functionalities of other exchanges. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] 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,[11] 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.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

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

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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'')[1] and Rule 19b–4 thereunder,[2] 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.[3] 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[4] 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.[5]

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).[6] 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.[7]

Additionally, under IM–5900–7, Nasdaq treats a company that switches its listing from NYSE to the Nasdaq 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.[8] 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.[9] 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.[10]

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.[11] Nasdaq states

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89875 (September 15, 2020), 85 FR 59346 (''Notice'').

[4] 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'').

[5] *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.

[6] *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).

[7] *See* Notice, *supra* note 3, 85 FR at 59347.

[8] *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.

[9] *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).

[10] *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.*

[11] *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

that an Acquisition Company could only switch its listing to Nasdaq if it satisfies all of Nasdaq's initial listing requirements. Nasdaq further states that the combined company would again have to satisfy all initial listing requirements at the time of the business combination.[12] According to Nasdaq, as under existing rules, the Acquisition Company itself would not receive services as an Eligible Switch under the proposed rule and the services would only be available to the company upon completing its business combination and listing on the Nasdaq Global or Global Select Markets pursuant to the conditions described in IM–5900–7(e).[13]

Nasdaq represents that no other company will be required to pay higher fees as a result of the proposed amendments and that providing these services will have no impact on the resources available for its regulatory programs.[14]

Finally, Nasdaq states that it proposes non-substantive technical amendments to IM–5900–7. Specifically, Nasdaq states that it proposes to eliminate most of the description of the history of the rule from the rule text because it is no longer applicable to any companies. However, Nasdaq further states that it proposes to relocate to a new paragraph (g) and make minor non-substantive changes to the discussion about the 2018 change to the services offered because some companies are still eligible to receive services under the rule in effect prior to the 2018 change. Nasdaq also proposes to renumber other paragraphs of the rule in order to improve the rule's readability.[15]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[16] Specifically, the Commission believes the proposed rule change is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,[17] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[18] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to treat as an Eligible Switch, for purposes of IM–5900–7, an Acquisition Company that (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 in conjunction with that business combination. According to the Exchange, an Acquisition Company may reconsider its listing market following the public announcement of a business combination that is intended to satisfy the conditions in IM–5101–2(b) in connection with its rebranding and the launch of the operating company as a public company. Moreover, according to the Exchange, the consideration about whether to switch markets is roughly the same for an Acquisition Company that has publicly announced a business combination as it is for other companies that are considered Eligible Switches. The Exchange believes that treating the company as an Eligible Switch would provide an incentive to the company to list on Nasdaq.[19] In addition, the Exchange believes that in most instances involving an Acquisition Company that has announced a business combination, the operating company plays a significant role in deciding where to list the combined company. The Exchange asserts, accordingly, it is not unfair to treat an Acquisition Company that has announced a business combination differently from one that has not yet made such an announcement.[20]

As noted in the Commission's previous order approving IM–5900–7, Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an Exchange not unfairly discriminate between issuers.[21] The Commission believes that the Exchange has reasonably justified treating an Acquisition Company transferring its listing from NYSE under the circumstances described above as an Eligible Switch and that it reflects the competition between the exchanges, with the Exchange offering a more valuable package of services for transfers of listings from a competing exchange.[22] The Commission further notes that such companies will be receiving the same package of services as any other Eligible Switch and will not be receiving any additional benefits or services by virtue of the proposed rule change. In addition, the Commission notes that if the Acquisition Company terminates its announced business combination, it would not be eligible to receive services as an Eligible Switch, but the Acquisition Company may be eligible to receive services as an Eligible New Listing if it subsequently completes a different business combination.[23]

The Commission also believes that describing in the Exchange's rules the products and services available to listed companies and their associated values will ensure that individual listed companies, including Acquisition Companies, are not given specially negotiated packages of products or services to list, or remain listed, that would raise unfair discrimination issues under the Act.[24] The Commission has previously found that the package of complimentary services offered to Eligible New Listings and Eligible Switches is equitably allocated among issuers consistent with Section 6(b)(4) of the Act and that describing the values

under the proposed rule; however, if the Acquisition Company subsequently completes a different business combination it may be eligible to receive services as an Eligible New Listing as described in existing IM–5900–7(e). *See* Notice, *supra* note 3, 85 FR at 59347, n.9.

[12] *See* Notice, *supra* note 3, 85 FR at 59347.

[13] *See* Notice, *supra* note 3, 85 FR at 59347–48.

[14] *See* Notice, *supra* note 3, 85 FR at 59348.

[15] *See* Notice, *supra* note 3, 85 FR at 59348.

[16] 15 U.S.C. 78f. 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).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Notice, *supra* note 3, 85 FR at 59348.

