acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that, by amending Rule 1011(p)(4) to correct an inadvertent drafting error, and fully and accurately describe the “final regulatory actions” that the definition of “specified risk event” includes, the proposed rule change will provide greater clarity to members and the public and serve the intended investor-protection purposes of the rules approved in SR–FINRA–2020–011.

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

FINRA does not believe that the proposed rule change is associated with any material economic impacts or will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to correct an inadvertent drafting error in Rule 1011(p)(4) that resulted in a narrower scope for the “final regulatory actions” that are included in the “specified risk event” definition than FINRA intended.

The aspect of the economic impact assessment undertaken in File No. SR–FINRA–2020–011 that pertained to the amendments to the Rule 1000 Series was based on the broader scope for the “final regulatory actions” that are included in the “specified risk event” definition that FINRA is proposing here. Consistent with FINRA’s initial intent, the broader scope for the “final regulatory actions” that are included in the “specified risk event” definition includes, for example, final SEC and CFTC regulatory actions where the sanction against the person was a suspension other than a suspension from associating with a member.

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

Written comments were neither solicited nor 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 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); or

• Send an email to rule-comments@sec.gov. Please include File Number SR–FINRA–2021–011 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–FINRA–2021–011. 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not read 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–FINRA–2021–011 and should be submitted on or before June 16, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–11077 Filed 5–25–21; 8:45 am]

BILLING CODE 4011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91961; File No. SR–

Nasdaq–2020–062]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Listing Rules Applicable to Special Purpose Acquisition Companies Whose Business Plan Is To Complete One or More Business Combinations

May 20, 2021.

I. Introduction

On September 3, 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 (“Exchange Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to amend its listing rules to permit companies whose business plan is to complete one or more business combinations (“SPACs” or “Acquisition Companies”) 15 calendar days following the closing of a business combination to demonstrate that the SPAC has satisfied the applicable round lot shareholder requirement. The proposed rule change was published for comment in the Federal Register on September 22, 2020.3

On November 4, 2020, pursuant to Section 19(b)(2) of the Exchange Act,4 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.5

5 See Securities Exchange Act Release No. 90340, 85 FR 71704 (November 10, 2020). The Commission designated December 21, 2020, as the date by which it should approve, disapprove, or institute

Continued
On December 16, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act
6 to determine whether to approve or disapprove the proposed rule change ("Proposal").

On February 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the Federal Register on March 16, 2021.6 On March 18, 2021, the Commission designated a longer period for Commission action on the proposed rule change.6

This order disapproves the proposed rule change, as modified by Amendment No. 1, because, as discussed below, Nasdaq has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposal is consistent with the requirements of Section 6(b)(5) of the Exchange Act, and, in particular, the requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.10

II. Description of the Proposal, as Modified by Amendment No. 1

A SPAC is a company with no operations whose business plan is to complete an initial public offering and then subsequently engage in a merger or acquisition with one or more unidentified operating companies within a specified period of time.11 Nasdaq listing rules, among other things, require a SPAC to keep at least 90% of the proceeds from its initial public offering in an escrow account, and to complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account within a specified period of time.12 Following each business combination, the combined company must meet the requirements for initial listing on Nasdaq13 including those requiring a minimum number of round lot shareholders (the “Shareholder Requirement”).14 If the combined company does not meet all the initial listing requirements following a business combination, Nasdaq listing rules currently provide that Nasdaq staff will issue a Staff Delisting Determination.16

In its proposal, Nasdaq acknowledges that its existing rules require that, “following each business combination” with a SPAC, the resulting company must satisfy all initial listing requirements. Nasdaq states, however, that the rule does not provide a timetable for the company to demonstrate that it satisfies those requirements. Accordingly, Nasdaq proposes to modify the rule to specify that if the SPAC demonstrates that it will satisfy all requirements except the applicable Shareholder Requirement, then the SPAC will receive 15 calendar days following the closing to demonstrate that it satisfied the applicable Shareholder Requirement immediately following the transaction’s closing. In addition, Nasdaq proposes to require that a company relying on this 15-day grace period publicly announce, prior to the business combination, on a Form 8–K, where required by SEC rules, or by issuing a press release, that it has not yet demonstrated compliance with the Shareholder Requirement and is subject to delisting if it cannot do so within the requisite time frame.17

Finally, Nasdaq proposes to halt trading in the securities if the company fails to make this public announcement.18

Nasdaq states that it ordinarily determines compliance with the Shareholder Requirement at the time of a business combination by reviewing a company’s public disclosures and information provided by the company about the transaction.19 According to Nasdaq, if it cannot determine compliance using public information, it will typically request the company to provide additional information such as registered shareholder lists from the company’s transfer agent, data from Cede & Co. about shares held in street name, or data from broker-dealers and third parties that distribute information such as proxy materials for the broker-dealers. If the company cannot provide information demonstrating compliance before the business combination closes, Nasdaq states that no further information would be required.

However, Nasdaq states that it has observed that in some cases it can be difficult for a company to obtain evidence demonstrating the number of shareholders that it has or will have following a business combination. Nasdaq states that shareholders in a SPAC may redeem or tender their shares until just before the time of the business combination, and the SPAC may not know how many shareholders will choose to redeem until very close to the consummation of the business combination.20 Nasdaq states that this could impact its ability to determine compliance before the business combination closes, in cases where the number of round lot shareholders is close to the applicable requirement.

