

Vessel Code (B&PV Code); and the rules of the ASME “Code for Operation and Maintenance of Nuclear Power Plants” (OM Code). These rules of the ASME B&PV and OM Codes set forth the requirements to which nuclear power plant components are designed, constructed, tested, repaired, and inspected. Section 50.55a(z) of 10 CFR allows applicants to use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC. To facilitate licensees’ requests for alternatives to the requirements in the above regulations, the NRC is providing an optional online form to submit the required information for a specific alternative request under 10 CFR 50.55a(z).

Dated: December 6, 2021.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2021–26646 Filed 12–8–21; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–28 and CP2022–31]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 13, 2021.

**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

#### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related

to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service’s request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

#### II. Docketed Proceeding(s)

1. *Docket No(s):* MC2022–28 and CP2022–31; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 212 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 3, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 13, 2021.

<sup>1</sup> See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2021–26661 Filed 12–8–21; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93714; File No. SR–NYSE–2021–42]

### 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 Requirements of Section 102.06 of the NYSE Listed Company Manual To Allow an Acquisition Company To Contribute a Portion of Its Trust Account to a New Acquisition Company and Spin-Off the New Acquisition Company to Its Shareholders

December 3, 2021.

#### I. Introduction

On August 23, 2021, the 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” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to amend the requirements of Section 102.06 of the NYSE Listed Company Manual (“Manual”) to allow an acquisition company to contribute a portion of the amount held in its trust account to a trust account of a new acquisition company and spin off the new acquisition company to its shareholders in certain situations. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.<sup>3</sup> On September 30, 2021, 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>

<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. 92839 (September 1, 2021), 86 FR 50408 (“Notice”). Comments received on the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2021-42/srnyse202142.htm>.

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

<sup>5</sup> See Securities Exchange Act Release No. 93222, 86 FR 55671 (October 6, 2021). The Commission designated December 7, 2021 as the date by which the Commission shall approve or disapprove, or

This order institutes 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

In 2008, the Exchange adopted a rule to allow companies that have no prior operating history and that have indicated their business plan is to consummate a business combination with one or more operating businesses or assets (“Business Combination”)<sup>7</sup> to list on the Exchange if they meet all applicable initial listing requirements, as well as additional conditions designed to provide investor protections to address specific concerns about the structure of such companies (“Acquisition Companies” or “ACs”).<sup>8</sup> These additional conditions generally require, among other things, that at least 90% of the proceeds from the initial public offering (“IPO”) and any concurrent sale of the AC’s equity securities be held in a trust account controlled by an independent custodian and that the AC complete within three years (or such shorter period specified by the AC’s constitutive documents or by contract) a Business Combination having a fair market value of at least 80% of the net assets held in the trust account at the time of the agreement to enter into the initial combination (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust).<sup>9</sup> Section 102.06 of the Manual further requires that each Business Combination be approved by a majority of the AC’s independent directors.<sup>10</sup> If the AC holds a shareholder vote on a Business Combination, the Business Combination must be approved by a majority of the votes cast at the meeting and public shareholders voting against the Business Combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable

and amounts distributed to management for working capital purposes) if the Business Combination is approved and consummated.<sup>11</sup> If a shareholder vote on a Business Combination is not held, the AC must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e-4 and Regulation 14E under the Act, which regulate issuer tender offers.<sup>12</sup>

The Exchange now proposes to modify Section 102.06 of the Manual to allow an AC listed under that rule to contribute a portion of the amount held in its trust account to the trust account of a new entity in a spin-off or similar corporate transaction (“SpinCo AC”). According to the Exchange, when an AC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent Business Combination with its ultimate target; however, the Exchange believes that because an AC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target.<sup>13</sup> The Exchange states that it is proposing to modify Section 102.06 of the Manual to permit what it believes is a more efficient structure whereby an AC can raise in its IPO the maximum amount of capital it anticipates it may need for a Business Combination transaction and then “rightsize” itself by contributing any amounts not needed to a SpinCo AC, which would be subject to the provisions of Section 102.06, in the same manner as the original AC, and spun off to the original AC’s shareholders.<sup>14</sup>

