

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 this filing will also 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-BX-2020-032 and should be submitted on or before March 12, 2021.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange provided additional information to clarify and support the proposal, and did not materially change the substance of the proposal over what the Commission published in the **Federal Register**. Among other things, in the Amendment the Exchange committed to freely and publicly post a "report" in which it will detail the weekly series that it will list under the proposal, along with information on the applicable strike interval tier and the underlying Customer ADV and underlying share price values upon which it determined the applicable strike interval. That information should be useful to market participants, as well as other options exchanges, as it will provide transparency into how BX applied its rule and should remove any potential for confusion that could be presented by a lack of transparency into the applicable strike intervals BX will apply under the new rule. Further, the Exchange added detail to address when the new rule will apply to a new option (e.g., an option on a recent initial public offering), which will provide certainty as to how the new rule applies in such

cases. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change SR-BX-2020-032, as modified by Amendment No. 1 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91127; File No. SR-CBOE-2020-075]

#### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Make Qualified Contingent Cross Orders Available for FLEX Option Trading

February 12, 2021.

On August 3, 2020, Cboe Exchange, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make Qualified Contingent Cross Orders available for FLEX option trading. The proposed rule change was published in the **Federal Register** on August 20, 2020.<sup>3</sup> On October 1, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> On October 23, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 90062, 85 FR 63312 (October 7, 2020).

replaced and superseded the proposed rule change as originally filed.<sup>6</sup> On November 18, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>8</sup> On February 2, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.<sup>9</sup>

Section 19(b)(2) of the Act<sup>10</sup> provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on August 20, 2020.<sup>11</sup> The 180th day after publication of the Notice is February 16, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> designates April 17, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change (File Number SR-CBOE-2020-075), as modified by Amendment No. 2.

<sup>6</sup> Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/sr-cboe2020075-7940531-224727.pdf>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 90457, 85 FR 75071 (November 24, 2020).

<sup>9</sup> Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/sr-cboe2020075-8330243-228699.pdf>.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> See *supra* note 3.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> On December 21, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> 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 <sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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,

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> See Section 802.01B of the Manual. The applicable requirement is 400 holders of round lots.

<sup>10</sup> See Notice, *supra* note 3, at 73122.

<sup>11</sup> See proposed amendment to Section 802.01B of the Manual. See also Notice, *supra* note 3, at 73122.

<sup>12</sup> 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.

<sup>13</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 90382 (November 9, 2020), 85 FR 73121 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 90739, 85 FR 85759 (December 29, 2020).