

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 087	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market 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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	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 type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>		Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposal to modify the listing requirements related to 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 *	<input type="text" value="Nikolai"/>	Last Name *	<input type="text" value="Utochkin"/>	
Title *	<input type="text" value="Assistant General Counsel"/>			
E-mail *	<input type="text" value="Nikolai.Utochkin@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 978-8075"/>	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="08/25/2017"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="edward.knight@nasdaq.com"/>				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to modify the listing requirements related to Acquisition Companies.

A notice of the proposed rule change for publication in the Federal Register is attached hereto 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 the Board of Directors of the Exchange on October 17, 2014. No other action is necessary for the filing of the rule change.

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

Nikolai Utochkin
Counsel
Listing and Governance
Nasdaq, Inc.
(301) 978-8029
or
Arnold Golub
Vice President and Deputy General Counsel
Nasdaq, Inc.
(301) 978-8075.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

In 2009 Nasdaq adopted a rule (IM-5101-2) to impose additional listing requirements on a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (“Acquisition Companies”).³ Based on experience listing these companies and reviewing the post-acquisition entities, Nasdaq proposes to modify the listing requirements applicable to them. Specifically, Nasdaq proposes to reduce the number of round-lot holders required for initial listing from 300 to 150 and to eliminate the continued listing shareholder requirement during the period that the company is subject to IM-5101-2.⁴ Nasdaq also proposes to require that an Acquisition Company maintain at least \$5 million in net tangible assets for initial and continued listing. Finally, Nasdaq proposes to impose a deadline for the company to demonstrate compliance with all initial listing requirements, including the 300 round-lot shareholder requirement, following a business combination.

The additional requirements currently applicable to an Acquisition Company require, in part, that 90% of the gross proceeds of the company’s offering must be deposited into and retained in an escrow account through the date of a business combination; that the entity complete a significant business combination within 36

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

⁴ Under IM-5101-2(b), 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 within 36 months of the effectiveness of its IPO registration statement.

months of the effectiveness of the IPO registration statement; and that public shareholders who object to the combination have the right to convert their common stock into a pro rata share of the funds held in escrow.⁵ Following each business combination the combined company must meet Nasdaq's requirements for initial listing.

Nasdaq has observed that Acquisition Companies often have difficulty demonstrating compliance with the shareholder requirement for initial and continued listing.⁶ Nasdaq attributes these difficulties to the unique nature of Acquisition Companies, which limits the number of retail investors interested in the vehicle and encourages owners to hold their shares until a transaction is announced, as long as 3 years after their initial public offering. These same features, however, limit the benefit to investors of having a shareholder requirement. In that regard, Nasdaq notes that the purpose of the shareholder requirement, along with the listing requirements pertaining to float and market value of public float, is to help ensure that a stock has an investor following and liquid market necessary for trading.⁷

Given the unique nature of Acquisition Companies, however, the potential for distorted prices occurring as a result of there being few shareholders or illiquidity is less of a concern for their investors. During the period between its public offering and the

⁵ The rules also require that that each proposed business combination must be approved by a majority of the company's independent directors.

⁶ Rule 5505(a)(3) requires at least 300 round lot holders for initial listing on the Capital Market. Rule 5550(a)(3) requires at least 300 public holders for continued listing. To date, most Nasdaq-listed Acquisition Companies have opted to list on the Capital Market.

⁷ See, e.g., Rocky Mountain Power Company, Securities Exchange Act Release No, 40648 (November 9, 1998) (text at footnote 11).

consummation of a business combination, the value of an Acquisition Company is based primarily on the value of the funds it holds in trust, and the Acquisition Company's shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the business combination. As a result, Acquisition Companies, generally, have historically traded close to the value in the trust, even when they have had few shareholders, which suggests that their lack of shareholders has not resulted in distorted prices and the associated concerns.⁸ Acquisition Companies must also undergo a transformative transaction within 36 months of listing, at which time they must meet all listing requirements, including the shareholder requirement. This provides an additional protection to shareholders, assuring that any liquidity issues are only temporary.

