



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103864; File No. SR-NASDAQ-2025-066]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Certain Initial Listing Requirements for de-SPAC Transactions**

September 4, 2025.

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 August 22, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 modify the rules applicable to de-SPAC transactions to align the treatment of OTC trading SPACs with similarly situated exchange-listed SPACs.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

#### **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

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

<sup>2</sup> 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

Nasdaq is proposing to modify the definition of a “Reverse Merger” in Listing Rule 5005(a)(39)<sup>3</sup> to exclude the security of a special purpose acquisition company, as that term is defined in Item 1601(b) of Regulation S-K (“SPAC”)<sup>4</sup> that is listing in connection with a de-SPAC transaction, as that term is defined in Item 1601(a) of Regulation S-K (“de-SPAC transaction”), upon effectiveness of a 1933 Securities Act registration statement (“Registration Statement”). Nasdaq also proposes to modify Listing Rules 5315(e)(4), 5405(a)(4), and 5505(a)(5) (the “ADV Requirement”) to exclude the security of a company listing in connection with a de-SPAC transaction, upon effectiveness of a Registration Statement, from the minimum trading volume requirement applicable to newly listing companies that previously traded in the over-the-counter (“OTC”) market. The effect of these changes will be to treat a de-SPAC transaction by a SPAC trading in the OTC market in the same way as a de-SPAC transaction

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<sup>3</sup> Rule 5005(a)(39) defines a “Reverse Merger” as “any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise.” However, the definition currently excludes from being a Reverse Merger “the acquisition of an operating company by a listed company satisfying the requirements of IM-5101-2 or a business combination described in Rule 5110(a).”

<sup>4</sup> The term special purpose acquisition company (SPAC) means a company that has:

(1) Indicated that its business plan is to:

(i) Conduct a primary offering of securities that is not subject to the requirements of § 230.419 of this chapter (Rule 419 under the Securities Act);

(ii) Complete a business combination, such as a merger, consolidation, exchange of securities, acquisition of assets, reorganization, or similar transaction, with one or more target companies within a specified time frame; and

(iii) Return proceeds from the offering and any concurrent offering (if such offering or concurrent offering intends to raise proceeds) to its security holders if the company does not complete a business combination, such as a merger, consolidation, exchange of securities, acquisition of assets, reorganization, or similar transaction, with one or more target companies within the specified time frame; or

(2) Represented that it pursues or will pursue a special purpose acquisition company strategy. 17 CFR § 229.1601

with a listed SPAC and, in each case, subject these transactions to the same rules applicable to an initial public offering.<sup>5</sup>

### Reverse Merger Rule

Under Nasdaq Listing Rule 5110(c), a security issued by a Company formed by a Reverse Merger, as defined in Listing Rule 5005(a)(39), is eligible for initial listing only if it satisfies additional listing conditions, including, among other requirements, that immediately before the filing of the initial listing application, the combined entity traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange; and timely filed all required periodic financial reports with the SEC or other regulatory authority (Forms 10-Q, 10-K or 20-F) for the prior year, including at least one annual report (the “Reverse Merger Requirement”).<sup>6</sup>

Listing Rule 5005(a)(39) defines a “Reverse Merger” as a transaction whereby an operating company becomes an Exchange Act reporting company by combining with a shell company. While a SPAC is a shell company, the rule specifically excludes from the definition of a Reverse Merger the acquisition of an operating company by a “listed” SPAC.<sup>7</sup> The Reverse Merger rule also provides an exception for a company that lists in connection with a firm commitment underwritten public offering where the gross proceeds to the company will be at least \$40 million.<sup>8</sup>

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<sup>5</sup> An OTC SPAC can also structure its de-SPAC transaction such that the operating company, and not the SPAC, is the surviving entity. In a transaction structured in this manner, the de-SPAC transaction would not be subject to the Reverse Merger or ADV Requirements because the listing applicant is a new registrant and not the OTC traded entity. The proposed rule change will therefore also align the treatment of these various structures.

<sup>6</sup> See Listing Rule 5110(c).

<sup>7</sup> See Listing Rule 5005(a)(39).

<sup>8</sup> See Listing Rule 5110(c)(3).

The Reverse Merger Requirement was designed to prevent an operating company from becoming an Exchange Act reporting company in a so-called “backdoor registration”<sup>9</sup> and immediately accessing public markets without any of the vetting from investors and/or underwriters that companies typically undergo when they perform a traditional IPO. Moreover, in these transactions, the newly public company typically is not required to file a 1933 Act registration statement, which is subject to the SEC Staff review.

