

*Required fields are shown with yellow backgrounds and asterisks.*

Filing by NASDAQ Stock Market  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<b>Rule</b>		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* David Last Name \* Strandberg

Title \* Associate Vice President

E-mail \* david.strandberg@nasdaq.com

Telephone \* (301) 978-8073 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 06/30/2016 Executive Vice President and General Counsel

By Edward S. Knight

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies’ Board of Directors. This Amendment No. 2 supersedes the original filing in its entirety.<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on December 10, 2015. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

David Strandberg  
Associate Vice President  
Nasdaq, Inc.  
(301) 978-8073.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 C.F.R. 240.19b-4.

<sup>3</sup> Amendment No. 1 was withdrawn on June 30, 2016.

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

a. Purpose

Nasdaq Rules require listed companies to make public disclosure in several areas. For example, a listed company is required to publicly disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions as well as when non-independent directors serve on a committee that generally requires only independent directors, such as for a controlled company or under exceptional and limited circumstances.<sup>4</sup> A listed company is also required to file required periodic reports with the Commission.<sup>5</sup> A principal purpose of these disclosure requirements is to protect investors and ensure these investors have necessary information to make informed investment and voting decisions.

However, based on press reports and information from market participants, Nasdaq has identified one area where investors may not have complete or timely information. This is when third parties compensate directors in connection with their candidacy for and/or service on company Boards of Directors. This third-party compensation, which may not be publicly disclosed, arises when a shareholder privately offers to compensate nominee directors in connection with those nominees' candidacy or service as directors. These arrangements vary but may include compensating directors based on achieving benchmarks such as an increase in share price over a fixed term.

Nasdaq believes these undisclosed compensation arrangements potentially raise several concerns, including that they may lead to conflicts of interest among directors and

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<sup>4</sup> See Rules 5250(b)(1), 5615(c)(2), 5605(c)(2)(B), 5605(d)(2)(B) and 5605(e)(3).

<sup>5</sup> See Rule 5250(c).

call into question the directors' ability to satisfy their fiduciary duties. These arrangements may also tend to promote a focus on short-term results at the expense of long-term value creation. Nasdaq believes that enhancing transparency around third-party board compensation would help address these concerns and would benefit investors by making available information potentially relevant to investment and voting decisions. Nasdaq further believes that the proposed disclosure would not create meaningful burdens on directors or those making these payments nor on the companies required to make the disclosure.

Accordingly, Nasdaq is proposing to adopt Rule 5250(b)(3) to require listed companies to publicly disclose on or through the companies' website or proxy statement or information statement for any shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, in Form 10-K or Form 20-F),<sup>6</sup> the material terms of all agreements and arrangements between any director or nominee and any person or entity other than the company (the "Third Party") relating to compensation or other payment in connection with that person's candidacy or service as a director.<sup>7,8</sup> A company may make this disclosure through its website by hyperlinking to another website, which must be continuously accessible. If that website subsequently becomes

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<sup>6</sup> This disclosure method is consistent with the method under Listing Rule 5605(d)(2)(B) for disclosure of the appointment of a non-independent compensation committee member under exceptional and limited circumstances.

<sup>7</sup> The proposal is intended to apply to agreements and arrangements whether or not the right to nominate a director legally belongs to the third party. See IM 5605-7 (Independent Director Oversight of Director Nominations).

<sup>8</sup> If the Company provides disclosure in a proxy or information statement, including to satisfy the SEC's proxy disclosure requirements, sufficient to comply with this rule, its obligation to satisfy this rule is fulfilled regardless of the reason for which such disclosure was made.

inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this proposed rule.

Consistent with other exemptions afforded certain types of companies, the Exchange is also proposing to amend Listing Rule 5615(a)(3) to provide that a foreign private issuer may follow home country practice in lieu of the requirements of the proposed rule. A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(b)(3) by utilizing the process described in Rule 5615(a)(3).

Companies listed at the time this proposed rule becomes effective or initially listed thereafter must disclose all agreements and arrangements in accordance with this proposed rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files next Form 10-K or Form 20-F). Thereafter, a listed company must make this disclosure at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.<sup>9</sup> The proposed rule does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholder meeting at which directors are elected.

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<sup>9</sup> A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with a shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).

If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) of the proposed rule but was not, the Company must promptly make the required disclosure in accordance with this proposed rule.<sup>10</sup> In addition, for agreements and arrangements not required to be disclosed in accordance with subparagraph (A)(ii) of the proposed rule, such as employment with a third party that existed prior to the nominee's candidacy and is otherwise disclosed, but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the company, only the difference between the new and previous level of compensation or other payment obligation need be disclosed.

