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Page 1 of * 50

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 092

Amendment No. (req. for Amendments *)

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to adopt alternative initial and continued listing requirements for Acquisition Companies listing on the Nasdaq Global Market

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) 987-8029 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 11/12/2021

(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 DN:
email=john.zecca@nasdaq.com
Date: 2021.11.12 16:50:45
-05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2021-092 19b-4.doc

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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SR-NASDAQ-2021-092 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-NASDAQ-2021-092 Exhibit 5.doc

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt alternative initial and continued listing requirements for Acquisition Companies listing on the Nasdaq Global Market.

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 November 5, 2020. 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

¹ 15 U.S.C. 78s(b)(1).

² 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

Nasdaq is proposing to adopt alternative initial and continued listing requirements for companies whose business plan is to complete one or more acquisitions, as described in Listing Rule IM-5101-2 (an “Acquisition Company”). As described below, such alternative listing requirements do not replace the requirements of Listing Rule IM-5101-2, which will continue to apply to all Acquisition Companies.

An Acquisition Company is a special purpose company formed for the purpose of completing an initial public offering and engaging in a merger or acquisition (a business combination) with one or more unidentified companies within a specific period of time.³ The securities sold by the Acquisition Companies in its initial public offering (“IPO”) are typically units, consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Management generally is granted a percentage of the Acquisition Company’s equity and may be required to purchase additional shares in a private placement at the

³ Pursuant to Listing Rule IM-5101-2 an Acquisition Company is required, among other things, to keep at least 90% of the proceeds from its IPO in an escrow account and, until the company has completed one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account, must meet the requirements for initial listing following each business combination. If a shareholder vote on the business combination is held, public shareholders voting against a 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 escrow account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. If a shareholder vote on the business combination is not held, the 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.

time of the Acquisition Company's IPO. Due to their different structure, Acquisition Companies do not have any prior financial history, at the time of their listing, like operating companies.

Historically, Acquisition Companies chose to list on the Nasdaq Capital Market instead of the Nasdaq Global Market, in part, because it had lower fees⁴ and lower initial distribution requirements.⁵ However, nothing in NASDAQ's rules prohibits an Acquisition Company from listing on the Global Market.⁶ More recently, certain Acquisition Companies have sought to list on the Nasdaq Global Market. In particular, Nasdaq notes that a recent SEC statement about accounting treatment by Acquisition Companies⁷ and subsequent and more recent accounting comments to Acquisition Companies has resulted in some Acquisition Companies adopting different accounting practices and, as a result, having insufficient equity to qualify for initial listing on the

⁴ Recently, Nasdaq amended the rules to make the listing fees and the timing of paying such fees for Acquisition Companies listing on the Nasdaq Capital and Global Markets the same. See Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

⁵ Listing Rules 5505(a)(2) and 5505(a)(3) require a Company to have one million Unrestricted Publicly Held Shares and at least 300 Round Lot Holders in connection with the initial listing on the Nasdaq Capital Market. See also Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; at least three registered and active Market Makers; and Market Value of Unrestricted Publicly Held Shares of \$15 million, Stockholders' equity of at least \$4 million, and Market Value of Listed Securities of \$50 million under the Market Value Standard.

⁶ Nasdaq Listing Rule 5310(i) provides that an Acquisition Company is not eligible to list on the Nasdaq Global Select Market.

⁷ *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies (SPACs)*, by John Coates, Acting Director of the Division of Corporation Finance, and Paul Munter, Acting Chief Accountant (April 12, 2021), available at: <https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs>.

Nasdaq Capital Market. However, these companies could list on the Nasdaq Global Market or on competing marketplaces, which permit listing without any minimum equity requirement.⁸

Listing Rules 5405 and 5450 require all companies, including Acquisition Companies, listing on the Nasdaq Global Market to have at least 400 Round Lot Holders for initial listing and 400 Total Holders for continued listing, respectively.⁹

Given Nasdaq's long experience listing Acquisition Companies on the Nasdaq Capital Market, and to facilitate capital formation, Nasdaq proposes to adopt alternative listing requirements that would allow Acquisition Companies to initially list their Primary Equity Security (other than an ADR) on the Nasdaq Global Market with at least 300 Round Lot Holders, and remain listed if they have at least 300 public stockholders,¹⁰ provided that they meet certain additional requirements for initial and continued listing

⁸ Nasdaq Rule 5405(b)(3) allows a company to list on the Nasdaq Global Market with no equity if it has a Market Value of Listed Securities of \$75 million and a Market Value of Unrestricted Publicly Held Shares of \$20 million, along with satisfying price, unrestricted publicly held shares, round lot holder and market maker requirements. See also Section 102.06 of the NYSE Listed Company Manual.

⁹ Round Lot Holder means a holder of a Normal Unit of Trading of Unrestricted Securities. See Listing Rule 5005(a)(40). "Round Lot" or "Normal Unit of Trading" means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol. See Listing Rule 5005(a)(39). "Total Holders" means holders of a security that includes both beneficial holders and holders of record. See Listing Rule 5005(a)(45).

¹⁰ "Public stockholders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. See also Listing Rule 5005(a)(36) defining "Public Holders" as holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

described below. These proposed requirements would be substantially similar to the NYSE listing standards for Acquisition Companies.¹¹

Initial Listing Requirements

As proposed, the new, alternative, listing requirements for Acquisition Companies, including the distribution requirements would be included in Listing Rule 5406. Under the proposal, Acquisition Companies would have to have at least 1.1 million Publicly Held Shares¹² and at least 300 Round Lot Holders when listing in conjunction with an IPO (rather than 400 Round Lot Holders as is the case currently). Acquisition Companies transferring from other exchanges or listing in connection with a quotation listing would be allowed to list based on the distribution requirements of 1.1 million publicly held shares¹³ at the time of initial listing on Nasdaq and

¹¹ Sections 102.06 and 802.01 of the NYSE Listed Company Manual. Although these rules provide the NYSE with certain discretion in determining the suitability for listing of an Acquisition Company, under Listing Rule 5101, Nasdaq has broad discretionary authority “over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.” Nasdaq further notes that while “Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.” Listing Rule IM-5101-1.

¹² “Publicly Held Shares” means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. See Listing Rule 5005(a)(35).

