEC also notes that the proposed rule raises concerns under the ICA. In February 2024, the SEC stated that, among other considerations, the duration of a SPAC is considered when determining whether a SPAC is an investment company, and the SPAC's activities may become more difficult to distinguish from those of an investment company the longer the SPAC takes to achieve its stated business purpose. In its July 9 order, the SEC notes that the NYSE failed to address ICA concerns when proposing to amend Rule 102.06(e).

HOW TO SUBMIT FEEDBACK

Those interested in commenting on whether the SEC should approve or deny the NYSE's proposed rule will have 21 days to provide comments after notice is published in the Federal Register and should follow the instructions provided by the SEC in [Section IV of the order](#).

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