



February 23, 2018

Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

805 King Farm Blvd
Rockville, MD 20850

Nasdaq.com

Re: File Number SR-NASDAQ-2017-087 (the "Proposal")

Dear Mr. Fields:

The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") is pleased to respond to the Securities and Exchange Commission ("Commission") request for additional analysis and input in its Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposal (the "Order").¹

An Acquisition Company is a company whose 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. As noted in the Proposal, in 2008 Nasdaq adopted a rule (IM-5101-2) to impose additional listing requirements on Acquisition Companies to afford investors in such companies protections beyond those applicable to operating companies. These rules impose additional requirements for listing these entities, including that 90% of the gross proceeds of the Acquisition Company's offering must be deposited into and retained in an escrow account through the date of a business combination; that the entity must complete a significant business combination within 36 months of the effectiveness of the IPO registration statement; that a majority of the Acquisition Company's independent directors must approve each business combination; and that public shareholders who object to the combination have the right to convert their common stock into a pro rata share of the funds held in escrow. Thus, an investor in an Acquisition Company has the ability to redeem their shares for cash at the time the company combines with an operating business, for an amount almost equal to the amount invested in the IPO. This redemption option establishes a value for the Acquisition Company, similar to the net asset value of many exchange traded products.

In the Proposal,² Nasdaq proposes to modify the listing requirements for Acquisition Companies listed on the Nasdaq Capital Market by reducing the number of round lot holders required for initial listing from 300 to 150, and eliminating the continued listing requirement for a minimum number of holders (which is also currently 300) that applies until the Acquisition Company completes one or more business combinations. Nasdaq also proposes to require that an Acquisition Company listed on the Nasdaq Capital Market maintain at least \$5 million net tangible assets for initial and continued listing. Finally, Nasdaq proposes to allow Acquisition Companies listed on any of its three listing tiers (the Nasdaq

¹ Securities Exchange Act Release No. 82478 (January 9, 2018), 83 FR 2278 (January 16, 2018).

² Securities Exchange Act Release No. 81816 (October 4, 2017), 82 FR 47269 (October 11, 2017).

Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market) 30 days to demonstrate compliance with initial listing requirements following each business combination.

In the Order the Commission requested comments from interested persons, including on any concerns they may have regarding the Proposal. In addition the Commission sought comments on five specific questions. Nasdaq addresses these specific questions, as well as one additional issue below.

Question 1. *Would the proposal ensure that a sufficient liquid market exists for the shares of SPACs on the Nasdaq Capital Market? Why or why not?*

Question 2. *Without any continued listing holder requirement, would the shares of SPACs still trade close to their redemption value, as the Exchange has stated? If yes, would that trading pattern continue after an announcement of a business combination?*

Answer: Questions 1 and 2 are related because the holder requirement generally is designed to help assure the availability of a liquid market, which in turn limits price dislocation. However, in the case of Acquisition Companies, there are other protections that also limit price dislocation, thereby making the shareholder requirement less important.

As a preliminary matter, Nasdaq has observed trading in Acquisition Companies that did not comply with the existing shareholder requirement. As explained below, based on those observations, Nasdaq believes that these non-compliant Acquisition Companies traded without significant price dislocation and therefore a sufficient liquid market for the shares of Acquisition Companies will continue to exist after eliminating that shareholder requirement.

Specifically, as indicated in the Proposal Nasdaq analyzed the trading history of Acquisition Companies listed since 2010, including those cited for non-compliance with the 300 shareholder requirement.³ Of 59 Acquisition Companies that were a part of this analysis, 17 companies or, 29 percent, were noncompliant with the 300 shareholder requirement. These non-compliant companies had from as few as 37 shareholders to as many as 273 shareholders.⁴ Average daily volume for these non-compliant Acquisition Companies was in excess of 10,000 shares and they continued to trade close to the \$10

³ Footnote 8, in the Proposal.

⁴ Six companies confirmed to Nasdaq that they did not meet the 300 holder requirement but did not provide an exact number of shareholders; three companies indicated they had fewer than 200 shareholders but did not provide an exact number of shareholders; and one company indicated it had fewer than 50 shareholders but did not provide an exact number of shareholders. The seven remaining noncompliant companies had 273, 150, 139, 114, 103, 95, and 37 shareholders. Thus, of 17 noncompliant Acquisition Companies analyzed, at least seven, and as many as 16, had 150 or fewer shareholders.

redemption value⁵ with nominal deviation from that value.⁶ Because the Proposal requires Acquisition Companies to have 150 holders upon listing, Nasdaq believes that the analysis described above, which included as many as 16 Acquisition Companies with fewer than 150 holders, is a reasonable indication that Acquisition Companies will continue to have sufficient liquidity under the Proposal.

