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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90245; File No. SR-NASDAQ-2020-069]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of 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

October 22, 2020

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 October 8, 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 and II below, which Items have been prepared by the Exchange. 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 Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes 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. This Amendment No. 1 replaces and supersedes the original filing in its entirety.

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 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

Nasdaq proposes to exempt Acquisition Companies listed pursuant to IM-5101-2 whose business plan is to complete one or more acquisitions, prior to the completion of any such acquisitions ("SPACs") from the requirement that 50% of a company's required minimum number of round lot holders need to hold $2,500 worth of securities at the time of initial listing.

Nasdaq's listing requirements include a number of criteria designed to ensure that a listed security has adequate liquidity and is thus suitable for listing and trading on a national securities exchange. These requirements are intended to ensure that there are sufficient shares available for trading to facilitate proper price discovery in the secondary market. Among these is the requirement for a company to have a minimum number of publicly held shares, market value of publicly held shares and round lot holders in order to list a security on the Exchange. These measures help assure that there will be sufficient investor interest and trading to support price discovery during the initial public offering ("IPO") process and once a security is listed.

On July 5, 2019, the Commission approved Nasdaq's proposed changes to enhance its initial listing standards related to liquidity ("Initial Liquidity Amendments").[3] Under the revised standards, securities subject to resale restrictions for any reason ("restricted securities") are excluded from the calculation of publicly held shares, market value of publicly held shares and round lot holders for initial listing purposes.[4] Nasdaq designed the Initial Liquidity Amendments to help ensure adequate distribution, shareholder interest and a liquid trading market for a security. The Initial Liquidity Amendments also imposed a new requirement that at least 50% of a company's minimum

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3 See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (approving SR-NASDAQ-2019-009).

4 Rule 5005(a)(37) defines "Restricted Securities" as "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."

required round lot holders must each hold unrestricted securities with a market value of at least $2,500 (the "Required Minimum Amount").

Nasdaq 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. It also serves to assure that investors purchasing shares in an IPO at the offering price are making a large enough investment that the price established in that offering is reliable. Prior to adopting the Initial Liquidity Amendments, Nasdaq 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. In adopting the Initial Liquidity Amendments, Nasdaq believed that the Required Minimum Amount is 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.

Since implementing the Initial Liquidity Amendments, Nasdaq has determined that the requirement for 50% of a company's required minimum number of round lot holders to hold $2,500 worth of securities is not appropriate for the listing of SPACs. SPACs are Special Purpose Acquisition Companies that raise capital in an initial public offering ("IPO") to enter into future undetermined business combinations through mergers, capital stock exchanges, asset acquisitions, stock purchases, reorganizations or other similar business combinations with one or more operating businesses or assets. At least 90% of the gross proceeds raised in the IPO and any concurrent sale of equity securities must be deposited into a trust account.[5] Within 36 months or such shorter time period as specified by the SPAC, the SPAC must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the trust account.[6] Shareholders have the opportunity to redeem their shares for a pro rata portion of the trust at the time of the business combination.[7]

In the offering of an operating company, the underwriters and investors determine a valuation of the company based on its revenues, future cash flow expectations, business activities and peer valuations, among other metrics. Nasdaq believes that imposing the Required Minimum Amount on operating companies helps to ensure that the price arrived at by the underwriters reflects demand from shareholders investing a meaningful amount in the securities. In contrast, in the Exchange's view, the value of a SPAC prior to a business combination is not based solely on investor demand for the security but is based primarily on the value of the cash held in the trust account.[8] Nasdaq therefore believes that the requirement for at least half of a SPAC's required unrestricted round lot holders to hold at least $2,500 of shares is not relevant to help establish the legitimacy of the offering price.

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5 See Nasdaq IM-5101-2(a).

