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Page 1 of \* 30

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

File No. \* SR 2024 - \* 038

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 amend certain procedures related to the suspension and delisting of Acquisition Companies.

### 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 \* Senior Counsel Listing and Governance

E-mail \* Nikolai.Utochkin@Nasdaq.com

Telephone \* (202) 329-2787 Fax

### Signature

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

Date 07/08/2024


(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.

 Date: 2024.07.08 17:22:52 -04'00'

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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SR-NASDAQ-2024-038 19b-4.docx

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-2024-038 Exhibit 1.docx

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-2024-038 Exhibit 5.docx

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend certain procedures related to the suspension and delisting of Acquisition Companies.

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 Exchange’s Board of Directors (the “Board”). Nasdaq staff will advise the Board of Directors of Nasdaq of any action taken pursuant to delegated authority. No other action by Nasdaq is necessary for the filing of the rule change.

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

Nikolai Utochkin  
Senior Counsel Listing and Governance  
Nasdaq, Inc.  
(202) 329-2787

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

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

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

a. Purpose

Nasdaq is proposing to amend certain procedures governing the suspension and delisting process applicable to a company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2 (“Acquisition Company”), that fails to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) (“Business Combination”) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination. Nasdaq also proposes to limit the Hearings Panels authority to review the Nasdaq Staff’s decision in these instances to a review for factual error only. Finally, Nasdaq also proposes to amend Listing Rule 5810(c)(1) to clarify it without a substantive change.<sup>3</sup>

Nasdaq permits the listing of an Acquisition Company only if it meets all applicable initial listing requirements, as well as the special requirements set forth in Listing Rule IM-5101-2 applicable only to Acquisition Companies. Among these special requirements is the requirement set forth in Listing Rule IM-5101-2(b) that an Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination, within 36 months of the effectiveness of its IPO registration statement, or such shorter period that

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<sup>3</sup> The proposed rule change would eliminate certain differences identified by NYSE between Nasdaq’s process and that of the NYSE. See Securities Exchange Act Release No. 99906 (April 4, 2024), 89 FR 25291 (April 10, 2024) (SR-NYSE-2024-18).

the company specifies in its registration statement. Listing Rule IM-5101-2 further provides that following a Business Combination, the company must meet the requirements for initial listing on Nasdaq.

Listing Rule IM-5101-2 provides that if an Acquisition Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth in Listing Rule IM-5101-2, Nasdaq will issue a Staff Delisting Determination under Listing Rule 5810 to delist the Company's securities. Pursuant to Listing Rule 5810(a), the Staff Delisting Determination informs the company of the factual basis for the determination and provides instructions regarding the Acquisition Company's obligations to disclose the Staff Delisting Determination to the public. In addition, pursuant to Listing Rule 5810(a)(3), the Staff Delisting Determination informs the company: that its securities will be suspended as of a date certain; that it has a right to request review of the Staff Delisting Determination by a Hearings Panel; and that a timely request for review will stay the suspension. While Listing Rule 5815(a)(1)(B) enumerates those instances where a timely request for review does not stay the company's suspension, those instances do not include a Staff Delisting Determination issued when an Acquisition Company fails to comply with the requirements of Listing Rule IM-5101-2, and therefore a timely request for a hearing for non-compliance with the provisions of Listing Rule IM-5101-2 currently stays the suspension and delisting action pending the issuance of a written panel decision.

Furthermore, Listing Rule 5815(c)(1)(A) provides that the Hearings Panel may, where it deems appropriate grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with

respect to the deficiency for which the exception is granted. Accordingly, an Acquisition Company that fails the requirements in Listing Rule IM-5101-2 to complete a business combination within 36 months or to meet the initial listing requirements following a Business Combination may request a review of a Staff Delisting Determination and seek an exception to the requirements from the Hearings Panel, and could remain listed and trading on Nasdaq pursuant to an exception granted by the Panel.