The terms "compensation" and "other payment" as used in this proposed rule are intended to be construed broadly and apply to agreements and arrangements that provide for non-cash compensation and other payment obligations, such as health insurance premiums or indemnification, made in connection with a person's candidacy or service as a director. Further, at a minimum, the disclosure should identify the parties to and the material terms of the agreement or arrangement relating to compensation. To allow listed companies affected by the proposed rule a transition period, the rule will be effective 30 days following the approval of this proposed rule by the Commission. Nasdaq will notify listed companies of the effective date.

In recognition of circumstances that do not raise the concerns noted above or where such disclosure may be duplicative, the proposed rule would not apply to agreements and arrangements that existed before the nominee's candidacy and the

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<sup>10</sup> See infra discussion on remedial disclosure.

nominee's relationship with the Third Party has been otherwise publicly disclosed, for example, pursuant to Items 402(a)(2) or 402(k) of Regulation S-K or in a director's biographical summary included in periodic reports filed with the Commission. An example of an agreement or arrangement falling under this exception is a director or a nominee for director being employed by a private equity or venture capital firm, or a fund established by such firm, where employees are expected to and routinely serve on the boards of the fund's portfolio companies and their remuneration is not materially affected by such service. If such a director or a nominee's remuneration is materially increased in connection with such person's candidacy or service as a director of the company, only the difference between the new and the previous level of compensation needs to be disclosed under the proposed rule.

Additionally, the proposed rule would not apply to agreements and arrangements that relate only to reimbursement of expenses incurred in connection with candidacy as a director, whether or not such reimbursement arrangement has been publicly disclosed. Further, Commission Rule 14a-12(c) subjects persons soliciting proxies in opposition to companies' proxy solicitation to certain disclosure requirements of Schedule 14A of the Act. The proposed rule relieves the company from the disclosure requirements of the proposed Rule 5250(b)(3)(A) where an agreement or arrangement for a director or a nominee has been disclosed under Item 5(b) of Schedule 14A of the Act in the current fiscal year. However, such an agreement or arrangement is subject to the continuous disclosure requirements of the proposed Rule 5250(b)(3)(B) on an annual basis. Similarly, a Company that provides disclosure in the current fiscal year pursuant to the requirement in Item 5.02(d)(2) of Form 8-K requiring "a brief description of any



arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director” – would not have to make separate disclosure under the proposed Rule 5250(b)(3)(A). Such disclosure under Commission rules, however, shall not relieve a company of its ongoing obligation under the proposed Rule 5250(b)(3)(B) to make annual disclosure.

In recognition that a company, despite reasonable efforts, may not be able to identify all such agreements and arrangements, the proposed rule provides that a company shall not be deficient with the proposed disclosure requirements if it has undertaken reasonable efforts to identify all such agreements and arrangements, including by asking each director or nominee in a manner designed to allow timely disclosure, and upon discovery of a non-disclosed arrangement, promptly makes the required disclosure by filing a Form 8-K or 6-K, where required by Commission rules, or by issuing a press release. However, such remedial disclosure, regardless of its timing, does not satisfy the ongoing annual disclosure requirements under subparagraph (B).

In cases where a company is considered deficient, the company must provide a plan to regain compliance. Consistent with deficiencies from most other rules that allow a company to submit a plan to regain compliance,<sup>11</sup> Nasdaq proposes to allow companies deficient under the proposed rule 45 calendar days to submit a plan sufficient to satisfy Nasdaq staff that the company has adopted processes and procedures designed to identify

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<sup>11</sup> Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

and disclose relevant agreements and arrangements in the future. If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.<sup>12</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> 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. The proposal accomplishes these objectives by enhancing transparency around third party compensation and payments made in connection with board service. The Exchange believes such disclosure has several benefits: it would provide information to investors to help them make meaningful investing and voting decisions. It would also address potential concerns that undisclosed third party compensation arrangements may lead to

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<sup>12</sup> Separate from this proposed rule change, Nasdaq is surveying interested parties as to whether Nasdaq should propose additional requirements surrounding directors and candidates that receive third party payments, including whether such directors should be prohibited from being considered independent under Nasdaq rules or prohibited from serving on the board altogether. Nasdaq has made no decision about whether to propose additional rules. If Nasdaq does determine to propose additional rules, any proposal would be subject to a separate rule filing. Listing Rule 5605(a)(2) excludes from the definition of Independent Director any “individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.”

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

conflicts of interest among directors and call into question their ability to satisfy fiduciary duties.

4. 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, as amended. The proposed rule to require listed companies to disclose third party compensation and payments in connection with board service is intended to provide meaningful information to investors and to address potential concerns with undisclosed compensation schemes without creating unnecessary burdens on directors or those making the payments.