6 See Nasdaq IM-5101-2(b).

7 See Nasdaq IM-5101-2(d) and (e).

8 Nasdaq analyzed the trading history from January 2020 through June 2020 of 57 active, Nasdaq-listed Acquisition Companies listed as of June 30, 2020. Nasdaq observed that shares of all reviewed Acquisition Companies traded, on average, close to the $10.00 redemption value with the median of the average daily range equal to $0.04. This range was the same for those Acquisition companies listed before and after the Initial Liquidity Amendments became operative on August 5, 2019 (25 and 32 companies, respectively).

As noted above, prior to adopting the Initial Liquidity Amendments, Nasdaq noticed problems with companies listing with a large number of round lot holders holding exactly 100 shares. Such holders held shares in the company prior to its IPO, and Nasdaq believed that such amount was not a representation of genuine investor interest in the company sufficient to support an exchange listing. In contrast, typically the only investors holding shares in a SPAC prior to an IPO are its founders and all other round lot holders represent new investors in the SPAC's IPO. Nasdaq therefore believes that SPACs do not present a similar risk of circumventing the round lot holder requirement through share transfers for no value, and Nasdaq has not observed this problem with SPACs. Furthermore, SPAC shareholders 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. As such, the SPAC structure provides an alternative liquidity mechanism that operating companies do not offer. Accordingly, based on the unique structure of SPACs, Nasdaq believes that SPACs should be excluded from the Required Minimum Amount and is proposing to revise Rules 5315(f)(1)(C), 5405(a)(3) and 5505(a)(3) to exclude SPACs from the Required Minimum Amount.[9] As a result of these changes, SPACs must satisfy the Exchange's initial listing requirements at the time

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[9] This change will also align Nasdaq's treatment of SPACs with the treatment of warrants under this rule. In this regard, the valuation of a warrant is similar to the valuation of a share of a SPAC in that the warrant's value is derived from the value of the underlying security and the value of a SPAC share is derived from the value of the underlying trust account. See Initial Liquidity Amendments at 33112.

of the IPO.[10] However, the requirement that 50% of the SPAC's required minimum number of round lot holders hold the Required Minimum Amount at the time of initial listing will not apply.

SPACs will also continue to remain subject to unique listing rules, which provide shareholders the right to redeem or convert their shares for a pro rata share of the trust in conjunction with the business combination. Following a business combination, in order to remain listed, the combined company must meet Nasdaq's initial listing requirements.[11] Nasdaq 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 standards will continue to help ensure that SPACs have sufficient public float, investor base, and trading interest likely to generate depth and liquidity to support exchange listing and trading, which should help to protect investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed 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

10 Those requirements currently include a minimum number of publicly held shares, minimum market value of publicly held shares, minimum number of round lot holders and minimum bid price.

11 Those requirements currently require 50% of the post-business combination entity's minimum number of round lot holders to hold the Required Minimum Amount.

12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(5).

market system, and, in general to protect investors and the public interest, by removing a listing requirement from a security that is not an appropriate measure of liquidity based on the unique structure of the listed company while ensuring adequate distribution, shareholder interest, a liquid trading market and investor protections through other listing standards.

Specifically, as noted above, prior to adopting the Initial Liquidity Amendments, Nasdaq noticed problems with companies listing with a large number of round lot holders holding exactly 100 shares. Such holders held shares in the company prior to its IPO, and Nasdaq believed that such amount was not a representation of genuine investor interest in the company to support an exchange listing. In contrast, typically the only investors holding shares in a SPAC prior to an IPO are its founders and all other round lot holders represent new investors in the SPAC's IPO. SPACs also offer alternative mechanisms to provide liquidity by affording shareholders 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. Nasdaq therefore believes that 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.

