

proposal's compatibility with DTC and NSCC infrastructure;<sup>382</sup> the liquidity of Securities;<sup>383</sup> how the end-of-day Security ownership balance reporting mechanism would affect short sales, including the locate process, clearing, settling, and market maker compliance with short sale rules;<sup>384</sup> how end-of-day Security ownership balances would affect the margin methodology for member self-calculation;<sup>385</sup> the potential liability of custodians for differences between DTC records and end-of-day Security ownership balances;<sup>386</sup> the proposed listing requirements' compliance with penny stock rules;<sup>387</sup> the proposal's compliance with the anti-fraud or customer protection provisions of the Exchange Act or other Commission regulations;<sup>388</sup> Security ownership verification, including for purposes of compliance with know-your-customer and anti-money laundering rules;<sup>389</sup> access to the end-of-day Security ownership balance records and the safeguarding of customer non-public information;<sup>390</sup> the requirements of Exchange Act Rule 12f-5 relating to the extension of UTP by other national securities exchanges to BSTX-listed Securities;<sup>391</sup> the relationship among tZERO, Overstock.com, Inc. ("Overstock"),<sup>392</sup> and entities related to the Exchange;<sup>393</sup> whether any registered broker-dealer has indicated its intention to become a BSTX Participant;<sup>394</sup> and whether the Exchange is still working with FINRA regarding end-of-day Security ownership balance reporting requirements for FINRA members.<sup>395</sup> Additional discussion on these topics is unnecessary, as they do not bear on the

basis for the Commission's decision to disapprove this proposal.

#### IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1), 6(b)(5), and 6(b)(8) of the Exchange Act.<sup>396</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>397</sup> that the proposed rule change (SR-BOX-2020-14), as modified by Amendment No. 1, be, and hereby is, disapproved.

By the Commission.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2020-28536 Filed 12-23-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90726; File No. SR-NYSE-2020-89]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 7.35C

December 18, 2020.

On October 23, 2020, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Provide the Exchange the authority to facilitate a Trading Halt Auction if a security has not reopened following a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 ("MWCB Halt") by 3:30 p.m.; (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM Interest would not be cancelled following an Exchange-facilitated Auction; and (4) change the Auction Reference Price for Exchange-facilitated Core Open Auctions. The proposed rule change was published for

comment in the **Federal Register** on November 12 2020.<sup>3</sup>

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, 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 as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 27, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates February 10, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSE-2020-89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-28511 Filed 12-23-20; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90730; File No. SR-NYSE-2020-87]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 7.31

December 18, 2020.

#### I. Introduction

On October 20, 2020, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

<sup>3</sup> See Securities Exchange Act Release No. 90363 (Nov. 5, 2020), 85 FR 71964 (Nov. 12, 2020).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<sup>382</sup> See PKA Law Letter, *supra* note 175, at 2.

<sup>383</sup> See PKA Law Letter, *supra* note 175, at 1.

<sup>384</sup> See IEX Letter, *supra* note 77, at 6; PKA Law Letter, *supra* note 175, at 1.

<sup>385</sup> See Nasdaq Letter, *supra* note 77, at 3.

<sup>386</sup> See Eversheds Letter, *supra* note 91, at 2.

<sup>387</sup> See IEX Letter, *supra* note 77, at 6.

<sup>388</sup> See Eversheds Letter, *supra* note 91, at 2; Nasdaq Letter, *supra* note 77, at 3.

<sup>389</sup> See Nasdaq Letter, *supra* note 77, at 3; PKA Law Letter, *supra* note 175, at 1.

<sup>390</sup> See Eversheds Letter, *supra* note 91, at 2.

<sup>391</sup> See Eversheds Letter, *supra* note 91, at 2-3; IEX Letter, *supra* note 77, at 3-4. One commenter also discussed aspects of requirements might be placed on a national securities exchange extending UTP to BSTX-listed Securities that the Exchange modified in Amendment No. 2 to SR-BOX-2019-19. See Eversheds Letter, *supra* note 91, at 3.

