

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57685; File No. SR-NASDAQ-2008-013)

April 18, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of Additional Initial Listing Standards for Special Purpose Acquisition Vehicles

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 March 14, 2008, The NASDAQ Stock Market LLC (“Nasdaq”) 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 Nasdaq. 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 the Substance of the Proposed Rule Change

The proposed rule change adopts additional listing criteria that Nasdaq proposes to apply when listing acquisition vehicles. Nasdaq will implement the proposed rule upon approval.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>3</sup>

**[IM-4300.] IM-4300-1. Use of Discretionary Authority**

No changes.

**IM-4300-2. Listing of Companies Whose Business Plan is to Complete One or More**

**Acquisitions**

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.complinet.com>.

Generally, Nasdaq will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of 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, Nasdaq will permit the listing if the company meets all applicable initial listing requirements, as well as the conditions described below.

- (a) Gross proceeds from the initial public offering must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution," as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account").
- (b) Within 36 months of the effectiveness of its IPO registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.
- (c) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the company's independent directors.
- (d) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered.

Until the company completes a business combination where all conditions in paragraph (b) above are met, the company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined company must meet the requirements for initial listing. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq will issue a Staff Determination under Rule 4804 to delist the company's securities.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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 the past, Nasdaq has applied its discretionary authority under Rule 4300 to deny listing to companies whose business plan is to complete an initial public offering and engage in a subsequent, unidentified merger or acquisition (an "acquisition vehicle").<sup>4</sup> However, Nasdaq has

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<sup>4</sup> Nasdaq Rule 4300 provides Nasdaq with broad discretionary authority over the initial and continued listing of securities in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, even though the securities meet all enumerated criteria for initial or continued listing.

observed that a number of such recent offerings have included investor protections that serve to mitigate Nasdaq's past concerns about listing such companies.<sup>5</sup> As a result, Nasdaq has reconsidered its prior policy and determined to list acquisition vehicles provided they do not otherwise raise public interest concerns.<sup>6</sup> In order to provide transparency to that change in policy, and to describe certain additional criteria that Nasdaq will require for acquisition vehicles, Nasdaq proposes to adopt IM-4300-2, which will set out criteria designed to afford investors in acquisition vehicles additional protection.

First, these companies must meet all applicable initial listing requirements. Thus, for initial listing, companies seeking to list on the Nasdaq Global Market must have a minimum market value of listed securities of \$75 million and companies seeking to list on the Nasdaq Capital Market must have a minimum market value of listed securities of \$50 million.<sup>7</sup> In addition, Nasdaq has determined to impose the following additional criteria for listing a company whose business plan is to complete an initial public offering and engage in a subsequent, unidentified merger or acquisition:<sup>8</sup>

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<sup>5</sup> In addition, while some of Nasdaq's past denials were based, in part, upon concerns surrounding the underwriter or sponsor of the company, Nasdaq has observed that the underwriters and sponsors of recent offerings do not raise similar concerns.

<sup>6</sup> As it does with any initial listing, Nasdaq will evaluate the reputation of the company's sponsors and underwriters pursuant to Nasdaq Rule 4300 in determining whether listing is appropriate.

<sup>7</sup> Nasdaq Rules 4310(c)(2)(B) and 4420(c). Note that given the nature of these companies, they will not satisfy the alternative initial listing requirements because of the income and operating history requirements of those standards. If the company chooses to list a unit, then Rule 4310(c)(10) or 4420(h) would also be applicable. As noted below, these companies will be required to satisfy the initial listing requirements following subsequent business combinations.

<sup>8</sup> These criteria were derived from protections Nasdaq has observed built into recent transactions and Rule 419 under the Securities Act of 1933, 17 CFR 230.419.

- (a) Gross proceeds from the initial public offering must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution," as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account").
- (b) Within 36 months of the effectiveness of its IPO registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.
- (c) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the company's independent directors.
- (d) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered.

Nasdaq will also review such a company in connection with each acquisition to assure that it remains appropriate to continue to list the company. In that regard, Nasdaq will require that the company meet the initial listing requirements upon conclusion of the transaction<sup>9</sup> and will conduct a regulatory review of any individuals that become newly involved with the company as a result of the transaction. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set

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<sup>9</sup> Companies will not be required to pay a new listing fee in connection with such a review.

forth above, Nasdaq will issue a Staff Determination under Rule 4804 to delist the company's securities.<sup>10</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general and with Sections 6(b)(5) of the Act,<sup>12</sup> in particular. Section 6(b)(5) requires, among other things, that a registered national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these requirements in that it imposes additional requirements on acquisition vehicles, which are designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices on the part of acquisition vehicles and their promoters.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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<sup>10</sup> The Commission notes acquisition companies listed on Nasdaq would need to meet the applicable Nasdaq's continued listing standards. See Telephone conversation between Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission and Arnold Golub, Associate General Counsel, Nasdaq, on April 4, 2008. For example, acquisition companies that list on the Nasdaq Global Market would need to meet the Global Market continued listing standards in Nasdaq Rule 4450. Further, the Commission notes that units would need to meet the listing standards in Nasdaq Rule 4310(c)(10), which requires all component parts to meet the applicable initial and continued listing standards.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

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

Within 35 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 self-regulatory organization consents, the Commission will:

- A. by order approve 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-2008-013 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Nasdaq-2008-013. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not 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-2008-013 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).