Nasdaq proposes to amend Rule 5815 to remove the stay provision in the situations described above so that an Acquisition Company's securities will be suspended from trading on Nasdaq during the pendency of the Hearings Panel's review.

Specifically, Nasdaq proposes to amend Listing Rule 5815(a)(1)(B)(ii) to provide that notwithstanding the general rule 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 for a hearing shall not stay the suspension of the securities from trading where the matter relates to a request made by an Acquisition Company that: (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement; or (ii) failed to meet the initial listing requirements following a Business Combination.<sup>4</sup>

This proposal is consistent with the rules of the NYSE.<sup>5</sup>

In addition, while Hearings Panels currently have the ability to grant an exception to an Acquisition Company that failed to (i) complete one or more business combinations

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<sup>4</sup> The existing part of the rule that provides that a stay is not available to an Acquisition Company that qualified for listing pursuant to the alternative initial listing requirements in Rule 5406 and that fails to meet the continued listing requirement in Rule 5452(a)(1) would remain and is unchanged by this proposed rule change.

<sup>5</sup> See Sections 102.06 and 802.01 of the NYSE Listed Company Manual.

satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination, Nasdaq staff has observed that this allows Acquisition Companies to use the additional time afforded by the administrative process set forth in Listing Rule 5815 to regain compliance with the requirements by either completing a Business Acquisition (in the case of failing to complete a Business Acquisition) or by using the benefits of Nasdaq listing and trading to achieve compliance with the initial listing requirements it did not satisfy. Nasdaq believes it would enhance investor protection to instead provide that the Hearings Panel's review of these issues is limited to the question of whether Nasdaq Staff made a factual error applying the applicable rule. Accordingly, Nasdaq proposes to adopt a new Listing Rule 5815(c)(1)(H) providing that when the Hearings Panel review is of a Staff Delisting Determination issued for failure to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) and Listing Rule 5452(a)(3) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination, the Hearings Panel may only reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination letter was in error and that the Acquisition Company never failed to satisfy the requirement. In such cases, the Hearings Panel may not consider facts indicating that the company had regained compliance since the Staff Delisting Determination, nor may the Hearings Panel grant an exception allowing the company additional time to regain compliance. Of course if such a company completes a business combination after receiving a Staff Delisting

Determination and/or demonstrates compliance with all applicable initial listing requirements, the combined Company could apply to list pursuant to the normal application review process.

Finally, Listing Rule 5810(c)(1) contains a list of deficiencies that immediately result in a Staff Delisting Determination. Nasdaq proposes to amend Listing Rule 5810(c)(1) to include on this list instances where an Acquisition Company fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e), are subject to immediate suspension and delisting. This proposed amendment to Listing Rule 5810(c)(1) does not change the deficiency administration process for an Acquisition Company in these circumstances because, as described above, Listing Rule IM-5101-2 already dictates this outcome by requiring an issuance of a Staff Delisting Determination. Nasdaq believes that this proposed rule change provides additional transparency and improves the readability of the rules without changing the substance of the rules.

Nasdaq will make the proposed rule changes described herein operative for Staff Delisting Determination letters based on a failure to satisfy IM-5101-2 issued on or after October 7, 2024. To that end, Nasdaq proposes to renumber current Listing Rule 5815(a)(1)(B)(ii)c. to Rule 5815(a)(1)(B)(ii)c.1. while providing that this rule applies in the case of a Staff Delisting Determination letter issued before October 7, 2024. New Listing Rule 5815(a)(1)(B)(ii)c.2. implements the changes described above and will



provide that it applies in the case of a Staff Delisting Determination letter issued on or after October 7, 2024. This delayed implementation will allow Acquisition Companies time to adjust to the new rules. The delayed implementation will also allow any Acquisition Company that has already received a Staff Delisting Determination letter, or that is expecting one in the near term, to continue under the prior process for which they may have planned.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, Nasdaq believes that the proposal to amend Listing Rule 5815(a)(1)(B)(ii) to provide that a hearing request shall not stay the suspension of the securities from trading when the request is made by an Acquisition Company that (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or (ii) failed to meet the initial listing requirements following a Business Combination is designed to protect investors and the public interest. In particular, this change will prevent continued trading in such company's securities until an independent Hearings Panel reviews the Staff Delisting Determination and determines that continued trading on Nasdaq is

