

that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.<sup>11</sup>

The Commission hereby grants the Exchange a limited exemption from the Quote Rule to operate the Program and disseminate the RLI without having to include RLP interest in IEX's best bid or offer. For the reasons discussed below, the Commission has determined that it is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system to provide a limited exemption from Rule 602 of Regulation NMS with respect to IEX's Program.

In light of the opportunity for retail customers to obtain potentially substantial price improvement at midpoint prices under IEX's Program, and in the interests of facilitating the ability of IEX to compete to be able to provide that opportunity to Retail orders in the limited context of the Program, providing a limited exemption should promote competition between exchanges and between IEX and off-exchange market makers.

Broad dissemination of the RLI through the appropriate securities information processor should benefit retail customers by providing broker-dealers that route Retail orders with limited supplemental information about the availability of price improvement opportunities for Retail orders under the Program.<sup>12</sup> To the extent the RLI is successful in attracting Retail orders to the Program, the increased competition should benefit retail customers by providing a mechanism through which they can receive the better prices that liquidity providers are willing to give their orders. This exemption also should benefit market participants that seek the opportunity to interact directly with Retail orders, as any liquidity provider may submit RLP interest to provide better prices to retail customers on the Exchange. Quotations that Rule 602 requires to be included in an exchange's best bid and offer are used to establish the national best bid and offer for an NMS stock and are eligible for protection against trade-throughs under Rule 611 of Regulation NMS.<sup>13</sup> Such quotations therefore must be accessible to all market participants on terms that

are not unfair or unreasonably discriminatory. In contrast, access to RLP interest is limited to Retail orders because many market participants may be willing to offer liquidity to retail investors at better prices than they would be willing to offer to all market participants. RLP interest thereby can benefit retail investors by giving them an opportunity to receive better prices on exchanges, but it is unsuitable for other purposes, including establishing a national best bid and offer and eligibility for Rule 611 protection.

Accordingly, *it is ordered*, pursuant to Rule 602(d) of Regulation NMS, that IEX is exempt from Rule 602 of Regulation NMS with respect to IEX's Program specifically concerning the dissemination of the RLI to advertise the presence of RLP interest under the Program without including RLP interest in the Exchange's quotation. This exemption is conditioned on the Exchange continuing to conduct the Program substantially as described in the Exchange's request for exemptive relief and the current applicable Exchange rules, including the dissemination of the RLI through the appropriate securities information processor. Any changes thereto may cause the Commission to reconsider this exemption. The foregoing exemption is subject to modification or revocation at any time if the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93219; File No. SR-NASDAQ-2021-054]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify Nasdaq IM-5101-2 To Permit an Acquisition Company To Contribute a Portion of Its Deposit Account to Another Entity in a Spin-Off or Similar Corporate Transaction

September 30, 2021.

#### I. Introduction

On June 24, 2021, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify Nasdaq IM-5101-2 to permit an acquisition company to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company in a spin-off or similar corporate transaction. The proposed rule change was published for comment in the **Federal Register** on July 13, 2021.<sup>3</sup> On August 25, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change

Generally, the Exchange will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its

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

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

<sup>3</sup> See Securities Exchange Act Release No. 92344 (July 7, 2021), 86 FR 36841 ("Notice"). Comments received on the proposal are available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2021-054/srnasdaq2021054.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 92751, 86 FR 48780 (August 31, 2021). The Commission designated October 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> 17 CFR 242.602(d).

<sup>12</sup> The RLI will not reveal the presence of other midpoint interest. Non-displayed midpoint interest could be present on IEX outside of the Program, and Retail orders will be able to trade with that interest.

<sup>13</sup> See 17 CFR 242.611.

<sup>14</sup> 17 CFR 200.30-3(a)(28).

business plan is to engage in a merger or acquisition with an unidentified company or companies.<sup>7</sup> However, the Exchange currently will permit the listing of a company whose business plan is to complete an initial public offering (“IPO”) and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (“Acquisition Company” or “SPAC”), if the company meets all applicable initial listing requirements, as well as certain conditions described in Nasdaq IM-5101-2.<sup>8</sup> Among other things, Nasdaq IM-5101-2 requires that at least 90% of the gross proceeds from the IPO and any concurrent sale by the Acquisition Company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an insured depository institution, or in a separate bank account established by a registered broker or dealer (collectively, a “deposit account”).<sup>9</sup> In addition, Nasdaq IM-5101-2 requires that within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the Acquisition Company specifies in its registration statement, the Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.<sup>10</sup> Nasdaq IM-5101-2 further requires each business combination to be approved by a majority of the Acquisition Company’s independent directors.<sup>11</sup> If the Acquisition Company holds a shareholder vote on a business combination, the business combination must be approved by a majority of the shares of common stock voting at the meeting and public shareholders voting against the business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated.<sup>12</sup> If a shareholder vote on a business combination is not held, the Acquisition Company 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 deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e-4 and Regulation 14E under the Act, which regulate issuer tender offers.<sup>13</sup>