Nasdaq also notes that Acquisition Companies will continue to have a significant number of shareholders following listing because of the requirement to have 150 holders for initial listing. Nasdaq has observed, and commenters have confirmed, that Acquisition Company holders are typically institutional investors that employ buy and hold strategy.⁷

Other protections required by Nasdaq rules for Acquisition Companies also help assure that shares of Acquisition Companies will continue to trade close to their redemption value even without a continued listing shareholder requirement. Nasdaq rules require that 90% of the gross proceeds from an Acquisition Company's IPO and any concurrent sale by the company of equity securities must be deposited in an escrow or similar account and that shareholders have the right to convert or redeem their shares of common stock into a pro rata share of the aggregate amount then in the deposit account.⁸ In practice, we understand that Acquisition Companies hold a larger portion than 90%.⁹ Nasdaq believes that it is this ability to redeem for close to the IPO offering amount, and arbitrage any differences between the redemption value and the market price, that allows shares of Acquisition Companies to trade close to their redemption value. Nasdaq also believes based on the data described above that this process will continue efficiently even without a continued listing shareholder requirement.

⁵ The average of each stock's average last price for the set of noncompliant Acquisition Companies was \$9.96.

⁶ The median of the average daily range for the set of noncompliant Acquisition Companies was \$0.07.

⁷ "SPAC investors will not be adversely affected by any liquidity issues because they typically hold their shares until a business combination is announced." "It can be difficult for SPACs to obtain 300 round-lot shareholders due to the high demand from institutional investors in the IPO allocation process." Letter from Alice Hsu, Akin Gump Strauss Hauer & Feld LLP, dated November 1, 2017. See also Letter from Jeffrey M. Solomon, Chief Executive Officer, Cowen and Company, LLC, dated October 19, 2017 (indicating "that Acquisition Companies are generally not marketed to, nor owned by, retail investors").

⁸ Nasdaq Listing Rule IM-5101-2.

⁹ "[T]he SPAC typically places an amount equal to 100% of the gross proceeds of the offering into a trust account." Letter from Paul D. Tropp, Freshfields Bruckhaus Deringer US LLP, dated January 30, 2018 (Freshfields Letter). See also letter from Sean Davy, SIFMA, dated October 31, 2017.

Importantly, Nasdaq believes that the shareholder requirement is an important listing requirement, which helps assure liquidity and thereby helps limit aberrant prices. Nonetheless, as described in the Proposal, Nasdaq has observed that it can be difficult for a company, once listed, to obtain evidence demonstrating the number of its shareholders because many accounts are held in street name and shareholders may object to being identified to the company.¹⁰ Unlike the case with most other types of companies, shareholders in Acquisition Companies have other protections that help define the trading price and assure that the shareholder can obtain that price upon redemption in the near term. Elimination of the requirement is intended to recognize that given these protections and unique characteristics of Acquisition Companies, the burdens of meeting a required minimum number of shareholders on a continued basis and demonstrating compliance with that number during their short lifetime, outweigh the benefits of the shareholder requirement. The Proposal would remove the burden of demonstrating the actual number of shareholders for this limited universe of Acquisition Companies.

Nasdaq also expects that Acquisition Companies will continue to trade close to their redemption value after an announcement of a business combination. Nasdaq's analysis of post-announcement trading did not identify a predominant trend across all of the Acquisition Companies but in 80 percent of analyzed cases volatility was either stable or lower than average. Further, any increase in volatility following a business combination can continue for only a short period of time because holders of Acquisition Companies are allowed to redeem their shares in connection with a business combination and such redemption typically occurs shortly following such announcement.

Question 3. *Without any continued listing holder requirement, could shares of SPACs be more prone to manipulation, either post-IPO or at the time of the business combination announcement (but before consummation of the business combination)?*

Answer: The right of holders to redeem funds held in escrow or a similar account is not impacted by the Proposal and Nasdaq believes that this right to redeem in conjunction with the business combination sufficiently mitigates manipulation concerns surrounding Acquisition Companies. Unlike other companies, the value of an investment in an Acquisition Company is transparent because of this redemption right. Also, as explained above, prior to such combination, the price of Acquisition Companies shares is highly correlated to the pro rata share of the trust.

In addition, Nasdaq and the Financial Industry Regulatory Authority ("FINRA")¹¹ monitor trading activity in Nasdaq-listed securities, including shares of Acquisition Companies, to identify and deter potential

¹⁰ Companies must seek information from broker-dealers and from third-parties that distribute information such as proxy materials for the broker-dealers. This process is costly, time-consuming and burdensome.

¹¹ FINRA conducts cross-market surveillances on behalf of Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

improper trading activity. This surveillance is designed to detect securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity.