Nasdaq believes that an Exchange Traded Fund ("ETF") is somewhat similar to an Acquisition Company in this regard in that an arbitrage mechanism keeps the ETF's price close to the value of its underlying securities, even when trading in the ETF's shares is relatively illiquid. The initial listing requirements for ETFs do not include a

⁸ Nasdaq analyzed the trading history of Acquisition Companies listed since 2010, including those cited for non-compliance with the 300 shareholder requirement. Nasdaq observed that shares of all reviewed Acquisition Companies traded, on average, close to the \$10 redemption value with the median of the average daily range equal to \$0.07. This measure was the same for the overall group of the reviewed stocks, for the subset of stocks that received deficiency notifications for non-compliance with the 300 shareholder requirement, and for the remaining subset of stocks for the companies that were not cited for non-compliance with the 300 shareholder requirement. Similarly, the average of each stock's average last price was between \$9.85 and \$9.96 for all three groups.

Nasdaq also reviewed trading activity following the announcement by Acquisition Companies of a pending business combination with an operating company and observed no increase in volatility in the vast majority of cases. In every instance where volatility did increase following the announcement of a pending business combination, the Acquisition Companies had not been cited for non-compliance with the 300 shareholder requirement.

shareholder requirement and only 50 shareholders are required for continued listing after the ETF has been listed for one year.

For these reasons, Nasdaq proposes to reduce the shareholder requirement for the initial listing of an Acquisition Company on the Capital Market from 300 to 150 round-lot shareholders.

Nasdaq has also observed that it can be difficult for a company, once listed, to obtain evidence demonstrating the number of its shareholders because many accounts are held in street name and shareholders may object to being identified to the company. As a result, companies must seek information from broker-dealers and from third-parties that distribute information such as proxy materials for the broker-dealers. This process is time-consuming and particularly burdensome for Acquisition Companies because all operating expenses are typically borne by the Acquisition Company's sponsors due to the requirement that the gross proceeds of the initial public offering remain in the trust account until the closing of the business combination. Accordingly, given the short life of an Acquisition Company,⁹ the trading characteristics of Acquisition Companies observed by Nasdaq,¹⁰ and the requirement to meet the initial listing standards at the time of the business combination, Nasdaq also proposes to eliminate the continued listing shareholder requirement for Acquisition Companies.

Nasdaq notes that Rule 3a51-1 under the Act¹¹ defines a "penny stock" as any equity security that does not satisfy one of the exceptions enumerated in subparagraphs

⁹ See, Footnote 4, *supra*.

¹⁰ See, Footnote 8, *supra*.

¹¹ 17 CFR 240.3a51-1.

(a) through (g) under the Rule. If a security is a penny stock, Rules 15g-1 through 15g-9 under the Act¹² impose certain additional disclosure and other requirements on brokers and dealers when effecting transactions in such securities. Rule 3a51-1(a)(2) under the Act¹³ excepts from the definition of penny stock securities registered on a national securities exchanges that have initial listing standards that meet certain requirements, including, in the case of primary common stock, 300 round lot holders. Rule 3a51-1 also includes alternative exceptions from the definition of penny stock. Nasdaq proposes to require that Acquisition Companies have \$5 million in net tangible assets for initial and continued listing, thereby assuring that the securities of such companies satisfy the exclusion from being a penny stock contained in Rule 3a51-1(g)(1) of the Act.¹⁴

If an Acquisition Company no longer meets the applicable net tangible assets requirement following initial listing, its common stock could become subject to the penny stock rules.¹⁵ Broker-dealers that effect recommended transactions in such securities, among other things, under Commission Rule 3a51-1(g), need to review current financial statements of the issuer to verify that the security meets the applicable net tangible assets

¹² 17 CFR 240.15g-1 et seq.

¹³ 17 CFR 240.3a51-1(a)(2).

¹⁴ 17 CFR § 240.3a51-1 (g)(1). Nasdaq believes that all Acquisition Companies currently listed satisfy this alternative.

¹⁵ The Commission has previously noted the potential for abuse with respect to penny stocks. See, e.g., Securities Exchange Act Release No. 49037 (January 16, 2004), 69 FR 2531 (January 8, 2004) (“Our original penny stock rules reflected Congress’ view that many of the abuses occurring in the penny stock market were caused by the lack of publicly available information about the market in general and about the price and trading volume of particular penny stocks”). Nasdaq would initiate proceedings under the Rule 5800 Series if an Acquisition Company were to no longer meet the proposed net tangible assets requirement.

