



EXPOSURE OF NEW RULE AND SUNDRY AMENDMENTS TO THE RULES AND REGULATIONS OF THE COMMISSION

New Rule

1. Proposed New Rule On Special Purpose Acquisition Companies (SPACs)

Sundry Amendment

2. Proposed Amendment to Rule 3(6)(b)- Time for Processing

Legend:

Additions are underlined; Deletions are ~~struck through~~; Justifications are *italicized*

New Rule

1. PROPOSED NEW RULE ON SPECIAL PURPOSE ACQUISITION COMPANIES (SPACS)

1. Definition of Terms

For the purpose of these rules,

- a. **"Custodian"** is as defined in the SEC Rules and Regulations
- b. **"Special Purpose Acquisition Company"** means a public company with no commercial operations that is formed strictly to raise capital through an initial public offer (IPO) for the purpose of acquiring an existing company
- c. **"Promoter"** means a person promoting the formation of the SPAC and shall include persons holding any specified securities of the SPAC prior to an IPO, whether or not the person is a part of the management team.
- d. **"Qualifying Acquisition"** means a merger or acquisition of shares or assets in one or more companies having business operations.

2. Eligibility

The Commission shall consider the suitability of the registration of the securities of a SPAC on a case by case basis, taking into consideration any factor, including but not limited to the following:

- a. Incorporation as a public company under the Companies and Allied Matters Act
- b. Cognate experience and track record of the promoters and management team which will include experience in any of the following fields: SPAC's transactions; private equity; business combinations; fund management; merchant banking



- c. Nature and extent of the management team's compensation
- d. The target qualifying acquisition has not been identified

3. Offer of Securities

- a. The method of offering of a SPAC securities shall comply with the methods of offering of securities prescribed under the ISA 2007 or as amended and SEC Rules and Regulations, provided however that the public offering by a SPAC for the purpose of listing on a SEC registered or recognized securities Exchange shall only be made through an issue of new securities and not by an Offer for Sale of securities.
- b. The provisions relating to appointment of Issuing House and filing of offer document provided for Public Offers under the SEC Rules and Regulations shall apply to a public offer by a SPAC issuer

4. Disclosures in a SPAC Offer Document

- a. The offer document shall contain all material information which are true, correct and adequate to enable the investors take an informed investment decision
- b. The lead issuing house shall exercise due diligence and satisfy themselves on the veracity and adequacy of disclosure in the offer documents
- c. In addition to the general registration requirements for public offer as stated in the Rules and Regulations of the Commission, the disclosures in a SPAC Prospectus shall include information on the following:
 - i. The particulars of the issue, which shall include the objective of the issue, use of proceeds, interim use and management of proceeds, and expenses of the issue
 - ii. Capital structure
 - iii. Underwriting
 - iv. Tax implication
 - v. Information on the issuer, including the SPAC's organisational structure, details of the promoters and their track record, the SPAC's target business sector or geographic area for the intended business acquisition (if applicable). Provided that the qualifying acquisition shall not be identified prior to the IPO
 - vi. Time frame for completion of the intended qualifying acquisition
 - vii. Valuation method(s) intended to be used in valuing the business acquisition, if known
 - viii. Management team, including their experience and track record, remuneration and benefits



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- ix. Share ownership
- x. Redemption rights
- xi. The limitation, if any, on the exercise of conversion rights for shareholders who vote against a proposed business acquisition
- xii. Potential conflicts of interest and risk factors
- xiii. Terms of escrow account
- xiv. Information on Group and/or affiliated companies
- xv. Legal and other statutory information/disclosures
- xvi. Claims, outstanding litigation and material developments
- xvii. Any other material disclosures
- xviii. Such information as the Commission may require or prescribe from time to time.

5. Issue Size

- a. A SPAC IPO issue size shall not be less than N10 billion
- b. The promoters shall hold at least 15% and not more than 20% of the post issue paid up capital. Provided that the promoters shall also have aggregate subscription of all securities in terms of amount in the SPAC prior to or simultaneous to the IPO amounting to at least 2.5% of the issue size.
- c. Notwithstanding the minimum requirement prescribed above, a SPAC shall demonstrate that the gross proceeds to be raised from the IPO would be sufficient to undertake a qualifying acquisition which will;
 - i. Enable the SPAC to have a core business with sufficient size and scale relative to the industry in which the business operates
 - ii. Offer returns to investors based on the equity capital to be deployed relative to industry returns.

6. Pricing

- a. A SPAC issue shall be through a fixed price mechanism and the issuer shall determine the price in consultation with the lead issuing house.

7. Underwriting

In addition to the general rule on Underwriting, the following shall apply:

- a. Where the issue is underwritten, adequate disclosure regarding the underwriting arrangements shall be made in the offer document
- b. Payment of at least 50% of the underwriting commission shall be deferred until successful completion of the business combination.



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- c. The deferred amount shall be deposited in an escrow account
- d. In the event of liquidation, the underwriter shall waive their rights on the deferred commission held in the escrow account

8. Offer Period

The IPO shall be open for at least three (3) working days and not more than ten (10) working days.

