

SOLICITATION OF COMMENTS ON BEHALF OF THE NASDAQ LISTING AND HEARING REVIEW COUNCIL

Potential Changes to the Initial Listing Requirements to Enhance Investor Protection and the Liquidity of Listed Securities

October 5, 2018

Nasdaq's listing requirements include a number of criteria, which in the aggregate are designed to ensure that securities have adequate liquidity and public interest to support an exchange listing. These criteria include the number of holders of the security, the number of shares held by the public and the aggregate value of the securities held by the public. As part of Nasdaq's ongoing efforts to review its listing requirements, engage with the public and foster a dialogue about Nasdaq rules, Nasdaq believes it is appropriate and timely to review these requirements to consider whether they can be updated and improved.

In order to assist with this review, Nasdaq is seeking comment, input and guidance from the public, including investors and companies, and their representatives. These comments will be reviewed by Nasdaq staff and the Nasdaq Listing and Hearing Review Council (the "Listing Council"). The Listing Council is a standing independent advisory committee appointed by the Board of Directors of the Nasdaq Stock Market, whose mission is to review the application of Nasdaq's listing rules and public policy issues related to listing, and, where appropriate, suggest new or modified rules for consideration by the Board. The Listing Council is comprised of individuals with diverse credentials and includes institutional investors, company representatives, lawyers, accountants, securities industry professionals and academics. Each Listing Council member is a respected leader in his or her field, committed to working with Nasdaq to enhance investor protection and the integrity of the Nasdaq Stock Market.

While all comments on the subject are welcome, the following discussion identifies a number of discrete proposed rule changes on which Nasdaq is specifically soliciting comment. Nasdaq asks for views on the impact of these potential changes on investor protection and the public interest, as well as on capital formation. Nasdaq also solicits comment on other changes to its rules that would help enhance investor protections, provide additional clarity about the requirements, and reduce unnecessary costs.

In addition, as capital markets have changed, Nasdaq has seen an increase in companies seeking to list following a transaction other than a traditional initial public offering. In particular, Nasdaq has received a number of applications from companies seeking to list pursuant to a Regulation A+ ("Reg A+") offering or pursuant to a business combination with a special purpose acquisition company ("SPAC"). As part of its review, Nasdaq believes it is appropriate and timely to consider whether these types of applicants raise unique concerns for investors, or face particular difficulties in satisfying Nasdaq's requirements, such that different considerations should apply to them.

For the avoidance of doubt, please note that at this time we are not considering changes to any of these requirements for continued listing purposes. Over time, the number of freely trading shares, the number of public shareholders and the trading volume of an issuer's security generally increase. In addition, it may be difficult to monitor compliance with these criteria as information, in particular about shares subject to resale restrictions, may not be readily available on an ongoing basis.

The comment period will run until November 16, 2018. Email responses are preferred and may be addressed to comments@nasdaq.com. Mail responses may be sent to:

Nasdaq Listing Qualifications
c/o William Slattery
805 King Farm Blvd.
Rockville, MD 20850

Following review of the comments, if Nasdaq determines to proceed with a proposed rule change, that proposal will be subject to public notice and comment as part of the Securities and Exchange Commission's review and approval process. Please note that Nasdaq must include any comments provided in response to this comment solicitation as part of its filing with the SEC and therefore any comments submitted could become publicly available.

Nasdaq and the Listing Council express gratitude for your comments and your attention to this important matter.

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Restricted Shares

Nasdaq's listing rules define Publicly Held Shares as "shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding." This definition does not exclude stock subject to resale restrictions.

Nasdaq's listing rules also require applicants seeking initial listing to have a minimum number of shareholders that hold at least 100 shares of stock (a "round lot"). Similar to the definition of publicly held shares, the definition of a round lot shareholder does not exclude holders of shares that are subject to resale restrictions.

Restricted securities include securities sold in unregistered offerings by an issuer or an affiliate such as in private placements, Regulation D offerings, or securities issued as part of an employee stock benefit plan or as compensation for professional services. This category also includes securities that are subject to resale restrictions for any other reason, such as securities that are subject to a lock up agreement or a similar contractual restriction.

The publicly held shares, market value of publicly held shares and round lot shareholder requirements are designed, in part, to help assure adequate liquidity and shareholder interest in applicant companies. Restricted securities may not contribute to liquidity and therefore we are considering whether to amend Nasdaq's initial listing criteria to exclude restricted securities from the definition of publicly held shares and market value of publicly held shares and from the minimum round lot shareholder requirement.

