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A legal update from Dechert's Corporate and Securities Group

Proposed Listing Standards Allow SPACs to List on the New York Stock Exchange

New York Stock Exchange LLC (the "NYSE" or the "Exchange") has proposed rule changes to the Exchange's Listed Company Manual to allow the listing of special purpose acquisition companies ("SPACs"). Previously, NYSE Euronext allowed SPACs to list only on its European markets. The proposal, which was filed with and is subject to approval by the U.S. Securities and Exchange Commission, would allow SPACs to list on the NYSE for the first time.

The proposed rule would require that SPACs have at least $250 million in total market capitalization, and a $200 million public float would be required at the time of initial listing. Although no prior operating history would be required, SPACs would have to meet the same distribution criteria as other initial public offerings ("IPOs")—400 holders of round lots and 1,100,000 publicly-held shares.

Similarly, all of the Exchange's corporate governance requirements applicable to operating companies will apply to listed SPACs. In the event that the issuer's securities are listed as units, the components of the units (other than common stock) must meet the applicable initial listing standards for the security types represented by the components. If one or more of the components qualifies for listing, however, such component(s) may remain listed.

Under the terms of its constitutive documents or by contract, any SPAC deemed suitable for listing would be subject to the following minimum requirements:

- Until consummation of a business combination, the issuer must hold at least 90% of the proceeds from the issuer's IPO and any other concurrent sales of the issuer's equity securities in a trust account controlled by an independent custodian.

- The issuer's public shareholders must approve the business combination by a majority vote at a duly held shareholders meeting.

- Each public shareholder voting against the business combination will have the right ("Conversion Right") to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account, provided that the business combination is approved and consummated. The issuer may establish a limit (set no lower than 10% of the shares sold in the issuer's IPO) as to the maximum number of shares that any public shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, may exercise Conversion Rights.

- The issuer may not consummate a business combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock issued in the IPO exercise their Conversion Rights in connection with such business combination.

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- The Exchange will commence delisting procedures promptly with respect to any issuer 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.

- The issuer's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event that the issuer liquidates prior to the completion of a business combination.

Supplemental listing standards would also apply to SPACs prior to, at the time of, and after a business combination.

These requirements largely codify market practice for SPACs, developed initially from SEC rule 419, which applies to small blind-pool issuers. The Exchange intends to consider proposed SPAC listings on a case-by-case basis. In determining the suitability for listing of a SPAC, the Exchange will consider:

- the experience and track record of management;

- the amount of time permitted for the completion of the business combination before the mandatory dissolution of the issuer;

- the nature and extent of management compensation;

- the extent of management's equity ownership in the issuer and any restrictions on management's ability to sell issuer stock;

- the percentage of the trust account that must be represented by the fair market value of the business combination;

- the percentage of voting publicly-held shares needed to approve the business combination;

- the percentage of the proceeds of sales of the issuer's securities placed in the trust account; and

- such other factors as the Exchange deems consistent with the goals of investor protection and the public interest.

The Exchange has designed the rule change 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; and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Recently, the number of SPAC deals and their value has grown rapidly with nearly a quarter of all IPOs in 2007 structured as SPACs. Goldman Sachs Group Inc. ("Goldman") announced last week that it was preparing to underwrite a SPAC for the first time. Under the structure that Goldman is proposing, management would receive a stake of 10% or less in any company its SPAC acquires, far less than the 20% stake that management teams typically receive in the industry. Goldman's SPACs would also have a longer timeframe than the usual 18–24 months for management to find a takeover target. If Goldman's new structure proves successful with both managers and investors, other banks could follow suit.

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Practice group contacts

For more information please, contact one of the Dechert lawyers listed or the Dechert attorney with whom you regularly work. Visit us at www.dechert.com/corporateandsecurities.

Bonnie A. Barsamian
New York
+1 212 698 3520
bonnie.barsamian@dechert.com

Andrew Case
London
+44 20 7184 7532
andrew.case@dechert.com

Adam M. Fox
New York
+1 212 649 8732
adam.fox@dechert.com

Thomas J. Friedmann
Washington, D.C.
+1 202 261 3313
thomas.friedmann@dechert.com

Christopher G. Karras
Philadelphia
+1 215 994 2412
christopher.karras@dechert.com

James A. Lebovitz
Philadelphia
+1 215 994 2510
james.lebovitz@dechert.com

Wayne Rapozo
London
+44 20 7184 7671
wayne.rapozo@dechert.com

David S. Rosenthal
New York
+1 212 698 3616
david.rosenthal@dechert.com

Brian D. Short
Philadelphia
+1 215 994 2737
brian.short@dechert.com

Dechert LLP

www.dechert.com

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