

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90995; File No. SR-NASDAQ-2020-069)

January 26, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Exclude Special Purpose Acquisition Companies from the Requirement That at Least 50% of a Company's Round Lot Holders Each Hold Unrestricted Securities with a Market Value of at Least \$2,500

I. Introduction

On October 8, 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 exclude special purpose acquisition companies from the requirement that at least 50% of a company's round lot holders each hold unrestricted securities with a market value of at least \$2,500. On October 21, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on October 28, 2020.³ On December 11, 2020, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90245 (October 22, 2020), 85 FR 68400 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

Amendment No. 1.⁵ This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange has proposed to exclude companies listed pursuant to Nasdaq Rule IM-5101-2 whose business plan is to engage in a merger or acquisition with one or more unidentified companies within a specified period of time (“SPACs”), prior to the completion of any such merger or acquisition, from the requirement that at least 50% of the company’s required minimum number of round lot holders must each hold unrestricted securities with a market value of at least \$2,500 at the time of initial listing (“Required Minimum Amount”).⁶

⁵ See Securities Exchange Act Release No. 90644, 85 FR 82005 (December 17, 2020). The Commission designated January 26, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.

⁶ Nasdaq defines “round lot holder” as a holder of a normal unit of trading of unrestricted securities. The number of beneficial holders will be considered in addition to holders of record. See Nasdaq Rule 5005(a)(40). Nasdaq defines “normal unit of trading” to mean 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. See Nasdaq Rule 5005(a)(39). Nasdaq defines “unrestricted securities” to mean securities that are not restricted securities. See Nasdaq Rule 5005(a)(46). Nasdaq defines “restricted securities” to mean securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered “restricted securities” under Rule 144. See Nasdaq Rule 5005(a)(37). The number of required minimum number of round lot holders is 450 holders for the Nasdaq Global Select Market; 400 holders for the Nasdaq Global Market; and 300 holders for the Nasdaq Capital Market. See Nasdaq Rules 5315(f)(1)(C), 5405(a)(3), and 5505(a)(3). Nasdaq defines “market value” as the consolidated closing bid price multiplied by the measure to be valued. See Nasdaq Rule 5005(a)(23).

The Exchange states in its proposal that it imposed the Required Minimum Amount to help ensure that at least 50% of the required minimum number of shareholders hold a meaningful value of unrestricted securities and that a company has sufficient investor interest to support an exchange listing.⁷ The Exchange asserts that, prior to adopting the Required Minimum Amount, it had noticed problems with companies listing where a large number of round lot holders held exactly 100 shares, which would be worth only \$400 in the case of a stock that is trading at the minimum bid price of \$4 per share, or as little as \$200 in the case of a stock listing under alternative price criteria.⁸ The Exchange further states that such holders held shares in the company prior to its IPO and that such amount was not a representation of genuine investor interest in the company sufficient to support an exchange listing.⁹ In proposing to adopt the standard, the Exchange stated that it believed the Required Minimum Amount was a more appropriate representation of genuine investor interest in the company and would make it more difficult to circumvent the round lot holder requirement through share transfers for no value.¹⁰

⁷ See Notice, supra note 3, at 68401; Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102, 33107 (July 11, 2019) (order approving SR-NASDAQ-2019-009) (“Required Minimum Amount Approval Order”). In the Required Minimum Amount Approval Order, the Commission also approved Nasdaq’s proposal to exclude restricted securities (see supra note 6) from the calculation of publicly held shares, market value of publicly held shares, and round lot holders for initial listing purposes. According to Nasdaq, these changes were designed to help ensure adequate distribution, shareholder interest, and a liquid trading market for a security. See Notice, supra note 3, at 68401; Required Minimum Amount Approval Order, supra, at 33103, 33108-09.

⁸ See Notice, supra note 3, at 68401. See also Required Minimum Amount Approval Order, supra note 7, at 33109.

⁹ See Notice, supra note 3, at 68401-02.

¹⁰ See id. at 68401; Required Minimum Amount Approval Order, supra note 7, at 33109.

The Exchange states that it does not believe the Required Minimum Amount is as relevant to the listing of SPACs.¹¹ In contrast to its observations regarding operating companies,¹² the Exchange states that typically the only investors holding shares in a SPAC prior to an IPO are its founders and that all other round lot holders generally represent new investors in the SPAC's IPO.¹³ The Exchange therefore does not believe that SPACs present a similar risk as operating companies of circumventing the round lot holder requirement through share transfers for no value and represents that it has not observed this problem with SPACs.¹⁴ Further, the Exchange states that shareholders of SPACs are afforded the opportunity to redeem or tender their shares for a pro rata portion of the value of the IPO proceeds maintained in a trust account in connection with the SPAC's business combination, which must occur within 36 months of the IPO, and therefore, the SPAC structure provides an alternative liquidity mechanism that operating companies do not offer.¹⁵

¹¹ See Notice, supra note 3, at 68401. Nasdaq Rule IM-5101-2 sets forth requirements applicable to SPACs and requires, among other things, that at least 90% of the gross proceeds raised in the IPO and any concurrent sale by the SPAC of equity securities must be deposited in a trust account. See Nasdaq Rule IM-5101-2(a). Until a SPAC has completed business combinations meeting the requirements of IM-5101-2(b), each shareholder has the right to redeem their shares into a pro rata share of the aggregate amount in the deposit account if: (i) the shareholder votes against a business combination; or (ii) a shareholder vote on the business combination is not held for which the company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act. See Nasdaq Rules IM-5101-2(d) and (e).