<sup>392</sup> In the Amended BSTX Governance Proposal, the Exchange states that Overstock, which is a publicly held corporation, wholly owns Medici Ventures, Inc., which owns 80.07% of tZERO. See Amended BSTX Governance Proposal, *supra* note 17, 85 FR at 50851.

<sup>393</sup> See PKA Law Letter, *supra* note 175, at 2.

<sup>394</sup> See IEX Letter, *supra* note 77, at 5.

<sup>395</sup> See IEX Letter, *supra* note 77, at 6.

<sup>396</sup> 15 U.S.C. 78f(b)(5).

<sup>397</sup> 15 U.S.C. 78s(b)(2).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 7.31 to (1) cancel ALO Orders that lock displayed interest and (2) add two new types of Self Trade Prevention (“STP”) modifiers. The proposed rule change was published for comment in the **Federal Register** on November 6, 2020.<sup>3</sup> On December 15, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.<sup>4</sup> The Commission has received no comments on the proposed rule change. This order provides notice of the filing of Amendment No. 1 to the proposed rule change, and grants approval to the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange’s proposal, as modified by Amendment No. 1, seeks to amend NYSE Rule 7.31 to provide for two additional types of STP modifiers. Currently, NYSE offers two versions of STP: STP Cancel Newest (“STPN”) and STP Cancel Oldest (“STPO”), as described in NYSE Rules 7.31(i)(2)(A) and 7.31(i)(2)(B), respectively. NYSE proposes to expand its STP offerings to establish STP Decrement and Cancel (“STPD”) and STP Cancel Both (“STPC”), which would be set forth in proposed Rules 7.31(i)(2)(C) and 7.31(i)(2)(D), respectively. NYSE’s proposed STPD and STPC offerings are based in part on the STPD and STPC offerings on NYSE’s affiliates NYSE Arca, Inc. (“NYSE Arca”), NYSE American LLC (“NYSE American”), NYSE Chicago, Inc. (“NYSE Chicago”), and NYSE National, Inc. (“NYSE National”) (collectively, the “Affiliated Exchanges”),<sup>5</sup> with differences to separately describe order processing for orders that are allocated in price-time priority and how STPD and STPC

would function consistent with NYSE’s parity allocation model.

For STPD, proposed NYSE Rule 7.31(i)(2)(C) would provide that an incoming order to buy (sell) with an STPD modifier would not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same Client ID,<sup>6</sup> as outlined in proposed NYSE Rules 7.31(i)(2)(C)(i) and (ii).

Proposed NYSE Rule 7.31(i)(2)(C)(i) would apply to resting orders in a priority category that allocates orders on price-time priority. As proposed, if both orders with an STP modifier are equivalent in size, both orders would be canceled back to the originating member organization. If the orders are not equivalent in size, the equivalent size would be canceled back to the originating Client ID and the larger order would be decremented by the size of the smaller order, with the balance remaining on NYSE’s Book. The Exchange states that this proposed functionality is based on the STPD functionality available on the Affiliated Exchanges.

Proposed NYSE Rule 7.31(i)(2)(C)(ii) would address how STPD would function for resting orders in a priority category that allocates orders on parity. As proposed, if a resting order would have been considered for an allocation, both the portion of the resting order that would receive an allocation and the portion of the incoming order marked with the STPD modifier that would be allocated to the resting order would be canceled back to the originating member organization. Resting orders with an STP modifier from the same Client ID that would not have been eligible for a parity allocation would remain on NYSE’s Book. NYSE states that if a member organization designates an order with an STPD modifier, that member organization has instructed NYSE to cancel the equivalent portion of both the incoming order and resting order with an STP modifier from the same Client ID, resulting in the larger order being decremented by the size of the smaller order and remaining on NYSE’s Book. According to the Exchange, in the case of a parity allocation, because resting orders are allocated based on their position on an allocation wheel,<sup>7</sup> it would be consistent with the incoming order’s decrementing instruction to provide a parity allocation to an eligible resting

order with an STP modifier from the same Client ID and cancel both the portion of the resting order corresponding to the allocation and the portion of the incoming order that would have been allocated to the resting order. The Exchange states that this proposed functionality is similar to how NYSE currently processes STPO modifiers if a resting order with an STP modifier from the same Client ID is in a priority category that allocates orders on parity, as described in NYSE Rule 7.31(i)(2)(B)(ii).