Further, the Exchange believes that excluding SPACs from the Required Minimum Amount avoids imposing an unnecessary impediment to the mechanism of a free and open market and is not unfairly discriminatory. As noted above, SPACs provide their shareholders with an alternate mechanism for obtaining liquidity, through the ability to redeem or tender their shares, which other companies do not provide. As such, it is not unfairly discriminatory to treat SPACs differently than operating companies. Further, in an initial offering of an operating company, the underwriters and investors determine a valuation of the company based on its revenues, future cash flow expectations, business activities and peer valuations, among other metrics. Nasdaq believes that imposing the Required Minimum Amount on operating companies helps to ensure that the price arrived at by the underwriters reflects demand from shareholders investing a meaningful amount of unrestricted securities. In contrast, the Exchange has observed that SPACs generally have historically traded close to the value in the trust during the period between its public offering and the consummation of a business combination.[14] This suggests that the value of a SPAC's security derives from the value of the underlying trust. Nasdaq therefore believes that the requirement for at least half of a SPAC's required unrestricted round lot holders to hold at least $2,500 of shares is not relevant to help establish the legitimacy of the offering price.

This proposed change will also align Nasdaq's treatment of SPACs with the treatment of warrants under this rule. In this regard, the valuation of a warrant is similar to the valuation of a share of a SPAC in that the warrant's value is derived from the value of the underlying security and the value of a SPAC share is derived from the value of the underlying trust account. SPACs are also similar to warrants in that warrants represent a right to purchase a share in a company in the future, and SPACs represent a right to convert shares of common stock into a pro rata share of the aggregate amount then in the trust account or into a share of the future post-business combination entity.

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14 See supra note 8.

In adopting the Initial Liquidity Amendments, Nasdaq believed, and the Commission concurred,[15] that it is not unfairly discriminatory to treat warrants differently and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market. The Exchange believes that because the valuation of a SPAC's security is similar to the valuation of a warrant, it is not unfairly discriminatory to treat SPACs differently than other company's listing common stock.

The Exchange believes that other listing standards will help it to ensure adequate distribution, shareholder interest and a liquid trading market of a SPAC's security at the time of IPO and following a business combination. In both cases, a SPAC must satisfy Nasdaq's initial listing standards.[16] Nasdaq 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 standards will continue to help ensure that SPACs have sufficient public float, investor base, and trading interest likely to generate depth and liquidity to support exchange listing and trading, which should help to protect investors and the public interest.

SPACs will also continue to remain subject to unique listing rules. Until the SPAC has completed a business combination of at least 80% of the trust account value, the SPAC must, among other things, submit the business combination to a shareholder vote.[17] Any public shareholders who vote against the business combination have a right to convert their shares of common stock into a pro rata share of the aggregate amount

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15 See Initial Liquidity Amendments at 33112.

16 See supra notes 10 and 11.

17 See Nasdaq IM-5101-2(d).

then in the trust account, if the business combination is approved and consummated.[18] If a shareholder vote on the business combination is not held, the SPAC must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the trust account.[19] In addition, following a business combination, the post-business combination entity must meet Nasdaq's initial listing requirements in order to remain listed.[20] Nasdaq believes that these additional investor protection standards will continue to provide safeguards to shareholders who invest in SPAC securities.

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 Exchange notes that NYSE Rule 802.01B(ii) requires SPACs to have a minimum number of 300 round lot holders ("public stockholders"),[21] however, NYSE does not require such public stockholders to hold a minimum investment amount. NYSE American Rule 119 also does not require public stockholders of a SPAC to hold a minimum investment amount. As a result of the proposed change, round lot holders of

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18 See Nasdaq IM-5101-2(d).

19 See Nasdaq IM-5101-2(e).

20 See supra note 11.

21 NYSE Rule 802.01B(ii)(B) states that "Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares." Nasdaq Rule 5005(a)(35) defines "publicly held shares" as "shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act."

SPACs listed on Nasdaq would not be required to hold the Required Minimum Amount, similar to round lot holders of SPACs listed on NYSE and NYSE American. As a result, the proposed rule change will promote competition among exchanges since it will allow Nasdaq to list SPACs that currently could list on NYSE and NYSE American. In addition, the proposed rule change will apply equally to all SPACs listing on Nasdaq and so won't impact competition among SPACs.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove 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. Please include File Number SR-NASDAQ-2020-069 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-2020-069. 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-2020-069 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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22 17 CFR 200.30-3(a)(12).