or average revenue test, have a reasonable basis for believing they remain accurate, and preserve copies of those financial statements as part of its records. To facilitate compliance by broker-dealers, Nasdaq will monitor the Acquisition Companies that fail the net tangible assets test and will publishes on the Nasdaq Listing Center web site a daily list of any such company that no longer meets the net tangible assets requirement of the penny stock exclusion, and which does not satisfy any other penny stock exclusion.¹⁶ Nasdaq also specifically reminds broker-dealers of their obligations under the penny stock rules.¹⁷

Last, Nasdaq notes that the existing rules require that following a business combination with an Acquisition Company, the resulting company must satisfy all initial listing requirements. The rule does not provide a timetable for the company to demonstrate that it satisfies those requirements, however. In order to assure that any company that does not satisfy the initial listing requirements following a business combination enters the delisting process promptly, Nasdaq proposes to codify that a company must evidence compliance with the initial listing requirements within 30 days

¹⁶ <https://listingcenter.nasdaq.com/PennyStockList.aspx>

¹⁷ In 2012, Nasdaq modified its listing requirements to add an alternative to the \$4 minimum bid price per share requirement (the “Alternative Price Filing”). In approving the Alternative Price Filing, the Commission stated that it believed that although the listing of securities that do not have a blanket exclusion from the penny stock rules and require ongoing monitoring may increase compliance burdens on broker-dealers, the additional steps taken by Nasdaq to facilitate compliance should reduce those burdens and that, on balance, Nasdaq’s proposal is consistent with the requirement of Section 6(b)(5) of the Act that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. See Exchange Act Release No. 66830 (April 18, 2012), 77 FR 24549 (April 24, 2012) (approving SR-NASDAQ-2012-002).

following a business combination. If the company does not evidence compliance in that time, Nasdaq staff would issue a delisting determination, which the company could appeal to an independent Hearings Panel as described in the Nasdaq Rule 5800 Series.

Nasdaq also proposes to delete a duplicative paragraph from the rule text.

These proposed changes will be effective upon approval. However, Nasdaq will permit Acquisition Companies, if any, that were listed on the Capital Market before this proposal was filed and that have less than \$5 million net tangible assets to remain listed, provided that such a company must continue to comply with the 300 public holder requirement for continued listing.¹⁸

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰, which requires that the rules of an exchange promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. While the change would allow Acquisition Companies to list with fewer shareholders, this proposed change is consistent with the investor protection provisions of the Act because other protections help assure that market prices will not be distorted by any potential resulting lack of liquidity. In particular, the ability of a shareholder to redeem shares for

¹⁸ See, Footnote 13, supra.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

a pro rata share of the trust helps assure that the Acquisition Company will trade close to the value of the assets held in trust.²¹

The proposed rule change will also continue to assure that any listed Acquisition Company satisfies an exclusion from the definition of a “penny stock” under the Act by imposing a new requirement that an Acquisition Company must maintain \$5 million of net tangible assets. Further, following listing Nasdaq will monitor the company and publish on its website if the company no longer satisfies those additional requirements or any of the other exclusions from being a penny stock contained in Rule 3a51-1 under the Securities Act of 1933.

Thus, this change will remove impediments to and perfect the mechanism of a free and open market by removing listing requirements that prohibit certain companies from listing or remaining listed without any concomitant investor protection benefits. In addition, the change would also limit the amount of time that an Acquisition Company could remain listed following a business combination if it has not demonstrated compliance with the initial listing requirements, thereby enhancing investor protection. Accordingly, Nasdaq believes that the proposal satisfies the Exchange Act requirements.

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. While the rule may permit more Acquisition Companies to list, or remain listed, on Nasdaq, other exchanges could adopt similar rules to compete for such listings.

²¹ See, Footnote 8, *supra*.

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

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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 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-2017-087)

August __, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Listing Requirements Related to Acquisition Companies.

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 August 25, 2017, 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 modify the listing requirements related to Acquisition Companies.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

In 2009 Nasdaq adopted a rule (IM-5101-2) to impose additional listing requirements on a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time ("Acquisition Companies").³ Based on experience listing these companies and reviewing the post-acquisition entities, Nasdaq proposes to modify the listing requirements applicable to them. Specifically, Nasdaq proposes to reduce the number of round-lot holders required for initial listing from 300 to 150 and to eliminate the continued listing shareholder requirement during the period that the company is subject to IM-5101-2.⁴ Nasdaq also proposes to require that an Acquisition Company maintain at least \$5 million in net tangible assets for initial and continued listing. Finally, Nasdaq proposes to impose a deadline for the company to demonstrate compliance with

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

⁴ Under IM-5101-2(b), an Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of

all initial listing requirements, including the 300 round-lot shareholder requirement, following a business combination.