For STPC, proposed NYSE Rule 7.31(i)(2)(D) would provide that an incoming order to buy (sell) marked with the STPC modifier would not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same Client ID, as outlined in proposed NYSE Rules 7.31(i)(2)(D)(i) and (ii).

Proposed NYSE Rule 7.31(i)(2)(D)(i) would apply to resting orders in a priority category that allocates orders on price-time priority. As proposed, the entire size of both orders with an STP modifier would be canceled back to the originating member organization. The Exchange states that the proposed functionality is based on the STPC functionality available on the Affiliated Exchanges.

Proposed NYSE Rule 7.31(i)(2)(D)(ii) would address how STPC would function for resting orders in a priority category that allocates orders on parity. As proposed, if a resting order with an STP modifier is in a priority category that allocates orders on parity and would have been considered for an allocation against an incoming order with an STPC modifier, none of the resting orders eligible for a parity allocation in that priority category would receive an allocation. The first resting order with an STP modifier eligible for a parity allocation would be canceled back, as would the incoming order. NYSE states that this proposed processing would be consistent with the member organization’s instruction that both the incoming order and resting order with an STP modifier from the same Client ID be canceled if there were a potential for an execution between the two orders. The Exchange states that this proposed functionality is similar to how NYSE currently processes STPN modifiers if a resting order with an STP modifier from the same Client ID is in a priority category that allocates orders on parity, as described in NYSE Rule 7.31(i)(2)(A)(ii).

NYSE also proposes non-substantive changes to renumber current NYSE Rules 7.31(i)(2)(C) and 7.31(i)(2)(D) as NYSE Rules 7.31(i)(2)(E) and 7.31(i)(2)(F) to accommodate the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 90309 (November 2, 2020), 85 FR 71127 (November 6, 2020).

<sup>4</sup> In Amendment No. 1 to the proposed rule change, the Exchange removed its proposal to cancel ALO Orders that lock displayed interest, and now only proposes to add two new types of STP modifiers to NYSE Rule 7.31. Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nyse-2020-87/srnyse202087-8146047-226657.pdf>.

<sup>5</sup> See NYSE Arca Rule 7.31-E(i)(2); NYSE American Rule 7.31E(i)(2); NYSE National Rule 7.31(i)(2); and NYSE Chicago Rule 7.31(i)(2).

<sup>6</sup> As specified in current NYSE Rule 7.31(i)(2)(D), for purposes of STP, references to Client ID mean a Client ID when using Pillar phase I protocols to communicate with NYSE or an MPID when using Pillar phase II protocols to communicate with NYSE.

<sup>7</sup> See NYSE Rule 7.37(b)(2).

addition of the proposed rules governing STPD and STPC. NYSE also proposes a conforming change to current NYSE Rules 7.31(d)(4)(F) and 7.31(i)(2)(C) to clarify that D Orders could only be designated with an STPN or STPO modifier (*i.e.*, that the new STPD and STPC modifiers would not be available for use with D Orders). NYSE also proposes to amend current NYSE Rule 7.31(i)(2)(D) to specify that STPD and STPC modifiers would only be available for use with Pillar phase II protocols.

The Exchange states that, because of the technology changes associated with this proposed rule change, it will announce the implementation date by Trader Update. Subject to approval of the proposed rule change, the Exchange anticipates that the proposed change will be implemented in January 2021.

