

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92345; File No. SR-NASDAQ-2021-055)

July 7, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Listing Rule 5910 to Establish Entry and All-Inclusive Annual Listing Fees for Companies Listing under IM-5101-2 on the Nasdaq Global Market

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 June 28, 2021, 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, 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 Rule 5910 to establish Entry and All-Inclusive Annual Listing Fees for companies listing under IM-5101-2 (companies whose business plan is to complete one or more acquisitions) on the Nasdaq Global Market.

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

Historically, companies 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 described in IM-5101-2, (“Acquisition Companies”) would choose to list on the Nasdaq Capital Market instead of the Nasdaq Global Market, primarily because it has lower fees. However, nothing in Nasdaq’s rules prohibits an Acquisition Company from listing on the Global Market.³ More recently, certain Acquisition Companies have sought to list on the Nasdaq Global Market. In particular, Nasdaq notes that a recent SEC statement about accounting treatment by Acquisition Companies⁴ has resulted in some Acquisition Companies adopting different accounting practices and, as a result, having insufficient equity to qualify for initial listing on the Nasdaq Capital Market. However, these companies could list on the Nasdaq

³ Nasdaq Listing Rule 5310(i) provides that an Acquisition Company is not eligible to list on the Nasdaq Global Select Market.

⁴ Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies (SPACs), by John Coates, Acting Director of the Division of Corporation Finance, and Paul Munter, Acting Chief Accountant (April 12, 2021), available at: <https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs>.

Global Market or on competing marketplaces, which permit listing without any minimum equity requirement.⁵ Nasdaq wishes to revise the fees for Acquisition Companies listing on the Nasdaq Global Market so that its fees for these companies seeking to list on that market tier will be competitive with other markets where they can list.

As described below, Nasdaq believes that this fee change is appropriate because Acquisition Companies listed on the Nasdaq Global Market (“Global Market Acquisition Companies”) receive the same services as Acquisition Companies listed on the Nasdaq Capital Market (“Capital Market Acquisition Companies”). For example, Global Market Acquisition Companies are not eligible to receive services from Nasdaq under IM-5900-7, unlike other companies listing on the Nasdaq Global Market but like Capital Market Acquisition Companies. Moreover, Global Market Acquisition Companies require fewer regulatory resources than other companies listing on the Nasdaq Global Market and the same regulatory resources as Capital Market Acquisition Companies. Therefore, Nasdaq proposes to adopt Entry and All-Inclusive Annual Listing Fees for Global Market Acquisition Companies that are identical to the fees currently charged Capital Market Acquisition Companies.

As proposed, Nasdaq would amend Rule 5910(a)(1) to include the following entry fee schedule applicable to Global Market Acquisition Companies, based on the number of shares outstanding: up to 15 million shares outstanding, \$50,000; over 15 million shares outstanding,

⁵ Nasdaq Rule 5405(b)(3) allows a company to list on the Nasdaq Global Market with no equity if it has a Market Value of Listed Securities of \$75 million and a Market Value of Unrestricted Publicly Held Shares of \$20 million, along with satisfying price, publicly held shares, round lot holder and market maker requirements. See also Section 102.06 of the NYSE Listed Company Manual.

\$75,000. These are the same fees charged Capital Market Acquisition Companies under Rule 5920(a)(1).⁶

In addition, Nasdaq would amend Rule 5910(b)(2) to include the following All-Inclusive Annual Fee schedule applicable to Global Market Acquisition Companies, based on the number of shares outstanding: up to 10 million shares outstanding, \$44,000; between 10,000,001 and 50 million shares outstanding, \$58,000; over 50 million shares outstanding, \$79,000. These are the same fees charged Capital Market Acquisition Companies under Rule 5920(b)(2)(A).

The proposed Entry Fee and All-Inclusive Annual Fee would be lower than the fees applicable to other companies listing on the Nasdaq Global Market. However, Nasdaq notes that Acquisition Companies differ in some important respects from traditional operating companies and believes that these differences make it reasonable to adopt separate fee schedules for Acquisition Companies.

An Acquisition Company, when it first lists under IM-5101-2, will only be listed for a brief period of time while looking to complete a business combination. Under IM-5101-2, an Acquisition Company must complete a business combination within three years, although the governing documents of many Acquisition Companies require the business combination occur in a shorter time. If the Acquisition Company does not complete a business combination it must return the funds held in trust to the company's shareholders and dissolve the company. Accordingly, Acquisition Companies must assess the economic value of a listing on the basis of a potentially very brief period of listing. Given the much shorter average length of an

⁶ Nasdaq would also add sub-paragraph numbering to Rule 5910(a)(1) to improve readability and move language about the deferral of the Entry Fee applicable to Acquisition Companies to new Rule 5910(a)(1)(B).

Acquisition Company's listing, Nasdaq believes it is reasonable to charge Acquisition Companies listed on the Nasdaq Global Market lower Entry Fees than operating companies.

