

Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, then the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the maximum amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. The Non-Interested Trustees of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Trustees may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions of the Order. In addition, the Non-Interested Trustees will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a business development company (as defined in section 2(a)(48) of the Act) and each of the investments permitted under these Conditions were approved by the

Required Majority under section 57(f) of the Act.

11. No Non-Interested Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with the Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee¹⁶ (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement

¹⁶ Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

between the Adviser and the Regulated Fund or Affiliated Fund.

14. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares (i) as directed by an independent third party, or (ii) in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-16714 Filed 7-31-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89413; File No. SR-NASDAQ-2020-044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Listing Rule IM-5900-8 To Offer a Complimentary Global Targeting Tool to Acquisition Companies Listed Pursuant to Nasdaq IM-5101-2 that Have Publicly Announced Entering Into a Binding Agreement for a Business Combination

July 28, 2020.

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 July 15, 2020, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Listing Rule IM-5900-8 to offer a complimentary global targeting tool to an Acquisition Company that has announced a business combination.

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

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, Nasdaq proposes to adopt Listing Rule IM-5900-8 to offer a complimentary global targeting tool to an Acquisition Company that has publicly announced a business combination.

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 an Acquisition Company, Nasdaq will permit the listing if the company meets all applicable initial listing

requirements, as well as the additional conditions described in IM-5101-2. These additional conditions generally require, among other things, that at least 90% of the gross proceeds from the initial public offering must be deposited in a "deposit account," as that term is defined in the rule, and that the company complete within 36 months, or a shorter period identified by the company, 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.

Acquisition Companies do not have operating businesses and tend to trade infrequently and in a tight range until the company completes an acquisition. Therefore, these companies do not generally need shareholder communication services, market analytic tools or market advisory tools and, upon listing, these companies do not receive complimentary services from Nasdaq under IM-5900-7, even if they list on the Nasdaq Global or Global Select Markets.⁴

However, over time Nasdaq observed that once an Acquisition Company publicly announces a business combination with an operating company, the Acquisition Company needs to identify and target investors appropriate for the new business. Specifically, once the Acquisition Company identifies the operating business it plans to acquire, the Acquisition Company needs to focus on targeting investors who are interested in investing in the future business operations or the industry of the acquired business. Such investor targeting may help the Acquisition Company convey the long-term vision of the acquired business to investors and thus attract new investors and diminish potential redemptions at the time of the business combination with the operating company.⁵

To that end, Nasdaq proposes to offer Acquisition Companies listed on Nasdaq a complimentary global targeting tool,⁶ following the public announcement that the company

⁴ See Securities Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663 (November 28, 2016). A former Acquisition Company is eligible to receive services under IM-5900-7 when it lists on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in IM-5101-2(b).

⁵ 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. See IM-5101-2(d) and (e).

⁶ The global targeting tool would be offered through Nasdaq Corporate Solutions, LLC, an affiliate of Nasdaq.

entered into a binding agreement for the business combination intended to satisfy the conditions in Listing Rule IM-5101-2(b) until 60 days following the completion of the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated.⁷

Through the global targeting tool, Nasdaq investor targeting specialists will help focus the Company's investor relations efforts on appropriate investors, tailor messaging to their interests and measure the Company's impact on their holdings. The analyst team will help develop a detailed plan aligning the targeting efforts with the Company's long-term ownership strategy. Analysis includes addressable risks and opportunities by region and investor type, and recommendations for where to focus time. This service has a retail value of approximately \$44,000 per year.

Nasdaq believes that the proposed complimentary services would provide an incentive to the Acquisition Companies to list on Nasdaq. Nasdaq also believes it is reasonable to balance its need to remain competitive with other listing venues, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. Nasdaq notes that no other company will be required to pay higher fees as a result of the proposed amendments and represents that providing this service will have no impact on the resources available for its regulatory programs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

⁷ Nasdaq offers certain complimentary services under IM-5900-7, based on market capitalization, to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering (other than an Acquisition Company), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, or in conjunction with a business combination that satisfies the conditions in Nasdaq IM-5101-2(b) and to companies (other than an Acquisition Company) switching their listing from the New York Stock Exchange to the Global or Global Select Markets. Nasdaq does not currently offer complimentary services to companies listing on the Nasdaq Capital Market or Acquisition Companies listing on any market tier. See IM-5900-7. Accordingly, in certain circumstances, for a short period following the business combination, a company may be eligible to receive services under IM-5900-7 and proposed IM-5900-8.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

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 proposed rule change is consistent with the provisions of Sections 6(b)(4),¹⁰ 6(b)(5),¹¹ and 6(b)(8),¹² in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq faces competition in the market for listing services,¹³ and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. In particular, Nasdaq believes that it is reasonable to enhance its competitive offering by providing all Acquisition Companies with a complimentary global targeting tool, following the public announcement of the business combination intended to satisfy the conditions in Listing Rule IM-5101-2(b) until 60 days following the completion the business combination or such time that the Acquisition Company publicly announces that such agreement is terminated.

