

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89915; File No. SR-NASDAQ-2020-044)

September 17, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of Proposed Rule Change to Adopt Listing Rule IM-5900-8 to Offer a Complimentary Global Targeting Tool to Acquisition Companies Listed Pursuant to Nasdaq IM-5101-2 that Have Publicly Announced Entering Into a Binding Agreement for a Business Combination

I. Introduction

On July 15, 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 offer a complimentary global targeting tool to an acquisition company that has publicly announced entering into a binding agreement for a business combination. The proposed rule change was published in the Federal Register on August 3, 2020.² The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

Generally, Nasdaq does 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 (“IPO”) 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 certain additional conditions described in Nasdaq Rule IM-5101-2 (Listing of Companies

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 89413 (July 28, 2020), 85 FR 46759 (“Notice”).

Whose Business Plan is to Complete One or More Acquisitions). Rule IM-5101-2 requires, among other things, that at least 90% of the gross proceeds from the IPO and any concurrent sale by the company of equity securities must be deposited in a “deposit account,” as that term is defined in the rule, and that the company complete within 36 months, or a shorter period identified by the company, 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.³

The Exchange proposes to adopt Nasdaq IM 5900-8, to allow Nasdaq, through its affiliate Nasdaq Corporate Solutions, LLC, to offer a company listed under IM-5101-2 (“Acquisition Company”) a complimentary global targeting tool following the public announcement that the company entered into a binding agreement for the business combination intended to satisfy the conditions in IM-5101-2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated.⁴

³ See Rule IM-5101-2(a) and (b). Nasdaq IM-5101-2 also requires that following each business combination, the combined company must meet the requirements for initial listing. See *infra* note 12. 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 in the IM-5101-2, Nasdaq will issue a Staff Delisting Determination under Nasdaq Rule 5810 to delist the company’s securities. See Rule IM-5101-2(d).

⁴ See proposed IM-5900-8. As set forth in Nasdaq IM-5900-7 (Services Offered to Certain Newly Listing Companies), the Exchange currently offers certain newly listing companies complimentary services to help them satisfy their obligations as public companies related to governance and communications, and to provide intelligence about their securities. These services are offered to companies listing on the Global or Global Select Market, based on market capitalization, in connection with their IPO in the United States, including American Depositary Receipts (other than a company listed under IM-5101-2); upon emerging from bankruptcy; in connection with a spin-off or carve-out

Proposed Nasdaq IM-5900-8 states that, through this global targeting tool, investor targeting specialists will help focus the Acquisition Company's investor relations efforts on appropriate investors, tailor messaging to their interests and measure the company's impact on their holdings. The analyst team will help develop a detailed plan aligning the targeting efforts with the company's long-term ownership strategy. Such analysis will include addressable risks and opportunities by region and investor type, and recommendations for where to focus time. According to the Exchange, this service has a retail value of approximately \$44,000 per year.⁵

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.⁶ Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's

from another company; in connection with a Direct Listing as defined in IM-5315-1 (including the listing of American Depositary Receipts); or in conjunction with a business combination that satisfies the conditions in IM-5101-2(b) ("Eligible New Listings"). These complimentary services are also offered, based on market capitalization, to companies (other than a company listed under IM-5101-2) switching their listing from the New York Stock Exchange to the Global or Global Select Markets ("Eligible Switches"). Nasdaq does not currently offer complimentary services to companies listing on the Nasdaq Capital Market or to Acquisition Companies listing on any market tier. See Nasdaq IM-5900-7. The Exchange stated that, in certain circumstances, under the proposal an Acquisition Company may be eligible to receive services under both IM-5900-7 and proposed IM-5900-8 for a short period of time following the completion of a business combination pursuant to IM-5101-2.

⁵ See proposed IM-5900-8.

⁶ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4) and (5).

facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act⁸ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to offer a complimentary global targeting tool to all Acquisition Companies⁹ following the public announcement of a binding agreement to enter into a business combination intended to satisfy the conditions in Nasdaq IM-5101-2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated. As stated in its proposal, the Exchange has observed that once an Acquisition Company publicly announces a business combination with an operating company, the Acquisition Company needs to identify and target investors appropriate for the new business and specifically target investors who are interested in investing in the acquired business.¹⁰ The Exchange stated that such investor targeting may help the Acquisition Company convey the long-term vision of the acquired business to investors and diminish potential redemptions at the time of the business combination with the operating company.¹¹ In

⁸ 15 U.S.C. 78f(b)(8).

⁹ This would include Acquisition Companies listed on the Nasdaq Capital, Global, and Global Select Markets. Nasdaq does not currently offer complimentary services under IM-5900-7 to companies listing on the Nasdaq Capital Market so this rule proposal will be the first time the Exchange provides the same service on all three listing tiers. See supra note 4.

¹⁰ See Notice, supra note 2, at 46760.