The additional requirements currently applicable to an Acquisition Company require, in part, that 90% of the gross proceeds of the company's offering must be deposited into and retained in an escrow account through the date of a business combination; that the entity complete a significant business combination within 36 months of the effectiveness of the IPO registration statement; and that public shareholders who object to the combination have the right to convert their common stock into a pro rata share of the funds held in escrow.⁵ Following each business combination the combined company must meet Nasdaq's requirements for initial listing.

Nasdaq has observed that Acquisition Companies often have difficulty demonstrating compliance with the shareholder requirement for initial and continued listing.⁶ Nasdaq attributes these difficulties to the unique nature of Acquisition Companies, which limits the number of retail investors interested in the vehicle and encourages owners to hold their shares until a transaction is announced, as long as 3 years after their initial public offering. These same features, however, limit the benefit to investors of having a shareholder requirement. In that regard, Nasdaq notes that the purpose of the shareholder requirement, along with the listing requirements pertaining to

the value of the deposit account within 36 months of the effectiveness of its IPO registration statement.

⁵ The rules also require that that each proposed business combination must be approved by a majority of the company's independent directors.

⁶ Rule 5505(a)(3) requires at least 300 round lot holders for initial listing on the Capital Market. Rule 5550(a)(3) requires at least 300 public holders for continued listing. To date, most Nasdaq-listed Acquisition Companies have opted to list on the Capital Market.

float and market value of public float, is to help ensure that a stock has an investor following and liquid market necessary for trading.⁷

Given the unique nature of Acquisition Companies, however, the potential for distorted prices occurring as a result of there being few shareholders or illiquidity is less of a concern for their investors. During the period between its public offering and the consummation of a business combination, the value of an Acquisition Company is based primarily on the value of the funds it holds in trust, and the Acquisition Company's shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the business combination. As a result, Acquisition Companies, generally, have historically traded close to the value in the trust, even when they have had few shareholders, which suggests that their lack of shareholders has not resulted in distorted prices and the associated concerns.⁸ Acquisition Companies must also undergo a transformative transaction within 36 months of listing, at which time they must meet all

⁷ See, e.g., Rocky Mountain Power Company, Securities Exchange Act Release No. 40648 (November 9, 1998) (text at footnote 11).

⁸ Nasdaq analyzed the trading history of Acquisition Companies listed since 2010, including those cited for non-compliance with the 300 shareholder requirement. Nasdaq observed that shares of all reviewed Acquisition Companies traded, on average, close to the \$10 redemption value with the median of the average daily range equal to \$0.07. This measure was the same for the overall group of the reviewed stocks, for the subset of stocks that received deficiency notifications for non-compliance with the 300 shareholder requirement, and for the remaining subset of stocks for the companies that were not cited for non-compliance with the 300 shareholder requirement. Similarly, the average of each stock's average last price was between \$9.85 and \$9.96 for all three groups.

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For these reasons, Nasdaq proposes to reduce the shareholder requirement for the initial listing of an Acquisition Company on the Capital Market from 300 to 150 round-lot shareholders.

Nasdaq has also observed that it can be difficult for a company, once listed, to obtain evidence demonstrating the number of its shareholders because many accounts are held in street name and shareholders may object to being identified to the company. As a result, companies must seek information from broker-dealers and from third-parties that distribute information such as proxy materials for the broker-dealers. This process is time-consuming and particularly burdensome for Acquisition Companies because all operating expenses are typically borne by the Acquisition Company’s sponsors due to the requirement that the gross proceeds of the initial public offering remain in the trust account until the closing of the business combination. Accordingly, given the short life of an Acquisition Company,⁹ the trading characteristics of Acquisition Companies observed

⁹ See, Footnote 4, *supra*.

by Nasdaq,¹⁰ and the requirement to meet the initial listing standards at the time of the business combination, Nasdaq also proposes to eliminate the continued listing shareholder requirement for Acquisition Companies.