The Commission recently adopted new rules to align the legal obligations of companies in de-SPAC transactions with those in traditional IPOs and mandated additional disclosures for both SPAC IPOs and de-SPAC transactions (the “SPAC Release”).<sup>10</sup> In the SPAC Release the Commission explained that “[w]hile structured as an M&A transaction, the de-SPAC transaction also is the functional equivalent of the private target company’s IPO, because it results in the target company becoming part of a combined company that is a reporting company and provides the private target company with access to cash proceeds that the SPAC had previously raised from the public.”<sup>11</sup> Further, investment banks involved in the de-SPAC transaction could be considered statutory underwriters and could be found liable for any material misstatements or omissions in the registration statement, similar to an IPO.<sup>12</sup>

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<sup>9</sup> See former Commissioner Aguilar speech: Facilitating Real Capital Formation, citing release No. 33-8587, (July 15, 2005) [70 FR 42233] (stating that “These transactions generally take one of two forms: In the most common type of transaction, a “reverse merger,” the private business merges into the shell company, with the shell company surviving and the former shareholders of the private business controlling the surviving entity. In another common type of transaction, a “back door registration,” the shell company merges into the formerly private company, with the formerly private company surviving and the shareholders of the shell company becoming shareholders of the surviving entity.”).

<sup>10</sup> Securities Exchange Act Release No. 99418 (January 24, 2024), 89 FR 14158 (February 26, 2024). In the SPAC Release the Commission also adopted a definition for a “de-SPAC transaction” that Nasdaq Staff proposes to utilize. See 17 CFR § 229.1601 (Item 1601 of Regulation S-K): “The term de-SPAC transaction means a business combination, such as a merger, consolidation, exchange of securities, acquisition of assets, reorganization, or similar transaction, involving a special purpose acquisition company and one or more target companies (contemporaneously, in the case of more than one target company).”

<sup>11</sup> SPAC Release at 14160.

<sup>12</sup> See e.g., SPAC Release at 14238: “in a de-SPAC distribution, there would be an underwriter present where someone is selling for the issuer or participating in the distribution of securities in the combined company to the SPAC's investors and the broader public. Depending on the facts and circumstances, such an entity could be deemed a “statutory underwriter” even though it may not be named as an underwriter in any given offering or may not be engaged in activities typical of a named underwriter in traditional capital raising.

As described above, Listing Rule 5005(a)(39) already excludes a de-SPAC transaction by a currently listed SPAC from the definition of a Reverse Merger, as do the comparable rules of other exchanges.<sup>13</sup> This exception was premised on the fact that Nasdaq initially listed the SPAC knowing it would seek to conduct a de-SPAC transaction, and investors invested with that knowledge and with the benefit of the additional disclosure and redemption possibilities that come at the time of the de-SPAC transaction, and so it would be inconsistent to require the company to delist and trade in the OTC market at the time it completes the very transaction it was formed to pursue. Nasdaq believes that expanding this definition to also exclude other de-SPAC transactions from the rule is similarly reasonable where the de-SPAC is listing at the time of effectiveness of a Registration Statement. The Commission treats a de-SPAC transaction as the functional equivalent of an IPO;<sup>14</sup> and given the proposed requirement that a de-SPAC transaction occurs upon effectiveness of the Registration Statement, such transaction is subject to a level of investor protection, rigorous disclosure requirements, and SEC review similar to that of an IPO. Similarly, a company conducting a firm commitment underwritten offering is also currently excluded from the Reverse Merger rules, because such an offering involves an underwriter and requires a registration statement, which includes issuer disclosure and can be reviewed by the Commission. These same elements apply to a de-SPAC transaction listing at the time of effectiveness of a Registration Statement, including the participation of investment banks that the Commission has noted could be considered statutory underwriters. Thus, Nasdaq believes that regardless of where the SPAC is trading, a company listing on Nasdaq in

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Section 11 would apply as it would to anyone acting as underwriter with respect to a registered de-SPAC transaction, and such person will have liability for any material misstatement or omission in the registration statement.”

<sup>13</sup> See e.g., NYSE Listed Company Manual Section 102.01F (“However, a Reverse Merger does not include the acquisition of an operating company by a listed company which qualified for initial listing as an acquisition company under Section 102.06.”).

<sup>14</sup> See footnote 10, above.

connection with a de-SPAC transaction at the time of effectiveness of a Registration Statement should be excluded from the Reverse Merger Requirement.

To effect this change, Nasdaq proposes to modify Listing Rule 5005(a)(39) to revise the existing de-SPAC exclusion from the definition of a Reverse Merger to exclude any de-SPAC transaction, as that term is defined in Item 1601(a) of Regulation S-K, that is listing upon effectiveness of a Registration Statement.

