



October 31, 2017

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Attention: Mr. Brent J. Fields, Secretary

Re: File Number SR-NASDAQ-2017-087

Dear Secretary Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is writing to respond to the invitation of the Securities and Exchange Commission (“Commission”) for public comment on the above-referenced proposal (the “Proposal”) by the NASDAQ Stock Market LLC (“NASDAQ”). Under the Proposal, NASDAQ will modify its listing requirements related to Acquisition Companies (as defined in the Proposal) to:

- (1) reduce the 300 round-lot holder requirement to 150 for an initial listing of an Acquisition Company, and eliminate the 300 public holder requirement for continued listing while an Acquisition Company;
- (2) require that an Acquisition Company maintain net tangible assets in excess of \$5 million; and
- (3) allow a 30-day period for a former Acquisition Company, post-initial business combination, to demonstrate compliance with all initial listing

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

requirements applicable to an operating company, including the 300 round-lot holder and the 300 public holder requirements.

SIFMA appreciates the opportunity to provide comments to the Commission on the Proposal.

For many years, SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, and investors in these markets enjoy the protection of the listing rules of national stock exchanges. While these rules are designed, in part, to protect investors and the public interest, SIFMA believes certain rules can be modified to increase market efficiency and promote a strong financial capital market. Potential modifications, like those contained in the Proposal, would be a positive step towards reducing unnecessary burdens on certain categories of issuers, such as Acquisition Companies, without negatively impacting investor protection.

Characteristics of Acquisition Companies

Acquisition Companies are playing an ever more prominent role in the U.S. equity markets. In the first three quarters of 2017, initial public offerings by Acquisition Companies raised a total of \$7.5 billion in proceeds or approximately 20 percent of the total proceeds of initial public offerings in the U.S. Acquisition Companies' prominence may continue to increase as they represent an alternative means for private companies to become public. With Acquisition Companies' large presence in the U.S. equity markets, the potential of an increasing role and their unique characteristics, it is important that NASDAQ, other stock exchanges and the Commission consider whether rules should be tailored for Acquisition Companies.

In connection with an Acquisition Company's initial public offering, the Acquisition Company typically places at least 100%² of the gross proceeds of the offering (with any additional funds coming from the Acquisition Company's sponsor(s)). Investors then have a right to exit the investment, at the time of the initial business combination, and receive their pro rata share of the funds held in the escrow account or to continue as an investor in the operating business. If no business combination is completed within the required time period, which is typically 24 or 27 months,³ investors would receive their pro rata share of the funds held in the escrow account. The right to the funds held in escrow is a key characteristic of Acquisition Companies that provide investor protection, which would not be impacted by the Proposal. Further, the availability and amount of funds held in the escrow account is protected by (1) the Acquisition Company receiving waivers from third parties to not proceed against the amount held in the escrow account, and a guarantee from the Acquisition Company's sponsor(s) in the event a claim is made against the escrow account and no waiver was obtained, (2) limiting the circumstances in which funds may be released to pro rata distributions to public investors, in

² While NASDAQ's rules require at least 90% to be placed into the escrow account, the market typically requires a greater percentage.

³ While NASDAQ's rules require a maximum of 36 months, the market typically requires a shorter time period.

connection with the initial business combination or, with respect only to interest earned on the escrowed funds, other limited circumstances including to pay taxes, and (3) limiting investments of the escrowed funds to high grade investments consistent with an exemption provided under the Investment Company Act of 1940, as amended. The investors' right to the funds held in the escrow account also results in limited trading volatility as the price for the Acquisition Company's common equity is a function of the funds held in escrow, further providing investor protection. These fundamental characteristics are provided for in Acquisition Companies' governing document and contracts, which also ensure that Acquisition Companies do not become "penny-stock" companies by limiting their ability to complete an initial business combination if the resulting net tangible assets would not exceed a specified threshold (generally \$5 million).