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

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

appropriate, and will prevent a company from using the benefits of Nasdaq listing and trading to achieve compliance with the requirement to complete a Business Combination or with the initial listing requirements the company did not satisfy following a Business Combination.

Nasdaq also believes that limiting the scope of a Hearings Panel discretion, in these circumstances, to reverse a delisting decision only where the Hearings Panel determines that the Staff Delisting Determination letter was in error, is appropriate in light of the need to provide transparency and protect prospective investors. The requirement to complete a business combination within 36 months is an investor protection embedded in Listing Rule IM-5101, and the calculation of whether a company complied with that requirement is strictly a factual question. Similarly, the question of whether a Business Combination failed to meet the initial listing requirements is a factual question and limiting the matter before the Hearings Panel to that question, along with the other changes described herein, will prevent a company from using the benefits of Nasdaq listing and trading to achieve compliance with the initial listing requirements it did not satisfy, just like any other previously unlisted company. Moreover, investors in the Acquisition Company and Business Combination continue to be protected because the Business Combination can still submit a new application for initial listing on Nasdaq at any point that it does satisfy all initial listing requirements, notwithstanding the proposed inability of the Panel to grant an exception to allow the company additional time to meet the initial listing requirements.

In addition, Nasdaq believes that the proposed rule change is consistent with Section 6(b)(7) of the Act, which requires, among other things, that the rules of a national

securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange, because following the proposed change an Acquisition Company would be able to request a review of the Staff Delisting Determination letter by an independent Hearings Panel and because the Hearings Panel will have the authority to reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination letter was in error.

Finally, Nasdaq believes that a proposal to amend Listing Rule 5810(c)(1) to provide that securities of an Acquisition Company that fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e), are subject to immediate suspension and delisting, is designed to remove impediments to and perfect the mechanism of a free and open market because this change provides transparency and improves the readability of the rules without changing their substance.

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 would be applied equally to all Acquisition Companies. In

addition, the proposed rule change will align the process for suspension and delisting of an Acquisition Company in the circumstances described above with that of the NYSE.<sup>8</sup>

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)<sup>9</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>10</sup> 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 Commission may designate if consistent with the protection of investors and the public interest.

Nasdaq believes that the propose rule change does not significantly affect the protection of investors or the public interest because it is designed to protect investors and the public interest by preventing continued trading in securities of an Acquisition Company that (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the

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<sup>8</sup> See Sections 102.06 and 802.01 of the NYSE Listed Company Manual. See also footnote 3, supra.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

effectiveness of its IPO registration statement or (ii) failed to meet the initial listing requirements following a Business Combination, until an independent Hearings Panel reviews the Staff Delisting Determination and determines that continued trading on Nasdaq is appropriate under the standard of review, as modified by this proposal. Nasdaq also believes that limiting the scope of a Hearing Panel discretion, in these circumstances, to reverse a delisting decision only where the Hearings Panel determines that the Staff Delisting Determination letter was in error, is designed to protect prospective investors. As noted above, this proposed change will align the process for suspension and delisting of an Acquisition Company in the circumstances described above with that of the NYSE.

Nasdaq also believes that the proposed rule change does not impose any significant burden on competition because the proposed rule change will align the process for suspension and delisting of an Acquisition Company in the circumstances described above with that of the NYSE.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>11</sup> 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

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<sup>11</sup> 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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2024-038)

July 8, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Procedures Related to the Suspension and Delisting of Acquisition Companies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 8, 2024, 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 amend certain procedures related to the suspension and delisting of Acquisition Companies. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 7, 2024.