### III. Discussion and Commission Findings

After careful consideration of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the Exchange's proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed, among other things, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

With respect to the proposed addition of STPD and STPC modifiers, NYSE asserts that the proposed change would remove impediments to and perfect the mechanism of a free and open market by allowing member organizations to better manage order flow and prevent executions with themselves. NYSE asserts that because orders routed by the same member organization via different connections may, in certain circumstances, be eligible to trade against each other, its proposal to establish additional STP modifiers would remove impediments to and perfect the mechanism of a free and open market, and serve to protect investors and the public interest, by enhancing member organizations' ability to prevent potentially undesirable trades and internalize order

flow. NYSE also asserts that the proposed rule change is designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest because the proposed changes are based on the approved rules of its Affiliated Exchanges, with modifications to address functionality specific to the NYSE's parity allocation model, and aligning its STP modifiers with those offered by its Affiliated Exchanges would promote consistency for member organizations that are members of the Exchange and one or more other Affiliated Exchanges. NYSE further asserts that the proposed differences to address how the proposed STPD and STPC modifiers would function for resting orders that are in a priority category that allocates orders on parity would remove impediments to and perfect the mechanism of a free and open market because the proposed rules are designed to honor the STPD and STPC instructions consistent with the NYSE's parity model. These proposed rules are also similar to how NYSE currently processes STPN and STPO modifiers for resting orders that are in a priority category that allocates orders on parity.

The Commission believes that the proposed rule change, as amended, will make the Exchange's STP rules consistent with the existing rules and functionalities of other exchanges. Accordingly, the Commission believes that the proposal is reasonably designed to remove impediments to and perfect the mechanism of a free and open market and is not designed to permit unfair discrimination. Based on the foregoing, the Commission therefore finds that the proposed rule change is consistent with the Act.<sup>9</sup>

### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2020-87 on the subject line.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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 No. SR-NYSE-2020-87. The file numbers 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 such 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 publicly available. All submissions should refer to File No. SR-NYSE-2020-87 and should be submitted on or before January 19, 2021.

### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. In Amendment No. 1, the Exchange removed its proposal to cancel ALO Orders that lock displayed interest, and now only proposes to add two new types of STP modifiers. Amendment No. 1 does not change any substantive provisions of the latter part of the proposed rule change regarding STP modifiers that were noticed for public comment. As discussed above, the Exchange further states that this proposed rule change will make its rules consistent with the rules and

<sup>8</sup> 15 U.S.C. 78f(b)(5).

functionalities of other exchanges. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR–NYSE–2020–87), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier**,  
Assistant Secretary.

[FR Doc. 2020–28522 Filed 12–23–20; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90729; File No. SR–NASDAQ–2020–060]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Treat as an Eligible Switch, for Purposes of IM–5900–7, an Acquisition Company That Switches From NYSE to Nasdaq After Announcing a Business Combination

December 18, 2020.

#### I. Introduction

On September 1, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to treat as an Eligible Switch, for purposes of IM–5900–7, an Acquisition Company that switches from the New York Stock Exchange (“NYSE”) to Nasdaq after announcing a business combination. On September 14, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on September 21, 2020.<sup>3</sup> The Commission received no

comments on the proposal, as modified by Amendment No. 1. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

Nasdaq proposes to modify IM–5900–7 to treat as an Eligible Switch under that rule any Acquisition Company<sup>4</sup> that both: (i) Switched its listing from NYSE to list on Nasdaq under IM–5101–2 after the company publicly announced that it entered into a binding agreement for a business combination; and (ii) subsequently satisfies the conditions in IM–5101–2(b) and lists on the Nasdaq Global or Global Select Markets, by meeting all listing requirements of one of these market tiers, in conjunction with that business combination.<sup>5</sup>