Question 4. *Has the Exchange demonstrated with specific data, analysis, and studies that the shares of SPACs trade consistently as stated in the proposal, and does the analysis support the proposed reductions in the holder initial and continued listing standards? If not, what data should be reviewed and analyzed? For example, in the Exchange’s examination of SPACs that were below the continued public holder listing requirement, how few shareholders did these SPACs have?*

Answer. In the Proposal and in this supplemental comment, Nasdaq has provided data and analysis, based on our experience with Acquisition Companies, that has led us to conclude that the Proposal is 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, in general, to protect investors and the public interest.¹² Other commenters have also supplemented the record with additional supportive data and analysis. We believe this data and analysis is sufficient to show that shares of Acquisition Companies trade consistently as stated in the Proposal and to allow the Commission to approve the Proposal. No commenters have suggested that any additional data, beyond what was requested in the Order, should be reviewed and analyzed.¹³

Question 5. *The Exchange asserted that it is time consuming and burdensome for a SPAC to obtain a list of shareholders to demonstrate the number of holders, because many shares are held in street name with broker-dealers. The Commission notes that the process of obtaining number of shareholders is similar for all listed companies. Do commenters think SPACs are particularly burdened by this process and the costs? Is the fact the costs are usually borne by the sponsors relevant?*

¹² See Footnote 4, *supra*, for the additional information about the number of shareholders of noncompliant Acquisition Companies analyzed by Nasdaq for the Proposal.

¹³ In a comment on the Proposal, the Council of Institutional Investors noted that it did not oppose the Proposal but believed additional information was required to assess it. See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors dated October 25, 2017. In a subsequent comment on the Order, Mr. Mahoney noted that “the questions the Commission seeks comment on ... should lead to additional information that would be helpful in making a determination of whether the proposal will benefit investors and the capital markets.” Letter dated January 25, 2018. Nasdaq and other commentators have answered those questions with data and analysis.

Answer: While the burden of demonstrating the number of holders may be similar for all companies, for the reasons described above, Nasdaq believes that imposing this burden on Acquisition Companies is unnecessary because of the additional investor protections provided by their structure.

Specifically, as noted above, Nasdaq rules provide for the redemption of an Acquisition Company's shares within three years and for the company resulting from the merger to again demonstrate compliance with the initial listing shareholder requirement. Nasdaq believes that these protections make demonstrating compliance with the continued listing shareholder requirement an unnecessary burden on Acquisition Companies. As described in the Proposal, the Commission also has recognized that the 300 shareholder requirement is also not appropriate for other types of entities, such as Exchange Traded Funds given the differing characteristics that allow them to trade close to the transparent value of their underlying assets.

Nasdaq also believes that there is some difference in burden on an Acquisition Company because the sponsors of Acquisition Companies typically cover most operating expenses and do not draw any salary or take any management fees from the Acquisition Company until a business combination transaction is completed. In a similar vein one commenter suggested that:

These costs and burdens are particular to SPACs given the unique nature of the majority of its funds being held in trust and having limited funds available outside of the trust as compared to an operating company which does not face such structural challenges.¹⁴

* * * * *

Separately in the Order the Commission notes that:

because the same number of holders today (i.e., 300) applies to SPACs listed on Nasdaq before and after a business combination, the issue of a post-combination transition period has not been raised. Nasdaq proposes to eliminate the continued listing requirement for SPACs, so that a listed SPAC with very few holders may need to have at least 300 holders a short time after a business combination. The Commission does not believe it is clear from Nasdaq's proposal that such a structure is workable, or how a listed SPAC would ensure it is in a position to sufficiently increase its number of holders.

Answer: The post-combination transition issue raised by the Commission exists currently and is not materially affected by the Proposal. Because the Acquisition Company holders are allowed to redeem their shares in connection with a business combination, the post-transaction entities do not know how many holders will remain until after the redemption has occurred. Additionally, there is no limitation on the number of redeeming holders, so in an Acquisition Company with 300 holders before the transaction there could be only 50 or fewer holders of the post-transaction entity.

To address this issue, Acquisition Companies typically undertake measures to increase the number of shareholders in the post-transaction entity. Such measures include, but are not limited to, roadshows for new investors regarding the proposed transaction and the resultant company, issuance of additional

¹⁴ Freshfields Letter.

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shares in a private placement concurrently with the business combination, and issuances of shares to shareholders of the target company.

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In view of the above, Nasdaq asks that the Commission approve the Proposal without delay. If you have any questions or need additional information, please contact me at [REDACTED].

Sincerely,



Arnold Golub
Vice President, Listing Qualifications
Deputy General Counsel