three Amended Manual Fields on amended Form G–32.33

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 of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:
(A) By order approve or disapprove 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);
• Send an email to rule-comments@sec.gov. Please include File Number SR–MSRB–2020–08 on the subject line.

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

All submissions should refer to File Number SR–MSRB–2020–08. 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 MSRB. 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–MSRB–2020–08 and should be submitted on or before November 18, 2020.

For the Commission, pursuant to delegated authority.34

J. Matthew DeLesDernier, Assistant Secretary.

[FR Doc. 2020–23795 Filed 10–27–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Exclude Special Purpose Acquisition Companies From the Requirement That at Least 50% of a Company’s Round Lot Holders Each Hold Unrestricted Securities With a Market Value of at Least $2,500


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 October 8, 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. On October 21, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to exclude special purpose acquisition companies from the requirement that at least 50% of a company’s round lot holders each hold unrestricted securities with a market value of at least $2,500. This Amendment No. 1 replaces and supersedes the original filing in its entirety.


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

33 As previously noted, the proposed rule change seeks to clarify amendments to Amended Form G–32, resulting from the authorization and approval by the SEC of the MSRB’s Primary Offering Practices Amendments. Comments to the Primary Offering Practices Amendments were previously summarized by the MSRB and can be found in the rulemaking transcript associated with File No. SR–MSRB–2019–07. See File No. SR–MSRB–2019–07, at p. 32; see also comment letter from Margaret R. Blake, Associate General Counsel, MSRB (June 6, 2019) (summarizing and responding to comment letters to the Primary Offering Practices Amendments) (the “Blake Letter”), available at https://www.sec.gov/comments/sr-msrb-2019-07/srmsrb201907-5639704-185629.pdf. As noted in the Blake Letter, “[c]ommenters did not raise concerns regarding the proposed addition of 57 data fields on Form G–32 that would be auto-populated from Form G–32.33

Liquidity Amendments to help ensure adequate distribution, shareholder interest and a liquid trading market for a security. The Initial Liquidity Amendments also imposed a new requirement that at least 50% of a company’s minimum required round lot holders must each hold unrestricted securities with a market value of at least $2,500 (the “Required Minimum Amount”).

Nasdaq imposed the Required Minimum Amount to help ensure that at least 50% of the required minimum number of shareholders hold a meaningful value of unrestricted securities and that a company has sufficient investor interest to support an exchange listing. It also serves to assure that investors purchasing shares in an IPO at the offering price are making a large enough investment that the price established in that offering is reliable. Prior to adopting the Initial Liquidity Amendments, Nasdaq had noticed problems with companies listing where a large number of round lot holders held exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share, or as little as $200 in the case of a stock listing under alternative price criteria. In adopting the Initial Liquidity Amendments, Nasdaq believed that the Required Minimum Amount is a more appropriate representation of genuine investor interest in the company and would make it more difficult to circumvent the round lot holder requirement through share transfers for no value.

Since implementing the Initial Liquidity Amendments, Nasdaq has determined that the requirement for 50% of a company’s required minimum number of round lot holders to hold $2,500 worth of securities is not appropriate for the listing of SPACs. SPACs are Special Purpose Acquisition Companies that raise capital in an initial public offering (“IPO”) to enter into future undetermined business combinations through mergers, capital stock exchanges, asset acquisitions, stock purchases, reorganizations or other similar business combinations with one or more operating businesses or assets. At least 90% of the gross proceeds raised in the IPO and any concurrent sale of equity securities must be deposited into a trust account.

Within 36 months or such shorter time period as specified by the SPAC, the SPAC must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the trust account. Shareholders have the opportunity to redeem their shares for a pro rata portion of the trust at the time of the business combination.

In the offering of an operating company, the underwriters and investors determine a valuation of the company based on its revenues, future cash flow expectations, business activities and peer valuations, among other metrics. Nasdaq believes that imposing the Required Minimum Amount on operating companies helps to assure that the price established by the underwriters reflects demand from shareholders investing a meaningful amount in the securities. In contrast, in the Exchange’s view, the value of a SPAC prior to a business combination is not based solely on investor demand for the security but is based primarily on the value of the cash held in the trust account.