Nasdaq notes that Rule 3a51-1 under the Act¹¹ defines a “penny stock” as any equity security that does not satisfy one of the exceptions enumerated in subparagraphs (a) through (g) under the Rule. If a security is a penny stock, Rules 15g-1 through 15g-9 under the Act¹² impose certain additional disclosure and other requirements on brokers and dealers when effecting transactions in such securities. Rule 3a51-1(a)(2) under the Act¹³ exempts from the definition of penny stock securities registered on a national securities exchanges that have initial listing standards that meet certain requirements, including, in the case of primary common stock, 300 round lot holders. Rule 3a51-1 also includes alternative exceptions from the definition of penny stock. Nasdaq proposes to require that Acquisition Companies have \$5 million in net tangible assets for initial and continued listing, thereby assuring that the securities of such companies satisfy the exclusion from being a penny stock contained in Rule 3a51-1(g)(1) of the Act.¹⁴

If an Acquisition Company no longer meets the applicable net tangible assets requirement following initial listing, its common stock could become subject to the penny

¹⁰ See, Footnote 8, supra.

¹¹ 17 CFR 240.3a51-1.

¹² 17 CFR 240.15g-1 et seq.

¹³ 17 CFR 240.3a51-1(a)(2).

¹⁴ 17 CFR § 240.3a51-1 (g)(1). Nasdaq believes that all Acquisition Companies currently listed satisfy this alternative.

stock rules.¹⁵ Broker-dealers that effect recommended transactions in such securities, among other things, under Commission Rule 3a51-1(g), need to review current financial statements of the issuer to verify that the security meets the applicable net tangible assets or average revenue test, have a reasonable basis for believing they remain accurate, and preserve copies of those financial statements as part of its records. To facilitate compliance by broker-dealers, Nasdaq will monitor the Acquisition Companies that fail the net tangible assets test and will publishes on the Nasdaq Listing Center web site a daily list of any such company that no longer meets the net tangible assets requirement of the penny stock exclusion, and which does not satisfy any other penny stock exclusion.¹⁶ Nasdaq also specifically reminds broker-dealers of their obligations under the penny stock rules.¹⁷

¹⁵ The Commission has previously noted the potential for abuse with respect to penny stocks. See, e.g., Securities Exchange Act Release No. 49037 (January 16, 2004), 69 FR 2531 (January 8, 2004) (“Our original penny stock rules reflected Congress’ view that many of the abuses occurring in the penny stock market were caused by the lack of publicly available information about the market in general and about the price and trading volume of particular penny stocks”). Nasdaq would initiate proceedings under the Rule 5800 Series if an Acquisition Company were to no longer meet the proposed net tangible assets requirement.

¹⁶ <https://listingcenter.nasdaq.com/PennyStockList.aspx>

¹⁷ In 2012, Nasdaq modified its listing requirements to add an alternative to the \$4 minimum bid price per share requirement (the “Alternative Price Filing”). In approving the Alternative Price Filing, the Commission stated that it believed that although the listing of securities that do not have a blanket exclusion from the penny stock rules and require ongoing monitoring may increase compliance burdens on broker-dealers, the additional steps taken by Nasdaq to facilitate compliance should reduce those burdens and that, on balance, Nasdaq’s proposal is consistent with the requirement of Section 6(b)(5) of the Act that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. See Exchange Act Release No. 66830 (April 18, 2012), 77 FR 24549 (April 24, 2012) (approving SR-NASDAQ-2012-002).

Last, Nasdaq notes that the existing rules require that following a business combination with an Acquisition Company, the resulting company must satisfy all initial listing requirements. The rule does not provide a timetable for the company to demonstrate that it satisfies those requirements, however. In order to assure that any company that does not satisfy the initial listing requirements following a business combination enters the delisting process promptly, Nasdaq proposes to codify that a company must evidence compliance with the initial listing requirements within 30 days following a business combination. If the company does not evidence compliance in that time, Nasdaq staff would issue a delisting determination, which the company could appeal to an independent Hearings Panel as described in the Nasdaq Rule 5800 Series.

Nasdaq also proposes to delete a duplicative paragraph from the rule text.