Specifically, proposed Section 102.06 of the Manual would provide that an AC will be permitted to contribute (the “Contribution”) in a spin-off or similar corporate transaction a portion of the amount held in the AC’s trust account to a trust account of another entity as provided below:

(i) In connection with the Contribution, each AC public shareholder has the right, through one

or more corporate transactions, to redeem a portion of its shares of common stock or units, as applicable, for its pro rata portion of the amount of the Contribution in lieu of being entitled to receive shares or units in the SpinCo AC;

(ii) the requirement of Section 102.06 of the Manual that the AC provide each public shareholder voting against a Business Combination with the right to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable, and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated, will be considered satisfied by pro rata distribution to such shareholders of the amounts in the trust account after having been reduced by the Contribution;

(iii) the public shareholders of the AC receive shares or units of the SpinCo AC on a pro rata basis, except to the extent they have elected to redeem a portion of their shares of the AC in lieu of being entitled to receive shares or units in the SpinCo AC;

(iii)<sup>15</sup> the Contribution will remain in a trust account for the benefit of the shareholders of the SpinCo AC in the manner required for ACs listed under Section 102.06 of the Manual;

(iv) the SpinCo AC meets all applicable initial listing requirements for an AC listing in connection with an initial public offering under Section 102.06 of the Manual; it being understood that, following such spin-off or similar corporate transaction:

(A) The 80% described in the first paragraph of Section 102.06<sup>16</sup> shall, in the case of the AC, be calculated based on the aggregate amount remaining in the trust account of the AC at the time of the agreement to enter into the Business Combination as reduced by the Contribution, and, in the case of the SpinCo AC, be calculated based on the aggregate amount in its trust account at the time of its agreement to enter into a Business Combination, and

(B) the right to convert and opportunity to redeem shares of common stock on a pro rata basis required for ACs listed under Section 102.06 of the Manual shall, in the case of the AC, be deemed to apply to the aggregate amount remaining in the trust account of the AC after the Contribution to the SpinCo AC, and, in the case of the

institute proceedings to determine whether to approve or disapprove, the proposed rule change.

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

<sup>7</sup> Section 102.06 of the Manual provides that a Business Combination may be in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets.

<sup>8</sup> See Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR-NYSE-2008-17) (“2008 Order”). See also Section 102.06 of the Manual. Acquisition Companies are also known as “Special Purpose Acquisition Companies” or “SPACs.”

<sup>9</sup> See Section 102.06 of the Manual.

<sup>10</sup> See Section 102.06(d) of the Manual.

<sup>11</sup> See Section 102.06(a) and (b) of the Manual.

<sup>12</sup> See Section 102.06(c) of the Manual.

<sup>13</sup> See Notice, *supra* note 3, at 50409. The Exchange further states that “[t]his has resulted in the inefficient, current practice of AC sponsors creating multiple ACs of different sizes at the same time, with the intention to use the AC that is closest in size to the amount a particular target needs.” *Id.*

<sup>14</sup> See *id.* The three-year period to complete a Business Combination under Section 102.06 of the Manual would, however, be calculated for each SpinCo AC based on the date of the original AC’s effective registration statement.

<sup>15</sup> The Exchange’s proposed rule mistakenly includes two paragraphs numbered Section 102.06(iii).

<sup>16</sup> See *supra* note 9 and accompanying text, for a description of the requirements of Section 102.06 of the Manual.

SpinCo AC, be deemed to apply to the aggregate amount in its trust account;

(v) in the case of the SpinCo AC, and any additional entities spun off from the SpinCo AC, each of which will also be considered a SpinCo AC, the three-year period (or such shorter period specified by the AC's constitutive documents or by contract) within which a listed AC must consummate its Business Combination under Section 102.06 of the Manual will be calculated based on the date of effectiveness of the AC's IPO registration statement; and

(vi) in the aggregate, through one or more opportunities by the AC and one or more SpinCo ACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the trust account established by the AC as described in the first paragraph of Section 102.06 of the Manual (excluding any deferred underwriters fees and taxes payable on the income earned on the trust account).