Currently, a company completing a business combination with a Nasdaq-listed Acquisition Company is eligible to receive services under IM–5900–7 when it lists, by meeting the listing requirements on the Nasdaq Global or Global Select Market, in conjunction with a business combination that satisfies the conditions in IM–5101–2(b).<sup>6</sup> According to Nasdaq, at this point, the Acquisition Company transitions to being an operating company and has a similar need as other companies for shareholder communication services, market analytic tools and market advisory tools. Nasdaq states that, for this purpose, the Acquisition Company is treated as an “Eligible New Listing” under the rule, similar to a company listing in connection with its IPO.<sup>7</sup>

Additionally, under IM–5900–7, Nasdaq treats a company that switches its listing from NYSE to the Nasdaq

<sup>4</sup> IM–5101–2 imposes additional listing requirements on a company whose business plan is to complete an initial public offering (“IPO”) and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (“Acquisition Companies”).

<sup>5</sup> See Notice, *supra* note 3, 85 FR at 59347. As Nasdaq states in its rule proposal, the combined company would again have to satisfy all initial listing requirements at the time of the business combination. See IM–5101–2(d) and (e); Notice, *supra* note 3, 85 FR at 59347. If the Company does not meet the requirements for initial listing or does not comply with one of the requirements set forth in IM–5101–2, Nasdaq will issue a Staff Delisting Determination under Nasdaq Rule 5810 to delist the company’s securities.

<sup>6</sup> See IM–5900–7(e). Specifically, within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination. See IM–5101–2(b).

<sup>7</sup> See Notice, *supra* note 3, 85 FR at 59347.

Global or Global Select Market as an “Eligible Switch” and, according to Nasdaq, offers such companies a package of services that can be more valuable than the package of services offered to Eligible New Listings.<sup>8</sup> Nasdaq states that, under the current rule, an Acquisition Company listed on NYSE that switches to Nasdaq as an Acquisition Company would not receive any services when it switches, even if it has already announced its business combination, but would receive services as an Eligible New Listing when it completes a business combination that satisfies the requirements of IM–5101–2(b). However, if the company waits until it completes a business combination and then switches to Nasdaq, the company would receive services as an Eligible Switch.<sup>9</sup> According to Nasdaq, removing the existing incentive for an Acquisition Company to delay switching its listing to Nasdaq until the time of its business combination will allow Nasdaq to process both the removal of the Acquisition Company and the simultaneous addition of the operating company, which will help ensure that the transaction is processed smoothly for the benefit of the company’s investors.<sup>10</sup>

Pursuant to the proposed rule change, Nasdaq proposes to treat as an Eligible Switch any company that switches its listing from NYSE and lists on Nasdaq under IM–5101–2 after the company has publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in IM–5101–2(b) and lists on the Global or Global Select Market in conjunction with that business combination.<sup>11</sup> Nasdaq states

<sup>8</sup> See Notice, *supra* note 3, 85 FR at 59347. In particular, an Eligible Switch with a market capitalization less than \$750 million receives the same package of services for the same two year term as an Eligible New Listing. But an Eligible Switch with a market capitalization of \$750 million or more receives services with a higher total retail value than a comparably sized Eligible New Listing and will receive those services for four years instead of two years. See Notice, *supra* note 3, 85 FR at 59347, n.8.

<sup>9</sup> See Notice, *supra* note 3, 85 FR at 59347 (stating that in this scenario the company would not be listing on Nasdaq as an Acquisition Company).

<sup>10</sup> See Notice, *supra* note 3, 85 FR at 59347. Nasdaq states that, otherwise, multiple markets would need to coordinate the removal of the company’s securities from one market, a change in the name and symbol of the securities, and the addition of securities to another market, which all occurs in conjunction with the closing of the business combination (itself a significant corporate event). See *id.*

<sup>11</sup> See proposed IM 5900–7(a)(2). According to Nasdaq, in the event that the Acquisition Company terminates the business combination that was announced when it switched, it would not be eligible to receive services as an Eligible Switch

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 89875 (September 15, 2020), 85 FR 59346 (“Notice”).