

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89897; File No. SR-NASDAQ-2020-062)

September 16, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Listing Rules Applicable to Special Purpose Acquisition Companies whose Business Plan is to Complete One or More Business Combinations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 3, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 rules applicable to companies whose business plan is to complete one or more business combinations.

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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

In 2009, Nasdaq adopted additional listing requirements for 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 (“Acquisition Companies”).<sup>3</sup> Such a company is required to keep at least 90% of the proceeds from its initial public offering in an escrow account and, until the company has completed one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account, must meet the requirements for initial listing following each business combination.<sup>4</sup> If a shareholder vote on the business combination is held, public shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the escrow account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated.<sup>5</sup> If the combined company does not meet the initial listing requirements following a business combination, Nasdaq Staff will issue a Staff Delisting Determination under Nasdaq Rule 5810.

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<sup>3</sup> Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (adopting the predecessor to IM-5101-2).

<sup>4</sup> See Nasdaq Rule IM-5101-2(d) and (e) [sic].

<sup>5</sup> See Nasdaq Rule IM-5101-2(d). If a shareholder vote on the business combination is not held, the company must provide all shareholders with the opportunity to redeem their shares for cash equal to their 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). Nasdaq Rule IM-5101-2(e).

Under the existing rules, “following each business combination” with an Acquisition Company, the resulting company must satisfy all initial listing requirements. The rule does not provide a timetable for the company to demonstrate that it satisfies those requirements, however. Accordingly, Nasdaq proposes to modify the rule to specify if the Acquisition Company demonstrates that it will satisfy all requirements except the applicable round lot shareholder requirement, then the company will receive 15 calendar days following the closing to demonstrate that it satisfied the applicable round lot shareholder requirement immediately following the transaction’s closing.

Ordinarily, in determining compliance with the round lot shareholder requirement at the time of a business combination, Nasdaq will review a company's public disclosures and information provided by the company about the transaction. For example, the merger agreement may result in the Acquisition Company issuing a round lot of shares to more than 300 holders of the target of the business combination at closing. If public information is not available that enables Nasdaq to determine compliance, Nasdaq will typically request that the company provide additional information such as registered shareholder lists from the company's transfer agent, data from Cede & Co. about shares held in street name, or data from broker-dealers and from third parties that distribute information such as proxy materials for the broker-dealers.<sup>6</sup> If the company can provide information demonstrating compliance before the business combination closes, no further information would be required.

However, Nasdaq has observed that in some cases it can be difficult for a company to obtain evidence demonstrating the number of shareholders that it has or will have following a business combination. As noted above, shareholders of an Acquisition Company may redeem or

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<sup>6</sup> Companies must seek this information from third parties because many accounts are held in street name and shareholders may object to being identified to the company.

tender their shares until just before the time of the business combination, and the company may not know how many shareholders will choose to redeem until very close to the consummation of the business combination. In cases where the number of round lot shareholders is close to the applicable requirement, this could affect the ability for Nasdaq to determine compliance before the business combination closes. Accordingly, for a company that has demonstrated that it will satisfy all initial listing requirements except for the round lot shareholder requirement before consummating the business combination, Nasdaq will allow the company 15 calendar days after the closing of the business combination, if necessary, to demonstrate that it also complied with the round lot requirement at the time of the business combination. To be clear, the company must still demonstrate that it satisfied the round lot shareholder requirement immediately following the business combination; the proposal is merely giving the company 15 calendar days to provide evidence that it did.

Nasdaq believes that this proposal balances the burden placed on the Acquisition Company to obtain accurate shareholder information for the new entity and the need to ensure that a company that does not satisfy the initial listing requirements following a business combination enters the delisting process promptly. If the company does not evidence compliance within the proposed time period, Nasdaq staff would issue a delisting determination, which the company could appeal to an independent Hearings Panel as described in the 5800 Series of the Nasdaq Rules.

Finally, Nasdaq proposes a non-substantive change to eliminate a duplicate paragraph in paragraphs (d) and (e) of IM-5101-2 and to add a new paragraph designation.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by imposing a specific timeline for Acquisition Companies to demonstrate that they will comply with the initial listing requirements following a business combination and allowing a reasonable period of time for the company to provide evidence that it complied with the round lot shareholder requirement at the time of the business combination.

The proposed rule would specify the time when an Acquisition Company must demonstrate compliance with the initial listing standards following the completion of a business combination, thereby enhancing investor protection. Specifically, it would require an Acquisition Company to provide evidence *before* completing the business combination that it will satisfy all requirements for initial listing, except for the round lot shareholder requirement. While the proposed rule would allow Acquisition Companies 15 calendar days, if needed, to provide evidence that they also complied with the round lot shareholder requirement at the time of the business combination, that additional time is a reasonable accommodation given both the difficulty companies face in identifying their shareholders and the ability for the Acquisition Company's shareholders to redeem their shares when the business combination is consummated. In that regard, Acquisition Companies are unlike other newly listing companies, which do not face redemptions and are not already listed and trading at the time they must demonstrate compliance. Importantly, the company must still demonstrate that it satisfied the round lot

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

shareholder requirement immediately following the business combination. As such, Nasdaq believes that the proposed rule change appropriately balances the protection of prospective investors with the protection of shareholders of the Acquisition Company, the latter of whom would be harmed if Nasdaq issued a delisting determination at a time when the company did, in fact, satisfy all initial listing requirements but could not yet provide proof.

The proposed rule change is also consistent with Section 6(b)(7) of the Act in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered. The proposed rule change accounts for the particular difficulties encountered by Acquisition Companies when attempting to determine their total number of shareholders due to the ability of shareholders to redeem their shares. Acquisition Companies will still be required to demonstrate compliance with all initial listing standards immediately following the business combination, which is the initial listing of the combined company. This is no different from the requirements imposed on other newly listing companies.

The non-substantive changes to eliminate a duplicate paragraph in paragraphs (d) and (e) of IM-5101-2 and to add a new paragraph designation will improve the rule's readability and thereby remove an impediment to a free and open market and a national market system and help to better protect investors, which Nasdaq believes is consistent with the requirements of Section 6(b)(5) of the Act.<sup>9</sup>

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 rule would clarify that a company listing in connection with a merger with an Acquisition Company must provide evidence before completing the business combination that it will satisfy all requirements for initial listing, although a reasonable accommodation would be made to allow the company to demonstrate compliance with the round lot shareholder requirement before issuing a delisting letter if that is the only requirement that the company cannot demonstrate compliance with before completing the business combination. This change is not expected to have any impact on 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-062 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-2020-062. 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 comment submissions. You should submit only information that you wish to



make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-062, 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.<sup>10</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).