Further, the proposed rule change is intended to promote transparency and protect investors and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
4. Text of the proposed rule change, marked to indicate additions to and deletions from the original filing.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2016-013)

July \_\_, 2016

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Require Listed Companies to Publicly Disclose Compensation by Third Parties to Board of Director's Members or Nominees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2016, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies' Board of Directors.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 Rules require listed companies to make public disclosure in several areas. For example, a listed company is required to publicly disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions as well as when non-independent directors serve on a committee that generally requires only independent directors, such as for a controlled company or under exceptional and limited circumstances.<sup>3</sup> A listed company is also required to file required periodic reports with the Commission.<sup>4</sup> A principal purpose of these disclosure requirements is to protect investors and ensure these investors have necessary information to make informed investment and voting decisions.

However, based on press reports and information from market participants, Nasdaq has identified one area where investors may not have complete or timely information. This is when third parties compensate directors in connection with their

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<sup>3</sup> See Rules 5250(b)(1), 5615(c)(2), 5605(c)(2)(B), 5605(d)(2)(B) and 5605(e)(3).

<sup>4</sup> See Rule 5250(c).

candidacy for and/or service on company Boards of Directors. This third-party compensation, which may not be publicly disclosed, arises when a shareholder privately offers to compensate nominee directors in connection with those nominees' candidacy or service as directors. These arrangements vary but may include compensating directors based on achieving benchmarks such as an increase in share price over a fixed term.

Nasdaq believes these undisclosed compensation arrangements potentially raise several concerns, including that they may lead to conflicts of interest among directors and call into question the directors' ability to satisfy their fiduciary duties. These arrangements may also tend to promote a focus on short-term results at the expense of long-term value creation. Nasdaq believes that enhancing transparency around third-party board compensation would help address these concerns and would benefit investors by making available information potentially relevant to investment and voting decisions. Nasdaq further believes that the proposed disclosure would not create meaningful burdens on directors or those making these payments nor on the companies required to make the disclosure.

Accordingly, Nasdaq is proposing to adopt Rule 5250(b)(3) to require listed companies to publicly disclose on or through the companies' website or proxy statement or information statement for any shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, in Form 10-K or Form 20-F),<sup>5</sup> the material terms of all agreements and arrangements between any director or nominee and any person or entity other than the company (the "Third Party") relating to compensation

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<sup>5</sup> This disclosure method is consistent with the method under Listing Rule 5605(d)(2)(B) for disclosure of the appointment of a non-independent compensation committee member under exceptional and limited circumstances.

or other payment in connection with that person's candidacy or service as a director.<sup>6,7</sup> A company may make this disclosure through its website by hyperlinking to another website, which must be continuously accessible. If that website subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this proposed rule.

Consistent with other exemptions afforded certain types of companies, the Exchange is also proposing to amend Listing Rule 5615(a)(3) to provide that a foreign private issuer may follow home country practice in lieu of the requirements of the proposed rule. A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(b)(3) by utilizing the process described in Rule 5615(a)(3).

Companies listed at the time this proposed rule becomes effective or initially listed thereafter must disclose all agreements and arrangements in accordance with this proposed rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files next Form 10-K or Form 20-F). Thereafter, a listed company must make this disclosure at least annually until the earlier of the resignation of the director or one year following the

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<sup>6</sup> The proposal is intended to apply to agreements and arrangements whether or not the right to nominate a director legally belongs to the third party. See IM 5605-7 (Independent Director Oversight of Director Nominations).

<sup>7</sup> If the Company provides disclosure in a proxy or information statement, including to satisfy the SEC's proxy disclosure requirements, sufficient to comply with this rule, its obligation to satisfy this rule is fulfilled regardless of the reason for which such disclosure was made.



termination of the agreement or arrangement.<sup>8</sup> The proposed rule does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholder meeting at which directors are elected.

If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) of the proposed rule but was not, the Company must promptly make the required disclosure in accordance with this proposed rule.<sup>9</sup> In addition, for agreements and arrangements not required to be disclosed in accordance with subparagraph (A)(ii) of the proposed rule, such as employment with a third party that existed prior to the nominee's candidacy and is otherwise disclosed, but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the company, only the difference between the new and previous level of compensation or other payment obligation need be disclosed.

The terms "compensation" and "other payment" as used in this proposed rule are intended to be construed broadly and apply to agreements and arrangements that provide for non-cash compensation and other payment obligations, such as health insurance premiums or indemnification, made in connection with a person's candidacy or service as a director. Further, at a minimum, the disclosure should identify the parties to and the

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<sup>8</sup> A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with a shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).

<sup>9</sup> See infra discussion on remedial disclosure.

material terms of the agreement or arrangement relating to compensation. To allow listed companies affected by the proposed rule a transition period, the rule will be effective 30 days following the approval of this proposed rule by the Commission. Nasdaq will notify listed companies of the effective date.

