SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63752; File No. SR–NYSEAMEX–2011–04]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Criteria for Listing Special Purpose Acquisition Companies (SPACs) To Provide an Option To Hold a Tender Offer in Lieu of a Shareholder Vote on a Proposed Acquisition

January 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2011, NYSE Amex LLC ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 119 of the NYSE Amex LLC Company Guide (the "Guide") to amend the criteria for listing companies that have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies (an "acquisition vehicle"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2010, the Exchange adopted a new Section 119 of the Guide setting forth standards for listing companies whose business plan was to complete an initial public offering and engage in a merger or acquisition with an acquisition vehicle.[3] These listing requirements included additional protections designed to protect investors from certain risks unique to this type of company, including that the acquisition vehicle obtain a vote of shareholders prior to consummating any acquisition and offer shareholders voting against the acquisition the ability to redeem their shares in exchange for a pro rata share of the cash held by the acquisition vehicle.[4] Similar protections have been voluntarily adopted by other acquisition vehicles that have not listed on the Exchange.

The Exchange understands that in a number of cases, hedge funds and other activist investors may have acquired an interest in an acquisition vehicle and used their ability to vote against a proposed acquisition as leverage to obtain additional consideration not available to other shareholders. For example, they may negotiate the sale of their stake to an affiliate of the acquisition vehicle's management for a price higher than their pro rata share of the deposit account. In other cases, the withheld votes may have caused the proposed acquisition to fail altogether. In order to prevent this type of "greenmail," recent acquisition vehicles, which went public and did not list on an exchange, adopted a modified structure under which they would not seek a vote on the acquisition, unless otherwise required by law. Instead, these acquisition vehicles would conduct a redemption offer pursuant to Rule 13e–4 and Regulation 14E under the Securities Exchange Act of 1934 (the "Act") after the public announcement and prior to the completion of the business combination, enabling shareholders who are opposed to the transaction to tender their shares in exchange for a pro rata share of the cash held by the acquisition vehicle. This is the same outcome available to public shareholders who vote against the acquisition pursuant to the Exchange's existing rule.

Under this new alternative, shareholders would still maintain the ability to "vote with their feet" if they oppose a proposed transaction and would, as just noted, also obtain their pro rata share of the acquisition vehicle's cash through the tender offer pursuant to Rule 13e–4 and Regulation 14E under the Act. As such, the Exchange believes that the protections provided by the existing rule would continue to be available. Further, this tender offer alternative would help prevent shareholders who support the acquisition and elect to retain their shares from being denied the benefits of the transaction by the actions of the activist investors. Accordingly, the Exchange proposes to modify Section 119 of the Guide [5] to allow an acquisition vehicle to conduct a tender offer for all shares of all shareholders in exchange for a pro rata share of the cash held in trust by the acquisition vehicle in compliance with Rule 13e-4 and Regulation 14E under the Act instead of soliciting a shareholder vote.

In addition, the proposed rule change would require an acquisition vehicle that is not subject to the Commission's proxy rules to conduct a tender offer for shares in exchange for a pro rata share of the cash held in trust by the acquisition vehicle in compliance with Rule 13e–4 and Regulation 14E under the Act and provide information similar to that required by the Commission's proxy rules, even if the acquisition vehicle seeks a shareholder vote. This change will assure that investors, in all cases, get comparable information about the proposed transaction.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[3] *See* Securities Exchange Act Release No. 63366 (November 23, 2010), 75 FR 74119 (November 30, 2010) (SR–NYSEAmex–2010–103). Prior to adopting new Section 119 of the Guide, the Exchange had permitted certain of such companies to list on the Exchange under Initial Listing Standards 3 or 4, which do not require prior operating history, as long as certain protections were provided to investors in such companies, such as requiring a shareholder vote prior to any acquisition. The Exchange adopted Section 119 to provide greater transparency to the listing criteria applicable to such companies. *See id.*

[4] Section 119 of the Guide also requires that at least 90% of the gross proceeds from the acquisition vehicle's initial public offering and any concurrent sale of equity securities must be deposited in a trust account; that within 36 months of the effectiveness of the acquisition vehicle's initial public offering registration statement, the acquisition vehicle must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account; and that each business combination must be approved by a majority of the acquisition vehicle's independent directors.

[5] The amended Section 119 standards are the same as the amended standards adopted by Nasdaq in IM–5101–2 in December 2010. *See* Securities Exchange Act Release No. 63607 (December 23, 2010), 75 FR 82420 (December 30, 2010) (SR–NASDAQ–2010–137).

of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these requirements in that it imposes additional requirements on acquisition vehicles, which are designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices on the part of acquisition vehicles and their promoters.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission hereby grants the request. The Commission notes that the Exchange's proposal is nearly identical to the rules of another exchange, which were subject to notice and comment and approved by the Commission.[12] Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–04 and should be submitted on or before February 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Nasdaq IM–5101–2 and *supra* note 5.

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).