As noted above, prior to adopting the Initial Liquidity Amendments, Nasdaq noticed problems with companies listing with a large number of round lot holders holding exactly 100 shares. Such holders held shares in the company prior to its IPO, and Nasdaq believed that such amount was not a representation of genuine investor interest in the company sufficient to support an exchange listing. In contrast, typically the only investors holding shares in a SPAC prior to an IPO are its founders and all other round lot holders represent new investors in the SPAC’s IPO. Nasdaq therefore believes that SPACs do not present a similar risk of circumventing the round lot holder requirement through share transfers for no value, and Nasdaq has not observed this problem with SPACs. Furthermore, SPAC shareholders are afforded the opportunity to redeem or tender their shares for a pro rata portion of the value of the IPO proceeds maintained in a trust account in connection with the SPAC’s business combination, which must occur within 36 months of the
IPO. As such, the SPAC structure provides an alternative liquidity mechanism that operating companies do not offer. Accordingly, based on the unique structure of SPACs, Nasdaq believes that SPACs should be excluded from the Required Minimum Amount and is proposing to revise Rules 5315(f)(1)(C), 5405(a)(3) and 5505(a)(3) to exclude SPACs from the Required Minimum Amount. As a result of these changes, SPACs must satisfy the Exchange’s initial listing requirements at the time of the IPO. However, the requirement that 50% of the SPAC’s required minimum number of round lot holders hold the Required Minimum Amount at the time of initial listing will not apply.

SPACs will also continue to remain subject to unique listing rules, which provide shareholders the right to redeem or convert their shares for a pro rata share of the trust in conjunction with the business combination. Following a business combination, in order to remain listed, the combined company must meet Nasdaq’s initial listing requirements. Nasdaq believes that although SPACs will be excluded from the Required Minimum Amount at the time of initial listing, requiring SPACs to satisfy Nasdaq’s other initial listing standards will continue to help ensure that SPACs have sufficient public float, investor base, and trading interest likely to generate depth and liquidity to support exchange listing and trading, which should help to protect investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by removing a listing requirement from a security that is not an appropriate measure of liquidity based on the unique structure of the listed company while ensuring adequate distribution, shareholder interest, a liquid trading market and investor protections through other listing standards.

Specifically, as noted above, prior to adopting the Initial Liquidity Amendments, Nasdaq noticed problems with companies listing with a large number of round lot holders holding exactly 100 shares. Such holders held shares in the company prior to its IPO, and Nasdaq believed that such amount was not a representation of genuine investor interest in the company to support an exchange listing. In contrast, typically the only investors holding shares in a SPAC prior to an IPO are its founders and all other round lot holders represent new investors in the SPAC’s IPO. SPACs also offer alternative mechanisms to provide liquidity by affording shareholders the opportunity to redeem or tender their shares for a pro rata portion of the value of the IPO proceeds maintained in a trust account in connection with the SPAC’s business combination. Nasdaq therefore believes that SPACs do not present a similar risk of circumventing the round lot holder requirement through share transfers for no value and that removing this requirement will not impact the protection of investors.

Further, the Exchange believes that excluding SPACs from the Required Minimum Amount avoids imposing an unnecessary impediment to the mechanism of a free and open market and is not unfairly discriminatory. As noted above, SPACs provide their shareholders with an alternate mechanism for obtaining liquidity, through the ability to redeem or tender their shares, which other companies do not provide. As such, it is not unfairly discriminatory to treat SPACs differently than operating companies. Further, in an initial offering of an operating company, the underwriters and investors determine a valuation of the company based on its revenues, future cash flow expectations, business activities and peer valuations, among other metrics. Nasdaq believes that imposing the Required Minimum Amount on operating companies helps to ensure that the price arrived at by the underwriters reflects demand from shareholders investing a meaningful amount of unrestricted securities. In contrast, the Exchange has observed that SPACs generally have historically traded close to the value in the trust during the period between its public offering and the consummation of a business combination. This suggests that the value of a SPAC’s security derives from the value of the underlying trust. Nasdaq therefore believes that the requirement for at least half of a SPAC’s required unrestricted round lot holders to hold at least $2,500 of shares is not relevant to help establish the legitimacy of the offering price.

