

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87726; File No. SR-NASDAQ-2019-092)

December 12, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 5515 Which Governs the Listing of Warrants on the Nasdaq Capital Market to Replace the Current Requirement That a Warrant Have 400 Round-Lot Holders with a Revised Requirement of 100 Holders That Are Both Public Holders and Round-Lot Holders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 5, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 5515 which governs the listing of warrants on the Nasdaq Capital Market. Specifically, Nasdaq proposes to replace the current requirement that a warrant have 400 Round-Lot Holders with a revised requirement of 100 Holders that are both Public Holders and Round-Lot Holders, which is substantially similar to a long-standing requirement for listing warrants on the NYSE American Exchange.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Exchange Rule 5515 governs the initial listing of warrants on the Nasdaq Capital Market. Among the requirements for listing warrants on the Nasdaq Capital Market is that each warrant to be listed must have 400 Round-Lot Holders.³ The corresponding rule of the NYSE American Market is Section 105 of the NYSE American Company Guide, which requires that each warrant to be listed must have 100 public warrant holders.

Prior to 2010, Nasdaq did not have a holder requirement for listing warrants on the Nasdaq Capital Market. In 2010, Nasdaq adopted a round lot holder requirement for the initial listing of warrants on the Nasdaq Capital Market to help ensure that warrants listed on the

³ Specifically, Rule 5515(a) currently provides that for initial listing on the Nasdaq Capital Market, “rights, warrants and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time) must meet the following requirements: (1) At least 400,000 issued; (2) The underlying security must be listed on Nasdaq or be a Covered Security; (3) At least three registered and active Market Makers; and (4) In the case of warrants, at least 400 Round Lot Holders (except that this requirement will not apply to the listing of rights or warrants in connection with the initial firm commitment underwritten public offering of such warrants).”

Nasdaq Capital Market had adequate distribution and a liquid trading market.⁴ At the time, Nasdaq determined to adopt the same 400 round lot holder requirement as applied to list warrants on the Nasdaq Global Market.

In most instances, the requirements for the Nasdaq Capital Market are lower than those of the Nasdaq Global Market. In addition, Nasdaq has positioned the Nasdaq Capital Market tier to compete for companies that otherwise may list on the NYSE American exchange. Accordingly, Nasdaq has determined to modify its minimum holder requirement to list warrants on the Nasdaq Capital Market so that it is lower than the requirement for the Nasdaq Global Market and substantially similar to the requirement for NYSE American.⁵ Specifically, Nasdaq proposes to adopt the standard of 100 Holders that are both Public Holders⁶ and Round-Lot Holders,⁷ which

⁴ Securities Exchange Act Release No. 61594 (February 25, 2010), 75 FR 9982 (March 4, 2010) (SR-NASDAQ-2010-024).

⁵ In considering this change, Nasdaq compared the trading quality of warrants listed on Nasdaq with that of warrants listed on NYSE American. The study reviewed trading during 2019 for warrants listed as of January 1, 2019, and included factors such as average daily volume executed, average quoted and effective spreads, and volatility. While it is difficult to draw conclusions given the small universe of data (only six warrants were listed on NYSE American as of January 1, 2019, and warrants on both markets did not trade on a large number of days) and other differences between the exchanges in market structure and listing requirements, based on this review, in Nasdaq's opinion, there was no evidence indicating that trading quality in warrants listed on NYSE American under its current listing standard was worse than those of warrants listed on Nasdaq under its standard. Additionally, Nasdaq is unaware that NYSE American has taken adverse action against a warrant or an issuer of such warrant listed under Section 105 of the NYSE American Company Guide based on the quantitative listing standards in question.

⁶ Nasdaq Rule 5005(a)(36) defines Public Holders as "holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding."

⁷ Nasdaq Rule 5005(a)(40) defines a Round Lot Holder as "a holder of a Normal Unit of Trading of Unrestricted Securities. The number of beneficial holders will be considered in addition to holders of record."

is substantially similar to (but could be more stringent than) the NYSE American 100 public warrant holders requirement.⁸ Nasdaq is proposing no changes to Nasdaq's other initial listing requirements for warrants on the Nasdaq Capital Market, nor is Nasdaq proposing changes to Nasdaq's continued listing standards for warrants.⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, 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. Specifically, Nasdaq believes this proposed rule change removes an impediment to a free and open system by enabling Nasdaq to compete with NYSE American for the listing of a broader scope of warrants and simultaneously by offering issuers of such warrants an additional listing option. Nasdaq further believes that it does so without impacting the protection of investors or the public interest because, in Nasdaq's opinion, the

⁸ The proposed Nasdaq requirement could be more stringent than the NYSE American requirement because the Nasdaq rule would require that the holders be both Public Holders and Round Lot Holders, and would exclude holders of restricted securities, whereas the NYSE American rule only requires that they be public holders.

⁹ Nasdaq notes that Section 105 of the NYSE American Company Guide also provides requirements around warrant exercise provisions when a company has the right to reduce the exercise price of its warrants. Similar to these NYSE American requirements, Nasdaq believes that its rules also require a company with such a right to comply with any applicable tender offer regulatory provisions under the federal securities laws and to publicly disclose material information such as the reduction of the warrant exercise price. Nasdaq intends to file a subsequent rule filing to provide transparency to this.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

quantitative standards at issue have been applied by NYSE American for many years without harm.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change is pro-competitive in that it permits competition for more issuers of warrants. Today, there is no such competition because such issuers are not eligible for listing on Nasdaq.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may allow the issuer of a warrant currently affected by the existing rule the opportunity to list on Nasdaq. The Exchange notes that its proposal is based on an existing NYSE American rule and, in its view, the proposal does not raise new issues that are inconsistent with the protection of investors and the public interest.

The Commission believes that waiver of the operative delay is appropriate because the proposed warrant holder requirement is substantially similar to the rules of another national securities exchange.¹⁶ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See also supra note 9.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-092 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-NASDAQ-2019-092. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact 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-NASDAQ-2019-092 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).