

and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92344; File No. SR-NASDAQ-2021-054]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Listing Rule IM-5101-2 To Permit an Acquisition Company To Contribute a Portion of Its Deposit Account to Another Entity in a Spin-Off or Similar Corporate Transaction

July 7, 2021.

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 June 24, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 modify Listing Rule IM-5101-2 to permit a SPAC to contribute a portion of the amount held in its deposit account to a deposit account of a new SPAC and spin off the new SPAC to its shareholders.

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.

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 proposes to modify IM-5101-2 to allow an acquisition company listed under that rule to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company and spin off the new acquisition company to its shareholders in certain situations where the new acquisition company will be subject to all of the same requirements as the original acquisition company.

Generally, Nasdaq will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. In 2008, Nasdaq adopted a rule to allow such companies to list if they meet all applicable initial listing requirements, as well as additional conditions designed to provide investor protections to address specific concerns about the structure of such companies (“acquisition companies” or “SPACs”).³ These additional conditions generally

require, among other things, that at least 90% of the gross proceeds from the initial public offering must be deposited in a “deposit account,” as that term is defined in the rule, and that the SPAC complete within 36 months, or a shorter period identified by the SPAC, 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.

When a SPAC conducts its initial public offering, it raises the amount of capital that it estimates will be necessary to finance a subsequent business combination with its ultimate target. However, because a SPAC cannot identify or select a specific business combination target at the time of its IPO, it often turns out that the amount raised is not optimal for the needs of a specific target. This has resulted in the inefficient, current practice of SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target needs. This practice creates the potential for conflicts between the multiple SPACs (each of which has different shareholders) and still fails to optimize the amount of capital that would benefit the SPAC’s public shareholders and a business combination target. Moreover, this creates the need for repetitive action throughout the ecosystem, including the filing and SEC review of multiple registration statements and periodic reports, formation of multiple boards of directors, multiple audits and multiple company listings. This practice also can lead to confusion amongst investors.

Accordingly, Nasdaq proposes to modify IM-5101-2 to permit a more efficient structure whereby an acquisition company can raise in its initial public offering the maximum amount of capital it anticipates it may need for a business combination transaction and then “rightsize” itself by contributing any amounts not needed to a new SPAC (the “SpinCo SPAC”), and spinning off this SpinCo SPAC to its shareholders. The SpinCo SPAC will be subject to all the provisions of IM-5101-2 in the same manner, and subject to the same timeframes, as the original SPAC.

It is expected that the new structure will be implemented in the following manner. If the listed SPAC (the “Original SPAC”) determines that it will not need all of the cash in its deposit account for its initial business combination, it will designate the excess cash for a new deposit account held by a new SPAC, the SpinCo SPAC (such

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

amount, the “SpinCo Deposit Account,” and the amount retained in the deposit account of the Original SPAC, the “Retained SPAC Deposit Account”), which will be spun off to the Original SPAC’s shareholders as described below. Until the spin-off described below, the amount designated for the SpinCo Deposit Account must continue to be held for the benefit of the shareholders of the Original SPAC. Following the spin-off, the SpinCo Deposit Account will be subject to the same requirements as the deposit account of the Original SPAC.

The SpinCo SPAC will file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo SPAC. Prior to the effectiveness of the registration statement, the Original SPAC will provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo Deposit Account divided by the per share amount in the Original SPAC’s deposit account (the “redemption price”).⁴

After completing the tender offer and effectiveness of the SpinCo SPAC’s registration statement, the Original SPAC will contribute the SpinCo Deposit Account to a deposit account held by the SpinCo SPAC in exchange for shares or units of the SpinCo SPAC, which the Original SPAC will then distribute to its public shareholders on a pro rata basis through one or more corporate transactions pursuant to the SpinCo SPAC’s effective registration statement.

The Original SPAC will then continue to operate as a SPAC until it completes its business combination and will offer redemption rights to its public shareholders in connection with that business combination in the same manner as a traditional SPAC. The SpinCo SPAC will operate in the same manner as a traditional SPAC, except that it could effect a spin-off prior to its business combination like the Original SPAC. If it does not elect to effect a spin-off, the SpinCo SPAC will proceed to complete an initial business combination and offer redemption rights in connection therewith like a traditional SPAC.