¹³ For Acquisition Companies that list at the time of their IPOs, the rule will require that the offering be on a firm commitment basis. If necessary, Nasdaq will rely on a written commitment from the underwriter to represent the anticipated value of the Acquisition Company’s offering in order to determine an Acquisition Company’s compliance with certain listing standards, including the number of Publicly Held Shares.

- (i) 300 Round Lot Holders;
- (ii) 2,200 total stockholders together with average monthly trading volume of 100,000 shares (for the most recent six months); or
- (iii) 500 total stockholders together with average monthly trading volume of one million shares (for the most recent twelve months).

To rely on these distribution requirements, Nasdaq proposes to adopt market capitalization and the publicly-held shares quantitative requirements that are more stringent than the current requirements applicable to Acquisition Companies listing on the Nasdaq Global Market.¹⁴

Under the proposed rule, an Acquisition Company must have Market Value of Listed Securities of at least \$100 million and Market Value of Publicly Held Shares of at least \$80 million at the time of initial listing. Nasdaq notes that there are a number of Acquisition Companies listed currently on other markets that would have met these revised requirements and, in Nasdaq's view, there is no evidence that these companies are unfit for exchange trading. The Exchange also notes that its revised quantitative requirements would be the same as those of the NYSE for Acquisition Companies.¹⁵

In addition to the proposed requirements described above, Nasdaq proposes to require an Acquisition Company to satisfy all additional requirements described in Listing Rule IM-5101-2; have at least four registered and active Market Makers; and

¹⁴ See footnote 8 above.

¹⁵ Nasdaq notes that Acquisition Companies could list on the NYSE under Section 102.06 on the basis of an aggregate market value of least \$100 million and market value of publicly-held shares of at least \$80 million. Nasdaq's understanding is that the NYSE calculates the aggregate market value by multiplying the total shares outstanding by the public offering price per share, which is also how Nasdaq calculates the Market Value of Listed Securities.

have a closing price or, if listing in connection with an IPO, an IPO price of at least \$4 per share.¹⁶

Finally, under the proposed rule, if the Acquisition Company lists units, the components of the units (other than Primary Equity Security, which must satisfy the requirements described above) must satisfy the initial listing requirements for the Nasdaq Global Market applicable to the component. If a component of a unit is a warrant, it must meet the following additional requirements (in addition to the requirements of Listing Rule 5410¹⁷):¹⁸

- At least 1,000,000 warrants outstanding;
- At least \$4 million aggregate market value;
- Warrants should have a minimum life of one year; and

¹⁶ The Market Maker requirement is the same as the requirement applicable to an Acquisition Company listing on the Nasdaq Global Market under the Market Value Standard. See Listing Rule 5405(b)(3). The minimum price requirement is similar to the bid price requirement for an Acquisition Company listing on the Nasdaq Global Market under the Market Value Standard, but is revised to reflect that an Acquisition Company listing in connection with an IPO will not have a bid price and to parallel the language used in the NYSE rule. See Nasdaq Listing Rule 5405(a) and NYSE Listed Company Manual Section 102.06.

¹⁷ Among other things, Listing Rule 5410 requires that the underlying security must be listed on the Global Market or be a Covered Security.

¹⁸ Although Section 713.12 of the NYSE Listed Company Manual provides the NYSE with certain discretion in reviewing the eligibility for listing of warrants, under Listing Rule 5101, Nasdaq has broad discretionary authority “over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.” Nasdaq further notes that while “Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.” Listing Rule IM-5101-1.

- The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants unless (i) the company undertakes to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules) and (ii) the company promptly gives public notice of the reduction in exercise price in a manner consistent with the Exchange's immediate release policy set forth in Rules 5250(b)(1) and IM-5250-1. The Exchange will apply the requirements in the immediately preceding sentence to the taking of any other action which has the same economic effect as a reduction in the exercise price of a listed warrant. This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established at the time of issuance of the warrants.

Continued Listing Requirements

Nasdaq also proposes to adopt continued listing standards for Acquisition Companies that initially listed under the proposed alternative standard and align them with the proposed initial listing standards. The requirements of Listing Rule IM-5101-2 also would continue to apply to Acquisition Companies that initially listed under the proposed alternative standard.

Under the proposed Rule 5452, until an Acquisition Company has satisfied the condition of consummating its business combination described in Rule IM-5101-2(b), Nasdaq will promptly initiate suspension and delisting procedures if:

- the Acquisition Company's average Market Value of Listed Securities is below \$50 million or the average Market Value of Publicly Held Shares is below \$40 million, in each case over 30 consecutive trading days. An Acquisition Company will not be eligible to follow the procedures outlined in Rule 5810(c)(2) with respect to this criterion, and will be subject to the procedures in proposed Rule 5810(c)(1), which will provide that Nasdaq Staff will issue a Staff Delisting Determination to such Acquisition Company informing the Company that its securities are immediately subject to suspension and delisting. Nasdaq will notify the Acquisition Company if its average Market Value of Listed Securities falls below \$75 million or the average Market Value of Publicly Held Shares falls below \$60 million and will advise the Acquisition Company of the delisting standard;
- the Acquisition Company's securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:
 - (1) at least 300 public stockholders (if a component of a unit is a warrant, at least 100 warrant holders);
 - (2) at least 1,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 12 months); or
 - (3) at least 600,000 Publicly Held Shares;¹⁹ or

¹⁹ See footnote 12 above.

- the Acquisition Company fails to consummate its business combination, required by Rule IM-5101-2(b), within the time period specified by its constitutive documents or required by contract, or as provided by Rule IM-5101-2(b), whichever is shorter.

Nasdaq also proposes to adopt Rule IM-5452-1 to explain the treatment of Acquisition Company units, and unit components, for purposes of the distribution requirements. In the case of Acquisition Company securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not meet the applicable continued listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component. If a component is a warrant, (in addition to the distribution requirement of 100 holders) the warrants will be subject to the continued listing standards for warrants set forth in Rule 5455.

Under the proposed rule, if the Acquisition Company lists warrants, the warrants must meet the following continued listing requirements (in addition to the requirements of Listing Rule 5455):²⁰

²⁰ Although Section 802.01D of the NYSE Listed Company Manual provides the NYSE with certain discretion in the appraisal of the suitability for continued listing of warrants, under Listing Rule 5101, Nasdaq has broad discretionary authority “over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.” Nasdaq further notes that

- The number of publicly-held warrants is at least 100,000;
- The number of warrant holders is at least 100; and
- Aggregate market value of warrants outstanding is at least \$1,000,000.