- Do commenters believe it would be appropriate to exclude restricted shares from the definition of publicly held shares and market value of publicly held shares? Why or why not.
- Do commenters believe it would be appropriate to exclude shareholders who only hold restricted shares from the minimum shareholder requirements? Why or why not.
- Do commenters suggest any alternative ways to help assure that listed securities will have sufficient liquidity to warrant a listing on Nasdaq?

- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a business combination with a SPAC in evaluating: (1) whether to exclude restricted shares from the definition of publicly held shares and market value of publicly held shares; and (2) whether to exclude shareholders who only hold restricted shares from the minimum shareholder requirements? If so, what are they?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a Reg A+ offering in evaluating: (1) whether to exclude restricted shares from the definition of publicly held shares and market value of publicly held shares; and (2) whether to exclude shareholders who only hold restricted shares from the minimum shareholder requirements? If so, what are they?

Minimum Investment Value for Holders

As noted, to help assure adequate liquidity and shareholder interest, Nasdaq listing rules require applicants seeking initial listing to have a minimum number of round lot shareholders. This can be achieved with an investment by a shareholder of \$400 at the time of listing, representing 100 shares at the \$4 minimum price requirement for initial listing on the Nasdaq Capital Market, or less if the company qualifies based on the alternative price requirement. Such a small investment may not be an adequate indicator to demonstrate sufficient investor interest to warrant listing on Nasdaq, and we are therefore considering changes to the shareholder requirement intended to help ensure that holders demonstrate a meaningful level of interest in the company. Specifically, we are seeking comment on a proposal to require at least half of the holders making up the required round lot shareholder count to have a minimum holding with a market value equal to or in excess of \$2,500.

- Do commenters believe that an additional requirement that a majority of an applicant's required minimum holders own stock with a market value of at least \$2,500 would be appropriate? Why or why not.
- Do commenters suggest any alternative ways to help assure that listed securities have demonstrated investor interest sufficient to warrant a listing on Nasdaq?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a business combination with a SPAC in evaluating whether to adopt a requirement that a majority of an applicant's required minimum holders own stock with a market value of at least \$2,500? If so, what are they?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a Reg A+ offering in evaluating whether to adopt a requirement that a majority of an applicant's required minimum holders own stock with a market value of at least \$2,500? If so, what are they?

Trading Volume

In the case of a company that is currently listed on another exchange or traded in the over-the-counter (“OTC”) market, Nasdaq looks to the trading in a security on the existing exchange or OTC to establish that the issuer meets Nasdaq’s share price requirement and all measures derived from that. In some cases trading of these issuers may be very light and the price not necessarily representative of the security’s value. Further, light trading volume in the OTC market may be indicative of insufficient liquidity upon listing on Nasdaq. To address these concerns, we are considering a new rule with respect to companies currently traded in the OTC to help validate the price of the security to be listed, and all listing measures derived from that price, by assuring it is based on sufficient trading.

Specifically, we are considering a new minimum trading volume requirement for OTC-traded companies seeking to list on Nasdaq of 2,000 shares average daily trading volume over the 30 trading day period prior to listing, with trading occurring on most of those 30 trading days. We would exclude from this requirement any company that lists in connection with a firm commitment public offering of at least \$4 million. In the case of an OTC-traded ADR, we would consider trading on the primary market as well as trading of the ADR.

- Do commenters believe that it would be appropriate to have an additional requirement that OTC-traded companies seeking to list on Nasdaq maintain a minimum of 2,000 shares average daily trading volume over the 30 trading day period prior to listing, with trading occurring on most of those 30 trading days? Why or why not.
- Do commenters believe that it would be appropriate to exclude from this requirement any company that lists in connection with a firm commitment public offering of at least \$4 million? Why or why not.
- Do commenters believe that, in the case of OTC-traded ADRs, it would be appropriate to consider trading on the primary market as well as trading of the ADR? Why or why not.
- Do commenters suggest any alternative ways to help assure that OTC-traded securities will have a liquid market upon listing on Nasdaq?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a business combination with a SPAC in evaluating whether to adopt a minimum trading volume requirement? If so, what are they?

Reg A+ Listings and SPACs

As noted above, companies are more frequently seeking to list pursuant to a Reg A+ offering or pursuant to a business combination with a SPAC.

- Do commenters believe there are any other considerations or standards that should apply to a company listing in conjunction with a Reg A+ offering?
- Do commenters believe it would be appropriate to require a minimum operating history for a company listing in conjunction with a Reg A+ offering?
- Do commenters believe there are any other considerations or standards that should apply to a company listing in conjunction with a business combination with a SPAC?