Further, upon first listing, Acquisition Companies are not eligible to receive services from Nasdaq under IM-5900-7, unlike other companies listing on the Nasdaq Global Market, and therefore Nasdaq believes that it is reasonable to charge Acquisition Companies that list on the Nasdaq Global Market lower Entry Fees than operating companies.⁷ While Acquisition Companies are searching for a target to complete a business combination Nasdaq has observed that their shares typically trade less frequently than comparable operating companies.⁸ Accordingly, they are less reliant on the Exchange's trading platform and need less support from the Nasdaq Market Intelligence Desk and require fewer regulatory resources to monitor trading. In addition, in Nasdaq's experience their periodic filings tend to be simpler than those of operating companies, they issue fewer press releases prior to announcing their business combination, and their prices generally remain stable resulting in very few deficiencies related to their price or market value measures, all of which also leads to their requiring fewer regulatory resources.⁹ Accordingly, Nasdaq believes that it is reasonable to charge Acquisition Companies listed on the Nasdaq Global Market lower All-Inclusive Annual Fees than operating companies.

Nasdaq does not expect the financial impact of this proposal to be material in terms of the

⁷ An Acquisition Company is offered certain services under IM-5900-8 following the public announcement that the company entered into a binding agreement for the business combination, however these services are available to Acquisition Companies listed on either the Nasdaq Global Market or the Nasdaq Capital Market.

⁸ This trading pattern will generally change once the Acquisition Company announces its business combination target.

⁹ While Nasdaq has experienced few deficiencies recently, historically some Acquisition Companies became non-compliant with the holder requirement. See, e.g., Nasdaq Rule 5550(a)(3) (requiring at least 300 Public Holders for continued listing on the Nasdaq Capital Market).

level of listing fees collected from issuers. Specifically, Nasdaq notes that without the proposed fee changes, many of the Acquisition Companies that do not qualify for the Nasdaq Capital Market would list on a market with lower listing fees instead of on Nasdaq, in which case Nasdaq would not collect any fees. Moreover, once an Acquisition Company completes a business combination it would be subject to the higher fee schedule applicable to operating companies.¹⁰ Accordingly, the Exchange believes that the proposed rule change will not impact the Exchange's resource commitment 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,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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.

¹⁰ Nasdaq notes that its All-Inclusive Annual Fee is assessed on January 1 of each year and neither the Acquisition Company nor the post-business combination entity would pay any additional fees in the year of the business combination (irrespective of the form or structure of that combination). However, the post-business combination would begin paying the higher Annual Fee as of January 1 of the following year.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

The proposed fees are being implemented to avoid charging a higher fee to an Acquisition Company that is unable to list on the Nasdaq Capital Market but is able to list on the Nasdaq Global Market due to insufficient shareholders' equity and to enable Nasdaq to compete with other markets that can list such Acquisition Companies. Nasdaq believes it is equitable under Section 6(b)(4) of the Act¹³ to charge Global Market Acquisition Companies the same fees as Capital Market Acquisition Companies given that they are treated the same regardless of whether they are listed on the Global or Capital Market. For example, as described below, neither is eligible to receive services upon first listing, each receive identical services from Nasdaq upon announcing a business combination and each uses similar regulatory resources.

Moreover, the Exchange believes that the proposal is not unfairly discriminatory, because Acquisition Companies are shell companies with no business operations, and, while searching for a target, their shares trade less frequently on the Exchange than operating companies. In Nasdaq's experience, Acquisition Companies are less reliant on the Exchange's trading platform and need less support from the Nasdaq Market Intelligence Desk and require fewer regulatory resources to monitor trading. In addition, in Nasdaq's experience, their periodic filings tend to be simpler than those of operating companies, they issue fewer press releases prior to announcing their business combination, and their prices generally remain stable resulting in very few deficiencies related to their price or market value measures, all of which also leads to their requiring fewer regulatory resources. Further, Acquisition Companies are not eligible to receive services from Nasdaq under IM-5900-7, unlike other companies listing on the Nasdaq Global Market. While an Acquisition Company is offered certain services under IM-5900-8 following the public announcement that the company entered into a binding agreement for the business

¹³ 15 U.S.C. 78f(b)(4).

combination, these services are available to Acquisition Companies listed on either the Nasdaq Global Market or the Nasdaq Capital Market. Therefore, Nasdaq believes that it is appropriate, and not unfairly discriminatory, to charge lower fees to Global Market Acquisition Companies than are charged to operating companies listed on the Nasdaq Global Market.

Finally, Nasdaq competes for listings with the New York Stock Exchange, which has adopted lower fees for Acquisition Companies than for operating companies¹⁴ and can list certain Acquisition Companies that have insufficient shareholders' equity to list on the Nasdaq Capital Market, but can list on the Nasdaq Global Market. Nasdaq believes that this competition is a non-discriminatory reason to reduce the fees for Acquisition Companies seeking to list on the Nasdaq Global Market.

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

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 new fee schedule will be available to all similarly situated issuers on the same basis. The Exchange does not believe that the proposed fees 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

¹⁴ See Section 902.11 of the NYSE Listed Company Manual, imposing a flat \$85,000 Listing Fee for an Acquisition Company and providing a limit of \$85,000 on annual fees payable by an Acquisition Company. Under NYSE Listing Rules, a SPAC can list without regard to the amount of its stockholders' equity.

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. Nasdaq notes that the New York Stock Exchange is its primary competitor for listing Acquisition Companies and that market has already adopted a lower fee for Acquisition Companies than for operating companies.¹⁵

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 Act.¹⁶

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁵ Id.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2021-055 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-2021-055. 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-2021-055 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).