Notwithstanding the foregoing, Nasdaq will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of Nasdaq, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, Nasdaq will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

Nasdaq also proposes to amend Rule 5810(c)(1) to align it with the proposed rule by providing that if an Acquisition Company, which qualified for listing pursuant to the alternative initial listing requirements in Rule 5406, fails to comply with the additional continued listing requirements in Rule 5452(a)(1), such failure will constitute a deficiency that will immediately result in Nasdaq issuing a Staff Delisting Determination with regard to the Acquisition Company's Primary Equity Security and the securities will be subject to immediate suspension and delisting.

Nasdaq also proposes to amend Rule 5815(a)(1)(B)(ii) to provide that notwithstanding the provision that a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written panel decision, a request

while "Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority." Listing Rule IM-5101-1.

made by an Acquisition Company (which qualified for listing pursuant to the alternative initial listing requirements in proposed Rule 5406) shall not stay the suspension of the securities from trading if such company fails to meet (i) the continued listing requirement in Rule 5452(a)(1); or (ii) the requirements for initial listing immediately following a business combination as required by Rule IM-5101-2.²¹ In each case, the company's securities will be immediately suspended from trading and will remain suspended unless the panel decision, if any, issued after the hearing determines to reinstate the securities. If the Acquisition Company does not request a hearing, then its securities will remain suspended from trading until they are delisted following the deadline to request such a hearing.

Nasdaq believes that the proposed modification to the distribution requirements for Acquisition Companies is appropriate because of the unique characteristics of the Acquisition Company structure. Specifically, pending the completion of a business combination, each share of an Acquisition Company represents a right to a pro rata share of the Acquisition Company's assets held in trust, and, in Nasdaq's view, as a result Acquisition Company shares typically have a trading price close to their liquidation value. Therefore, Nasdaq believes that the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree with Acquisition Companies, and, in Nasdaq's view, there is less need to ensure that there are a large number of shareholders of an Acquisition Company, as compared to a typical operating

²¹ IM-5101-2 provides that if an Acquisition Company “does not meet the requirements for initial listing following a business combination ... Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.” Rule 5810 further provides that “Staff Delisting Determinations... unless appealed, subject the Company to immediate suspension and delisting.”

company, to create an active market that generates appropriate pricing. Nasdaq also believes that the proposed distribution requirements for Acquisition Companies are appropriate because the proposed alternative listing requirements for Acquisition Companies under Rule 5406 are generally equal to or higher than the requirements otherwise applicable to Acquisition Companies listing on the Nasdaq Capital Market.²² Nasdaq also notes that Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued requirements substantially identical to those included in this proposal and that the proposed amendments will enable Nasdaq to compete more effectively for Acquisition Companies listings.

Finally, Nasdaq believes that the proposed rule change would not affect the status of Nasdaq listed securities under Rule 3a51-1 of the Act.²³

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq also believes that the proposal to adopt an alternative set of listing requirements for Acquisition Companies is designed to promote just and equitable

²² See footnote 5 above.

²³ 17 CFR 240.3a51-1.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

principles of trade, and to remove impediments to and perfect the mechanism of a free and open market because the proposed standards would permit Nasdaq to list securities of Acquisition Companies that meet specified criteria, including market value, distribution, and price requirements, which should help to ensure that the securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, Acquisition Companies would have to meet other existing investor protection criteria, such as the escrow account requirement, public shareholder approval requirement, public shareholder redemption rights, and public shareholder liquidation preferences, which should further the ability of investors to protect and monitor their investment pending a business combination. Finally, Acquisition Companies that list securities on Nasdaq would have to comply with all Nasdaq corporate governance requirements applicable to operating companies. Nasdaq also notes that Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued requirements nearly identical to those included in this proposal and that the Commission previously found these initial listing standards to be consistent with the requirements of the Act.²⁶

The proposal is also designed to protect investors and the public interest because, prior to a business combination, an Acquisition Company would need to maintain average aggregate market value of listed securities of at least \$50 million and average market value of publicly held shares of at least \$40 million, in each case over 30 consecutive trading days. Nasdaq would issue a Staff Delisting Determination under Rule 5810 to delist the securities of Acquisition Companies that fall below such

²⁶ See e.g. Securities Exchange Act Release No. 80199 (March 10, 2017), 82 FR 13905 (March 15, 2017) (approving SR-NYSE-2016-72) and Securities Exchange Act Release No. 81079 (July 5, 2017), 82 FR 32022 (July 11, 2017) (approving SR-NYSE-2017-11).

requirements immediately and the Acquisition Companies could not use the time period to cure deficiencies afforded to other operating companies. In addition, the proposal is designed to protect investors and the public interest because securities of Acquisition Companies will be immediately suspended from trading, notwithstanding a timely request for a hearing, in connection with a Staff Delisting Determination under Rule 5810 based on the proposed market value of listed securities and market value of publicly held shares requirements. In these cases, the company's securities will be immediately suspended and will remain suspended unless the panel decision, if any, issued after the hearing determines to reinstate the securities.

Nasdaq also believes that the proposed amendments to its rules to adopt an alternative set of listing requirements containing lower distribution requirements for Acquisition Companies are consistent with the protection of investors because, in Nasdaq's view, Acquisition Company shares typically have a trading price close to their liquidation value. The Exchange's distribution standards are important because the existence of a significant number of holders can be an indicia of a liquid trading market, which supports an appropriate level of price discovery. Because Acquisition Company shares typically trade close to their liquidation value, in Nasdaq's view, price discovery is less important than it is with operating companies and therefore there is a reduced reliance on distribution requirements to assure appropriate price discovery. Nasdaq also believes that the proposed distribution requirements for Acquisition Companies are consistent with the protection of investors because the proposed alternative listing requirements for Acquisition Companies under Rule 5406 are generally equal to or higher than the requirements otherwise applicable to Acquisition Companies listing on the

Nasdaq Capital Market.²⁷ In addition, a number of Acquisition Companies have listed on the NYSE subject to identical distribution requirements to those proposed by the Exchange and, in Nasdaq's view, there is no evidence that they have proven unfit for exchange trading. It is also important to note that any Acquisition Company that remains listed on the Nasdaq Global Market after completing a business combination will be required to meet the initial listing requirement of 400 round lot holders at the time of consummation of the transaction.