9. Subscription and Allotment

- a. The minimum subscription size of a SPAC IPO shall not be less than N25 million
- b. For a SPAC offer to be successful, it must:
 - i. Be at least 75% subscribed
 - ii. Have a minimum of 50 subscribers
- c. No single subscriber shall be allotted more than 10% of the post issue capital and the allotment to investors shall be on a proportionate or discretionary basis as disclosed in the offer document
- d. The issuing house shall ensure that allotment proposal is filed with the Commission within 5 working of the close of the offer
- e. The issuing house shall ensure that monies from rejected applications and surplus return monies are returned to investors in line with the provisions of the Commission's Rules and Regulations on the treatment of return monies

10. Utilization and Management of Proceeds

- a. The net proceeds shall:
 - i. only be utilized for the purpose(s) stated in the approved offer documents
 - ii. be domiciled in an interest bearing escrow account opened and maintained specifically for that purpose with a Custodian
- b. The issuer and lead issuing house shall be the signatories to the escrow account.
- c. At least 90% of the gross proceeds of the IPO shall be deposited in the escrow account not later than 24 hours after approval of allotment
- d. The proceeds shall be held in the escrow account until consummation of the qualifying acquisition or liquidation
- e. The escrowed funds shall be invested only in short-term fixed income investment grade liquid instruments as disclosed in the offer document.
- f. The offer documents shall disclose how the amounts deducted from the gross proceeds raised will be utilized



- g. Prior to the completion of the qualifying acquisition, proceeds from the initial public offering that are not placed in the escrow account shall not be utilized for payment of remuneration whether directly or indirectly to members of the management team of the SPAC or their related parties, including but not limited to: salaries, consulting fees, management contract fees, director's fees, finder's fees, loans, advances, bonuses, deposits or similar payments
- h. The interest and other income derived from the escrowed funds may be utilized by the SPAC for the following purposes:
 - i. Payment of taxes
 - ii. General working capital expenses, subject to prior approval by way of special resolution of the shareholders, other than the promoters

11. SPAC Specific Obligations

- a. A SPAC shall file its SEC approved Prospectus with the relevant Exchange(s) on which it seeks to be listed, along with any other information/document required by the Exchange(s) regarding the intended qualifying acquisition
- b. The SPAC shall seek prior approval of its shareholders (other than the promoters) by way of vote for the proposed qualifying acquisition
- c. The resolution for the qualifying acquisition must be approved by a majority in number of the holders of the voting securities representing at least 75% of the total value of securities held by all holders of voting securities (other than promoters) present and voting either in person or by proxy at a general meeting duly convened for that purpose. Where the qualifying acquisition comprise more than one acquisition, each acquisition must be approved by the holders of the voting securities in the same manner
- d. Where a shareholder (other than promoter(s)) votes against the proposed qualifying acquisition, he shall have the redemption right to convert his securities into pro-rata portion of the aggregate amount held in the escrow account (net of taxes payable). Provided that a shareholder that has not voted may not be afforded redemption right.
- e. In the event of any change of control of the SPAC, the issuer shall provide the redemption option to the shareholders (other than promoters) for converting their securities into a pro-rata portion of the aggregate amount held in the escrow account (net of taxes payable)
- f. The issuer shall complete the qualifying acquisition within the timeframe disclosed in the offer document but not exceeding thirty-six (36) months from the date of the close of the IPO



- g. If the qualifying acquisition is not consummated within the permitted timeframe, the escrow account shall be liquidated in line with these rules and disclosures in the offer document
- h. In the event of liquidation and delisting, the promoters shall not participate in the liquidation distribution
- i. A promoter shall not transfer or sell his holding or securities in the SPAC prior to the consummation of a qualifying acquisition
- j. The issuer shall ensure that the qualifying acquisition(s) have an aggregate fair market value equal to at least 80% of the aggregate amount deposited in the escrow account, excluding deferred underwriting commission held in escrow and any taxes payable on the income earned on the escrowed funds
- k. The issuer and promoters shall ensure that there is no related party transactions or connections between the promoters or their associates, with regards to the qualifying acquisition
- l. Where warrants are issued in the SPAC IPO, the issuer shall ensure that:
 - i. Each unit may consist of one share and no more than one share purchase warrants
 - ii. The exercise price of the warrants shall not be lower than the price of the ordinary shares offered in the IPO
 - iii. The warrants may be detached with the equity shares and traded separately on the designated stock Exchange(s) provided that details have been appropriately disclosed in the offer document
 - iv. The warrants shall not be exercisable prior to the consummation of the qualifying acquisition
 - v. In the event of liquidation of the SPAC, the warrants shall expire
 - vi. The warrants shall not have any entitlement to the funds in escrow upon liquidation or redemption.