The Exchange now proposes to modify Nasdaq IM-5101-2 to allow a SPAC listed under that rule to contribute a portion of its deposit account to a deposit account of a new entity in a spin-off or similar corporate transaction (“SpinCo SPAC”). According to the Exchange, when a SPAC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent business combination with its ultimate target; however, the Exchange believes that because a SPAC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target.<sup>14</sup> The Exchange states that it is proposing to modify Nasdaq IM-5101-2 to permit what it believes is a more efficient structure whereby a SPAC can raise in its IPO the maximum amount of capital it anticipates it may need for a business combination transaction and then “rightsize” itself by contributing any amounts not needed to a SpinCo SPAC, which would be subject to the provisions of Nasdaq IM-5101-2, in the same manner as the original SPAC, and spun off to the original SPAC’s shareholders.<sup>15</sup>

Specifically, proposed Nasdaq IM-5101-2(f) would provide that a SPAC will be permitted to contribute a portion of the amount held in the deposit account to a deposit account of another entity (the “Contribution”) in a spin-off or similar corporate transaction, subject to the following conditions:

(i) The requirements set forth in Nasdaq IM-5101-2(d) and (e) that shareholders of a SPAC must have the right to convert or redeem their shares of common stock into a pro rata share of the aggregate amount in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) at the times

<sup>13</sup> See Nasdaq IM-5101-2(e).

<sup>14</sup> See Notice, *supra* note 3, at 36841. The Exchange further states that “[t]his has resulted in the inefficient, current practice of SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target needs.” *Id.*

<sup>15</sup> See *id.* The 36-month period to complete a business combination under Nasdaq IM-5101-2 would, however, be calculated for each SpinCo SPAC based on the date of the original SPAC’s effective registration statement.

specified in such paragraphs may be based on the amounts in the deposit account of the SPAC at such times after having been reduced by the Contribution provided that, in connection with the Contribution, the SPAC’s public shareholders shall have had the right, through one or more corporate transactions, to redeem a portion of their shares of common stock (or, if units were sold in the SPAC’s IPO, units) for their pro rata portion of the amount of the Contribution in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(ii) the public shareholders of the SPAC receive shares or units of the SpinCo SPAC on a pro rata basis, except to the extent they have elected to redeem a portion of their shares of the SPAC in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(iii) the amount distributed to the SpinCo SPAC will remain in a deposit account for the benefit of the shareholders of the SpinCo SPAC in the same manner as described in Nasdaq IM-5101-2(a);

(iv) the SpinCo SPAC meets all applicable initial listing requirements, as well as the conditions described in Nasdaq IM-5101-2(a) through (e); it being understood that, following such spin-off or similar corporate transaction: (A) For purposes of Nasdaq IM-5101-2(b) the 80% described therein shall,<sup>16</sup> in the case of the SPAC, be calculated based on the aggregate amount remaining in the deposit account of the SPAC at the time of the agreement to enter into the initial combination after the Contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be calculated based on the aggregate amount in its deposit account at the time of its agreement to enter into its initial combination,<sup>17</sup> and (B) for purposes of Nasdaq IM-5101-2(d) and (e),<sup>18</sup> the right to convert and opportunity to redeem shares of common stock on a pro rata basis, respectively, shall, in the case of the SPAC, be deemed to apply to the aggregate amount remaining in the deposit account of the SPAC after the contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be deemed to apply to the aggregate amount in its deposit account;

(v) in the case of the SpinCo SPAC, and any additional entities spun off from the SpinCo SPAC, each of which will also be considered a SpinCo SPAC, the 36-month period described in Nasdaq IM-5101-2(b) (or such shorter period that the original SPAC specifies in its registration statement) will be calculated based on the date of effectiveness of the SPAC’s IPO registration statement; and

(vi) in the aggregate, through one or more opportunities by the SPAC and one or more SpinCo SPACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full

<sup>16</sup> See *supra* note 10 and accompanying text, for a description of the requirements of Nasdaq IM-5101-2(b).

