

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89386; File No. SR-NASDAQ-2020-039)

July 23, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Listing Rule IM-5900-4 to Waive the All-Inclusive Annual Listing Fee for Any Company Not Listed on a National Securities Exchange That Is Listing Upon Closing of Its Acquisition of a Special Purpose Acquisition Company Listed on Another National Securities Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on July 9, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Listing Rule IM-5900-4 to waive the All-Inclusive Annual Listing Fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company listed on another national securities exchange.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend Listing Rule IM-5900-4 to waive the All-Inclusive Annual Listing Fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company (“Acquisition Company”) listed on another national securities exchange.

When an Acquisition Company consummates its business combination, it may choose a new listing venue for its post-business combination existence as an operating company. In most such cases, the Acquisition Company is the legal acquirer in the business combination transaction and thus the company transferring its listing to Nasdaq is the same entity as was listed on the other national securities exchange prior to the acquisition (i.e., the Acquisition Company). When an Acquisition Company that is the legal acquirer transfers its listing to Nasdaq following the business combination, the first All-Inclusive Annual Listing Fee is waived. Specifically, Listing Rule IM-5900-4 provides that “Nasdaq has determined to waive for the year of transfer the All-Inclusive Annual Listing Fee applicable to the year such transfer is made in the case of securities that ... are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to Nasdaq.”

However, in fulfilling the requirements for an Acquisition Company to complete an acquisition under applicable exchange rules, occasionally the Acquisition Company is not the legal acquirer in the business combination and, instead, the business combination is structured so that the Acquisition Company is acquired by the operating company. Under the current Nasdaq rules, a company listing in connection with its acquisition of an Acquisition Company listed on another national securities exchange would not benefit from a similar waiver of listing fees.

To address this disparity, Nasdaq proposes to amend the fee waiver provisions of Listing Rule IM-5900-4. Specifically, the Exchange proposes to extend to any company that is not listed immediately prior to listing its class of primary equity securities upon closing of its acquisition of an Acquisition Company listed on another national securities exchange the benefits similar to those provided by Listing Rule IM-5900-4 that waives for companies transferring their securities from another exchange the requirement to pay the All-Inclusive Annual Listing Fee with respect to that class of primary equity securities or any other securities transferred in conjunction therewith for the remainder of the calendar year in which the transfer occurs. The decision whether to structure a business combination with the Acquisition Company as the legal acquirer rather than the other party does not result in the listing of a substantively different entity. Accordingly, the Exchange believes there is no basis for charging fees purely on the basis of the structure of the business combination chosen by the parties. The Exchange does not expect there to be a significant number of listings in which this proposed fee waiver will be applicable. Consequently, the proposed rule change would not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

The Exchange believes that the proposed fee waivers are equitable as it being implemented to avoid an anomalous fee outcome arising from the manner in which an Acquisition Company business combination has been structured.

The Exchange believes that the proposal is not unfairly discriminatory, because the proposed waivers are intended to avoid the impact on a small group of issuers of an anomalous fee outcome arising from the manner in which an Acquisition Company business combination has been structured. Nasdaq also notes that such waiver is not intended to provide these issuers with any benefit that would place them in a more favorable position than other newly-listed companies, including specifically other previously unlisted companies that list upon completion

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

of an acquisition of a company listed on Nasdaq.⁵ An Acquisition Company is a shell company with no business operations. Consequently, the parties to a business combination between an Acquisition Company and an operating company have significant flexibility in how they choose to structure the business combination, including in determining which entity will be the legal acquirer.

Accordingly, the Exchange is proposing to amend its fee structure to reflect the incidental nature of the resulting Acquisition Company business combination and to avoid treating companies undergoing similar business combinations disparately.

By contrast to an Acquisition Company business combination, there are typically more significant limitations on the ability of the parties to a merger between two operating companies to make decisions about which entity will be the acquirer, including, for example, the desire to maintain the acquirer's SEC registration and concerns about how to present the combined entity to the market. As such, it is much more likely that the listing fee implications of how the transaction is structured would be a major consideration for the parties to an Acquisition Company business combination than would be the case in a merger between two operating companies. As the implications of the proposed fee waivers for decisions relating to the transaction structures utilized by unlisted companies listing in connection with the acquisition of an Acquisition Company are typically greater than for other companies listing in conjunction with merger transactions, the proposed waivers are not unfairly discriminatory.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

⁵ Listing Rule IM-5900-1 provides for certain credits that benefit a non-Nasdaq company that lists in connection with its acquisition of a Nasdaq listed company.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed waiver will be available to all similarly situated issuers on the same basis. The Exchange does not believe that the proposed waivers will have any meaningful effect on the competition among issuers listed on the Exchange.

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2)⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-039 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-NASDAQ-2020-039. This file number should be included on the subject line if e-mail 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-039 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

J. Matthew DeLesDernier
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).