Nasdaq believes that the proposed amendments to require that an Acquisition Company, which qualified for listing under the proposed new rule, that failed to meet the requirements for initial listing immediately following a business combination may not stay the suspension of the securities from trading by a timely request for a hearing (following the issuance of a Staff Delisting Determination under Rule 5810 to delist the securities) is designed to protect investors and the public interest because it will help assure that the combined company that failed to meet the initial listing requirements will not trade on Nasdaq.

While the proposed alternative set of listing requirements for Acquisition Companies is different from the requirements applicable to operating companies and contains distribution requirements for the listing of Acquisition Companies that would be lower than those for other applicants seeking to list on the Nasdaq Global Market, Nasdaq does not believe that this difference is unfairly discriminatory because market value-based listing standards are largely adopted to ensure adequate trading liquidity and, consequently, efficient market pricing of a company's securities. As an investment in an

²⁷ See footnote 5 above.

Acquisition Company prior to its business combination represents a right to a pro rata share of the Acquisition Company's assets held in trust, Acquisition Company shares typically have a trading price close to their liquidation value and, in Nasdaq's view, the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree. As such, the Exchange does not believe it is unfairly discriminatory to apply different distribution requirements to Acquisition Companies than to other listing applicants.

Nasdaq also notes that Acquisition Companies listing under the proposed rule will be subject to the existing requirements in Listing Rule IM-5101-2 which requires that until the Company completes a business combination within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement (the 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 at the time of the agreement to enter into the initial combination) the Acquisition Company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing immediately following a business combination or does not comply with one of the requirements in Listing Rule IM-5101-2, Nasdaq will delist the Company's securities.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enable Nasdaq to better compete with the

NYSE, given the Commission's recent guidance regarding accounting considerations for Acquisition Companies, as described above, by adopting an alternative set of listing requirements for Acquisition Companies that a greater number of these companies will be able to meet at the time of their IPOs. As such, it is intended to promote competition for the listing of Acquisition Companies.

Nasdaq also does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will be available to all Acquisition Companies listing on Nasdaq and all such companies will be able to choose which standards to list under.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²⁸ of the Act and Rule 19b-4(f)(6) thereunder²⁹ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

Commission may designate if consistent with the protection of investors and the public interest.

Nasdaq believes that the proposed alternative initial and continued listing requirements for Acquisition Companies listing on the Nasdaq Global Market does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition because Nasdaq is adopting listing standards that the Commission previously found to be consistent with the protection of investors and the public interest requirements of Section 6(b)(5) of the Act and because the Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued listing requirements that are nearly identical to those included in this proposal³⁰ and as such the proposed amendments will enable Nasdaq to compete more effectively for Acquisition Companies listings.

Furthermore, Rule 19b-4(f)(6)(iii)³¹ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

³⁰ See footnote 26 above.

³¹ 17 CFR 240.19b-4(f)(6)(iii).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) to allow Acquisition Companies meeting these requirements to immediately list on the Nasdaq Global Market, thereby enabling Nasdaq to compete more effectively for Acquisition Companies listings. Nasdaq believes that allowing such listings is consistent with the protection of investors and the public interest because these Acquisition Companies could instead list on the NYSE, which has allowed listings for a number of years subject to initial and continued listing requirements that are nearly identical to those included in this proposal.

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

This proposal is based on the requirements in Sections 102.06 and 802.01 of the NYSE Listed Company Manual applicable to the Acquisition Companies.

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-2021-092)

November __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Alternative Initial and Continued Listing Requirements for Acquisition Companies Listing on the Nasdaq Global Market

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 12, 2021, 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 adopt alternative initial and continued listing requirements for Acquisition Companies listing on the Nasdaq Global Market.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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

Nasdaq is proposing to adopt alternative initial and continued listing requirements for companies whose business plan is to complete one or more acquisitions, as described in Listing Rule IM-5101-2 (an "Acquisition Company"). As described below, such alternative listing requirements do not replace the requirements of Listing Rule IM-5101-2, which will continue to apply to all Acquisition Companies.

An Acquisition Company is a special purpose company formed for the purpose of completing an initial public offering and engaging in a merger or acquisition (a business combination) with one or more unidentified companies within a specific period of time.³

³ Pursuant to Listing Rule IM-5101-2 an Acquisition Company is required, among other things, to keep at least 90% of the proceeds from its IPO in an escrow account and, until the company has completed one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account, must meet the requirements for initial listing following each business combination. If a shareholder vote on the business combination is held, public shareholders voting against a 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 escrow account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. If a shareholder vote on the business combination is not held, the company must provide all shareholders with the opportunity to redeem all their

The securities sold by the Acquisition Companies in its initial public offering (“IPO”) are typically units, consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Management generally is granted a percentage of the Acquisition Company’s equity and may be required to purchase additional shares in a private placement at the time of the Acquisition Company’s IPO. Due to their different structure, Acquisition Companies do not have any prior financial history, at the time of their listing, like operating companies.

Historically, Acquisition Companies chose to list on the Nasdaq Capital Market instead of the Nasdaq Global Market, in part, because it had lower fees⁴ and lower initial distribution requirements.⁵ However, nothing in NASDAQ’s rules prohibits an Acquisition Company from listing on the Global Market.⁶ More recently, certain Acquisition Companies have sought to list on the Nasdaq Global Market. In particular,

shares for cash equal to their pro rata share of the aggregate amount then in the deposit account.

⁴ Recently, Nasdaq amended the rules to make the listing fees and the timing of paying such fees for Acquisition Companies listing on the Nasdaq Capital and Global Markets the same. See Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

⁵ Listing Rules 5505(a)(2) and 5505(a)(3) require a Company to have one million Unrestricted Publicly Held Shares and at least 300 Round Lot Holders in connection with the initial listing on the Nasdaq Capital Market. See also Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; at least three registered and active Market Makers; and Market Value of Unrestricted Publicly Held Shares of \$15 million, Stockholders' equity of at least \$4 million, and Market Value of Listed Securities of \$50 million under the Market Value Standard.

⁶ Nasdaq Listing Rule 5310(i) provides that an Acquisition Company is not eligible to list on the Nasdaq Global Select Market.