<sup>17</sup> As the Exchange states, this amount would be calculated after giving effect to the SpinCo SPAC’s contribution to a subsequent SpinCo SPAC, if any. See Notice, *supra* note 3, at 36842.

<sup>18</sup> See *supra* notes 12–13 and accompanying text, for a description of the requirements of Nasdaq IM-5101-2(d) and (e).

<sup>7</sup> See Nasdaq IM-5101-2.

<sup>8</sup> See *id.*

<sup>9</sup> See Nasdaq IM-5101-2(a).

<sup>10</sup> See Nasdaq IM-5101-2(b).

<sup>11</sup> See Nasdaq IM-5101-2(c).

<sup>12</sup> See Nasdaq IM-5101-2(d).

amount of the deposit account established by the SPAC as described in Nasdaq IM-5101-2(a) (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account).<sup>19</sup>

The Exchange states that, under the proposal, it expects that the new structure will be implemented in the following manner. If a listed SPAC (the “Original SPAC”) determines that it will not need all the cash in its deposit account for its initial business combination, the Original SPAC will designate the excess cash for a new deposit account of a SpinCo SPAC (the “SpinCo Deposit Account,” and the amount retained in the deposit account of the Original SPAC, the “Retained SPAC Deposit Account”).<sup>20</sup> The Exchange states that the amount designated for the SpinCo Deposit Account must continue to be held for the benefit of the shareholders of the Original SPAC until the completion of the spin-off transaction and, following the spin-off of the SpinCo SPAC to the Original SPAC’s shareholders, the SpinCo Deposit Account would be subject to the same requirements as the deposit account of the Original SPAC.<sup>21</sup>

According to the Exchange, the SpinCo SPAC would file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo SPAC and, prior to the effectiveness of the registration statement, the Original SPAC would provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo Deposit Account divided by the per share amount in the Original SPAC’s deposit account (the “redemption price”).<sup>22</sup> The Exchange further states that, after completing the tender offer for the redemption and the effectiveness of the SpinCo SPAC’s registration statement, the Original SPAC would contribute the SpinCo Deposit Account to a deposit account held by the SpinCo SPAC in exchange for shares or units of the SpinCo SPAC, which the Original SPAC would then distribute to its public shareholders on a pro rata basis through one or more

<sup>19</sup> Proposed Nasdaq IM-5101-2(f) provides that the conditions set forth in the proposed rule would similarly apply to successive spin-offs or similar corporate transactions, “mutatis mutandis.”

<sup>20</sup> See Notice, *supra* note 3, at 36841-42.

<sup>21</sup> See *id.* at 36842.

<sup>22</sup> See *id.* According to the Exchange, the redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e-4 and Regulation 14E of the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption. See *id.* at 36842 n.4.

corporate transactions pursuant to the SpinCo SPAC’s effective registration statement.<sup>23</sup>

According to the Exchange, the Original SPAC would then continue to operate as a SPAC until it completes its business combination and would offer redemption rights to its public shareholders in connection with that business combination in the same manner as a traditional SPAC, while the SpinCo SPAC would operate in the same manner as a traditional SPAC, except that it could effect a subsequent spin-off prior to its business combination like the Original SPAC.<sup>24</sup> The Exchange states that if SpinCo SPAC does not elect to effect a spin-off, it would proceed to complete an initial business combination and offer redemption rights in connection therewith like a traditional SPAC.<sup>25</sup>

### III. Proceedings To Determine Whether To Approve or Disapprove SR-NASDAQ-2021-054 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>26</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>27</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to

<sup>23</sup> See *id.* at 36842.

<sup>24</sup> See *id.* The proposed rule would provide that, for purposes of Nasdaq IM-5101-2(b), the Original SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the Retained SPAC Deposit Account, after the contribution to the SpinCo SPAC, at the time of its agreement to enter into its initial combination. Nasdaq further states that, similarly, a SpinCo SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the SpinCo Deposit Account at the time of its agreement to enter into its initial combination after giving effect to its contribution to any subsequent SpinCo SPAC.

