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Nasdaq.com

February 25, 2021

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number SR-NASDAQ-2020-062 (the "Proposal")

Dear Ms. Countryman,

The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") is pleased to respond to the Securities and Exchange Commission ("Commission") request for additional analysis and input in its Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposal (the "Order").¹

IM-5101-2 requires a company listed under that rule (an "Acquisition Company") to allow public shareholders the opportunity to redeem or tender their shares before the Acquisition Company completes a business combination. Upon closing of the business combination, the combined company must satisfy all requirements for initial listing. In the Proposal,² Nasdaq proposes to modify IM-5101-2 to specify that if an Acquisition Company demonstrates that it will satisfy all requirements for initial listing except the applicable round lot shareholder requirement, then the company will be allowed 15 calendar days following the closing to demonstrate that it satisfied the applicable round lot shareholder requirement immediately following the transaction's closing. Importantly, the proposed rule would not extend the deadline for compliance, but merely provide a grace period for the company to demonstrate that it complied.

In the Order, the Commission specifically sought comment on the four issues outlined below related to the Proposal. Only one comment letter was submitted in response to the Order, from the Council of Institutional Investors ("CII").³ Nasdaq addresses the Commission's questions and responds to the CII comments that are relevant to the filing below.

¹ Securities Exchange Act Release No. 90682 (December 21, 2021), 85 FR 83113 (December 16, 2020).

² Securities Exchange Act Release No. 99897 (September 22, 2020), 85 FR 59574 (September 16, 2020).

³ See Letter from Jeffrey P. Mahoney, Council of Institutional Investors to Secretary, Securities and Exchange Commission (January 7, 2021). CII also raised concerns with the SPAC structure that are outside the scope of Nasdaq's proposal.

Question 1. *The Exchange has not provided data to support its position that SPACs have particular difficulties demonstrating compliance with the minimum number of holders requirements.*

Answer: As explained in the Proposal, shareholders of an Acquisition Company may redeem or tender their shares until just before the time of the business combination. In addition, as a publicly traded, Nasdaq-listed security, shares of the Acquisition Company trade on a daily basis with those shares settling on a “T+2” basis two days later. In particular around the time of the business combination investors interested in the target company will purchase shares and shareholders who are not will exit their investment by selling shares.

Most shareholders hold their shares in brokerage accounts. The investor is listed as the owner of these shares in the brokerage firm’s books and records. The brokerage firm, in turn, holds the shares at DTC. In turn, DTC’s nominee, Cede & Co., is listed as the registered owner on the records maintained by the company’s transfer agent.⁴

As a result, a company typically does not know the number of its shareholders nor the number who hold at least a round lot of shares. In order to get that count, the company first has to ask its transfer agent for the number of record holders that hold at least one round lot. Among those record holders will be Cede & Co. The Company, or the transfer agent, will then have to contact Cede & Co. to obtain the name of the brokerage firms holding shares for their clients. These brokerage firms will typically rely on third-party firms, such as Broadridge and Mediant, to provide account-level information in a share range analysis indicating the number of accounts for various share ranges, such as 0-100 shares and 101-999 shares. Each step of this process involves costs and take several days.

Given the uncertainty around the number of redemptions and ongoing trading through the closing of the business combination, it may not be possible for the company to definitively establish that it will satisfy the round lot shareholder requirement before completing the combination. Shares that trade up to the close of the business combination settle two days later, on a T+2 basis. The company can then begin the process of obtaining shareholder information from the transfer agent, Cede and the third parties that track broker-dealer level information, which can take another five to ten business days.

The difficulties in obtaining shareholder information are not unique to SPACs completing business combinations. Indeed, they can affect any type of publicly traded company. However, the ability for shareholders to redeem their shares complicates the process and is unique to SPACs. Further, while other companies may not become listed until they demonstrate compliance with the round lot shareholder requirement, as well as all other initial listing requirements, SPACs completing business combinations are also unique in that they are already listed and, thus, not allowing the additional time would result in their being the only type of company to face immediate delisting as a result of the combined impact of the shareholder’s ability to redeem and the systemic difficulties in determining shareholders. Thus, the effect on SPACs, and their existing public shareholders, would be disproportionate if the SPAC were delisted before it was given a reasonable opportunity to complete the process of determining its shareholders in order to demonstrate compliance.

⁴ See How Issuers Work with DTC, <https://www.dtcc.com/settlement-and-asset-services/issuer-services/how-issuers-work-with-dtc>.