#### Average Daily Trading Volume Requirement

In 2019, the Commission approved Nasdaq’s proposed changes to enhance its initial listing standards related to liquidity (“Initial Liquidity Amendments”).<sup>15</sup> Under the revised standards, the ADV Requirement provides that securities that traded in the OTC market prior to the application to list such securities on Nasdaq, must have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day, with trading occurring on more than half of those 30 days. Nasdaq adopted the ADV Requirement to help ensure a liquid trading market, promote price discovery and help establish an appropriate market price for the OTC securities listing on Nasdaq.

Since implementing the Initial Liquidity Amendments, Nasdaq has determined that the ADV Requirement is neither necessary nor appropriate for the listing of a Company in connection with a de-SPAC transaction.

Historically, SPACs listed and traded primarily, if not exclusively, on national securities exchanges while pursuing a business combination, and, at the time the ADV Requirement was adopted SPACs were neither targeted nor immediately affected by the ADV Requirement. Recently, however, Nasdaq observed an increase in a number of SPACs that have been delisted from an exchange and then trade as SPACs in the OTC market. When an OTC-trading SPAC enters into a business combination and applies to list on Nasdaq in connection with the de-SPAC

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<sup>15</sup> See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (approving SR-NASDAQ-2019-009).

transaction the ADV Requirement applies because the primary equity security “is trading in the U.S. over-the-counter market as of the date of application...”<sup>16</sup>

For an operating company, 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 ADV Requirement on operating companies trading in the OTC market helps ensure that once listed these companies will have sufficient investor base and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. In contrast, in the Exchange’s view, the value of a SPAC prior to a business combination typically is not based on investor interest in the operating company or analysis of its metrics, but instead is based primarily on the value of the cash held in the trust account and supported by the potential redemption ability at the time of the de-SPAC transaction. Nasdaq therefore believes that the ADV Requirement for OTC-trading SPACs is not relevant to help establish the legitimacy of the SPAC market price.

Further, Nasdaq believes that the investor base in the SPAC, typically, changes significantly at the time of the de-SPAC transaction and investors interested in the operating company will first purchase the securities following that transaction. As a result, trading in the SPAC prior to the de-SPAC transaction is not indicative of how the company will trade after the transaction and, therefore, the de-SPAC transaction more closely resembles an IPO of the target company than an OTC uplisting, thus rendering the ADV Requirement not meaningful in helping establish whether the new company will trade well once listed. Accordingly, Nasdaq proposes to modify Listing Rules 5315(e)(4), 5405(a)(4), and 5505(a)(5), on the Nasdaq Global Select, Global and Capital Markets, accordingly, to exclude from the ADV Requirement the security of a company listing in connection with a de-SPAC transaction, as that term is defined in Item 1601(a) of Regulation S-K, upon effectiveness of a Registration Statement.

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<sup>16</sup> See Listing Rules 5315(e)(4), 5405(a)(4), and 5505(a)(5): “[i]f the security is trading in the U.S. over-the-counter market as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing...”

Although OTC-trading SPACs will be excluded from the ADV Requirement at the time of their application, the post business combination company will be required to satisfy all of Nasdaq's other initial listing standards, as would any IPO or other new listing. Nasdaq believes that this will continue to help ensure that securities of the post business combination companies have sufficient public float, investor base, and trading interest likely to generate depth and liquidity to support exchange listing and trading, which will 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,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> 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 market system, and, in general to protect investors and the public interest, by (1) excluding the security of an OTC-trading SPAC listing in connection with a de-SPAC transaction upon effectiveness of a Registration Statement from the definition of a Reverse Merger, and (2) removing a listing requirement applicable to an OTC-trading SPAC that is not an appropriate measure of investor base and trading interest. In both cases, based on the unique characteristics of a de-SPAC transaction, the changes will align the requirements for listing a de-SPAC transaction with those for listing an IPO, consistent with the treatment by the Commission in other contexts, eliminating an impediment to a free and open market, while ensuring adequate distribution, shareholder interest, a liquid trading market and investor protections through other listing standards.