<sup>25</sup> See *id.*

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>27</sup> *Id.*

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>28</sup>

As described above, the proposal would allow a SPAC listed under Nasdaq IM-5101-2 to contribute a portion of the amount held in its deposit account to the deposit account of a SpinCo SPAC. The Exchange states that the proposal would permit a more efficient structure because a SPAC often raises an amount of capital through its IPO that is not optimal for the needs of a specific acquisition target.<sup>29</sup> According to the Exchange, this has resulted in SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular acquisition target needs.<sup>30</sup> The Exchange believes this practice creates the potential for conflicts of interest, fails to optimize the amount of capital that would benefit the SPAC’s public shareholders and a business combination target, creates inefficiencies, and can lead to confusion.<sup>31</sup> Accordingly, the Exchange believes the proposal would provide shareholders the opportunity to invest with a sponsor without spreading that investment across the sponsor’s multiple SPACs.<sup>32</sup>

The Commission received comments broadly supporting the proposed rule change. Specifically, one commenter stated that the proposed rule change would introduce a “more efficient, cost-effective[,] and flexible” structure than provided for by the current SPAC listing rules, “while continuing to offer significant and appropriate protections to SPAC investors.”<sup>33</sup> This commenter further argued that shareholders’ ability under the proposed rule change to redeem their investment in connection with each specific business combination by the Original SPAC or a SpinCo SPAC would both increase flexibility and

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> See Notice, *supra* note 3, at 36841.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See *id.* at 36842.

<sup>33</sup> See letter from Kellen Carter, ARK Investment Management LLC, to Vanessa Countryman, Secretary, Commission, dated August 2, 2021, at 1-2.

investors' ability to understand the companies that a SPAC plans to acquire and the risks associated with each such target company.<sup>34</sup> Another commenter similarly argued that the proposed rule change would permit a more efficient SPAC structure while "maintaining all of the investor protections" in the current SPAC listing rules.<sup>35</sup>

The Commission has concerns, however, about whether the proposal is sufficiently designed to protect investors and the public interest, as required by Section 6(b)(5) of the Act. First, the Commission is concerned that proposed Nasdaq IM-5101-2(f) would circumvent the current requirements of Nasdaq IM-5101-2 that the Commission previously found were designed to protect investors.<sup>36</sup> Specifically, Nasdaq IM-5101-2(b) requires a SPAC to complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account.<sup>37</sup> This 80% requirement sets a minimum size of a business combination that investors will be aware of from their initial investment. In addition, the 80% requirement ensures that the founders of the SPAC will not seek a very small SPAC target solely to ensure they successfully complete a business combination in order to break escrow and thereby earn their payment (promote) for finding a target. The proposal could potentially allow a SPAC to engage in multiple business combinations that are very small in size as compared to the original amount in the deposit account. The proposal also does not include any limitations with respect to the amount a SPAC may contribute to a SpinCo SPAC and thereby reduce its escrow account. Moreover, it appears the proposed structure could potentially incentivize SPAC founders to complete smaller business combinations in cases where they cannot identify a target company of sufficient size to meet the 80% requirement with respect to the Original SPAC, thereby leaving investors with a choice of whether to accept an investment in a smaller-sized company

than originally contemplated or a partial redemption of their original investment from the reduced deposit account. The Commission is concerned that allowing SPACs to engage in such transactions effectively eliminates the original 80% requirement, may subvert investor expectations regarding a SPAC's future business combination prospects, and may benefit the founders of SPACs at the expense of retail investors.<sup>38</sup> In this regard, the Commission is concerned that the Exchange has not provided sufficient justification regarding how its proposal is consistent with the protection of investors, including the investor protection measures that were originally contemplated by Nasdaq IM-5101-2 and which the Commission found to be consistent with the Act.<sup>39</sup>

Furthermore, the Commission believes the proposal could introduce additional complexity to SPAC securities, particularly for retail investors. While the market in SPAC securities is already complex, the Exchange's proposal would allow for the listing of SPACs that may spin-off into smaller and smaller SPACs, each presenting additional risks and considerations to investors that may not be fully realized at the time of the Original SPAC's IPO or at the time of each spin-off transaction when investors have the opportunity to receive shares in the SpinCo SPAC or redeem their pro-rata portion of the SpinCo SPAC Contribution.<sup>40</sup> Further, although the Exchange states the proposal is expected