Nasdaq notes that a recent SEC statement about accounting treatment by Acquisition Companies⁷ and subsequent and more recent accounting comments to Acquisition Companies has resulted in some Acquisition Companies adopting different accounting practices and, as a result, having insufficient equity to qualify for initial listing on the Nasdaq Capital Market. However, these companies could list on the Nasdaq Global Market or on competing marketplaces, which permit listing without any minimum equity requirement.⁸

Listing Rules 5405 and 5450 require all companies, including Acquisition Companies, listing on the Nasdaq Global Market to have at least 400 Round Lot Holders for initial listing and 400 Total Holders for continued listing, respectively.⁹

Given Nasdaq's long experience listing Acquisition Companies on the Nasdaq Capital Market, and to facilitate capital formation, Nasdaq proposes to adopt alternative

⁷ *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies (SPACs)*, by John Coates, Acting Director of the Division of Corporation Finance, and Paul Munter, Acting Chief Accountant (April 12, 2021), available at: <https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs>.

⁸ Nasdaq Rule 5405(b)(3) allows a company to list on the Nasdaq Global Market with no equity if it has a Market Value of Listed Securities of \$75 million and a Market Value of Unrestricted Publicly Held Shares of \$20 million, along with satisfying price, unrestricted publicly held shares, round lot holder and market maker requirements. See also Section 102.06 of the NYSE Listed Company Manual.

⁹ Round Lot Holder means a holder of a Normal Unit of Trading of Unrestricted Securities. See Listing Rule 5005(a)(40). "Round Lot" or "Normal Unit of Trading" means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol. See Listing Rule 5005(a)(39). "Total Holders" means holders of a security that includes both beneficial holders and holders of record. See Listing Rule 5005(a)(45).

listing requirements that would allow Acquisition Companies to initially list their Primary Equity Security (other than an ADR) on the Nasdaq Global Market with at least 300 Round Lot Holders, and remain listed if they have at least 300 public stockholders,¹⁰ provided that they meet certain additional requirements for initial and continued listing described below. These proposed requirements would be substantially similar to the NYSE listing standards for Acquisition Companies.¹¹

Initial Listing Requirements

As proposed, the new, alternative, listing requirements for Acquisition Companies, including the distribution requirements would be included in Listing Rule 5406. Under the proposal, Acquisition Companies would have to have at least 1.1 million Publicly Held Shares¹² and at least 300 Round Lot Holders when listing in

¹⁰ “Public stockholders” exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. See also Listing Rule 5005(a)(36) defining “Public Holders” as holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

¹¹ Sections 102.06 and 802.01 of the NYSE Listed Company Manual. Although these rules provide the NYSE with certain discretion in determining the suitability for listing of an Acquisition Company, under Listing Rule 5101, Nasdaq has broad discretionary authority “over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.” Nasdaq further notes that while “Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.” Listing Rule IM-5101-1.

¹² “Publicly Held Shares” means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. See Listing Rule 5005(a)(35).

conjunction with an IPO (rather than 400 Round Lot Holders as is the case currently). Acquisition Companies transferring from other exchanges or listing in connection with a quotation listing would be allowed to list based on the distribution requirements of 1.1 million publicly held shares¹³ at the time of initial listing on Nasdaq and

- (i) 300 Round Lot Holders;
- (ii) 2,200 total stockholders together with average monthly trading volume of 100,000 shares (for the most recent six months); or
- (iii) 500 total stockholders together with average monthly trading volume of one million shares (for the most recent twelve months).

To rely on these distribution requirements, Nasdaq proposes to adopt market capitalization and the publicly-held shares quantitative requirements that are more stringent than the current requirements applicable to Acquisition Companies listing on the Nasdaq Global Market.¹⁴

Under the proposed rule, an Acquisition Company must have Market Value of Listed Securities of at least \$100 million and Market Value of Publicly Held Shares of at least \$80 million at the time of initial listing. Nasdaq notes that there are a number of Acquisition Companies listed currently on other markets that would have met these revised requirements and, in Nasdaq's view, there is no evidence that these companies

¹³ For Acquisition Companies that list at the time of their IPOs, the rule will require that the offering be on a firm commitment basis. If necessary, Nasdaq will rely on a written commitment from the underwriter to represent the anticipated value of the Acquisition Company's offering in order to determine an Acquisition Company's compliance with certain listing standards, including the number of Publicly Held Shares.

¹⁴ See footnote 8 above.

are unfit for exchange trading. The Exchange also notes that its revised quantitative requirements would be the same as those of the NYSE for Acquisition Companies.¹⁵

In addition to the proposed requirements described above, Nasdaq proposes to require an Acquisition Company to satisfy all additional requirements described in Listing Rule IM-5101-2; have at least four registered and active Market Makers; and have a closing price or, if listing in connection with an IPO, an IPO price of at least \$4 per share.¹⁶

Finally, under the proposed rule, if the Acquisition Company lists units, the components of the units (other than Primary Equity Security, which must satisfy the requirements described above) must satisfy the initial listing requirements for the Nasdaq Global Market applicable to the component. If a component of a unit is a warrant, it must meet the following additional requirements (in addition to the requirements of Listing Rule 5410¹⁷):¹⁸

¹⁵ Nasdaq notes that Acquisition Companies could list on the NYSE under Section 102.06 on the basis of an aggregate market value of least \$100 million and market value of publicly-held shares of at least \$80 million. Nasdaq's understanding is that the NYSE calculates the aggregate market value by multiplying the total shares outstanding by the public offering price per share, which is also how Nasdaq calculates the Market Value of Listed Securities.

¹⁶ The Market Maker requirement is the same as the requirement applicable to an Acquisition Company listing on the Nasdaq Global Market under the Market Value Standard. See Listing Rule 5405(b)(3). The minimum price requirement is similar to the bid price requirement for an Acquisition Company listing on the Nasdaq Global Market under the Market Value Standard, but is revised to reflect that an Acquisition Company listing in connection with an IPO will not have a bid price and to parallel the language used in the NYSE rule. See Nasdaq Listing Rule 5405(a) and NYSE Listed Company Manual Section 102.06.

¹⁷ Among other things, Listing Rule 5410 requires that the underlying security must be listed on the Global Market or be a Covered Security.

- At least 1,000,000 warrants outstanding;
- At least \$4 million aggregate market value;
- Warrants should have a minimum life of one year; and
- The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants unless (i) the company undertakes to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules) and (ii) the company promptly gives public notice of the reduction in exercise price in a manner consistent with the Exchange's immediate release policy set forth in Rules 5250(b)(1) and IM-5250-1. The Exchange will apply the requirements in the immediately preceding sentence to the taking of any other action which has the same economic effect as a reduction in the exercise price of a listed warrant.

