

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-462, OMB Control No. 3235-0521]

Proposed Collection; Comment Request; Extension: Rule 425

Upon Written Request Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given, that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. Approximately 5,370 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total 1,343 annual burden hours (0.25 hours per response × 5,370 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by December 4, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: September 28, 2023.

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98659; File No. SR-NASDAQ-2023-022]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Create a New, Non-Trading Limited Underwriter Membership Class and Impose Related Requirements for Principal Underwriting Activity

September 29, 2023.

I. Introduction

On July 12, 2023, 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 create a new, non-trading limited underwriter membership class and impose related requirements for principal underwriting activity in connection with a company applying for initial listing on the exchange with a transaction involving an underwriter. The proposed rule change was published for comment in the **Federal Register** on July 31, 2023. ³ On September 12, 2023, pursuant to Section 19(b)(2) of the Exchange Act, ⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the

proposed rule change. ⁵ The Commission has received no comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act ⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Nasdaq states in its proposal that it recently issued an Equity Regulatory Alert ⁷ that highlighted the important role of underwriters as gatekeepers in the initial public offerings (“IPO”) process and the applicability of market rules and the federal securities laws. ⁸ Nasdaq states that notwithstanding the important role of underwriters, the Exchange does not currently require underwriters of companies that are going public on the Exchange to be Exchange members. ⁹

Nasdaq therefore is proposing to amend its rules to create a new, limited membership class for those underwriters seeking only to perform underwriting activity as the principal underwriter on the Exchange ¹⁰ (and not seeking access to trade via the Nasdaq Market Center) and to require a company applying for initial listing in connection with a transaction involving an underwriter to have a principal

⁵ See Securities Exchange Act Release No. 99366, 88 FR 63999 (September 18, 2023). The Commission designated October 29, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ <https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA2022-9>.

⁸ Nasdaq also described that it had observed instances in the Fall of 2022 of unusually high price spikes immediately following the pricing of certain IPOs on the Exchange, mostly with respect to small-cap companies whose offerings were less than \$25 million. The IPOs that were the subject of these extreme price spikes then experienced equally dramatic price declines to a level at or below the offering price. See Notice, *supra* note 3, 88 FR at 49509.

⁹ See Nasdaq General Rules, General 1, Section 1(b)(11) for the definition of “member” or “Nasdaq Member”.

¹⁰ Under the proposal “Principal underwriter” is defined as having the same definition used in Rule 405 promulgated under the Securities Act of 1933 (“Securities Act”). Rule 405 under the Securities Act states that the term principal underwriter means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter. Such definition provides that the term “issuer” in the definition of “principal underwriter” has the meaning given in Sections 2(4) and 2(11) of the Securities Act. 17 CFR 230.405.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97985 (July 25, 2023), 88 FR 49508 (July 31, 2023) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).