

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91294; File No. SR-NASDAQ-2020-062)

March 10, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment, No. 1, to Amend Listing Rules Applicable to Special Purpose Acquisition Companies Whose Business Plan is to Complete One or More Business Combinations

On September 3, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its listing rules to permit companies whose business plan is to complete one or more business combinations (“SPACs” or “Acquisition Companies”) 15 calendar days following the closing of a business combination to demonstrate that the SPAC has satisfied the applicable round lot shareholder requirement. The proposed rule change was published for comment in the Federal Register on September 22, 2020.³ On November 4, 2020, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 16, 2020, the Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89897 (September 16, 2020), 85 FR 59574. Comments received on the proposal are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2020-062/srnasdaq2020062.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90340, 85 FR 71704 (November 10, 2020). The Commission designated December 21, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On February 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed, and is described in Items I and II below, which Items have been prepared by the Exchange.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, as modified by Amendment No. 1, 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 “Original Proposal”). The Exchange is filing this proposal (“Amendment No. 1”) to amend the Original Proposal. Amendment No. 1 supersedes the Original Proposal in its entirety to add an additional disclosure requirement.

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.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 90682, 85 FR 83113 (December 16, 2020).

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

1. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2020-062, which was published for comment by the Commission on September 16, 2020.⁸ The original proposal would allow certain acquisition companies listed under IM-5101-2 with a 15-day period after closing a business combination to provide evidence that the combined company satisfied the round lot shareholder requirement for initial listing at the time of the business combination. This Amendment No. 1 would require a company relying on this 15-day period to file a Form 8-K, were required by SEC rules, or issue a press release noting that the company is relying upon the additional 15 calendar days available under Nasdaq rules to demonstrate compliance.

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”).⁹ 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.¹⁰ 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

⁸ Securities Exchange Act Release No. 99897 (September 22, 2020), 85 FR 59574 (September 16, 2020).

⁹ Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (adopting the predecessor to IM-5101-2).

¹⁰ See Nasdaq Rule IM-5101-2(d) and (e).

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.¹¹ 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.

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

¹¹ 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).

from third parties that distribute information such as proxy materials for the broker-dealers.¹² 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 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 calendars days to provide evidence that it did.

Providing Acquisition Companies with an additional 15 days to demonstrate compliance with the round lot rule as of the date of the business combination will result in the continuation of the listing of companies that have completed a business combination but not yet demonstrated

¹² 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.

that they satisfied all initial listing requirements. For this reason, the Exchange proposes that each Acquisition Company that has not demonstrated compliance with the applicable round lot shareholder requirement on the date of the business combination's closing will be required to issue a press release or file a Form 8-K, if required, prior to closing of the business combination, stating that the company is relying upon the additional 15 calendar days available under Nasdaq rules to demonstrate compliance. The company also will be required to note that in the event it is unable to demonstrate compliance, the company will be subject to delisting. In the event the Acquisition Company does not make the required public disclosure prior to the closing of the business combination, Nasdaq will halt trading in the company's securities until such time as the required announcement is made public.

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. Nasdaq also believes that the disclosure requirement will help provide transparency to investors about the status of the company during this time.

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,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

compliance. Importantly, the company must still demonstrate that it satisfied the round lot shareholder requirement immediately following the business combination. The proposed rule also requires an Acquisition Company utilizing the additional 15 day period after closing of the business combination to file a Form 8-K, were required by SEC rules, or issue a press release, prior to the closing of the business combination, noting that the company is relying upon the additional 15 calendar days available under Nasdaq rules to demonstrate compliance. The company must also note that in the event it is unable to demonstrate compliance, the company will be subject to delisting. In the event the Acquisition Company does not make the required disclosure prior to the listing of the combined company, Nasdaq will halt trading in the company's securities until such time as the required announcement is made public. The Exchange believes this disclosure requirement will ensure that prospective investors are aware that the company has not yet demonstrated that it meets the shareholder requirement and therefore may be delisted. In light of these requirements, 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.¹⁵

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

On December 21, 2020, the Commission issued an Order Instituting Proceedings¹⁶ ("OIP") pursuant to Section 19(b)(2)(B) of the Act to determine whether to approve or

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ Securities Exchange Act Release No. 90682 (December 21, 2021), 85 FR 83113 (December 16, 2020).

disapprove the Original Proposal superseded by this Amendment No. 1. In response to the OIP, the Council of Institutional Investors (“CII”) submitted a comment letter dated January 7, 2021.¹⁷ Simultaneous to the submission of this Amendment No. 1, the Exchange is submitting a comment letter in response to the Commission’s OIP. That comment letter addresses the issues raised in the CII comment letter.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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-2020-062 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

¹⁷ See Letter from Jeffrey P. Mahoney, Council of Institutional Investors Letter to Secretary, Securities and Exchange Commission (January 7, 2021). CII also raised concerns with the SPAC structure that are outside the scope of Nasdaq’s proposal.

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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).