[20] *See id.*

[21] 15 U.S.C. 78f(b)(5); *see also* Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262, 79266 (December 21, 2011) (approving NASDAQ–2011–122) (''2011 Approval Order'') (''The Commission believes that NASDAQ has provided a sufficient basis for its different treatment of Eligible Switches and that this portion of NASDAQ's proposal meets the requirements of the Act in that it reflects competition between exchanges, with NASDAQ offering discounts for transfers of listings from a competing exchange.'').

[22] *See supra* note 8 and accompanying text.

[23] *See supra* note 11.

[24] *See* Securities Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663, 85665 (November 28, 2016) (approving Nasdaq–2016–106) (''2016 Approval Order'') (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)). The Commission notes that the Exchange represents that no other company will be required to pay higher fees as a result of the proposal and that the proposal will have no impact on the resources available for its regulatory programs. *See supra* note 14 and accompanying text.

of the services adds greater transparency to the Exchange's rules and to the fees applicable to such companies.[25] Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for treating as an Eligible Switch, for purposes of IM–5900–7, an Acquisition Company that switches from NYSE to Nasdaq after announcing a business combination and satisfies the conditions in IM–5101–2(b) and lists on the Nasdaq's Global or Global Select Markets by meeting all listing requirements and that this change does not unfairly discriminate among issuers and is therefore consistent with Section 6(b)(5) of the Act. For similar reasons, and as the value of services offered to an Eligible Switch is not changing, only whether certain Acquisition Companies are treated as an Eligible Switch instead of an Eligible Listing, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act.

Further, the Exchange asserts that its proposal removes an incentive for an Acquisition Company to wait until the consummation of a business combination to change listing exchanges if it would like to receive the more valuable package of services, which otherwise makes it more difficult to process the listing determinations smoothly.[26] As noted above, under the proposal the Acquisition Company will be treated as an Eligible Switch only in connection with the business combination that was announced prior to the transfer of its listing to Nasdaq.[27] Therefore, the proposal appears to be narrowly crafted and does not permit the company to be treated as an Eligible Switch indefinitely should the announced business combination be terminated. Based on the above, the Commission believes that the proposal should remove impediments to the operation of a free and open market and protect investors and the public interest, consistent with Section 6(b)(5) of the Act.

The Exchange has also stated that the proposal would provide an incentive for a company to list on Nasdaq given that companies often reconsider their listing market at the time of a public announcement to a business combination in connection with its rebranding and the launch of the operating company. As noted above, the Commission also believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. The Exchange states in its proposal that it faces competition in the market for listing services and the Commission understands that the Exchange competes, in part, by offering complimentary services to companies. Specifically, the Exchange is offering a more valuable listing package of complementary services to Acquisition Companies that transfer from NYSE at the time that they announce a business combination, and later satisfy the conditions in IM–5901–2(b) and all the initial listing requirements at the time of the business combination to list on the Nasdaq Global or Global Select Markets,[28] to attract new listings. Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.[29]

Finally, the Commission finds that it is consistent with Section 6(b)(5) of the Act [30] for the Exchange to make various technical and conforming revisions to facilitate clarity of its Rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change, as modified by Amendment No. 1 (SR–NASDAQ–2020–060), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28518 Filed 12–23–20; 8:45 am]

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[25] *See* 2016 Order, *supra* note 24, 81 FR at 85665; 2011 Approval Order, *supra* note 21, 76 FR at 79266.

[26] *See supra* note 10 and accompanying text.

[27] *See supra* note 11 and accompanying text.

[28] As Nasdaq states in its filing, ''[o]f course an Acquisition Company could only switch its listing to Nasdaq if it satisfies all of Nasdaq's initial listing requirements. In addition, the combined company would again have to satisfy all initial listing requirements at the time of the business combination.'' Notice, *supra* note 3, 85 FR at 59347.

[29] 15 U.S.C. 78f(b)(8).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–56; File No. S7–21–20]

Privacy Act of 1974; System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Rescindment of system of record notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A–108, the Securities and Exchange Commission (Commission or SEC) proposes to rescind four existing systems of records. The Notice of Rescindment identifies the system of records, explains why the SORN is being rescinded, and provides an account of what will happen to the records previously maintained in the system.

DATES: The rescindments will become effective on February 8, 2021.

ADDRESSES:

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–21–20 on the subject line.

Paper Comments

Send paper comments in triplicate to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to S7–21–20. This file number should be included on the subject line if email is used. To help 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/other.shtml*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Ronnette McDaniel, Privacy and Information Assurance Branch Chief, 202–551–7200 or *privacyhelp@sec.gov.*

SUPPLEMENTARY INFORMATION: Four systems were identified for rescindment from the SEC's Privacy Act systems of records inventory. The SORNs were identified for rescindment because they are duplicative, and covered by another SEC system of records. OMB requires that each agency provide assurance that systems of records do not duplicate any existing agency or government-wide systems of records. A description of