Round-Lot Holder and Public Holder Requirements

SIFMA believes that, because of the characteristics discussed above, it is not appropriate to apply a single set of rules to Acquisition Companies and operating companies. While NASDAQ and other markets have attempted to provide flexibility for certain issuers, including Acquisition Companies, additional flexibility in these rules, can help enhance efficiency and create stronger equity markets, while ensuring that the applicable rules continue to protect investors. Specifically, SIFMA agrees with NASDAQ that the benefit of an Acquisition Company having 300 round-lot holders at the time of its initial public offering and 300 public holders prior to a business combination does not provide investor protection or other meaningful benefits to an Acquisition Company's shareholders because of the unique characteristics of an Acquisition Company, including the shareholders' pro rata right to the funds held in the escrow account, the limited amount of time that the Acquisition Company has to complete its initial business combination, and the unique trading fundamentals. While the benefits of meeting the round-lot holder and public holder requirements are limited, the costs and burdens imposed on an Acquisition Company to satisfy the existing rules, result in additional burdens because Acquisition Companies, prior to the initial business combination, have limited funds not held in escrow. These limited funds are stretched even further as SIFMA members have found that it is often difficult and costly for Acquisition Companies to demonstrate compliance with these holder requirements. Therefore, the Proposal, as it relates to the round-lot holder and public holder requirements, has the ability to reduce costs and burdens on Acquisition Companies while not negatively impacting investors.

Minimum Net Tangible Assets

As NASDAQ points out, Acquisition Companies are typically exempt from being "penny-stock" because of an exemption provided by their listing on NASDAQ (or a similar stock exchange) and the applicable listing rules, including the round-lot holder and public holder requirements. With the modifications to the round-lot holder and public holder requirements discussed above, SIFMA supports requiring Acquisition Companies to maintain net tangible assets in excess of \$5 million. SIFMA believes that by adding a requirement that will prevent an

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Acquisition Company from being a “penny stock,” or otherwise being able to identify Acquisition Companies that do not meet such requirement, the Proposal will allow market participants to feel confident transacting in such securities without the need to analyze whether such Acquisition Company is a “penny stock” issuer, which is especially important for brokers and dealers. Additionally, this additional requirement will not result in any practical cost or burden on most Acquisition Companies as Acquisition Companies have similar restrictions included in their charter documents.

Phase-in of Full Initial Listing Requirements

Once an Acquisition Company completes its initial business combination, the rationale for tailoring the listing rules as discussed above is removed as the former Acquisition Company would have characteristics similar to a traditional operating company being initially listed. As such, SIFMA believes that Acquisition Companies that have completed their initial business combination should be subject to the same standards applicable to other operating companies, including the round-lot holder and public holder requirements applicable to operating companies (SIFMA takes no position at this time on whether the current rules applicable to operating companies should themselves be modified as it is outside of the scope of the Proposal). However, requiring an Acquisition Company to show compliance with all initial listing requirements at the time of its initial business combination has proven difficult and costly for Acquisition Companies. As an alternative, SIFMA agrees with NASDAQ that providing these former Acquisition Companies, post-initial business combination, with 30 days to demonstrate compliance with all initial listing requirements, including the round-lot holder and public holder requirements, strikes a balance of providing the company with necessary time to manage its limited resources while protecting investors in the same way NASDAQ protects investors in operating companies that are conducting their initial public offerings.

Covered Securities

SIFMA also agrees with NASDAQ that the Proposal should not affect the designation of NASDAQ listed securities of Acquisition Companies as “Covered Securities.” While NASDAQ notes that different listing standards for different categories of companies has not precluded the Commission from finding those securities are “Cover Securities” in the past, SIFMA notes that any alternative conclusion could negatively impact the markets and create inefficiencies as a result of forcing a one size fits all approach to listing standards by NASDAQ.

Approval of Proposal

We urge the Commission to approve the Proposal. These more tailored rules help make for more efficient and strong U.S. equity markets, a goal SIFMA continues to support, and, as NASDAQ argues, helps further the objectives of Section 6(b)(5) of the Securities and Exchange Act of 1934, as amended, by removing impediments to, and perfecting the mechanism of, a free and open market by removing listing requirements that prohibit certain companies from listing or


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remaining listed without any accompanying investor protection benefits. In addition, we encourage NASDAQ and other exchanges to continue working on making the capital markets more efficient, including by modifying their rules to take into account the specific nature of certain companies, while continuing to protect investors.

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Please contact either Gregg Noel at (213) 687-5234 or Gregg.Noel@skadden.com or Robert Goldstein at (213) 687-5009 or Robert.Goldstein@skadden.com, at Skadden, Arps, Slate, Meagher & Flom LLP if you would like to further discuss the issues raised in the comment letter. If you have any questions regarding SIFMA's views or require additional information, please do not hesitate to contact the undersigned at (212) 313-1118 or by e-mail at sdavy@sifma.org.

Very truly yours,

A handwritten signature in black ink that reads "Sean Davy". The signature is written in a cursive style with a large, sweeping flourish at the end.

Sean Davy, Managing Director, Capital Markets Division
Securities Industry and Financial Markets Association