to allow a SPAC that determines that it will have excess cash following its initial business combination to spin-off those funds to a new SPAC,<sup>41</sup> the proposal is not limited to this particular situation and would allow a SPAC to break escrow to create new SpinCo SPACs at any time after its IPO, regardless of whether any potential business combination has been identified.<sup>42</sup> Moreover, under current SPAC rules, investors have to make one determination on whether to redeem their shares or retain ownership in the combined operating business after a business combination that has an aggregate fair market value of at least 80% of the value of the deposit account. In contrast, under the proposal, investors would have to make multiple decisions on whether to hold or redeem their securities in potentially multiple SpinCo SPACs, and those investors that choose to redeem may not be made whole as to their original investment until a subsequent business combination of the Original SPAC and/or the SpinCo SPACs occur. Additionally, the proposal raises concerns about whether investors are adequately protected when only the sponsors, not shareholders, are participating in the decision to reduce the deposit account and contribute those funds to the SpinCo SPAC.<sup>43</sup> For these reasons, the Commission is concerned that investors may not have adequate information at the time they initially invest in the Original SPAC and at the time they are required to make decisions regarding whether to invest in the SpinCo SPACs or to redeem their investment, which can occur multiple times over the term of the Original SPAC, raising investor protection concerns under Section 6(b)(5) of the Act.

The Commission is also concerned that certain aspects of the proposed rule change are vague and unclear and may raise additional investor protection

<sup>38</sup> Moreover, the proposal does not appear to be limited to future SPACs and could potentially allow existing SPACs to engage in spin-offs. The Commission believes that permitting existing SPACs to engage in such transactions could raise investor protection issues given that investors who initially invested in the SPACs would not have been aware that the SPAC would not have to comply with the 80% requirement and could spin off into multiple SpinCo SPACs.

<sup>39</sup> See 2008 Order, *supra* note 28. In addition, the proposal appears to require redeeming shareholders to effectively pay deferred underwriting fees by deducting those fees from the aggregate redemption amount available to shareholders. See proposed Nasdaq IM-5101-2(f)(vi). This is not required for the Original SPAC as set forth under current Nasdaq IM-5101-2(d) and (e) and would result in the redeeming shareholders potentially receiving less than 90% of the gross proceeds from the deposit account. Under the current SPAC listing rules, only taxes payable and amounts distributed to management for working capital purposes can be excluded from the aggregate amount in the deposit account.

<sup>40</sup> For example, under the proposal it would be difficult for an investor to know at the time of its investment in the Original SPAC (or at the time of each contribution) whether there will be future contributions to SpinCos, and, if so, how much the original escrow will be reduced and how much will be left for the Original SPAC's business combination. The Commission believes such information would be important to investors in making informed investment decisions in the Original SPAC.

<sup>41</sup> See Notice, *supra* note 3, at 36841-42.

<sup>42</sup> The proposal also does not include any timing limitations with respect to when a SPAC may engage in a contribution and spin-off. As such, it appears that a contribution and spin-off could occur very close to the end of the 36-month period within which the Original SPAC and any SpinCo SPAC has to complete its business combination. This raises investor protection issues since shareholders may not have enough time to review disclosures before a vote or redemption decision is required.

<sup>43</sup> In these situations, the SpinCo SPAC may be structured completely differently than was disclosed at the time of the investment in the Original SPAC. For example, nothing in the proposal prevents the SpinCo SPAC from having a different target industry or business than the Original SPAC, different compensation arrangements than the Original SPAC, or different terms than disclosed in the Original SPAC registration statement.

<sup>34</sup> See *id.* at 2.

<sup>35</sup> See letter from White & Case LLP to Vanessa Countryman, Secretary, Commission, dated August 3, 2021, at 1.

<sup>36</sup> See Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008) (Order Granting Approval to Proposed Rule Change, as modified by Amendment No. 1, to Adopt Additional Initial Listing Standards to list Securities of Special Purpose Acquisition Companies) (NASDAQ-2008-013) ("2008 Order").

<sup>37</sup> The deposit account must contain at least 90% of the gross proceeds from the SPAC's IPO and any concurrent sale by the SPAC of equity securities. See Nasdaq IM-5101-2(a).

concerns. For example, proposed Nasdaq IM-5101-2(f)(i) would provide shareholders the right to redeem, “through one or more corporate transactions,” their pro rata portion of the SPAC’s contribution to a SpinCo SPAC’s deposit account. In addition, proposed Nasdaq IM-5101-2(f)(vi) provides that public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the deposit account “through one or more opportunities.” The proposal, however, does not set forth any specific requirements applicable to the redemption or conversion opportunities with respect to the contribution to a SpinCo SPAC or specify what would qualify as an acceptable corporate transaction for purposes of a redemption.<sup>44</sup> Moreover, the proposed rule states that a SPAC will be permitted to contribute a portion of the amount held in the deposit account to a deposit account of “another entity” in a spin-off “or similar corporate transaction.” However, the proposal does not specify whether there are any limitations on the types of entities that may receive the contribution, including whether such entities could include an already existing SPAC, or what would constitute a “similar transaction.” The Commission is concerned that the lack of clarity and vagueness in the proposed rule text may cause confusion amongst market participants regarding the scope of the proposal and what is required under the proposed rules.

