THE NASDAQ STOCK MARKET LLC RULES

Nasdaq Rule 5815

Note on the applicability of Nasdaq Rule 5815’s Transitional Rule Text:

Pursuant to an approval order (the “Approval Order) by the U.S. Securities and Exchange Commission (“SEC”),¹ changes to Nasdaq Rule 5815(a)(5) and (6) became operative on October 15, 2020. The Exchange will apply this Transitional Rule Text to any hearing requests concerning Nasdaq staff delisting determinations, public reprimand letters, or written denials of a listing application, made prior to the SEC’s Approval Order.

The Exchange will retain this Transitional Rule Text on its rulebook’s website until there are no longer any companies subject to the rule text below, at which point the Exchange will remove the Transitional Rule Text from its rulebook’s website.

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing

(1) Timely Request Stays Delisting

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or written denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination, Public Reprimand Letter, or written denial of a listing application. Requests for hearings should be submitted in writing to the Hearings Department.

(B) Subject to the following limitations, a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written Panel Decision.

(i) If the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event
the Hearings Panel determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(ii) A timely request for a hearing will not stay the suspension of the securities from trading pending the issuance of a written Panel Decision when the Staff Delisting Determination is related to one of the following deficiencies:

a. A Company whose application for initial listing has not been approved prior to consummation of a transaction whereby the Company combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing, as described in Nasdaq Rule 5110(a); or

b. A Company that has filed for protection under any provision of the federal bankruptcy laws, or comparable foreign laws, or that has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, as described in Nasdaq Rule 5110(b).

In each case, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application. In the case of a Company's failure to timely request a hearing to review a Delisting Determination, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

(3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application, the Company must submit a hearing fee of $10,000.

(4) Scheduling of Hearings

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by
the Hearings Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

(5) Submissions from Company

The Company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

(6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) Composition of the Hearings Panel

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) Scope of the Hearings Panel's Discretion

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

   (A) grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;

   (B) Reserved;

   (C) suspend and delist the Company's securities;
(D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(E) find the Company in compliance with all applicable listing standards; or

(F) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(G) In the case of a Company that fails to hold an annual meeting, the Hearings Panel may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements

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(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in the Rule 5100 Series, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

d) Hearings Panel Procedures

(1) Panel Decision

After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

(2) Form 25 Notification of Delisting

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the matter for review, or withdraws its call for review, Nasdaq will follow the procedures described in Rule 5830 to submit an application on Form 25 to the SEC to strike the security from listing.

(3) Hearings Panel Deadlock

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel
will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

(4) Procedures Applicable for Recurring Deficiencies

(A) Hearings Panel Monitor

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under Hearings Panel monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to maintain certain levels of stockholders' equity, to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(5) Request for Hearings Panel Reconsideration

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's
request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.

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