The Exchange states that, under the proposal, it expects that the new structure will be implemented in the following manner. If a listed AC (the "Original AC") determines that it will not need all the cash in its trust account for its initial Business Combination, the Original AC will designate the excess cash for a new trust account of a SpinCo AC that will be spun off to Original AC's shareholders.<sup>17</sup> The Exchange states that the amount designated for the SpinCo trust account must continue to be held for the benefit of the shareholders of the Original AC until the completion of the spin-off transaction and, following the spin-off of the SpinCo AC to the Original AC's shareholders, the SpinCo trust account would be subject to the same requirements as the trust account of the Original AC.<sup>18</sup>

According to the Exchange, the SpinCo AC would file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo AC and, prior to the effectiveness of the registration statement, the Original AC would provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo trust account divided by the per share amount in the Original AC's trust account.<sup>19</sup> The

Exchange further states that, after completing the tender offer for the redemption and the effectiveness of the SpinCo AC's registration statement, the Original AC would contribute the SpinCo trust account to a trust account held by the SpinCo AC in exchange for shares or units of the SpinCo AC, which the Original AC would then distribute to its public shareholders on a pro rata basis through one or more corporate transactions pursuant to the SpinCo AC's effective registration statement.<sup>20</sup>

According to the Exchange, the Original AC would then continue to operate as an AC until it completes its Business Combination and would offer redemption rights to its public shareholders in connection with that Business Combination in the same manner as a traditional AC, while the SpinCo AC would operate in the same manner as a traditional AC, except that it could effect a subsequent spin-off prior to its Business Combination like the Original AC.<sup>21</sup> The Exchange states that if SpinCo AC does not elect to effect a spin-off, it would either (i) proceed to complete an initial Business Combination and offer redemption rights in connection therewith like a traditional AC, or (ii) liquidate.<sup>22</sup>

Finally, the Exchange proposes to amend the subsection of Section 802.01B of the Manual setting forth the continued listing criteria applicable to ACs to specify that those criteria would also be applicable in their entirety to SpinCo ACs. In addition, the Exchange proposes to add a new subsection to Section 102.06 of the Manual stating that the applicable continued listing criteria for both ACs and SpinCo ACs would be set forth in Section 802.01B of the Manual.

### III. Proceedings To Determine Whether To Approve or Disapprove SR-NYSE-2021-42 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>23</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any

conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>24</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>25</sup>

As described above, the proposal would allow an AC listed under Section 102.06 of the Manual to contribute a portion of the amount held in its trust account to the trust account of a SpinCo AC. The Exchange states that the proposal would permit a more efficient structure because an AC often raises an amount of capital through its IPO that is not optimal for the needs of a specific acquisition target.<sup>26</sup> According to the Exchange, this has resulted in AC sponsors creating multiple ACs of different sizes at the same time, with the intention to use the AC that is closest in size to the amount a particular acquisition target needs.<sup>27</sup> The Exchange believes this practice creates the potential for conflicts of interest, fails to optimize the amount of capital that would benefit the AC's public shareholders and a Business Combination target, creates inefficiencies, and can lead to confusion.<sup>28</sup> Accordingly, the Exchange believes the proposal would provide shareholders the opportunity to invest with a sponsor without spreading that investment across the sponsor's multiple ACs.<sup>29</sup>

The Commission has concerns, however, about whether the proposal is sufficiently designed to protect investors and the public interest, as required by Section 6(b)(5) of the Act.

<sup>17</sup> See Notice, *supra* note 3, at 50409.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.* According to the Exchange, the redemption could occur, for example, through a partial cash tender offer for shares of the Original AC pursuant to Rule 13e-4 and Regulation 14E under the Act, and the redemption may be of a separate class of shares distributed to unitholders

of the Original AC for the purpose of facilitating the redemption. See *id.* at 50409 n.5.