In addition, the Exchange has proposed that the conditions described in proposed Nasdaq IM-5101-2(f) shall apply to successive spin-offs or similar corporate transactions, “mutatis mutandis.” The Exchange provides no specificity or detail as to what this means or what factors the Exchange would consider when determining how to apply the proposed rule to successive spin-offs or similar corporate transactions. As drafted, the rule text would appear to give the Exchange broad discretion to apply the proposed rule in a different manner with respect to successive spin-offs or transactions to different SPAC issuers. It is also difficult for the Commission to assess

<sup>44</sup> The Exchange states that a redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e-4 and Regulation 14E of the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption. See Notice, *supra* note 3, at 36842 n.4. On the other hand, Nasdaq IM-5101-2 currently includes very specific requirements relating to redemption rights of public shareholders with respect to a business combination. See Nasdaq IM-5101-2(d)-(e).

whether the proposal is consistent with Section 6(b)(5) of the Act if the Exchange could simply change how the rule applies to fit a particular transaction by invoking its discretion through the proposed “mutatis mutandis” language. The Commission believes this lack of transparency and objectivity in the proposed rule raises investor protection and unfair discrimination concerns under the Act because market participants may be confused about what is permitted under the rules and the Exchange may elect to apply its rules in an inconsistent and discriminatory manner.

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest, and not be designed to permit unfair discrimination.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.”<sup>45</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>46</sup> and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>47</sup>

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>48</sup> to determine whether the proposal should be approved or disapproved.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested

persons concerning whether the proposal is consistent with Section 6(b)(5)<sup>49</sup> of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>50</sup> any request for an opportunity to make an oral presentation.<sup>51</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 27, 2021. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by November 10, 2021. The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice,<sup>52</sup> in addition to any other comments they may wish to submit about the proposed rule change.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-054 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-2021-054. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> 17 CFR 240.19b-4.

<sup>51</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>52</sup> See *supra* note 3.

<sup>45</sup> 17 CFR 201.700(b)(3).

<sup>46</sup> See *id.*

<sup>47</sup> See *id.*

<sup>48</sup> 15 U.S.C. 78s(b)(2)(B).

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-2021-054 and should be submitted by October 27, 2021. Rebuttal comments should be submitted by November 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-21770 Filed 10-5-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93232; File No. SR-NYSENAT-2021-19]

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 7.12

October 1, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 30, 2021, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 extend the pilot related to the market-wide circuit breaker in Rule 7.12 to the close of business on March 18, 2022. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), 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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Rule 7.12 to the close of business on March 18, 2022.

###### Background

The Market-Wide Circuit Breaker ("MWCBB") rules, including the Exchange's Rule 7.12, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCBB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot Rules," *i.e.*, Rule 7.12 (a)-(d)).<sup>4</sup> The

Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX").<sup>5</sup> Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan"),<sup>6</sup> including any extensions to the pilot period for the LULD Plan.<sup>7</sup> In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.<sup>8</sup> In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 7.12 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.<sup>9</sup> The Exchange then filed to extend the pilot for an additional year to the close of business

SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129 ("Pilot Rules Approval Order").

<sup>5</sup> The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCBB Halt. *See, e.g.*, NYSE Arca Rule 6.65-O(d)(4).

<sup>6</sup> *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

<sup>7</sup> *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NSX-2011-11) (Approval Order); and 68779 (January 31, 2013), 78 FR 8638 (February 6, 2013) (SR-NSX-2013-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of Rule 11.20A).

<sup>8</sup> *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

<sup>9</sup> *See* Securities Exchange Act Release No. 85572 (April 9, 2019), 84 FR 15257 (April 15, 2019) (SR-NYSENAT-2019-08).

<sup>53</sup> 17 CFR 200.30-3(a)(57).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024;