



## INNOVATION IS KEY TO GROWTH

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August 2, 2021

Vanessa Countryman  
Secretary, Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

VIA ELECTRONIC DELIVERY

RE: File Number SR–NASDAQ–2021–054

Dear Secretary Countryman:

ARK Investment Management LLC (“ARK Invest”) appreciates the opportunity to respond to the request by the U.S. Securities Exchange Commission (“Commission”) for comments regarding the proposal of The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) to modify Nasdaq Listing Rule IM–5101–2 relating to companies 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 specified period of time (“SPACs”) (the “Proposed Rule Change”).<sup>1</sup> ARK Invest is an investment adviser registered with the Commission. ARK Invest specializes in thematic investing in disruptive innovation and provides investment advisory services to the ARK ETF Trust, a registered investment company, and to certain separately managed accounts and pooled investment vehicles, each of which may invest in SPACs from time to time.

Current IM-5001-2 requires that a SPAC complete one or more business combinations having an aggregate fair market value of at least 80% of the value of its deposit account at the time of an agreement to enter into the Combination (along with satisfying certain other conditions). The Proposed Rule Change would make this requirement more flexible and would permit a SPAC to contribute a portion of the amount held in its deposit account to a deposit account of a new SPAC and spin off the new SPAC to the initial SPAC’s shareholders, subject to certain additional conditions.

ARK Invest strongly supports the Proposed Rule Change. ARK Invest believes that the Proposed Rule Change would benefit investors in the series of the ARK ETF Trust, other advisory clients of ARK Invest, and other investors that invest in SPACs for the reasons described in this letter.

ARK Invest believes that the Proposed Rule Change would create an investment structure that will be more efficient, cost-effective and flexible than the structure under the current framework for investors in SPACs. In this regard, the Proposed Rule Change would create a mechanism to allow investors to invest in one SPAC and potentially participate in multiple business combinations while allowing the SPAC to optimize and rightsize itself through spinning off a new SPAC to its shareholders if the initial SPAC raises a larger amount of capital than is ultimately needed in connection with the initial

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<sup>1</sup> Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Listing Rule IM–5101–2 To Permit an Acquisition Company To Contribute a Portion of Its Deposit Account to Another Entity in a Spin-Off or Similar Corporate Transaction, 86 Fed. Red. 36841, July 13, 2021 (the “Adopting Release”).



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SPAC's intended business combination transaction, and would avoid the need for sponsors to create multiple SPACs of different sizes at the same time (as described in more detail in the Adopting Release).

The Proposed Rule Change would provide any public shareholder of the initial SPAC the right to redeem its pro rata portion of the amount to be contributed by the initial SPAC to the new SPAC prior to the spin-off transaction, in lieu of the shareholder being entitled to receive interests in the spun-off new SPAC. As stated in the Adopting Release, this feature of the Proposed Rule Change provides "public shareholders an additional, early redemption opportunity with respect to a portion of their holdings, before the time they would be able to do so in a traditional SPAC, and public shareholders [also] would maintain the ability to redeem the portion of their investment attributable to each specific acquisition after reviewing all disclosure with respect to that acquisition."<sup>2</sup> In ARK Invest's view, the early redemption opportunity will increase investors' flexibility with respect to their SPAC investments and also investors' ability to understand the companies that a SPAC plans to acquire and the risks associated with each such target company.

In addition, it is ARK Invest's view that the Proposed Rule Change also would provide appropriate and tailored new investor protections in addition to the early redemption opportunity relating to SPACs relying on the new aspects of IM-5101-2. For example, all of the protective conditions under current IM-5101-2 would continue to apply to the spun-off SPAC, and the 36-month (or shorter) period for the spun-off SPAC to complete a business combination transaction would be calculated based on the date of effectiveness of the original SPAC's IPO registration statement.

Accordingly, if adopted as proposed, ARK Invest believes that IM-5101-2 as amended by the Proposed Rule Change would create a more efficient SPAC structure and provide other meaningful benefits to SPAC investors while continuing to offer significant and appropriate protections to SPAC investors.

We greatly appreciate the opportunity to comment on the Proposed Rule Change. Please feel free to contact Kellen Carter, Chief Compliance Officer and Corporate Counsel of ARK Invest, at [REDACTED] with any questions on the points discussed herein.

Very Truly Yours,

/s/ Kellen Carter

Kellen Carter

ARK Invest

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<sup>2</sup> See Adopting Release.