¹² See supra notes 8-9 and accompanying text.

¹³ See Notice, supra note 3, at 68401.

¹⁴ See id.

¹⁵ See id. at 68401-02. The Exchange also states that it believes the value of a SPAC prior to a business combination, unlike the value of an operating company, is not based solely on investor demand for the security but, in the Exchange's view, is based primarily on the value of the cash held in the trust account. See id.

The Exchange accordingly believes that SPACs should be excluded from the Required Minimum Amount and proposes to revise Nasdaq Rules 5315(f)(1)(C) (for the Nasdaq Global Select Market), 5405(a)(3) (for the Nasdaq Global Market), and 5505(a)(3) (for the Nasdaq Capital Market) to exclude SPACs from the requirement to meet the Required Minimum Amount at the time of initial listing.¹⁶ The Exchange notes, however, that SPACs must continue to satisfy the Exchange's other initial listing requirements at the time of listing,¹⁷ including the SPAC listing rules, which, among other things, provide shareholders the right to redeem or convert their shares for a pro rata share of the trust account in conjunction with the business combination.¹⁸ Moreover, following a business combination, in order to remain listed, the combined company must meet Nasdaq's initial listing requirements, which include the Required Minimum Amount, at the time of the IPO.¹⁹ The Exchange states in its proposal that it believes that, although SPACs will be excluded from the Required Minimum Amount at the time of initial listing, requiring SPACs to satisfy Nasdaq's other initial listing standards²⁰ would continue to help ensure that SPACs have sufficient public float, investor base, and trading interest likely to

¹⁶ See id. at 68402.

¹⁷ See id. These initial listing requirements currently include, among other things, a minimum number of unrestricted publicly held shares, minimum market value of unrestricted publicly held shares, minimum number of round lot holders of unrestricted shares, and minimum bid price. See id. at 68402 n.9. The Commission notes, as an example, that a SPAC listed on the Nasdaq Capital Market under the Market Value of Listed Securities Standard must have at least one million unrestricted publicly held shares and a market value of unrestricted publicly held shares of at least \$15 million. See Nasdaq Rules 5505(a)(2) and 5505(b)(2)(C). See also Nasdaq Rule 5300 Series (The Nasdaq Global Select Market) and 5400 Series (The Nasdaq Global Market).

¹⁸ See Notice, supra note 3, at 68402-03. See also supra notes 11, 15, and accompanying text.

¹⁹ See Notice, supra note 3, at 68402.

²⁰ See supra note 17.

generate depth and liquidity to support exchange listing and trading, which should help to protect investors and the public interest.²¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,²³ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized that the development and enforcement of meaningful listing standards for an exchange is of critical importance to financial markets and the investing public.²⁴ Among other things, the Commission has stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies that have or will have sufficient public

²¹ See Notice, supra note 3, at 68402.

²² 15 U.S.C. 78f(b). In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ See infra notes 25-26.

float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets.²⁵ Meaningful listing standards are also important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²⁶

The Exchange has proposed to exclude SPACs, prior to the completion of a business combination, from the requirement to meet the Required Minimum Amount at the time of initial listing on the Nasdaq Global Select Market, Nasdaq Global Market, and Nasdaq Capital Market.

²⁵ See, e.g., Securities Exchange Act Release Nos. 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (“SR-NYSE-2017-31 Approval Order”); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (“SR-NYSE-2017-11 Approval Order”); 65708 (November 8, 2011), 76 FR 70799, 70802 (November 15, 2011) (“SR-NASDAQ-2011-073 Approval Order”); 63607 (December 23, 2010), 75 FR 82420, 82422 (December 30, 2010) (“SR-NASDAQ-2010-137 Approval Order”); 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (“SR-NYSE-2008-17 Approval Order”); and 58228 (July 25, 2008), 73 FR 44794, 44796 (July 31, 2008) (“SR-NASDAQ-2008-013 Approval Order”). In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange’s standards for market depth and liquidity so that fair and orderly markets can be maintained. See, e.g., Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (“SR-NYSE-2017-30 Approval Order”); SR-NYSE-2017-31 Approval Order, 82 FR at 48298; SR-NYSE-2017-11 Approval Order, 82 FR at 32023; SR-NASDAQ-2010-137 Approval Order, 75 FR at 82422; and SR-NYSE-2008-17 Approval Order, 73 FR at 27599. The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., SR-NYSE-2017-30 Approval Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR-NASDAQ-2019-059); and 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR-NASDAQ-2020-001).