Nasdaq believes that excluding a de-SPAC transaction by an OTC-trading SPAC from the Reverse Merger definition avoids imposing an unnecessary impediment to the mechanism of a free and open market and is not unfairly discriminatory. Specifically, as noted above, the

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

Reverse Merger Requirement was designed to prevent an operating company from becoming an Exchange Act reporting company and immediately accessing public markets without proper disclosure and vetting opportunities by the Commission and investors. Nasdaq believes that a de-SPAC transaction with an OTC-trading SPAC where the post transaction entity lists upon effectiveness of a Registration Statement does not present the same concerns as a typical Reverse Merger transaction. The Commission in the SPAC Release explained that “[w]hile structured as an M&A transaction, the de-SPAC transaction also is the functional equivalent of the private target company’s IPO, because it results in the target company becoming part of a combined company that is a reporting company and provides the private target company with access to cash proceeds that the SPAC had previously raised from the public.” Unlike the historical “backdoor registrations” that the Reverse Merger rule was designed to capture, a de-SPAC transaction would be required to file a 1933 Act registration statement to avail itself of the proposed rule change. Further, investment banks involved in the de-SPAC transaction could be considered statutory underwriters and could be found liable for any material misstatements or omissions in the registration statement,<sup>19</sup> similar to an IPO and the existing exception to the application of the Reverse Merger rule where a company lists in connection with certain firm commitment public offerings.

Nasdaq believes that excluding a de-SPAC transaction by OTC-trading SPACs from the definition of a Reverse Merger is reasonable because it aligns the treatment of such transactions with the treatment of a de-SPAC transaction by a Nasdaq-listed SPAC because both cases represent the functional equivalent of an IPO, as the Commission explained in the SPAC Release, and, therefore, these cases differ from a typical Reverse Merger where a public shell

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<sup>19</sup> See footnote 11, above.

merges into a private company, in a so-called “backdoor registration”<sup>20</sup> without a Registration Statement which is subject to review by Commission staff.<sup>21</sup>

The proposed requirement that a de-SPAC transaction by an OTC-trading or listed SPAC, is excluded from the definition of Reverse Merger only where the Company is listing upon effectiveness of a Registration Statement is designed to protect investors and the public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

Nasdaq also believes that excluding the security of a company listing in connection with a de-SPAC transaction, upon effectiveness of a Registration Statement, from the ADV Requirement applicable to newly listing companies that previously traded in the OTC market is designed to avoid imposing an unnecessary impediment to the mechanism of a free and open market and is not unfairly discriminatory.

Specifically, as noted above, the ADV Requirement was adopted to help ensure a liquid trading market, promote price discovery and establish an appropriate market price for the OTC securities listing on Nasdaq. However, since implementing the Initial Liquidity Amendments, Nasdaq has determined that the ADV Requirement is neither necessary nor appropriate for the listing of de-SPAC transactions because trading in the SPAC is not indicative of trading in the merged operating company because shareholders, typically, have the opportunity to redeem their shares in the SPAC for a pro rata portion of the trust at the time of the business combination.

For an operating company, 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 ADV Requirement on operating companies trading in the OTC market helps ensure that once listed these companies will have sufficient investor base

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<sup>20</sup> See footnote 8, above.

<sup>21</sup> Nasdaq notes that a de-SPAC transaction where the SPAC is not the surviving entity is not subject to the Reverse Merger Requirement because the entity to be listed is a new registrant, and, therefore a de-SPAC transaction can already be structured so as not to implicate the Reverse Merger Requirement.

and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. 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. In that regard, 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. This suggests that the value of a SPAC's security derives from the value of the underlying trust. Nasdaq therefore believes that assessing the average daily trading volume of the SPAC before the transaction is not relevant to help establish the trading characteristics of the post transaction entity.

Further, Nasdaq believes that the investor base in the SPAC, typically, changes significantly at the time of the de-SPAC transaction and investors interested in the operating company will first purchase the securities following that transaction. As a result, trading in the SPAC prior to the de-SPAC transaction is not indicative of how the company will trade after the transaction and, therefore, the de-SPAC transaction more closely resembles an IPO of the target company than an OTC uplisting rendering the ADV Requirement not meaningful in helping establish whether the new company will trade well once listed.<sup>22</sup>

The Exchange believes that other listing standards will help it to ensure adequate distribution, shareholder interest and a liquid trading market of a de-SPAC transaction security following a business combination. In all cases, a de-SPAC transaction must satisfy Nasdaq's initial listing standards which will continue to help ensure that securities of the post business combination entity 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.

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<sup>22</sup> Nasdaq notes that a de-SPAC transaction where the SPAC is not the surviving entity is not subject to the ADV Requirement because the entity to be listed is a new registrant, and, therefore a de-SPAC transaction can already be structured not to implicate the ADV Requirement.

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 proposed rule changes are designed to avoid imposing an unnecessary impediment to the mechanism of a free and open market and does not limit the ability of companies to list on any other national securities exchange. Furthermore, while the rule change may permit more companies to list on Nasdaq in connection with de-SPAC transactions, other exchanges could adopt similar rules to compete for such listings. In addition, the proposed rule change could help facilitate competition amongst OTC-trading SPACs with other 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 will:

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 (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2025-066 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-2025-066. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2025-066 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.<sup>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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