These proposed changes will be effective upon approval. However, Nasdaq will permit Acquisition Companies, if any, that were listed on the Capital Market before this proposal was filed and that have less than \$5 million net tangible assets to remain listed, provided that such a company must continue to comply with the 300 public holder requirement for continued listing.¹⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰, which requires that the rules of an exchange promote just and equitable principles of trade,

¹⁸ See, Footnote 13, *supra*.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. While the change would allow Acquisition Companies to list with fewer shareholders, this proposed change is consistent with the investor protection provisions of the Act because other protections help assure that market prices will not be distorted by any potential resulting lack of liquidity. In particular, the ability of a shareholder to redeem shares for a pro rata share of the trust helps assure that the Acquisition Company will trade close to the value of the assets held in trust.²¹

The proposed rule change will also continue to assure that any listed Acquisition Company satisfies an exclusion from the definition of a “penny stock” under the Act by imposing a new requirement that an Acquisition Company must maintain \$5 million of net tangible assets. Further, following listing Nasdaq will monitor the company and publish on its website if the company no longer satisfies those additional requirements or any of the other exclusions from being a penny stock contained in Rule 3a51-1 under the Securities Act of 1933.

Thus, this change will remove impediments to and perfect the mechanism of a free and open market by removing listing requirements that prohibit certain companies from listing or remaining listed without any concomitant investor protection benefits. In addition, the change would also limit the amount of time that an Acquisition Company could remain listed following a business combination if it has not demonstrated compliance with the initial listing requirements, thereby enhancing investor protection. Accordingly, Nasdaq believes that the proposal satisfies the Exchange Act requirements.

²¹ See, Footnote 8, *supra*.

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. While the rule may permit more Acquisition Companies to list, or remain listed, on Nasdaq, other exchanges could adopt similar rules to compete for such listings.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-087 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-2017-087. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2017-087 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The NASDAQ Stock Market Rules

* * * * *

IM-5101-2. Listing of Companies Whose Business Plan is to Complete One or More Acquisitions

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.

However, in the case of a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq will permit the listing if the Company meets all applicable initial listing requirements, as well as the conditions described below.

(a) – (c) No change.

(d) Until the Company has satisfied the condition in paragraph (b) above, if the Company holds a shareholder vote on a business combination for which the Company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act in advance of the shareholder meeting, the business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered. 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 deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. A Company may establish a limit (set no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any Shareholder, together with any affiliate of such Shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Act), may exercise such conversion rights. For purposes of this paragraph (d), public Shareholder excludes officers and directors of the Company, the Company's sponsor, the founding Shareholders of the Company, and any Family Member or affiliate of any of the foregoing persons, or the beneficial holder of more than 10% of the total shares outstanding.

[Until the Company completes a business combination where all conditions in paragraph (b) above are met, the 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 following a business combination or does not comply

with one of the requirements set forth above, Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.]

(e) Until the Company has satisfied the condition in paragraph (b) above, if a shareholder vote on the business combination is not held for which the Company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Act, 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 (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e-4 and Regulation 14E under the Act, which regulate issuer tender offers. The Company must file tender offer documents with the Commission containing substantially the same financial and other information about the business combination and the redemption rights as would be required under Regulation 14A of the Act, which regulates the solicitation of proxies.

(f) Until the Company completes a business combination where all conditions in paragraph (b) above are met, the Company must maintain net tangible assets (i.e., total assets less intangible assets and liabilities) in excess of \$5 million as demonstrated on the Company's most recent audited financial statements filed with, and satisfying the requirements of, the Commission or Other Regulatory Authority. In the case of a Company listing at the time of its initial public offering, net tangible assets may be demonstrated in a public filing, such as the Company's registration statement, on a pro forma basis reflecting the offering. A Company listed as of August 25, 2017, does not need to satisfy this paragraph (f) if it has at least 300 Public Holders.

(g) Until the Company completes a business combination where all conditions in paragraph (b) above are met, the 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] evidence compliance with the requirements for initial listing within 30 days following a business combination or does not comply with one of the requirements set forth above, Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.

* * * * *

5505. Initial Listing of Primary Equity Securities

A Company applying to list its Primary Equity Security on the Capital Market must meet all of the requirements set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

(a) Initial Listing Requirements for Primary Equity Securities:

(1) – (2) No change.

(3) At least 300 Round Lot Holders (except for a Company described in IM-5101-2, which must have at least 150 Round Lot Holders);

(4) – (5) No change.

(b) No change.

* * * * *

5550. Continued Listing of Primary Equity Securities

A Company that has its Primary Equity Security listed on the Capital Market must continue to meet all of the requirements set forth in Rule 5550(a) and at least one of the Standards set forth in Rule 5550(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(a) Continued Listing Requirements for Primary Equity Securities:

(1) – (2) No change.

(3) At least 300 Public Holders (except for a Company described in IM-5101-2, which is not subject to this requirement);

(4) – (5) No change.

(b) No change.