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–NYSEArca–2021–04 and should be submitted on or before February 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.13

J. Matthew DeLesterDier, Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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

January 26, 2021.

I. Introduction

On October 8, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to exclude special purpose acquisition companies from the requirement that at least 50% of a company’s round lot holders each hold unrestricted securities with a market value of at least $2,500. On October 21, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on October 28, 2020.3

On December 11, 2020, pursuant to Section 19(b)(2) of the Act,4 the Commission designated a longer period within which to approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.5 This order approves the proposed rule change, as modified by Amendment No. 1.

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

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

The Exchange states in its proposal that it imposed the Required Minimum Amount to help ensure that at least 50% of the required minimum number of shareholders hold a meaningful value of unrestricted securities and that a company has sufficient investor interest to support an exchange listing.7 The Exchange asserts that, prior to adopting the Required Minimum Amount, it had noticed problems with companies listing where a large number of round lot holders held exactly 90 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share, or as little as $200 in the case of a stock listing under alternative price criteria.8 The Exchange further states that such holders held shares in the company prior to its IPO and that such amount was not a representation of genuine investor interest in the company sufficient to support an exchange listing.9 In proposing to adopt the standard, the Exchange stated that it believed the Required Minimum Amount was a more appropriate representation of genuine investor interest in the company and would make it more difficult to circumvent the round lot holder requirement through share transfers for no value.10

The Exchange states that it does not believe the Required Minimum Amount is as relevant to the listing of SPACs.11

NASDAQ GLOBAL SELECT MARKET: 400 holders for the Nasdaq Global Market; 300 holders for the Nasdaq Capital Market. See Nasdaq Rules 5315(f)(1)(C), 5405(a)(3), and 5505(a)(3). Nasdaq defines “market value” as the consolidated closing bid price multiplied by the measure to be valued. See Nasdaq Rule 5005(a)(23).

7 See Notice, supra note 3, at 68401; Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102, 33107 (July 11, 2019) (order approving SR–NASDAQ–2019–009) (“Required Minimum Amount Approval Order”). In the Required Minimum Amount Approval Order, the Commission also approved Nasdaq’s proposal to exclude restricted securities (see supra note 6) from the calculation of publicly held shares, market value of publicly held shares, and round lot holders for initial listing purposes. According to Nasdaq, these changes were designed to help ensure adequate distribution, shareholder interest, and a liquid trading market for a security. See Notice, supra note 3, at 68401; Required Minimum Amount Approval Order, supra, at 33103. 10

See Notice, supra note 3, at 68401–02.

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

11 See Notice, supra note 3, at 68401. Nasdaq Rule IM–5101–2 sets forth requirements applicable to SPACs and requires, among other things, that at least 90% of the gross proceeds raised in the IPO and any concurrent sale by the SPAC of equity securities must be deposited in a trust account. See Nasdaq Rule IM–5101–2(a). Until a SPAC has completed business combinations meeting the requirements of IM–5101–2(b), each shareholder...
In contrast to its observations regarding operating companies, the Exchange states that typically the only investors holding shares in a SPAC prior to an IPO are its founders and that all other round lot holders generally represent new investors in the SPAC’s IPO. The Exchange therefore does not believe that SPACs present a similar risk as operating companies of circumventing the round lot holder requirement through share transfers for no value and represents that it has not observed this problem with SPACs. Further, the Exchange states that shareholders of SPACs are afforded the opportunity to redeem or tender their shares for a pro rata portion of the value of the IPO proceeds maintained in a trust account in connection with the SPAC’s business combination, which must occur within 36 months of the IPO, and therefore, the SPAC structure provides an alternative liquidity mechanism that operating companies do not offer.

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

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized that the development and enforcement of meaningful listing standards for an exchange is of critical importance to financial markets and the investing public. Among other things, the Commission has stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies that have or will have sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets.

Meaningful listing standards are also important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

The Exchange has proposed to exclude SPACs, prior to the completion of a business combination, from the requirement to meet the Required Minimum Amount at the time of initial listing on the Nasdaq Global Select Market, Nasdaq Global Market, and Nasdaq Capital Market. As described above, the Exchange states that, unlike with operating companies where the
Required Minimum Amount is necessary to demonstrate genuine investor interest in the operating company to support an exchange listing. SPACs do not present a similar risk of circumventing the round lot holder requirement through share transfers for no value and that removing this requirement will not impact the protection of investors.27

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

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

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

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,32 that the proposed rule change, as modified by Nasdaq’s rules provide alternative standards to satisfy in lieu of the market value standards, SPACs typically list under the market value standard given that they have no prior operating history.

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

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


27 See supra note 14 and accompanying text.
28 See supra notes 12–13 and accompanying text. For example, SPACs listed on the Nasdaq Capital Market under the Market Value of Listed Securities Standard would be required to have at least 1,000,000 unrestricted publicly held shares, at least 30 round lot holders that hold unrestricted shares, a minimum market value of listed securities of $50 million, a minimum market value of unrestricted publicly held shares of at least $15 million, and a minimum number of $15 million.
29 See Nasdaq Rules 5505(a)–(b). See also Nasdaq Rules 5315(e)–(f) (Nasdaq Global Select Market) and 5405(a)–(b) (Nasdaq Global Market). The Commission understands that, although


SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 4, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission’s headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission’s website at https://www.sec.gov.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.