¹⁸ Although Section 713.12 of the NYSE Listed Company Manual provides the NYSE with certain discretion in reviewing the eligibility for listing of warrants, under Listing Rule 5101, Nasdaq has broad discretionary authority “over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.” Nasdaq further notes that while “Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.” Listing Rule IM-5101-1.

This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established at the time of issuance of the warrants.

Continued Listing Requirements

Nasdaq also proposes to adopt continued listing standards for Acquisition Companies that initially listed under the proposed alternative standard and align them with the proposed initial listing standards. The requirements of Listing Rule IM-5101-2 also would continue to apply to Acquisition Companies that initially listed under the proposed alternative standard.

Under the proposed Rule 5452, until an Acquisition Company has satisfied the condition of consummating its business combination described in Rule IM-5101-2(b), Nasdaq will promptly initiate suspension and delisting procedures if:

- the Acquisition Company's average Market Value of Listed Securities is below \$50 million or the average Market Value of Publicly Held Shares is below \$40 million, in each case over 30 consecutive trading days. An Acquisition Company will not be eligible to follow the procedures outlined in Rule 5810(c)(2) with respect to this criterion, and will be subject to the procedures in proposed Rule 5810(c)(1), which will provide that Nasdaq Staff will issue a Staff Delisting Determination to such Acquisition Company informing the Company that its securities are immediately subject to suspension and delisting. Nasdaq will notify the Acquisition Company if its average Market Value of Listed Securities falls below \$75 million or the average Market Value of Publicly Held Shares falls

- below \$60 million and will advise the Acquisition Company of the delisting standard;
- the Acquisition Company's securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:
 - (1) at least 300 public stockholders (if a component of a unit is a warrant, at least 100 warrant holders);
 - (2) at least 1,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 12 months); or
 - (3) at least 600,000 Publicly Held Shares;¹⁹ or
 - the Acquisition Company fails to consummate its business combination, required by Rule IM-5101-2(b), within the time period specified by its constitutive documents or required by contract, or as provided by Rule IM-5101-2(b), whichever is shorter.

Nasdaq also proposes to adopt Rule IM-5452-1 to explain the treatment of Acquisition Company units, and unit components, for purposes of the distribution requirements. In the case of Acquisition Company securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not meet the applicable continued listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing

¹⁹ See footnote 12 above.

of the component. If a component is a warrant, (in addition to the distribution requirement of 100 holders) the warrants will be subject to the continued listing standards for warrants set forth in Rule 5455.

Under the proposed rule, if the Acquisition Company lists warrants, the warrants must meet the following continued listing requirements (in addition to the requirements of Listing Rule 5455):²⁰

- The number of publicly-held warrants is at least 100,000;
- The number of warrant holders is at least 100; and
- Aggregate market value of warrants outstanding is at least \$1,000,000.

Notwithstanding the foregoing, Nasdaq will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of Nasdaq, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, Nasdaq will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

²⁰ Although Section 802.01D of the NYSE Listed Company Manual provides the NYSE with certain discretion in the appraisal of the suitability for continued listing of warrants, under Listing Rule 5101, Nasdaq has broad discretionary authority “over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.” Nasdaq further notes that while “Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.” Listing Rule IM-5101-1.

Nasdaq also proposes to amend Rule 5810(c)(1) to align it with the proposed rule by providing that if an Acquisition Company, which qualified for listing pursuant to the alternative initial listing requirements in Rule 5406, fails to comply with the additional continued listing requirements in Rule 5452(a)(1), such failure will constitute a deficiency that will immediately result in Nasdaq issuing a Staff Delisting Determination with regard to the Acquisition Company's Primary Equity Security and the securities will be subject to immediate suspension and delisting.

Nasdaq also proposes to amend Rule 5815(a)(1)(B)(ii) to provide that notwithstanding the provision that a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written panel decision, a request made by an Acquisition Company (which qualified for listing pursuant to the alternative initial listing requirements in proposed Rule 5406) shall not stay the suspension of the securities from trading if such company fails to meet (i) the continued listing requirement in Rule 5452(a)(1); or (ii) the requirements for initial listing immediately following a business combination as required by Rule IM-5101-2.²¹ In each case, the company's securities will be immediately suspended from trading and will remain suspended unless the panel decision, if any, issued after the hearing determines to reinstate the securities. If the Acquisition Company does not request a hearing, then its securities will remain suspended from trading until they are delisted following the deadline to request such a hearing.

²¹ IM-5101-2 provides that if an Acquisition Company “does not meet the requirements for initial listing following a business combination ... Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.” Rule 5810 further provides that “Staff Delisting Determinations... unless appealed, subject the Company to immediate suspension and delisting.”

Nasdaq believes that the proposed modification to the distribution requirements for Acquisition Companies is appropriate because of the unique characteristics of the Acquisition Company structure. Specifically, pending the completion of a business combination, each share of an Acquisition Company represents a right to a pro rata share of the Acquisition Company's assets held in trust, and, in Nasdaq's view, as a result Acquisition Company shares typically have a trading price close to their liquidation value. Therefore, Nasdaq believes that the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree with Acquisition Companies, and, in Nasdaq's view, there is less need to ensure that there are a large number of shareholders of an Acquisition Company, as compared to a typical operating company, to create an active market that generates appropriate pricing. Nasdaq also believes that the proposed distribution requirements for Acquisition Companies are appropriate because the proposed alternative listing requirements for Acquisition Companies under Rule 5406 are generally equal to or higher than the requirements otherwise applicable to Acquisition Companies listing on the Nasdaq Capital Market.²² Nasdaq also notes that Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued requirements substantially identical to those included in this proposal and that the proposed amendments will enable Nasdaq to compete more effectively for Acquisition Companies listings.

Finally, Nasdaq believes that the proposed rule change would not affect the status of Nasdaq listed securities under Rule 3a51-1 of the Act.²³

²² See footnote 5 above.