¹¹ See id. The Acquisition Company's shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the business combination. See IM-5101-2(d) and (e).

addition, the Exchange believes that such diminished redemptions may help Acquisition Companies remain in compliance with other listing requirements, including the shareholder requirement for continued listing.¹² The Exchange further stated that offering the tool for 60 days following the completion of the business combination will allow for a smooth transition to the traditional operating company model and avoid disruption of the service during the completion of the business combination transaction.¹³

As noted in the order approving Nasdaq IM-5900-7, Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an Exchange not unfairly discriminate between issuers.¹⁴ The Commission believes that the

¹² See Notice, supra note 2, at 46761. Listing Rule 5450(a)(2) requires at least 400 Total Holders for continued listing on the Nasdaq Global Market. Listing Rule 5550(a)(3) requires at least 300 Public Holders for continued listing on the Nasdaq Capital Market. The Commission notes, however, that these continued listing requirements only apply during the continued listing of the Acquisition Company prior to any business combination. Nasdaq IM-5101-2 requires that, at the time of a business combination, the combined company would need to meet all applicable initial listing requirements. See supra note 3. For initial listing, among other requirements, Listing Rule 5405(a)(3) requires at least 400 Round Lot Holders on Nasdaq Global Market and Listing Rule 5505(a)(3) requires at least 300 Round Lot Holders on Nasdaq Capital Market.

¹³ See Notice, supra note 2, at 46761. The Exchange stated that Acquisition Companies do not have operating businesses and, therefore, do not generally need shareholder communication services, market analytic tools or market advisory tools. As a result, these companies do not receive complimentary services under Nasdaq IM-5900-7, but would be eligible to receive services under IM-5900-7 when listing on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in IM-5101-2(b). See id. at 46760. See also IM-5900-7. While the Exchange noted that a company may be eligible to receive services under both IM-5900-7 and proposed IM-5900-8 for a short period of time following the completion of a business combination, the Commission notes that such eligibility would be restricted to the global targeting tool and would be limited to no more than 60 days. See supra note 4.

¹⁴ 15 U.S.C. 78f(b)(5); see also Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (approving NASDAQ-2011-122) (“2011 Approval Order”).

Exchange has reasonably justified treating an Acquisition Company that has publicly announced that it has entered into a binding agreement to enter into a business combination differently than other companies, including Acquisition Companies that have not yet announced that they have entered into a business combination. As discussed above, Acquisition Companies have an increased need to focus on identifying and communicating with shareholders and prospective investors following the public announcement of entering into a business combination. In addition, the Exchange stated that at this time in an Acquisition Company's lifecycle, the company is transitioning to the traditional operating company model and the complimentary global targeting tool will help ease this transition.¹⁵

The Commission also believes that describing in the Exchange's rules the products and services available to listed companies and their associated values adds greater transparency to the Exchange's rules and to the fees applicable to such companies and will ensure that individual listed companies, including Acquisition Companies, are not given specially negotiated packages of products or services to list, or remain listed, that would raise unfair discrimination issues under the Act.¹⁶ The Commission has previously found that the package of complimentary services offered to Eligible New Listings and Eligible Switches, which includes the global targeting tool, is equitably allocated among issuers consistent with Section

¹⁵ See Notice, supra note 2, at 46761.

¹⁶ See Exchange Act Release No. 79366, 81 FR 85663 at 85665 (approving SR-NASDAQ-2016-106) ("2016 Approval Order") (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE-2011-20)). The Commission notes that the Exchange also stated that no other company will be required to pay higher fees as a result of the proposal and that providing the complimentary global targeting tool will have no impact on the resources available for its regulatory programs. See Notice, supra note 2, at 46760.

6(b)(4) of the Act.¹⁷ Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for offering a complimentary global targeting tool to Acquisition Companies that have announced that they have entered into a binding agreement to enter into a business combination until 60 days following the completion of the business combination (or such time that the Acquisition Company publicly announces that such agreement is terminated), and that this change does not unfairly discriminate among issuers and is consistent with the Act.

The Commission also believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. The Exchange stated in its proposal that it faces competition in the market for listing services and the Commission understands that the Exchange competes, in part, by offering complimentary services to companies.¹⁸ The Exchange further stated it believes the offering of the complimentary global targeting tool will provide an incentive to Acquisition Companies to list on Nasdaq.¹⁹ Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.²⁰

¹⁷ See 2016 Approval Order, supra note 16, at 85665.

¹⁸ See Notice, supra note 2, at 46761. The Commission notes that the complimentary services under the proposal will be provided by Nasdaq Global Solutions, LLC, an affiliate of Nasdaq. The Commission has previously stated that providing complimentary services to its listed companies through an affiliate as opposed to a third party vendor is among the different ways Nasdaq competes for listings and provides services to listed companies and that this reflects the competitive environment. See 2011 Approval Order, supra note 14, at 79267. The Exchange also noted that other providers could compete by offering similar services to Acquisition Companies. See Notice, supra note 2, at 46761.

¹⁹ See Notice, supra note 2, at 46760.

²⁰ 15 U.S.C. 78f(b)(8)

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2020-044) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier
Assistant Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).