

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89403; File No. SR-NASDAQ-2020-038)

July 27, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Defer Entry Fees for Acquisition Companies

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 14, 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 defer entry fees for Acquisition Companies for one year from the date of listing and to make minor attendant technical changes.

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

¹ 15 U.S.C. 78s(b)(1).

² 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 a rule (IM-5101-2) to impose additional listing requirements on 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”).³ Based on experience listing these companies, Nasdaq proposes to modify the process of assessing entry fees applicable to them on all three tiers of Nasdaq. Specifically, for an Acquisition Company listed under IM-5101-2 on the Nasdaq Global or Global Select Market, Nasdaq proposes to defer the entry fee described in Listing Rule 5910(a)(1) for one year from the date of listing. Similarly, for an Acquisition Company listed under IM-5101-2 on the Nasdaq Capital Market, Nasdaq proposes to defer the entry fee described in Listing Rule 5920(a)(1) for one year from the date of listing. For the avoidance of doubt, in each case, such fee is owed to Nasdaq at the time of listing based on the fee schedule in effect on the date of listing but is assessed by Nasdaq on the first anniversary of the date of listing.

Acquisition Companies are formed to raise capital in an initial public offering (IPO) with the purpose of using the proceeds to acquire one or more unspecified businesses or assets to be identified after the IPO. However, unlike other types of listed companies that have pre-existing operations or that fund their operations by proceeds raised from the IPO, following the IPO, an

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

Acquisition Company funds a trust account with an amount typically equal to 100% of the gross proceeds of the IPO.⁴ As such, operating expenses are typically borne by the Acquisition Company's sponsors, particularly during the initial post-IPO period. The Acquisition Company's sponsor is the entity or management team that forms the Acquisition Company and, typically, runs the operations of the Acquisition Company until an appropriate target company is identified and the business combination is consummated. The funds in the trust account are typically invested in short-term U.S. government securities or held as cash, earning interest over time. Thus, Acquisition Company unique structure results in sponsor's extreme fee sensitivity, particularly during the initial post-IPO period before any substantial amount of interest is earned from the trust account. Nasdaq believes that the market practice of depositing 100% of the gross proceeds of the IPO in a trust account (rather than the minimum required 90%) benefits shareholders and is consistent with investor protection because it helps assure that shareholders exercising their right to redeem their shares for a pro rata share of the trust account will receive the full IPO price paid, rather than a lesser amount guaranteed by Nasdaq rules.⁵ Accordingly, to encourage this market practice Nasdaq believes it is appropriate to defer the payment of the entry fees owed by an Acquisition Company listed on Nasdaq until the first anniversary of the date of listing.

Nasdaq believes that the proposed fee deferral would provide an incentive to sponsors to list Acquisition Companies on Nasdaq. Nasdaq also believes it is reasonable to balance its need

⁴ While under Nasdaq's rules an Acquisition Company could pay operating and other expenses, subject to a limitation that 90% of the gross proceeds of the company's offering must be retained in trust account, Nasdaq understands that marketplace demands typically dictate that 100% of the gross proceeds from the IPO be kept in the trust account and that only interest earned on that account be used to pay taxes and a limited amount of operating expenses. See Listing Rule IM-5101-2 (a).

⁵ See Listing Rule IM-5101-2 (d) and (e).

to remain competitive with other listing venues, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. Nasdaq notes that the fee deferral will not cause any reduction to Nasdaq's revenue and no other company will be required to pay higher fees as a result of the proposed amendments and represents that the proposed fee deferral will have no impact on the resources available for its regulatory programs.

Nasdaq also proposes to amend Listing Rules 5910(a)(11) and 5920(a)(11) to clarify that Acquisition Companies listed under IM-5101-2 are subject to the application fees described in these rules. This will also help assure that there is no impact on the resources available for Nasdaq's regulatory programs.

Finally, Nasdaq proposes to amend the reference in Listing Rule 5920(a)(1) to correctly cross reference Listing Rule 5920(a)(11), which describes the assessment of application fees on the Nasdaq Capital Market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

Nasdaq believes that the proposed rule change to defer the entry fees described in Listing Rules 5910(a)(1) and 5920(a)(1) for one year from the date of listing is reasonable and not unfairly discriminatory because it recognizes the unique structure Acquisition Companies that results in sponsor's extreme fee sensitivity, particularly during the initial post-IPO period before any substantial amount of interest is earned from the trust account. Unlike other companies, which have pre-existing operations and immediate access to the IPO proceeds, Acquisition Companies are unique because at least 90%, and typically 100%, of the IPO proceeds are held in trust for the shareholders and are not available to fund their operations. Acquisition Companies also do not have any prior operations that generate cash that could be used to fund their operations. Nasdaq also believes that the proposed fee deferral is reasonable in that it will create a commercial incentive for sponsors to list Acquisition Companies on Nasdaq. Nasdaq competes for listings, in part, by the level of its listing fees, and the proposed deferral of the entry fees for Acquisition Companies based on the unique issues associated with their structure is similarly a reasonable basis on which for Nasdaq to distinguish itself from competitors.

Nasdaq also notes that no other company will be required to pay higher fees as a result of the proposed amendments. Therefore, Nasdaq believes that allowing an Acquisition Company to pay entry fees on a deferred basis is reasonable and not inequitable or unfairly discriminatory.

Finally, Nasdaq believes that the proposal to defer such fees is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically,

the amount of revenue deferred by allowing Acquisition Companies to pay entry fees one year from the date of listing is not substantial, and the fee deferral may result in more Acquisition Companies listing on Nasdaq, thereby increasing the resources available for Nasdaq's listing compliance program, which helps assure that listing standards are properly enforced and investors are protected. In addition, Nasdaq believes that the market practice of depositing 100% of the gross proceeds of the IPO in a trust account for the benefit of shareholders (rather than the required 90%) benefits those shareholders and is consistent with the investor protection goals of the Act because it helps assure that shareholders exercising their right to redeem their shares for a pro rata share of the trust account will receive the full IPO price paid, rather than a lesser amount guaranteed by Nasdaq rules.

Nasdaq believes that the potential impact on revenue from the entry fee deferral, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

Nasdaq also believes that the proposed rule change to amend Listing Rules 5910(a)(11) and 5920(a)(11) to clarify that Acquisition Companies listed under IM-5101-2 are subject to the application fees described in these rules and to amend the reference in Listing Rule 5920(a)(1) to correctly cross reference Listing Rule 5920(a)(11), which describes the assessment of application fees, is designed to promote just and equitable principles of trade by eliminating potential confusion about Nasdaq rules by clarifying these rules and updating an inaccurate cross-reference, without changing the substance of the rules.

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. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by

each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees. For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

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.⁸

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.

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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-038 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-2020-038. 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-2020-038 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.⁹

J. Matthew DeLesDernier
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).