<sup>20</sup> See *id.* at 50409.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>24</sup> *Id.*

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> See Notice, *supra* note 3, at 50409.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 50410.

First, the Commission is concerned that the proposed amendments to Section 102.06 of the Manual would circumvent the current requirements of Section 102.06 that the Commission previously found were designed to protect investors.<sup>30</sup> Specifically, Section 102.06 of the Manual requires an AC to complete one or more Business Combinations having a fair market value equal to at least 80% of the net assets held in trust.<sup>31</sup> This 80% requirement sets a minimum size of a Business Combination that investors will be aware of from their initial investment. In addition, the 80% requirement ensures that the founders of the AC will not seek a very small AC target solely to ensure they successfully complete a Business Combination in order to break escrow and thereby earn their payment (promote) for finding a target. The proposal could potentially allow an AC to engage in multiple Business Combinations that are very small in size as compared to the original amount in the trust account. The proposal also does not include any limitations with respect to the amount an AC may contribute to a SpinCo AC and thereby reduce its escrow account. Moreover, it appears the proposed structure could potentially incentivize AC founders to complete smaller Business Combinations in cases where they cannot identify a target company of sufficient size to meet the 80% requirement with respect to the Original AC, thereby leaving investors with a choice of whether to accept an investment in a smaller-sized company than originally contemplated or a partial redemption of their original investment from the reduced deposit account. The Commission is concerned that allowing ACs to engage in such transactions effectively eliminates the original 80% requirement, may subvert investor expectations regarding an AC's future Business Combination prospects, and may benefit the founders of ACs at the expense of retail investors.<sup>32</sup> In this regard, the Commission is concerned that the Exchange has not provided sufficient justification regarding how its

proposal is consistent with the protection of investors, including the investor protection measures that were originally contemplated by Section 102.06 of the Manual and which the Commission found to be consistent with the Act.<sup>33</sup>

Furthermore, the Commission believes the proposal could introduce additional complexity to AC securities, particularly for retail investors. While the market in AC securities is already complex, the Exchange's proposal would allow for the listing of ACs that may spin-off into smaller and smaller ACs, each presenting additional risks and considerations to investors that may not be fully realized at the time of the Original AC's IPO or at the time of each spin-off transaction when investors have the opportunity to receive shares in the SpinCo AC or redeem their pro-rata portion of the SpinCo AC Contribution.<sup>34</sup> Further, although the Exchange states the proposal is expected to allow an AC that determines that it will have excess cash following its initial Business Combination to spin-off those funds to a new AC,<sup>35</sup> the proposal is not limited to this particular situation and would allow an AC to break escrow to create new SpinCo ACs at any time after its IPO, regardless of whether any potential Business Combination has been identified.<sup>36</sup> Moreover, under current AC rules, investors have to make one determination on whether to redeem their shares or retain ownership

in the combined operating business after a Business Combination that has a fair market value equal to at least 80% of the net assets of the trust account. In contrast, under the proposal, investors would have to make multiple decisions on whether to hold or redeem their securities in potentially multiple SpinCo ACs, and those investors that choose to redeem may not be made whole as to their original investment until a subsequent Business Combination of the Original AC and/or the SpinCo ACs occurs. Additionally, the proposal raises concerns about whether investors are adequately protected when only the sponsors, not shareholders, are participating in the decision to reduce the deposit account and contribute those funds to the SpinCo AC.<sup>37</sup> For these reasons, the Commission is concerned that investors may not have adequate information at the time they initially invest in the Original AC and at the time they are required to make decisions regarding whether to invest in the SpinCo ACs or to redeem their investment, which can occur multiple times over the term of the Original AC, raising investor protection concerns under Section 6(b)(5) of the Act.