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

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq is proposing to amend certain procedures governing the suspension and delisting process applicable to a company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2 (“Acquisition Company”), that fails to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) (“Business Combination”) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination. Nasdaq also proposes to limit the Hearings Panels authority to review the Nasdaq Staff’s decision in these instances to a review for factual error only. Finally, Nasdaq also proposes to amend Listing Rule 5810(c)(1) to clarify it without a substantive change.<sup>3</sup>

Nasdaq permits the listing of an Acquisition Company only if it meets all applicable initial listing requirements, as well as the special requirements set forth in

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<sup>3</sup> The proposed rule change would eliminate certain differences identified by NYSE between Nasdaq’s process and that of the NYSE. See Securities Exchange Act Release No. 99906 (April 4, 2024), 89 FR 25291 (April 10, 2024) (SR-NYSE-2024-18).



Listing Rule IM-5101-2 applicable only to Acquisition Companies. Among these special requirements is the requirement set forth in Listing Rule IM-5101-2(b) that an Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination, within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement. Listing Rule IM-5101-2 further provides that following a Business Combination, the company must meet the requirements for initial listing on Nasdaq.

Listing Rule IM-5101-2 provides that if an Acquisition Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth in Listing Rule IM-5101-2, Nasdaq will issue a Staff Delisting Determination under Listing Rule 5810 to delist the Company's securities. Pursuant to Listing Rule 5810(a), the Staff Delisting Determination informs the company of the factual basis for the determination and provides instructions regarding the Acquisition Company's obligations to disclose the Staff Delisting Determination to the public. In addition, pursuant to Listing Rule 5810(a)(3), the Staff Delisting Determination informs the company: that its securities will be suspended as of a date certain; that it has a right to request review of the Staff Delisting Determination by a Hearings Panel; and that a timely request for review will stay the suspension. While Listing Rule 5815(a)(1)(B) enumerates those instances where a timely request for review does not stay the company's suspension, those instances do not include a Staff Delisting

Determination issued when an Acquisition Company fails to comply with the requirements of Listing Rule IM-5101-2, and therefore a timely request for a hearing for non-compliance with the provisions of Listing Rule IM-5101-2 currently stays the suspension and delisting action pending the issuance of a written panel decision.

Furthermore, Listing Rule 5815(c)(1)(A) provides that the Hearings Panel may, where it deems appropriate grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. Accordingly, an Acquisition Company that fails the requirements in Listing Rule IM-5101-2 to complete a business combination within 36 months or to meet the initial listing requirements following a Business Combination may request a review of a Staff Delisting Determination and seek an exception to the requirements from the Hearings Panel, and could remain listed and trading on Nasdaq pursuant to an exception granted by the Panel.

Nasdaq proposes to amend Rule 5815 to remove the stay provision in the situations described above so that an Acquisition Company's securities will be suspended from trading on Nasdaq during the pendency of the Hearings Panel's review. Specifically, Nasdaq proposes to amend Listing Rule 5815(a)(1)(B)(ii) to provide that notwithstanding the general rule 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 for a hearing shall not stay the suspension of the securities from trading where the matter relates to a request made by an Acquisition Company that: (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement; or

(ii) failed to meet the initial listing requirements following a Business Combination.<sup>4</sup>

This proposal is consistent with the rules of the NYSE.<sup>5</sup>

In addition, while Hearings Panels currently have the ability to grant an exception to an Acquisition Company that failed to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination, Nasdaq staff has observed that this allows Acquisition Companies to use the additional time afforded by the administrative process set forth in Listing Rule 5815 to regain compliance with the requirements by either completing a Business Acquisition (in the case of failing to complete a Business Acquisition) or by using the benefits of Nasdaq listing and trading to achieve compliance with the initial listing requirements it did not satisfy. Nasdaq believes it would enhance investor protection to instead provide that the Hearings Panel's review of these issues is limited to the question of whether Nasdaq Staff made a factual error applying the applicable rule. Accordingly, Nasdaq proposes to adopt a new Listing Rule 5815(c)(1)(H) providing that when the Hearings Panel review is of a Staff Delisting Determination issued for failure to (i) complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) and Listing Rule 5452(a)(3) within 36 months of the effectiveness of its IPO registration statement; or (ii) meet the requirements for initial listing following the Business Combination, the