²³ 17 CFR 240.3a51-1.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq also believes that the proposal to adopt an alternative set of listing requirements for Acquisition Companies is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market because the proposed standards would permit Nasdaq to list securities of Acquisition Companies that meet specified criteria, including market value, distribution, and price requirements, which should help to ensure that the securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, Acquisition Companies would have to meet other existing investor protection criteria, such as the escrow account requirement, public shareholder approval requirement, public shareholder redemption rights, and public shareholder liquidation preferences, which should further the ability of investors to protect and monitor their investment pending a business combination. Finally, Acquisition Companies that list securities on Nasdaq would have to comply with all Nasdaq corporate governance requirements applicable to operating companies. Nasdaq also notes that Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued requirements nearly

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

identical to those included in this proposal and that the Commission previously found these initial listing standards to be consistent with the requirements of the Act.²⁶

The proposal is also designed to protect investors and the public interest because, prior to a business combination, an Acquisition Company would need to maintain average aggregate market value of listed securities of at least \$50 million and average market value of publicly held shares of at least \$40 million, in each case over 30 consecutive trading days. Nasdaq would issue a Staff Delisting Determination under Rule 5810 to delist the securities of Acquisition Companies that fall below such requirements immediately and the Acquisition Companies could not use the time period to cure deficiencies afforded to other operating companies. In addition, the proposal is designed to protect investors and the public interest because securities of Acquisition Companies will be immediately suspended from trading, notwithstanding a timely request for a hearing, in connection with a Staff Delisting Determination under Rule 5810 based on the proposed market value of listed securities and market value of publicly held shares requirements. In these cases, the company's securities will be immediately suspended and will remain suspended unless the panel decision, if any, issued after the hearing determines to reinstate the securities.

Nasdaq also believes that the proposed amendments to its rules to adopt an alternative set of listing requirements containing lower distribution requirements for Acquisition Companies are consistent with the protection of investors because, in Nasdaq's view, Acquisition Company shares typically have a trading price close to their

²⁶ See e.g. Securities Exchange Act Release No. 80199 (March 10, 2017), 82 FR 13905 (March 15, 2017) (approving SR-NYSE-2016-72) and Securities Exchange Act Release No. 81079 (July 5, 2017), 82 FR 32022 (July 11, 2017) (approving SR-NYSE-2017-11).

liquidation value. The Exchange's distribution standards are important because the existence of a significant number of holders can be an indicia of a liquid trading market, which supports an appropriate level of price discovery. Because Acquisition Company shares typically trade close to their liquidation value, in Nasdaq's view, price discovery is less important than it is with operating companies and therefore there is a reduced reliance on distribution requirements to assure appropriate price discovery. Nasdaq also believes that the proposed distribution requirements for Acquisition Companies are consistent with the protection of investors because the proposed alternative listing requirements for Acquisition Companies under Rule 5406 are generally equal to or higher than the requirements otherwise applicable to Acquisition Companies listing on the Nasdaq Capital Market.²⁷ In addition, a number of Acquisition Companies have listed on the NYSE subject to identical distribution requirements to those proposed by the Exchange and, in Nasdaq's view, there is no evidence that they have proven unfit for exchange trading. It is also important to note that any Acquisition Company that remains listed on the Nasdaq Global Market after completing a business combination will be required to meet the initial listing requirement of 400 round lot holders at the time of consummation of the transaction.

Nasdaq believes that the proposed amendments to require that an Acquisition Company, which qualified for listing under the proposed new rule, that failed to meet the requirements for initial listing immediately following a business combination may not stay the suspension of the securities from trading by a timely request for a hearing (following the issuance of a Staff Delisting Determination under Rule 5810 to delist the

²⁷ See footnote 5 above.

securities) is designed to protect investors and the public interest because it will help assure that the combined company that failed to meet the initial listing requirements will not trade on Nasdaq.

While the proposed alternative set of listing requirements for Acquisition Companies is different from the requirements applicable to operating companies and contains distribution requirements for the listing of Acquisition Companies that would be lower than those for other applicants seeking to list on the Nasdaq Global Market, Nasdaq does not believe that this difference is unfairly discriminatory because market value-based listing standards are largely adopted to ensure adequate trading liquidity and, consequently, efficient market pricing of a company's securities. As an investment in an Acquisition Company prior to its business combination represents a right to a pro rata share of the Acquisition Company's assets held in trust, Acquisition Company shares typically have a trading price close to their liquidation value and, in Nasdaq's view, the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree. As such, the Exchange does not believe it is unfairly discriminatory to apply different distribution requirements to Acquisition Companies than to other listing applicants.

Nasdaq also notes that Acquisition Companies listing under the proposed rule will be subject to the existing requirements in Listing Rule IM-5101-2 which requires that until the Company completes a business combination within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement (the 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 at the time of the agreement to enter into the initial combination) the Acquisition Company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing immediately following a business combination or does not comply with one of the requirements in Listing Rule IM-5101-2, Nasdaq will delist the Company's securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enable Nasdaq to better compete with the NYSE, given the Commission's recent guidance regarding accounting considerations for Acquisition Companies, as described above, by adopting an alternative set of listing requirements for Acquisition Companies that a greater number of these companies will be able to meet at the time of their IPOs. As such, it is intended to promote competition for the listing of Acquisition Companies.

Nasdaq also does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will be available to all Acquisition Companies listing on Nasdaq and all such companies will be able to choose which standards to list under.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

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 necessary or appropriate in the public interest, for the protection of investors, or 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:

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-092 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-2021-092. 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-2021-092 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.³⁰

J. Matthew DeLesDernier
Assistant Secretary

³⁰ 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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5405. Initial Listing Requirements and Standards for Primary Equity Securities

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5406. Alternative Initial Listing Requirements for Companies whose Business Plan is to Complete One or More Acquisitions

In addition to being able to list under the requirements described in Rule 5405, a Company whose business plan is to complete one or more acquisitions, as described in IM-5101-2 (an “Acquisition Company”), can alternatively list its Primary Equity Security (other than an ADR) on the Nasdaq Global Market as set forth in this Rule. For Acquisition Companies that list at the time of their IPOs, Nasdaq will require that the offering be on a firm commitment basis, and, if necessary, Nasdaq will rely on a written commitment from the underwriter to represent the anticipated value of the Acquisition Company’s offering in order to determine an Acquisition Company’s compliance with certain listing standards, including the number of Publicly Held Shares.

- (a) The Acquisition Company must satisfy all requirements described in IM-5101-2;
- (b) The Acquisition Company must have a Market Value of Listed Securities of at least \$100 million;
- (c) The Primary Equity Security must:
 - (1) have a closing price or, if listing in connection with an IPO, an IPO price of at least \$4 per share;
 - (2) have a Market Value of Publicly Held Shares of at least \$80 million;
 - (3) have at least 1,100,000 Publicly Held Shares; and
 - (4) satisfy one of the following distribution criteria:
 - (A) In the case of an Acquisition Company listing in connection with an IPO, at least 300 Round Lot Holders.