The Commission is also concerned that certain aspects of the proposed rule change are vague and unclear and may raise additional investor protection concerns. For example, proposed Section 102.06(i) would provide shareholders the right to redeem, "through one or more corporate transactions," their pro rata portion of the AC's contribution to a SpinCo AC's trust account. In addition, proposed Section 102.06(vi) provides that public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the trust account "through one or more opportunities." The proposal, however, does not set forth any specific requirements applicable to the redemption or conversion opportunities with respect to the contribution to a SpinCo AC or specify what would qualify as an acceptable corporate transaction for purposes of a redemption.<sup>38</sup> Moreover, the proposed

<sup>30</sup> See 2008 Order, *supra* note 8.

<sup>31</sup> The trust account must contain at least 90% of the proceeds from the AC's IPO and any concurrent sale by the AC of equity securities. See Section 102.06 of the Manual.

<sup>32</sup> Moreover, the proposal does not appear to be limited to future ACs and could potentially allow existing ACs to engage in spin-offs. The Commission believes that permitting existing ACs to engage in such transactions could raise investor protection issues given that investors who initially invested in the ACs would not have been aware that the AC would not have to comply with the 80% requirement and could spin off into multiple SpinCo ACs.

<sup>33</sup> See 2008 Order, *supra* note 8. In addition, the proposal appears to require redeeming shareholders to effectively pay deferred underwriting fees by deducting those fees from the aggregate redemption amount available to shareholders. See proposed Section 102.06(vi) of the Manual. This is not required for the Original AC as set forth under current Section 102.06(b) and (c) of the Manual and would result in the redeeming shareholders potentially receiving less than 90% of the gross proceeds from the trust account. Under the current AC listing rules, only taxes payable and amounts disbursed to management for working capital purposes can be excluded from the aggregate amount in the trust account.

<sup>34</sup> For example, under the proposal it would be difficult for an investor to know at the time of its investment in the Original AC (or at the time of each contribution) whether there will be future contributions to SpinCos, and, if so, how much the original escrow will be reduced and how much will be left for the Original AC's Business Combination. The Commission believes such information would be important to investors in making informed investment decisions in the Original AC.

<sup>35</sup> See Notice, *supra* note 3, at 50409.

<sup>36</sup> The proposal also does not include any timing limitations with respect to when an AC may engage in a contribution and spin-off. As such, it appears that a contribution and spin-off could occur very close to the end of the three-year period within which the Original AC and any SpinCo AC has to complete its Business Combination. This raises investor protection issues since shareholders may not have enough time to review disclosures before a vote or redemption decision is required.

<sup>37</sup> In these situations, the SpinCo AC may be structured completely differently than was disclosed at the time of the investment in the Original AC. For example, nothing in the proposal prevents the SpinCo AC from having a different target industry or business than the Original AC, different compensation arrangements than the Original AC, or different terms than disclosed in the Original AC registration statement.

<sup>38</sup> The Exchange states that a redemption could occur, for example, through a partial cash tender offer for shares of the Original AC pursuant to Rule

rule states that an AC will be permitted to contribute a portion of the amount held in the trust account to a trust account of “another entity” in a spin-off “or similar corporate transaction.”

However, the proposal does not specify whether there are any limitations on the types of entities that may receive the contribution, including whether such entities could include an already existing AC, or what would constitute a “similar transaction.” The Commission is concerned that the lack of clarity and vagueness in the proposed rule text may cause confusion amongst market participants regarding the scope of the proposal and what is required under the proposed rules.

In addition, the Exchange has proposed that the conditions described in proposed Section 102.06 with respect to SpinCo ACs shall similarly apply to successive spin-offs or similar corporate transactions. The Exchange provides no specificity or detail regarding what factors the Exchange would consider when determining whether a transaction is a “similar corporate transaction” to a spinoff covered by the proposed rule. As drafted, the rule text would appear to give the Exchange broad discretion in determining what “similar” corporate transactions are covered by the proposed rule and such broad discretion could be used in a different manner with respect to different AC issuers. It is also difficult for the Commission to assess whether the proposal is consistent with Section 6(b)(5) of the Act if the Exchange could simply determine to apply the rule to some successive corporate transactions and not others on a case by case basis by invoking its discretion through the proposed language. The Commission believes this lack of transparency and objectivity in the proposed rule raises investor protection and unfair discrimination concerns under the Act because market participants may be confused about the scope of the proposal and the Exchange may elect to apply its rules in an inconsistent and discriminatory manner.