Nasdaq states that under its proposal the SPAC must still demonstrate that it satisfied the round lot shareholder requirement immediately following the business combination, and that the proposal merely would give the SPAC 15 calendar days to provide evidence that it had met the Shareholder Requirement. Nasdaq also states that it believes that the proposed public disclosure requirement will help provide transparency to investors about the status of the company during the additional time period it has to evidence compliance.21

18 See id.

19 Nasdaq states, for example, that the merger agreement may result in the Acquisition Company issuing a round lot of shares to more than 300 holders of the target of the business combination at closing.20 The Exchange notes that SPACs are unlike other newly listing companies which do not face redemptions and are not already listed and trading at the time they must demonstrate compliance.
compliance with the Shareholder Requirement. Nasdaq believes that the proposal “balances the burden placed on the Acquisition Company to obtain accurate shareholder information for the new entity and the need to ensure that a company that does not satisfy the initial listing requirements following a business combination enters the delisting process promptly.” Nasdaq states that if the company does not evidence compliance within the proposed time period, Nasdaq staff would issue a Staff Delisting Determination, which the company could then appeal to an independent hearings panel.

The Commission received two comment letters opposing the proposal from the Council of Institutional Investors. The commenter stated that additional information from Nasdaq in response to the OIP would be helpful in determining whether the proposed rule change is consistent with the Exchange Act, and questioned whether a loosening of SPAC listing standards is consistent with the protection of investors and the public interest. More broadly, the commenter referenced a recent study that it believes finds that SPACs and their officers and directors face limited liability to investors for material misstatements or omissions from their registration statements, and that SPAC structures generally create losses for long-term investors. Finally, the commenter referenced the study’s suggestion that the regulatory treatment for SPACs should be generally equivalent to that for direct listings and questioned whether Nasdaq’s proposal would lead to a pro-SPAC bias. The Exchange responded to CII Letter I that the proposal would not loosen SPAC listing standards because under its proposal SPACs should be generally equivalent to that for direct listings and questioned whether Nasdaq’s proposal would lead to a pro-SPAC bias. The Exchange responded to CII Letter I that the proposal would not loosen SPAC listing standards because under its proposal SPACs would still have to comply with the Shareholder Requirement at the time of the business combination and would just be provided an additional 15 days after completing their business combination to demonstrate such compliance. The Exchange further stated that its proposal will provide transparency and does not pose any additional risk to the protection of shareholders.

III. Discussion and Commission Findings

The Commission must consider whether Nasdaq’s proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5) of the Exchange Act, which requires, in relevant part, that the rules of a national securities exchange be designed “to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.” Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [SRO] that proposed the rule change.”

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations. Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.

The Commission has consistently recognized the importance of the minimum number of holders and other requirements stating that such listing standards help ensure that exchange listed securities have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. The Shareholder Requirement also helps to ensure that trading in exchange-listed securities is not susceptible to manipulation.

As discussed above, Nasdaq is proposing to: (1) Allow a SPAC 15 calendar days following the closing of a business combination to demonstrate that it satisfied the applicable Shareholder Requirement immediately following the transaction’s closing, and (2) require a SPAC relying on the additional 15 day period to publicly announce, prior to the listing of the combined company, that it has not demonstrated compliance with the Shareholder Requirement and is subject to delisting if it cannot do so within the requisite time period. Nasdaq states that it can be difficult for a SPAC to obtain evidence demonstrating the number of holders the SPAC will have following its business combination because SPAC shareholders have the right to redeem or tender their shares until just before the time of such business combination. Further, Nasdaq states that, given the uncertainty around the number of redemptions and ongoing trading through the closing of the business combination, it may not be possible for Nasdaq to provide the additional 15 days after completing their business combination.
meeting initial listing standards, and have their securities continue to trade until the delisting process has been completed. In such circumstances, a SPAC could complete a business combination and very soon thereafter be subject to delisting proceedings, and during such time its securities may continue to trade with a number of holders that is substantially less than the required minimum raising concerns about the maintenance of fair and orderly markets and investor protection.

While Nasdaq has amended its proposal to require certain public disclosure, the Commission does not believe the disclosure required by the proposed rule adequately addresses the potential risks associated with trading during a time period in which the minimum number of round lot shareholders may not be present, nor has Nasdaq explained why subjecting shareholders to this potential risk is consistent with the protection of investors and the public interest, and the other requirements of Section 6(b)(5) of the Exchange Act.

As stated above, under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.” The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations. For the reasons discussed above, the Commission concludes that, because Nasdaq has not demonstrated that its proposal is designed to prevent fraudulent and manipulative acts and practices or to protect investors and the public interest, Nasdaq has not met its burden to demonstrate that its proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular Section 6(b)(5) of the Exchange Act. For this reason, the Commission must disapprove the 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 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 Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–Nasdq–2020–062 is disapproved.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–11099 Filed 5–25–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of ConvexityShares 1x SPIKES Futures ETF Under NYSE Arca Rule 8.200–E (Trust Issued Receipts)

May 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) 2 and Rule 19b–4 thereunder, notice is hereby given that on May 13, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

40 In disapproving 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).