²⁶ See, e.g., SR-NASDAQ-2011-073 Approval Order, supra note 25, 76 FR at 70802; SR-NASDAQ-2010-137 Approval Order, supra note 25, 75 FR at 82422; SR-NYSE-2008-17 Approval Order, supra note 25, 73 FR at 27599; and SR-NASDAQ-2008-013 Approval Order, supra note 25, 73 FR at 44796.

As described above, the Exchange states that, unlike with operating companies where the Required Minimum Amount is necessary to demonstrate genuine investor interest in the operating company to support an exchange listing, SPACs do not present a similar risk of circumventing the round lot holder requirement through share transfers for no value and that removing this requirement will not impact the protection of investors.²⁷

Given the differences between SPACs and operating companies, including in their structure, and the rights of SPAC shareholders to convert or redeem their shares upon a business combination for a pro rata portion of the IPO proceeds maintained in a trust account, the Commission believes that it is reasonable and not unfairly discriminatory for the Exchange to exclude SPACs from the requirement to meet the Required Minimum Amount at the time of initial listing of the SPAC. Specifically, the Commission believes the Exchange has provided a reasonable basis for its proposal to differentiate SPACs from operating companies in terms of the requirement to comply with the Required Minimum Amount upon initial listing given that, in the Exchange's experience, SPACs do not appear to present a similar risk of circumventing the round lot holder requirement through share transfers for no value. As the Exchange states in its proposal, typically the only investors holding shares in a SPAC prior to an IPO are its founders, whereas other round lot holders generally represent new investors, in contrast to the Exchange's experience with operating companies.²⁸

Further, the Exchange's other initial listing requirements will remain applicable to SPACs at the time of their initial listing including, among other things, that round lot holders hold unrestricted shares and that SPACs will continue to meet the minimum number and market

²⁷ See supra note 14 and accompanying text.

²⁸ See supra notes 12-13 and accompanying text.

value of unrestricted publicly held shares requirements as well as the other listing requirements on the applicable market tier, in addition to the specific listing criteria applicable to SPACs.²⁹ As the Commission stated when approving the Exchange’s amendments to exclude restricted securities from its calculation of a company’s publicly held shares, market value of publicly held shares, and round lot holders for purposes of qualifying the company’s securities for initial listing, the amendments “should allow the Exchange to more accurately determine whether a security has adequate distribution and liquidity and is thus suitable for listing and trading on the Exchange.”³⁰ In addition, all initial listing requirements apply to the combined company upon consummation of a business combination, which would include the Required Minimum Amount. The Commission therefore believes the Exchange’s current listing rules will continue to provide appropriate listing standards for SPAC securities, both prior to and after the completion of any business combination. Moreover, investors in SPACs will continue to have the ability to convert or redeem their shares for cash into a pro rata share of the amount in the trust account, pursuant to the provisions of Nasdaq Rules IM-5101-2(d) and (e).

These other listing requirements, taken together, should continue to help ensure that SPACs are listed only if there will be a sufficient market, with adequate depth and liquidity and

²⁹ For example, SPACs listed on the Nasdaq Capital Market under the Market Value of Listed Securities Standard would be required to have at least 1,000,000 unrestricted publicly held shares, at least 300 round lot holders that hold unrestricted shares, a minimum market value of listed securities of \$50 million, a minimum market value of unrestricted publicly held shares of at least \$15 million, and at least three registered and active market makers. See Nasdaq Rules 5505(a)-(b). See also Nasdaq Rules 5315(e)-(f) (Nasdaq Global Select Market) and 5405(a)-(b) (Nasdaq Global Market). The Commission understands that, although Nasdaq’s rules provide alternative standards to satisfy in lieu of the market value standards, SPACs typically list under the market value standard given that they have no prior operating history.

³⁰ Required Minimum Amount Approval Order, supra note 7, at 33111. See also supra note 7.

with sufficient investor interest to support an exchange listing, and will continue to provide investors the redemption feature. The Commission also notes that the Exchange’s proposal is consistent with SPAC listing standards on other listing exchanges that do not require round lot holders to hold unrestricted securities of a minimum market value amount.³¹ For the reasons discussed above, the Commission believes the Exchange’s proposal is consistent with the requirements of Section 6(b)(5) of the Act and with the maintenance of fair and orderly markets under the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change, as modified by Amendment No. 1 (SR-NASDAQ-2020-069), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier
Assistant Secretary

³¹ See, e.g., New York Stock Exchange LLC (“NYSE”) Listed Company Manual Section 102.06. The Commission notes that NYSE’s initial listing standards for SPACs, which require an aggregate market value of \$100 million and market value of publicly-held shares of \$80 million, are generally higher than those on Nasdaq. See supra notes 17 and 29. See also NYSE American LLC Company Guide Sections 102 and 119.

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).