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be

designed to protect investors and the public interest, and not be designed to permit unfair discrimination.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.”<sup>39</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>40</sup> and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>41</sup>

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>42</sup> to determine whether the proposal should be approved or disapproved.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)<sup>43</sup> of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>44</sup> any request for an opportunity to make an oral presentation.<sup>45</sup>

<sup>39</sup> 17 CFR 201.700(b)(3).

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> 17 CFR 240.19b-4.

<sup>45</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 30, 2021. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by January 13, 2022. The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice,<sup>46</sup> in addition to any other comments they may wish to submit about the proposed rule change.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-42 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSE-2021-42. This file number should be included on the subject line if email 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 website (<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 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 the filing also will 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

Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>46</sup> See *supra* note 3.

13e-4 and Regulation 14E under the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original AC for the purpose of facilitating the redemption. See Notice, *supra* note 3, at 50409 n.5. On the other hand, Section 102.06 of the Manual currently includes very specific requirements relating to redemption rights of public shareholders with respect to a Business Combination. See Section 102.06(b)-(c) of the Manual.

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-42 and should be submitted by December 30, 2021. Rebuttal comments should be submitted by January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-26625 Filed 12-8-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-586, OMB Control No. 3235-0647]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

*Extension:*  
Rule 204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in Rule 204 (17 CFR 242.204) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day

following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission's goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission's goal of addressing potentially abusive "naked" short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization ("SRO") examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a "collection of information" within the meaning of the Paperwork Reduction Act.

**1. Allocation Notification Requirement:** As of December 31, 2020, there were 3,551 registered broker-dealers.<sup>1</sup> Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). The Commission estimates that a broker or dealer could have to make such determination and notification

with respect to approximately 2.1 equity securities per day.<sup>2</sup> The Commission estimates a total of 1,886,646 potential notifications in accordance with Rule 204(d) across all registered broker-dealers that could be allocated responsibility to close out a fail to deliver position per year (3,551 registered broker-dealers notifying participants once per day<sup>3</sup> on 2.1 equity securities, multiplied by 253 trading days in 2020). The total estimated annual burden hours per year will be approximately 301,864 burden hours (1,886,646 multiplied by 0.16 hours/notification).<sup>4</sup>

**II. Demonstration Requirement for Fails to Deliver on Long Sales:** As of December 31, 2020, there were 127 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, the Commission estimates that a participant of a registered clearing agency will have to make such a determination with respect to approximately 29 securities per day.<sup>5</sup> The Commission estimates a total of 931,799 potential demonstrations in accordance with Rule 204(a)(1) across all broker-dealer participants per year (127 participants checking for compliance once per day on 29 securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hours per year will be approximately 149,088 burden

<sup>2</sup> DERA estimates that there were approximately 7,450 average daily fail to deliver positions during 2020. Across 3,551 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 2.1 (7,450 ÷ 3,551) equity securities.

<sup>3</sup> Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, the Commission believes that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

<sup>4</sup> See Amendments to Regulation SHO, Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38265 (July 31, 2009) ("Rule 204 Adopting Release") (July 27, 2009) (making permanent the amendments to Regulation SHO contained in Interim Final Temporary Rule 204T and incorporating by reference the time estimates from the Rule 204T Adopting Release for compliance with the notification, demonstration, and certification requirements of Rule 204).

<sup>5</sup> DERA estimates that during 2020 approximately 49.2% of trade volume was long. DERA estimates that there were approximately 7,450 average daily fail to deliver positions during 2020. Across 127 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 59 (7,450 ÷ 127) equity securities. 49.2% of 59 equity securities per trading day equals approximately 29 securities per day.

<sup>1</sup> The Commission's Division of Economic Risk and Analysis ("DERA") estimates that there were approximately 3,551 registered broker-dealers as of December 31, 2020.

<sup>47</sup> 17 CFR 200.30-3(a)(57).