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<sup>4</sup> The existing part of the rule that provides that a stay is not available to an Acquisition Company that qualified for listing pursuant to the alternative initial listing requirements in Rule 5406 and that fails to meet the continued listing requirement in Rule 5452(a)(1) would remain and is unchanged by this proposed rule change.

<sup>5</sup> See Sections 102.06 and 802.01 of the NYSE Listed Company Manual.

Hearings Panel may only reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination letter was in error and that the Acquisition Company never failed to satisfy the requirement. In such cases, the Hearings Panel may not consider facts indicating that the company had regained compliance since the Staff Delisting Determination, nor may the Hearings Panel grant an exception allowing the company additional time to regain compliance. Of course if such a company completes a business combination after receiving a Staff Delisting Determination and/or demonstrates compliance with all applicable initial listing requirements, the combined Company could apply to list pursuant to the normal application review process.

Finally, Listing Rule 5810(c)(1) contains a list of deficiencies that immediately result in a Staff Delisting Determination. Nasdaq proposes to amend Listing Rule 5810(c)(1) to include on this list instances where an Acquisition Company fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e), are subject to immediate suspension and delisting. This proposed amendment to Listing Rule 5810(c)(1) does not change the deficiency administration process for an Acquisition Company in these circumstances because, as described above, Listing Rule IM-5101-2 already dictates this outcome by requiring an issuance of a Staff Delisting Determination.

Nasdaq believes that this proposed rule change provides additional transparency and improves the readability of the rules without changing the substance of the rules.

Nasdaq will make the proposed rule changes described herein operative for Staff Delisting Determination letters based on a failure to satisfy IM-5101-2 issued on or after October 7, 2024. To that end, Nasdaq proposes to renumber current Listing Rule 5815(a)(1)(B)(ii)c. to Rule 5815(a)(1)(B)(ii)c.1. while providing that this rule applies in the case of a Staff Delisting Determination letter issued before October 7, 2024. New Listing Rule 5815(a)(1)(B)(ii)c.2. implements the changes described above and will provide that it applies in the case of a Staff Delisting Determination letter issued on or after October 7, 2024. This delayed implementation will allow Acquisition Companies time to adjust to the new rules. The delayed implementation will also allow any Acquisition Company that has already received a Staff Delisting Determination letter, or that is expecting one in the near term, to continue under the prior process for which they may have planned.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, Nasdaq believes that the proposal to amend Listing Rule 5815(a)(1)(B)(ii) to provide that

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

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

a hearing request shall not stay the suspension of the securities from trading when the request is made by an Acquisition Company that (i) failed to complete one or more business combinations satisfying the requirements set forth in Listing Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or (ii) failed to meet the initial listing requirements following a Business Combination is designed to protect investors and the public interest. In particular, this change will prevent continued trading in such company's securities until an independent Hearings Panel reviews the Staff Delisting Determination and determines that continued trading on Nasdaq is appropriate, and will prevent a company from using the benefits of Nasdaq listing and trading to achieve compliance with the requirement to complete a Business Combination or with the initial listing requirements the company did not satisfy following a Business Combination.