Nasdaq believes it is reasonable, and not unfairly discriminatory, to offer the global targeting tool to Acquisition Companies following the public announcement of the business combination that is intended to satisfy the conditions in Listing Rule IM-5101-2(b) because at such time Acquisition Companies will have increased need to focus on identifying and communicating with its shareholders and prospective investors. Once the Acquisition Company identifies the operating business it plans to acquire, the Acquisition Company needs to focus on targeting investors who are interested in

investing in the acquired business. Such investor targeting may help the Acquisition Company convey the long-term vision of the acquired business to the investors and thus diminish potential redemptions at the time of the business combination with the operating company. Nasdaq also believes that such diminished redemptions may help Acquisition Companies remain in compliance with other listing requirements, including the shareholder requirement for continued listing.¹⁴

At this time in the Acquisition Company's lifecycle, the companies are transitioning to the traditional operating company model and the complimentary global targeting tool will help ease that transition. In addition, these companies will be eligible to receive this service for the first time, and offering the complimentary global targeting tool will provide Nasdaq Corporate Solutions with the opportunity to demonstrate the value of its services and forge a relationship with the company at a time when the new operating company is choosing its service providers. For these reasons, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer the global targeting tool to Acquisition Companies following the public announcement of such business combination. In addition, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer Acquisition Companies a complimentary global targeting tool for 60 days following the completion the business combination because it would allow for a smooth transition to the traditional operating company model and avoid disruption of the service during such transaction.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act¹⁵ that providing and updating the values of the services within the rule is necessary,¹⁶ and Nasdaq does not believe this indication of value has an effect on the allocation of fees nor does it permit unfair discrimination, as all Acquisition

Companies will receive the same services. Further, this provision will enhance the transparency of Nasdaq's rules and the value of the services it offers Acquisition Companies, thus promoting just and equitable principles of trade. As such, the proposed rule change is consistent with the requirements of Section 6(b)(4) and (5) of the Exchange Act.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.¹⁷

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule change reflects that competition, but does not impose any burden on the competition with other exchanges. Rather, Nasdaq believes the proposed changes will result in Acquisition Companies being eligible to receive the global targeting tool and therefore will enhance competition for new listings of Acquisition Companies.

Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

Nasdaq also notes that Nasdaq Corporate Solutions competes with other service providers in providing services like the global targeting tool. To the extent that these other providers believe that Nasdaq offering a complimentary services for a limited time creates a competitive burden on their offerings, they are able to craft a similar program to attract Acquisition Companies to their services.

¹⁷ See Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE-2011-20)).

¹⁴ Listing Rule 5450(a)(2) requires at least 400 Total Holders for continued listing on the Nasdaq Global Market. Listing Rule 5550(a)(3) requires at least 300 Public Holders for continued listing on the Nasdaq Capital Market.

¹⁵ 15 U.S.C. 78s(b).

¹⁶ See Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR-NASDAQ-2014-058) (footnote 39 and accompanying text: "We would expect Nasdaq, consistent with Section 19(b) of the Exchange Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.")

¹⁰ 15 U.S.C. 78f(4).

¹¹ 15 U.S.C. 78f(5).

¹² 15 U.S.C. 78f(8).

¹³ The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/271214.htm.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-044 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-2020-044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-044, and should be submitted on or before August 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89420; File No. 4-631]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan To Address Extraordinary Market Volatility To Add MEMX LLC as a Participant

July 29, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that on July 6, 2020, MEMX LLC ("MEMX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan to Address Extraordinary Market Volatility ("LULD Plan" or "Plan") as a Participant.³ The amendment adds MEMX as a Participant⁴ to the LULD Plan. The Commission is publishing this

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 242.608.

³ See Letter from Anders Franzone, General Counsel, MEMX, dated July 6, 2020, to Vanessa A. Countryman, Secretary, Commission. On May 6, 2012, the Commission issued an order approving the Plan on a pilot basis (the "Approval Order"). See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The Commission approved the LULD Plan on a permanent basis on April 11, 2019. See Securities Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019).

⁴ Defined in Section I(K) of the Plan as follows: "Participant" means a Party to the Plan.

notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

As noted above, the sole proposed amendment to the LULD Plan is to add the Exchange as a Participant. On May 4, 2020, the Commission issued an order granting MEMX's application for registration as a national securities exchange.⁵ A condition of the Commission's approval was the requirement for MEMX to join the Plan.

Under Section II(C) of the LULD Plan, any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III (B) of the Plan. Section III(B) of the LULD Plan sets forth the process for a prospective new Participant to effect an amendment of the Plan. Specifically, the LULD Plan provides that such an amendment to the Plan may be effected by the new national securities exchange or national securities association by executing a copy of the Plan as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan); and submitting such executed Plan to the Commission. The amendment will be effective when it is approved by the Commission in accordance with Rule 608 of Regulation NMS, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS.

MEMX has become a participant in the applicable Market Data Plans,⁶ executed a copy of the Plan currently in effect, with the only change being the addition of its name in Section II(A) of the Plan, and has provided a copy of the Plan executed by MEMX to each of the other Participants. MEMX has also submitted the executed Plan to the Commission. Accordingly, all of the Plan requirements for effecting an

⁵ See Securities Exchange Act Release No. 88806, 85 FR 27451 (May 8, 2020).

⁶ See Letter from Robert Books, Chairman, Operating Committee, CTA/CQ Plans, to Vanessa A. Countryman, Secretary, Commission, dated June 29, 2020 to Vanessa A. Countryman, Secretary, SEC (relating to Thirty-Fourth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fifth Substantive Amendment to the Restated CQ Plan adding MEMX as a participant) and letter from Robert Books, Chairman, Operating Committee, UTP Plan, to Vanessa A. Countryman, Secretary, Commission, dated June 29, 2020 (relating to Forty-Eighth Amendment to the UTP Plan adding MEMX as a participant).