12. Promoter /Management Team Compensation

- a. Any compensation to be enjoyed by the promoter/management team, both in terms of quantum and timing, shall not be disproportionate to the expected shareholder value creation and the timing of such value creation.
- b. Where securities are issued to the management team at a discount, adequate disclosure shall be made in the offer document for investors to make informed decision whether the level of the discount and the proposed timing of the realization of the rewards through the sale of the discounted securities are appropriate taking into consideration the SPAC's business strategy and the management team's contributions



- c. Security-based compensation arrangements between the SPAC and members of the management team such as employee share option schemes are prohibited prior to completion of the qualifying acquisition
- d. Where securities are issued to the management team at a discount, the discounted shares shall not be sold within one year of the IPO.

13. Qualifying Acquisition

- a. A qualifying acquisition by a SPAC shall be subject to the prior approval of the Commission.
- b. Where the proposed qualifying acquisition entails the acquisition of a business with a long gestation period or high levels of uncertainty, the SPAC shall demonstrate that such proposal is not detrimental to the interest of investors and that the management team is committed to the company until such time that the business objective is achieved
- c. A qualifying acquisition should result in the SPAC having an identifiable core business of which it has a majority ownership and management control
- d. The Commission may permit a qualifying acquisition involving an acquisition of a non-majority stake if the SPAC can demonstrate that such non-majority stake is in line with the regulations or practices within the industry and that it has management control
- e. For the purpose of this rule, management control by a SPAC include control over:
 - i. The strategic and financial decisions of the business to be acquired, whether joint or otherwise
 - ii. The operations of the business to be acquired.

14. Acquisitions from Related Parties

A SPAC is prohibited from consummating a business combination with any entity affiliated with the promoters, management team or any insider of the SPAC, unless a fairness opinion from a qualified independent professional confirms that the combination is fair to the shareholders.

15. Moratorium

- a. The following parties shall observe a moratorium on the sale, transfer or assignment of all or part of their direct and indirect shareholding interest held in the SPAC:



- i. Founding shareholders, the management team, the controlling shareholders and the respective associates of the SPAC- from date of SPAC's listing until at least 6 months from the date of consummation of the qualifying acquisition; and
- ii. Executive directors of the resulting issuer/company with an interest of 5% or more of the issued share capital of the resulting issuer/company – At least 6 months from the date of consummation of the qualifying acquisition
 - b. Provided that where the qualifying acquisition entails or involves assets which are not yet income generating, the persons mentioned in (a) above shall not sell, transfer or assign their holdings from the date of the listing or consummation of the qualifying acquisition (as applicable) until the assets have generated one full financial year of operating profits and positive cash flow from operating activities based on its audited financial statements. Thereafter, they may sell, transfer or assign up to a maximum of 50% per annum on a straight-line basis of their respective holdings in the securities under moratorium
 - c. The SPAC shall apply to the Commission for the lifting of the moratorium on the securities held by the respective parties demonstrating that the conditions for such lifting have been met

16. Liquidation of The SPAC

- a. A SPAC shall be liquidated where:
 - i. it fails to consummate the qualifying acquisition within the permitted time frame
 - ii. there is a material change in relation to the profile of the promoters and/or the management team critical to the success of the SPAC and/or successful completion of the qualifying acquisition, and shareholders' approval was not obtained
- b. The amount held in escrow (net of any taxes payable and direct expenses related to the liquidation distribution) shall be distributed to the respective holders of voting securities on a pro rata basis within six (6) weeks.
- c. Any income earned from the permitted investments shall be part of the liquidation distribution
- d. Promoters, including members of the management team shall not participate in the liquidation distribution other than in relation to securities purchased after the listing of the SPAC
- e. Pre-IPO investors shall not participate in the liquidation distribution other than in relation to any securities subscribed for by them as part of the IPO and securities purchased after the listing of the SPAC



17. Continuous Disclosure Requirements

The continuous disclosure requirements applicable for issuers provided under the existing rules and regulations of the Commission shall apply to a SPAC issuer.

18. Fees

The fees payable for registration of securities and offer of securities shall apply to SPACs.

Justification

Special Purpose Acquisition Companies (SPACs) offer alternative investment opportunities for the investing public. It is thus crucial to ensure that this vehicle operates in a manner consistent with investor protection, public interest, market integrity and transparency. Like other PLCs growth process, regulatory approvals are required by SPACs at critical junctures –e.g. at capital raise, listing, business combination/acquisition etc.

As public companies, SPACs come under existing relevant laws and regulations, as currently provided for under the ISA, hence the need to incorporate SPAC specific requirements proposed hereunder in the Commission’s rules and regulations.

Sundry Amendment

2. PROPOSED AMENDMENT TO RULE 3(6)(b)- TIME FOR PROCESSING

Full Text of Existing Rule 3 (6)(b)- Time for Processing

An application for any form of registration by an applicant shall lapse if the applicant fails or neglects to comply with the registration requirements within twelve (12) months of filing the application.

Proposed Amendment

An application for any form of registration by an applicant shall lapse if the applicant fails or neglects to comply with the registration requirements within thirty (30) days of filing the application.

Justification



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The proposed amendment supports the Commission's efforts in reducing time-to-market and a reduction in the processing time window will make the Commission's processes more efficient. By so doing, only serious applicants who are willing to comply with registration requirements will file with the Commission and instances of dumping applications with the Commission would be reduced.