

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93622; File No. SR-NASDAQ-2021-092]

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

November 19, 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 November 12, 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 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.

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 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

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.

⁴ Recently, Nasdaq amended the rules to make the listing fees and the timing of paying such fees for

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 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

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>.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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

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.

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).

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 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

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.

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

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
- 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

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.

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 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

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.

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 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

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."

¹⁹ See footnote 12 above.

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

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 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 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

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).

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).

²⁷ See footnote 5 above.

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) of the Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³⁰ normally does not become operative for 30 days after the date of its filing. However, pursuant to Rule 19b-4(f)(6)(iii),³¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can allow Acquisition Companies meeting the proposed requirements to immediately list on the Nasdaq Global Market. The Exchange states that such waiver would be consistent with the protection of investors and the public interest because Acquisition Companies are

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6)(iii).

currently allowed to list on another national securities exchange subject to initial and continued listing requirements that are nearly identical to those included in this proposal.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is substantially similar to the rules of another national securities exchange that were previously approved by the Commission.³² Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.³³

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 change 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email 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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

³² See *supra* notes 11 and 26, and accompanying text.

³³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-092, and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93625; File No. SR-CTA/CQ-2021-03]

Consolidated Tape Association; Notice of Filing of the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

November 19, 2021.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that on November 5, 2021,³ certain participants in the Second Restatement of the Consolidated

Tape Association ("CTA") Plan and Restated Consolidated Quotation ("CQ") Plan (collectively "CTA/CQ Plans" or "Plans") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plans.⁴ These amendments represent the Twenty-Fifth Charges Amendment to the CTA Plan and Sixteenth Charges Amendment to the CQ Plan ("Amendments"). Under the Amendments, the Participants propose to amend the Plans to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rules ("MDI Rules").⁵ The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rules.

The proposed Amendments have been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.⁶ The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants, is the statement of the purpose and summary of the Amendments, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Schedule of Market Data Charges for the Plans, marked to show the proposed Amendments, is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of these final rules was June 8, 2021. As specified in the MDI Rules Release, the Participants must submit updated fees regarding the receipt and use of the expanded content of consolidated

⁴ The amendments were approved and executed by more than the required two-thirds of the self-regulatory organizations ("SROs") that are participants of the CTA/CQ Plans. The participants that approved and executed the amendments (the "Participants") are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the CTA/CQ Plans are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc. See *infra* Section I. G.

⁵ Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("MDI Rules Release").

⁶ 17 CFR 242.608(b)(2).

market data by November 5, 2021.⁷ Consistent with that requirement, the Participants are submitting the above-captioned amendments to the Plans to propose such fees.⁸

The Participants are proposing a fee structure for the following three categories of data, which collectively comprise the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:⁹

(1) Level 1 Core Data, which the Participants propose would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that Level 1 Core Data would continue to include all information that subscribers receive for current fees and add odd-lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).¹⁰

Professional and Nonprofessional Fees

For each of the three categories of data described above, the Participants are

⁷ MDI Rules Release at 18699.

⁸ As the Commission is aware, some of the SROs (the "Petitioners") have challenged the MDI Rules Release in the D.C. Circuit. The Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia*, the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia*, the right to assert legal challenges regarding the Commission's disposition of this submission.

⁹ 17 CFR 242.600(b)(26) ("Rule 600").

¹⁰ The Participants propose to price subsets of data that comprise core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants understand that certain data subscribers may not wish to add depth of book data or auction information, or may want to add only depth of book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants expect that Competing Consolidators would be purchase all core data.

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).