

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 21	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 038	Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

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

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Nikolai Last Name \* Utochkin  
 Title \* Counsel Listing and Governance  
 E-mail \* nikolai.utochkin@nasdaq.com  
 Telephone \* (301) 978-8029 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 07/14/2020  
 By John Zecca  
 (Name \*)

EVP and Chief Legal Counsel

john.zecca@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to defer entry fees for Acquisition Companies for one year from the date of listing and to make minor attendant technical changes.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 25, 2019. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Nikolai Utochkin  
Counsel  
Listing and Governance  
Nasdaq, Inc.  
(301) 978-8029

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

<sup>2</sup> 17 CFR 240.19b-4.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. 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”).<sup>3</sup> 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 Acquisition Company funds a trust account

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

with an amount typically equal to 100% of the gross proceeds of the IPO.<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>4</sup> 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).

<sup>5</sup> See Listing Rule IM-5101-2 (d) and (e).

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 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.

b. Statutory Basis

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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

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 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.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>8</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

**EXHIBIT 1**

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

July \_\_, 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”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2020, 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 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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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").<sup>3</sup> 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.

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

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 Acquisition Company funds a trust account with an amount typically equal to 100% of the gross proceeds of the IPO.<sup>4</sup> 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

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<sup>4</sup> 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).

paid, rather than a lesser amount guaranteed by Nasdaq rules.<sup>5</sup> 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 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,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in

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<sup>5</sup> See Listing Rule IM-5101-2 (d) and (e).

<sup>6</sup> 15 U.S.C. 78f(b).

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 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

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<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

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.<sup>8</sup>

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
- Send an e-mail to [rule-comments@sec.gov](mailto: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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 Web site (<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; the Commission does not 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.<sup>9</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market LLC Rules**

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**5910. The Nasdaq Global Market (including the Nasdaq Global Select Market)****(a) Entry Fee**

(1) A Company that submits an application to list any class of its securities (not otherwise identified in this Rule 5900 Series) on the Nasdaq Global Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. For a Company (other than a company listed under IM-5101-2) [T]this fee will be assessed on the date of listing on the Nasdaq Global Market. The Entry Fee for a Company listed under IM-5101-2 is based on the fee schedule in effect on the date of listing but is initially deferred and will be assessed on the first anniversary of the date of listing. [, except for]Assessment of the application fees is described in paragraph (a)(11), below.

Up to 30 million shares \$150,000

30+ to 40 million shares \$170,000

40+ to 50 million shares \$210,000

50+ to 60 million shares \$250,000

60+ to 70 million shares \$290,000

Over 70 million shares \$295,000

(2) – (10) No change.

(11) A Company (including a company listed under IM-5101-2) subject to the Entry Fee described in paragraph (a)(1) of this Rule must submit a non-refundable \$25,000 initial application fee with its application. If the Company does not list within 12 months of submitting its application (or by October 15, 2014, if later), it will be assessed an additional non-refundable \$5,000 application fee each 12 months thereafter to keep its application open. If a Company does not timely pay such additional application fee, its application will be closed and it will be required to submit a new application and initial application fee if it subsequently reapplies. Nasdaq will credit all application fees paid by the Company in connection with an application that has not been closed towards the Entry Fee payable upon listing.

(b) No change.

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**5920. The Nasdaq Capital Market****(a) Entry Fee**

(1) A Company that submits an application to list any class of its securities (not otherwise identified in this Rule 5900 Series) on the Nasdaq Capital Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. For a Company (other than a company listed under IM-5101-2) [T]this fee will be assessed on the date of entry on the Nasdaq Capital Market. The Entry Fee for a Company listed under IM-5101-2 is based on the fee schedule in effect on the date of listing but is initially deferred and will be assessed on the first anniversary of the date of listing. [, except for]Assessment of the application fees is described in paragraph (a)(1[0]1) below.

Up to 15 million shares \$50,000

Over 15 million shares \$75,000

(2) – (10) No change.

(11) A Company (including a company listed under IM-5101-2) subject to the Entry Fee described in paragraph (a)(1) of this Rule must submit a non-refundable \$5,000 initial application fee with its application. If the Company does not list within 12 months of submitting its application (or by October 15, 2014, if later), it will be assessed an additional non-refundable \$5,000 application fee each 12 months thereafter to keep its application open. If a Company does not timely pay such additional application fee, its application will be closed and it will be required to submit a new application and initial application fee if it subsequently reapplies. Nasdaq will credit all application fees paid by the Company in connection with an application that has not been closed towards the Entry Fee payable upon listing.

(12) No change.

(b) No change.

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