C A D W A L A D E R

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May 14, 2008

VIA E-MAIL: RULE-COMMENTS@SEC.GOV

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Comment Letter on SR-NASDAQ-2008-013; Release No. 34-57685 – Notice of Filing of Proposed Rule Change Relating to the Adoption of Additional Listing Standards for Special Purpose Acquisition Vehicles

Dear Ms. Morris:

Cadwalader, Wickersham & Taft LLP ("Cadwalader") appreciates this opportunity to comment on the proposed rule change filed by The NASDAQ Stock Market LLC ("Nasdaq") with the Securities Exchange Commission ("SEC") to adopt additional initial listing standards for special purpose acquisition vehicles ("SPACs"), as published in the Federal Register on April 24, 2008 (the "Proposal"). Cadwalader is a major international law firm whose clients transact in SPAC securities.

In the past, Nasdaq has applied its discretionary authority under Rule 4300 to deny listing to companies whose business plan is to complete an initial public offering and engage in a subsequent, unidentified merger or acquisition (e.g., SPACs). The Proposal provides for additional listing criteria that Nasdaq proposes to apply when listing SPACs.

We agree that Nasdaq should implement additional listing criteria for SPACs, and should, in its discretion, list those SPACs that comply with the agreed upon criteria (as well as criteria applicable to Nasdaq listed companies generally). We believe that one additional listing standard for SPACs, beyond those contained in the Proposal, is necessary to maintain the quality and public confidence of the Nasdaq, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

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Specifically, we have been made aware that certain exchange-listed SPACs[1] have not publicly announced the record date for shareholders to be able to vote on the proposed business acquisition until after such date has already passed. This is problematic because, as a result of not knowing when a record date falls until after it has passed, purchasers and sellers of certain SPAC shares are acquiring or disposing of securities without knowing whether the right to vote on the SPAC's proposed acquisition was transferred during the purchase/sale. This is an unacceptable result given that the proposed business acquisition is so fundamental to the value of the SPAC and the right to vote is a fundamental incident of securities ownership.

As I am sure you are aware, a SPAC's 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, subject to certain controls and restrictions (including restrictions in the SPAC's certificate of incorporation and the rules of the exchange where the SPAC is listed). As a result, SPACs are a unique asset class. Participants in the securities markets know with certainty that there will be a proposal put to SPAC shareholders to enter into a fundamental transaction. Having the right to vote on that proposal has real and discrete economic value. Furthermore, in a typical SPAC structure, shareholders can either approve of the proposed transaction, reject the transaction, or reject the transaction *and* elect to have their SPAC shares redeemed for a pro-rata share of the trust account established by the SPAC[2]. If record dates are not being publicly announced until after they have passed, certain investors will likely be acquiring and disposing of SPAC shares without knowing whether they have acquired (or disposed of) the right to vote on the most important transaction in the lifecycle of the SPAC (along with the valuable, related right to elect to convert the SPAC share into a pro-rata portion of the trust account). Moreover, it is also possible that certain investors may know whether the right to vote on the fundamental transaction is being transferred with the SPAC shares, while other investors may not. This asymmetry of information—resulting from the failure of the SPAC to publicly announce the record date in advance—creates, at a minimum, the potential for investors to be denied the benefit of their bargain.

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[1] The vast majority of listed SPACs are listed on the American Stock Exchange. *See* Cowan, Lynn; *Exchanges Vie to List 'Blank Check' Firms*; The Wall Street Journal; February 22, 2008.

[2] SPACs typically set up a trust account to custody the majority of the proceeds from the SPAC's initial public offering. Maintaining the proceeds of the IPO in a trust account can be required by SEC or exchange rules (e.g., Nasdaq's Proposal) or the SPAC's certificate of incorporation.

This description of SPAC voting procedures is a simplification and does not reflect the procedures of any particular SPAC. Typically, there are also limits on the number of shareholders who can reject the transaction and elect to convert their shares into a pro-rata portion of the trust account.

It bears emphasizing that even absent the unique features of a SPAC, which magnify the economic value of the right to vote, the right to vote is a fundamental incident of securities ownership and the root of shareholder power.

The fundamental nature of a shareholder's right to vote and its integral relationship with the setting of a record date becomes even more clear when viewed in the context of Delaware corporate law. DGCL §213(a) prohibits record dates from being set retroactively by a Board of Directors. This requirement is intended to prevent the improper manipulation of the record date to the detriment of shareholders. If a record date is publicly announced for the first time only after it has already passed, this frustrates the purpose of setting a record date in the future. The fundamental right to vote is impaired.

Therefore, we respectfully propose that the SEC implement, along with Nasdaq's current Proposal, a simple rule requiring that any Nasdaq–listed SPAC notify the public at least ten days in advance of a record date. Notice can be made by any means currently used to notify the public, including public filings with the SEC, such as 8-Ks, proxy and registration statements. Note that Nasdaq Rule 4310(c)(25) requires Nasdaq-listed issuers to provide notice to both Nasdaq and the public at least 10 days in advance of a record date for "any dividend action or action relating to a stock distribution". Just as purchasers and sellers of a security need to know whether the security will be acquired (or disposed of) ex-dividend, persons transacting in SPACs need to know whether the right to vote on a fundamental transaction will be transferred in a purchase/sale.

Such a rule, along with Nasdaq's current Proposal, will ensure that in listing SPACs, the quality of and public confidence in Nasdaq will be maintained, fraudulent and manipulative acts and practices will be prevented, just and equitable principles of trade will be promoted, and investors and the public interest will be protected.

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If you have any questions concerning Cadwalader's comments, please feel free to call Steven Lofchie at (212) 504.6700, or Tim Geller at (212) 504.6984.

Sincerely,

/s/

Steven Lofchie
Tim Geller