Nasdaq also believes that limiting the scope of a Hearings Panel discretion, in these circumstances, to reverse a delisting decision only where the Hearings Panel determines that the Staff Delisting Determination letter was in error, is appropriate in light of the need to provide transparency and protect prospective investors. The requirement to complete a business combination within 36 months is an investor protection embedded in Listing Rule IM-5101, and the calculation of whether a company complied with that requirement is strictly a factual question. Similarly, the question of whether a Business Combination failed to meet the initial listing requirements is a factual question and limiting the matter before the Hearings Panel to that question, along with the other changes described herein, will prevent a company from using the benefits of Nasdaq listing and trading to achieve compliance with the initial listing requirements it

did not satisfy, just like any other previously unlisted company. Moreover, investors in the Acquisition Company and Business Combination continue to be protected because the Business Combination can still submit a new application for initial listing on Nasdaq at any point that it does satisfy all initial listing requirements, notwithstanding the proposed inability of the Panel to grant an exception to allow the company additional time to meet the initial listing requirements.

In addition, Nasdaq believes that the proposed rule change is consistent with Section 6(b)(7) of the Act, which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange, because following the proposed change an Acquisition Company would be able to request a review of the Staff Delisting Determination letter by an independent Hearings Panel and because the Hearings Panel will have the authority to reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination letter was in error.

Finally, Nasdaq believes that a proposal to amend Listing Rule 5810(c)(1) to provide that securities of an Acquisition Company that fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e), are subject to immediate suspension and delisting, is designed to remove impediments to and perfect the mechanism of a free and

open market because this change provides transparency and improves the readability of the rules without changing their substance.

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 would be applied equally to all Acquisition Companies. In addition, the proposed rule change will align the process for suspension and delisting of an Acquisition Company in the circumstances described above with that of the NYSE.<sup>8</sup>

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 Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

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<sup>8</sup> See Sections 102.06 and 802.01 of the NYSE Listed Company Manual. See also footnote 3, *supra*.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 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.



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:

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-038 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2024-038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-038 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**The Nasdaq Stock Market LLC Rules**

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**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);
- a security of a Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, that: (i) fails to comply with one or more of the requirements set forth in Rule IM-5101-2, including, without limitation, a failure to complete one or more business combinations satisfying the requirements set forth in Rule IM-5101-2(b) within 36 months of the effectiveness of its IPO registration statement or a failure to meet the requirements for initial listing following a business combination as described in Rule IM-5101-2(d) and (e); or (ii) in the case of a Company that qualified for listing pursuant to the alternative initial listing requirements in Rule 5406, fails to meet the continued listing requirement in Rules 5452(a)(1) and (3); 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.

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### **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);

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. 1. In the case of a Staff Delisting Determination letter issued before October 7, 2024, a[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.

c. 2. In the case of a Staff Delisting Determination letter issued on or after October 7, 2024, a Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, which fails to meet (i) the continued listing requirement in Rules 5452(a)(1) and (3), for companies that listed pursuant to the alternative initial listing requirements in Rule 5406; (ii) the requirement set forth in Rule IM-5101-2(b) to complete one or more business combinations within 36 months of the effectiveness of its IPO registration statement; or (iii) 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.

(b) No change.

**(c) Scope of the Hearings Panel's Discretion**

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A)– (G) No change.

(H) In the case of a Company whose business plan is to complete one or more acquisitions, as described in Rule IM-5101-2, where the Staff Delisting Determination letter issued on or after October 7, 2024, is based on a failure to satisfy (i) the requirement set forth in Rule IM-5101-2(b) and Rule 5452(a)(3) to complete one or more business combinations within 36 months of the effectiveness of its IPO registration statement; or (ii) the requirements for initial listing immediately following a business combination as required by Rule IM-5101-2, only reverse a delisting decision where the Panel determines that the Staff Delisting Determination letter was in error and that the Company never failed to satisfy the requirement. In such cases, the Panel may not consider facts indicating that the Company had regained compliance under Rule 5815(c)(1)(E), nor may the Panel grant an exception under Rule 5815(c)(1)(A) allowing the Company additional time to regain compliance.

(2) – (4) No change.

(d) No change.

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