This proposed change will also align Nasdaq’s treatment of SPACs with the treatment of warrants under this rule. In this regard, the valuation of a warrant is similar to the valuation of a share of a SPAC in that the warrant’s value is derived from the value of the underlying security and the value of a SPAC share is derived from the value of the underlying trust account. SPACs are also similar to warrants in that warrants represent a right to purchase a share in a company in the future, and SPACs represent a right to convert shares of common stock into a pro rata share of the aggregate amount then in the trust account or into a share of the future post-business combination entity.

In adopting the Initial Liquidity Amendments, Nasdaq believed, and the Commission concurred, that it is not unfairly discriminatory to treat warrants differently and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market. The Exchange believes that because the valuation of a SPAC’s security is similar to the valuation of a warrant, it is not unfairly discriminatory to treat SPACs differently than other company’s listing common stock.

The Exchange believes that other listing standards will help it to ensure adequate distribution, shareholder interest and a liquid trading market of a SPAC’s security at the time of IPO and following a business combination. In both cases, a SPAC must satisfy Nasdaq’s initial listing standards. Nasdaq believes that although SPACs will be excluded from the Required Minimum Amount at the time of initial listing, requiring SPACs to satisfy Nasdaq’s other initial listing standards will continue to help ensure that SPACs have sufficient public float, investor base, and trading interest likely to generate depth and liquidity to support exchange listing and trading, which should help to protect investors and the public interest.

SPACs will also continue to remain subject to unique listing rules. Until the
SPAC has completed a business combination of at least 80% of the trust account value, the SPAC must, among other things, submit the business combination to a shareholder vote. Any public shareholders who vote against the business combination have a right to convert their shares of common stock into a pro rata share of the aggregate amount then in the trust account, if the business combination is approved and consummated. If a shareholder vote on the business combination is not held, the SPAC 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 trust account. In addition, following a business combination, the post-business combination entity must meet Nasdaq’s initial listing requirements in order to remain listed. Nasdaq believes that these additional investor protection standards will continue to provide safeguards to shareholders who invest in SPAC 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 Exchange notes that NYSE Rule 802.01B(ii) requires SPACs to have a minimum number of 300 round lot holders (“public stockholders”), however, NYSE does not require such public stockholders to hold a minimum investment amount. NYSE American Rule 119 also does not require public stockholders of a SPAC to hold a minimum investment amount. As a result of the proposed change, round lot holders of SPACs listed on Nasdaq would not be required to hold the Required Minimum Amount, similar to round lot holders of SPACs listed on NYSE and NYSE American. As a result, the proposed rule change will promote competition among exchanges since it will allow Nasdaq to list SPACs that currently could list on NYSE and NYSE American. In addition, the proposed rule change will apply equally to all SPACs listing on Nasdaq and so won’t impact competition among SPACs.

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 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–2020–069 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–2020–069 on the subject line.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0022]

Proposed First Renewed Memorandum of Understanding (MOU) Assigning Certain Federal Environmental Responsibilities to the State of Arizona, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: The FHWA and the State of Arizona, acting by and through its Department of Transportation (State), propose a renewal of the State’s participation in the State Assumption of Responsibility for Categorical Exclusions. This program allows FHWA to assign to States its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed Memorandum of Understanding (MOU), are

19 See supra note 11.
20 See supra note 11.
21 NYSE Rule 802.01B[li][ii] states that “Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.” Nasdaq Rule 5005(a)(3) defines “publicly held shares” as “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. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d–3 under the Act.”