Question 2. *The Exchange has provided no data or other evidence showing how long it has taken SPACs that have been unable to meet the applicable minimum number of holders requirement, whether or not due to last minute shareholder redemptions, to come into compliance with such requirements.*

Answer: During 2019 and 2020, Nasdaq processed applications for 49 business combinations, of which 21 needed additional time to demonstrate that they complied with the round lot shareholder requirement.

Question 3. *The Exchange has not explained how providing a SPAC an additional 15 days following the closing of the business combination simply to demonstrate that it complied with the applicable minimum number of holders requirement immediately following the closing, would address the substantive compliance concerns associated with last minute shareholder redemptions by SPACs that are close to the minimum requirement.*

Answer: See response to Question 1, above.

Question 4. *The Exchange also has not addressed the risk that, by waiting for SPACs to demonstrate compliance with the minimum number of holders requirements until after the closing of the business combination, noncompliant companies could be listed on the Exchange despite not meeting initial listing standards, and have their securities continue to trade until the delisting process has been completed.*

Answer: When considering whether to delist a company for non-compliance with the listing requirements, Nasdaq must balance the harm to existing shareholders of the company against the harm of investors purchasing a security believing that it meets Nasdaq's listing requirements when, in fact, it does not.⁵ Nasdaq acknowledges the concerns raised by the Commission's question and accordingly is concurrently submitting an amendment to the Proposal. Under this amendment, any SPAC that has not demonstrated compliance with the applicable round lot shareholder requirement by the date of the business combination's closing would be required to issue a press release or file a Form 8-K, if required, stating that the company is relying upon the additional 15 calendar days available under Nasdaq rules to demonstrate compliance. The company also will be required to note that in the event it is unable to demonstrate compliance, the company will be subject to delisting. The Exchange believes this amendment will ensure that prospective investors are aware that the company has not yet demonstrated that it meets the shareholder requirement and therefore may be delisted.

Nasdaq believes that with this additional disclosure, allowing the proposed 15-day period for the company to demonstrate compliance with the round lot shareholder requirement would be consistent with, but stricter than, how Nasdaq treats non-compliance with other listing requirements. Specifically, most Nasdaq rules allow a non-compliant company either a compliance period or the ability to provide a plan to regain compliance.⁶ Where the rules allow for a compliance period, that period is typically 180 days. Where the rules permit a plan to regain compliance, Nasdaq rules provide non-compliant companies with 45-60 days to provide the plan and allow staff to grant up to 180 days for the company

⁵ See *In re Tassaway*, Securities Exchange Act Release No. 11291, 45 S.E.C. 706 (Mar. 13, 1975).

⁶ Under Nasdaq Rule 5810(c)(1), most companies would only be subject to immediate delisting if they fail to solicit proxies or where there is a public interest concern.

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to regain compliance. Thus, the proposed 15-day period is substantially shorter than the period other non-compliant companies are provided before they are issued a delisting notification. Nasdaq believes that this shorter period appropriately balances the difficulties faced by companies in determining their shareholders, the fact that the Acquisition Company is already a listed company with public shareholders at the time of the business combination, and the fact that the combined company must satisfy all initial listing requirements following the business combination. The proposed additional disclosure will help ensure that prospective investors are aware that the company has not yet fully satisfied that requirement. For these reasons, Nasdaq believes that the proposal, as revised, is consistent with the requirements of the Act.

Finally, Nasdaq notes that the assertion made in the CII Letter that the Proposal represents a “loosening of SPAC listing standards” reflects a misunderstanding of the Proposal. The Exchange is not loosening the standard with respect to Acquisition Companies but instead the same requirement that applies to such companies, and all other companies, will continue to apply. As previously stated, companies will be required to demonstrate they were in compliance with all initial listing standards at the time of the business combination. The only distinction from any other listing is that Acquisition Companies will be allowed 15 days after completing the business combination to provide evidence demonstrating compliance with the round lot shareholder requirement at the time of the business combination. As outlined above, the proposed rule provides clarity and transparency to the process, but is consistent with the compliance process for other listed companies and does not pose any additional risk to the protection of investors.

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In view of the above, Nasdaq asks that the Commission approve the Proposal. If you have any questions or need additional information, please contact me at [REDACTED].

Sincerely,



Arnold Golub
Vice President
Deputy General Counsel