Nasdaq proposes adopting a new subsection at IM-5101-2(f) which will

⁴ This redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e-4 and Regulation 14E of the Securities Exchange Act of 1934, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption.

specifically permit this type of transaction by allowing the Original SPAC to contribute a portion of the amount held in the deposit account to the deposit account of SpinCo SPAC in a spin-off or similar corporate transaction where all of the conditions described below are satisfied:

(i) The public shareholders of the Original SPAC receive a pro rata interest in the SpinCo SPAC, except to the extent that they have elected to redeem a portion of their shares of the Original SPAC in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(ii) public shareholders must have the right to convert or redeem their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) before the first business combination, with part of such conversion or redemption able to be fulfilled through a redemption (including by means of a tender offer) in lieu of being entitled to receive shares or units in the spin-off of a SpinCo SPAC;

(iii) the amount distributed to the SpinCo SPAC must remain in the SpinCo Deposit Account for the benefit of the shareholders of the SpinCo SPAC in the same manner applicable to the Original SPAC as described in IM-5101-2(a);

(iv) the SpinCo SPAC must meet all applicable initial listing requirements, as well as the conditions described in IM-5101-2(a) through (e);

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

(vi) in the aggregate, through one or more opportunities by the Original SPAC and one or more SpinCo SPACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the deposit account established by the Original SPAC as described in IM-5101-2(a) (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account).

Proposed IM-5101-2(f) would further provide that, for purposes of IM-5101-2(b), the Original SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining

in the Retained SPAC Deposit Account at the time of its agreement to enter into its initial combination. Similarly, a SpinCo SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the SpinCo Deposit Account at the time of its agreement to enter into its initial combination after giving effect to its contribution to a subsequent SpinCo SPAC, if any.

In addition, proposed IM-5101-2(f) would provide that, for purposes of IM-5101-2(d) and (e), the right to convert and opportunity to redeem shares of common stock on a pro rata basis, respectively, will, in the case of the Original SPAC, be deemed to apply to the aggregate amount remaining in the Retained SPAC Deposit Account, and, in the case of the SpinCo SPAC, be deemed to apply to the aggregate amount in the SpinCo Deposit Account. Under IM-5101-2(c), a majority of the Original SPAC’s independent directors must approve its business combination and a majority of the independent directors of the SpinCo SPAC must approve the SpinCo SPAC’s business combination.

In this manner, the structure allows public shareholders an additional, early redemption opportunity with respect to a portion of their holdings, before the time they would be able to do so in a traditional SPAC, and public shareholders would maintain the ability to redeem the portion of their investment attributable to each specific acquisition after reviewing all disclosure with respect to that acquisition. All other protections contained under IM-5101-2 would continue to apply, with adjustments only to reflect the potential for a spin-off of a new SPAC that is subject to all of the requirements of IM-5101-2. Moreover, the proposed structure would also provide shareholders the opportunity to invest with a sponsor without spreading that investment across the sponsor’s multiple SPACs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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, by

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

establishing the means through which a SPAC can complete more than one business combination resulting in separate operating companies.

The Commission has previously concluded that listing an acquisition company that satisfies the requirements of Nasdaq IM-5101-2 is consistent with the investor protection goals of the Exchange Act.⁷ The proposed rule change will extend these important investor protections to a new structure that addresses inefficiencies and potential conflicts of interest in the SPAC market. Specifically, as proposed, a SpinCo SPAC will be required to satisfy all applicable initial listing requirements, like any other SPAC listing on Nasdaq. In addition, the provisions of IM-5101-2(a) will apply to the SpinCo SPAC in the same manner as they apply to any other SPAC, except the deposit account will be contributed to the SpinCo SPAC by the Original SPAC.

The provisions of IM-5101-2(b) and IM-5101-2(d) or (e), as applicable, will also apply to each of the Original SPAC and the SpinCo SPAC in the proposed structure in the same manner as they apply to any other SPAC, except that the 80% test will be applied to the amount retained by the Original SPAC after public shareholders have had an initial, early redemption opportunity and the Original SPAC has contributed a portion of its deposit account to the SpinCo SPAC. The Exchange believes that this proposed difference does not adversely affect shareholders because the shareholders will still have the opportunity to redeem for the entire pro rata share of the trust account prior to completion of the business combination. The primary difference is that the redemption right may be effected through two decisions, one of which is accelerated to allow an earlier redemption than would be available to the public shareholders of a traditional SPAC and the other will come at the time of the business combination, just as in a traditional SPAC.

As with the existing rules, each business combination must be approved by the SPAC's independent directors, as required by IM-5101-2(c), and following each business combination, the combined company must satisfy all initial listing requirements, as required by IM-5101-2(d) or (e), respectively.

Accordingly, in this manner, the Exchange believes that the proposed rule change satisfies the requirements of Section 6(b)(5) of the Act in that it is designed 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.

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 available in a non-discriminatory way to any company satisfying its requirements, as well as all other applicable Nasdaq listing requirements. In addition, Nasdaq faces competition for listings but the proposed rule change does not impose any burden on the competition with other exchanges; any competing exchange could similarly adopt rules to allow listing SPACs using such a structure.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2021-054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-054, and should be submitted on or before August 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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⁷ Securities Exchange Act Release No. 58228, *supra* note 3.

⁸ 17 CFR 200.30-3(a)(12).