

SEC Approves NASDAQ SPAC Listing Requirements

On July 25, 2008, the SEC approved the rules proposed by the Nasdaq Stock Market for SPAC listing applications. See Release No. 34-58228; File No. SR-NASDAQ-2008-013.

The requirements include the following:

1. At least 90% of the gross proceeds of the IPO and any concurrent sale by the SPAC of equity securities must be deposited in a deposit account.¹
2. The SPAC must complete - within 36 months of the effectiveness of the IPO registration statement (or such shorter period that the SPAC specifies in its registration statement) – one or more business combinations that represent an aggregate of at least 80% of the fair market value of the deposit account² at the time of the agreement to enter into the initial business combination.
3. Each business combination must be approved by a majority of the SPAC's independent directors and approved by a majority of the shares of common stock voting at the meeting at which the business combination is being considered, until the SPAC has completed business combination(s) of at least 80% of the fair market value of the deposit account at the time of the initial business combination.
4. Until the SPAC has completed business combination(s) of at least 80% of the fair market value of the deposit account at the time of the initial business combination, each public shareholder voting against a business combination must have the right to convert their shares into a 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) if the business combination is approved and consummated. The SPAC may establish a floor (but not lower than 10% of the shares sold in the IPO) as to the maximum number of shares that any shareholder, together with any affiliate or any person with whom that shareholder is acting as a group, may exercise conversion rights. The rule excludes from

¹ A “**deposit account**” is defined as:

- (a) a trust account maintained by an independent trustee;
- (b) an escrow account maintained by an “insured depository institution” as such term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2); or
- (c) a separate bank account established by a registered broker or dealer.

² Excluding deferred underwriting fees and taxes payable on the income earned on the deposit account.

such rights all officers, directors, the SPAC's sponsor, the founding shareholders and any of their family members or affiliates.

5. The SPAC must notify NASDAQ of each proposed business combination until it completes business combinations of at least 80% of the fair market value of the deposit account at the time of the initial business combination.

6. Following each business combination, the resulting entity must meet NASDAQ's initial listing standards to remain listed on NASDAQ.

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If you have questions or would like additional information regarding the new rules discussed in this Client Alert, please contact one of the following or the EGS attorney with whom you regularly work.

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