(B) In the case of an Acquisition Company listing in connection with a transfer or quotation:

(1) at least 300 Round Lot Holders; or

(2) at least 2,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 6 months); or

(3) at least 500 total stockholders and average monthly trading volume of 1,000,000 shares (for most recent 12 months).

(d) As required by Rule 5225(a)(1)(A), if the Acquisition Company lists units, the components of the units (other than Primary Equity Security, which must satisfy the requirements of Rule 5406(c)) must satisfy the initial listing requirements for the Nasdaq Global Market applicable to the component. If a component of a unit is a warrant, it must meet the following additional requirements:

(1) At least 1,000,000 warrants outstanding;

(2) At least \$4 million aggregate market value;

(3) Warrants should have a minimum life of one year; and

(4) The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants unless (i) the company undertakes to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules) and (ii) the company promptly gives public notice of the reduction in exercise price in a manner consistent with the Exchange's immediate release policy set forth in Rules 5250(b)(1) and IM-5250-1. The Exchange will apply the requirements in the immediately preceding sentence to the taking of any other action which has the same economic effect as a reduction in the exercise price of a listed warrant. This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the exercise price have been previously established at the time of issuance of the warrants.

* * * * *

5452. Continued Listing Requirements for Acquisition Companies listed under Rule 5406

A Company whose business plan is to complete one or more acquisitions, as described in IM-5101-2 (an "Acquisition Company"), that qualified for listing on the Nasdaq Global Market pursuant to the alternative initial listing requirements in Rule 5406 must continue

to meet all of the requirements set forth in this rule and IM-5101-2, in addition to the minimum bid price of \$1 per share requirement in Rule 5450(a)(1) and the requirement to have at least four registered and active Market Makers in Rule 5450(b)(2)(D). All other continued listing requirements of Rule 5450 are superseded by the requirements set forth below.

(a) Until an Acquisition Company has satisfied the condition of consummating its business combination described in Rule IM-5101-2(b), Nasdaq will promptly initiate suspension and delisting procedures if:

(1) the Acquisition Company's average Market Value of Listed Securities is below \$50,000,000 or the average Market Value of Publicly Held Shares is below \$40,000,000, in each case over 30 consecutive trading days. An Acquisition Company will not be eligible to follow the procedures outlined in Rule 5810(c)(2) with respect to this criterion, and will be subject to the procedures in Rule 5810(c)(1) which provides that Nasdaq Staff will issue a Staff Delisting Determination to such Acquisition Company. Nasdaq will notify the Acquisition Company if its average Market Value of Listed Securities falls below \$75,000,000 or the average Market Value of Publicly Held Shares falls below \$60,000,000 and will advise the Acquisition Company of the delisting standard.

(2) the Acquisition Company's securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

(A) at least 300 public stockholders (if a component of a unit is a warrant, at least 100 warrant holders);

(B) at least 1,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 12 months); or

(C) at least 600,000 Publicly Held Shares.

(3) the Acquisition Company fails to consummate its business combination, required by Rule IM-5101-2 (b), within the time period specified by its constitutive documents or required by contract, or as provided by Rule IM-5101-2 (b), whichever is shorter.

(b) In the case of an Acquisition Company listed warrants, the warrants must meet the following continued listing requirements (in addition to the requirements of Listing Rule 5455):

(A) The number of publicly-held warrants is at least 100,000;

(B) The number of warrant holders is at least 100; and

(C) Aggregate market value of warrants outstanding is at least \$1,000,000.

IM-5452-1. Treatment of Acquisition Company units, and unit components, for purposes of the distribution requirements

For purposes of Rule 5452, "public stockholders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more.

In addition, Rule 5452(a)(2) sets forth certain distribution criteria applicable to an Acquisition Company listed under Rule 5406. In the case of Acquisition Company securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not meet the applicable listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component. If a component is a warrant, (in addition to the distribution requirement of 100 holders) the warrants will be subject to the continued listing standards for warrants set forth in Rules 5452 and 5455.

Notwithstanding the foregoing, Nasdaq will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of Nasdaq, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, the Exchange will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

IM-5810-1. No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies;
- an Equity Investment Tracking Stock fails to comply with the additional continued listing requirements in Rule 5222(c) or a Staff Delisting Determination has been issued with respect to the security such Equity Investment Tracking Stock tracks;
- the common stock of the REIT in a Paired Share Unit listed under Rule 5226 becomes separately tradable from the common stock of the Parent;
- An issuer of non-convertible bonds listed on Nasdaq fails to meet its obligations on the non-convertible bonds, as set forth in Rule 5702(b)(2);
- a Subscription Receipt listed under Rule 5520 fails to comply with the continued listing requirements in Rule 5565 or a Staff Delisting Determination has been issued with respect to the security such Subscription Receipt is exchangeable for;
- a security fails to meet the continued listing requirement for minimum bid price and is not eligible to receive a compliance period as described under Rule 5810(c)(3)(A)(iii) or (iv);[or]
- a security of a Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, that qualified for listing pursuant to the alternative initial listing requirements in Rule 5406 fails to meet the continued listing requirement in Rule 5452(a)(1); or
- Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern.

(2) - (4) No change.

(d) No change.

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing**(1) Timely Request Stays Delisting**

(A) No change.

(B) Subject to the following limitations, a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written Panel Decision.

(i) No change.

(ii) A timely request for a hearing will not stay the suspension of the securities from trading pending the issuance of a written Panel Decision when the Staff Delisting Determination is related to one of the following deficiencies:

a. A Company whose application for initial listing has not been approved prior to consummation of a transaction whereby the Company combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing, as described in Nasdaq Rule 5110(a); [or]

b. A Company that has filed for protection under any provision of the federal bankruptcy laws, or comparable foreign laws, or that has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, as described in Nasdaq Rule 5110(b)[.]; or

c. A Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, which qualified for listing pursuant to the alternative initial listing requirements in Rule 5406, that fails to meet (i) the continued listing requirement in Rule 5452(a)(1); or (ii) the requirements for initial listing immediately following a business combination as required by Rule IM-5101-2.

In each case, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(2) - (6) No change.