In recognition of circumstances that do not raise the concerns noted above or where such disclosure may be duplicative, the proposed rule would not apply to agreements and arrangements that existed before the nominee's candidacy and the nominee's relationship with the Third Party has been otherwise publicly disclosed, for example, pursuant to Items 402(a)(2) or 402(k) of Regulation S-K or in a director's biographical summary included in periodic reports filed with the Commission. An example of an agreement or arrangement falling under this exception is a director or a nominee for director being employed by a private equity or venture capital firm, or a fund established by such firm, where employees are expected to and routinely serve on the boards of the fund's portfolio companies and their remuneration is not materially affected by such service. If such a director or a nominee's remuneration is materially increased in connection with such person's candidacy or service as a director of the company, only the difference between the new and the previous level of compensation needs to be disclosed under the proposed rule.

Additionally, the proposed rule would not apply to agreements and arrangements that relate only to reimbursement of expenses incurred in connection with candidacy as a director, whether or not such reimbursement arrangement has been publicly disclosed. Further, Commission Rule 14a-12(c) subjects persons soliciting proxies in opposition to companies' proxy solicitation to certain disclosure requirements of Schedule 14A of the

Act. The proposed rule relieves the company from the disclosure requirements of the proposed Rule 5250(b)(3)(A) where an agreement or arrangement for a director or a nominee has been disclosed under Item 5(b) of Schedule 14A of the Act in the current fiscal year. However, such an agreement or arrangement is subject to the continuous disclosure requirements of the proposed Rule 5250(b)(3)(B) on an annual basis.

Similarly, a Company that provides disclosure in the current fiscal year pursuant to the requirement in Item 5.02(d)(2) of Form 8-K requiring “a brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director” – would not have to make separate disclosure under the proposed Rule 5250(b)(3)(A). Such disclosure under Commission rules, however, shall not relieve a company of its ongoing obligation under the proposed Rule 5250(b)(3)(B) to make annual disclosure.

In recognition that a company, despite reasonable efforts, may not be able to identify all such agreements and arrangements, the proposed rule provides that a company shall not be deficient with the proposed disclosure requirements if it has undertaken reasonable efforts to identify all such agreements and arrangements, including by asking each director or nominee in a manner designed to allow timely disclosure, and upon discovery of a non-disclosed arrangement, promptly makes the required disclosure by filing a Form 8-K or 6-K, where required by Commission rules, or by issuing a press release. However, such remedial disclosure, regardless of its timing, does not satisfy the ongoing annual disclosure requirements under subparagraph (B).

In cases where a company is considered deficient, the company must provide a plan to regain compliance. Consistent with deficiencies from most other rules that allow

a company to submit a plan to regain compliance,<sup>10</sup> Nasdaq proposes to allow companies deficient under the proposed rule 45 calendar days to submit a plan sufficient to satisfy Nasdaq staff that the company has adopted processes and procedures designed to identify and disclose relevant agreements and arrangements in the future. If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> 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

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<sup>10</sup> Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

<sup>11</sup> Separate from this proposed rule change, Nasdaq is surveying interested parties as to whether Nasdaq should propose additional requirements surrounding directors and candidates that receive third party payments, including whether such directors should be prohibited from being considered independent under Nasdaq rules or prohibited from serving on the board altogether. Nasdaq has made no decision about whether to propose additional rules. If Nasdaq does determine to propose additional rules, any proposal would be subject to a separate rule filing. Listing Rule 5605(a)(2) excludes from the definition of Independent Director any “individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.”

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

market system, and, in general to protect investors and the public interest. The proposal accomplishes these objectives by enhancing transparency around third party compensation and payments made in connection with board service. The Exchange believes such disclosure has several benefits: it would provide information to investors to help them make meaningful investing and voting decisions. It would also address potential concerns that undisclosed third party compensation arrangements may lead to conflicts of interest among directors and call into question their ability to satisfy fiduciary duties.

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, as amended. The proposed rule to require listed companies to disclose third party compensation and payments in connection with board service is intended to provide meaningful information to investors and to address potential concerns with undisclosed compensation schemes without creating unnecessary burdens on directors or those making the payments.

Further, the proposed rule change is intended to promote transparency and protect investors and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-013 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-013. 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2016-013 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.<sup>14</sup>

Robert W. Errett  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 4**

Text is marked to show changes to proposed rule language in the original filing. Additions to original filing are double underlined; deletions from original filing are stricken through.

\* \* \* \* \*

**5250. Obligations for Companies Listed on The Nasdaq Stock Market**

(a) No change.

**(b) Obligation to Make Public Disclosure**

(1) – (2) No change.

**(3) Disclosure of Third Party Director and Nominee Compensation**

The provisions of this Rule 5250(b)(3) shall be effective on June 30, 2016. Companies listed at that time or initially listed thereafter must disclose all agreements and arrangements in accordance with this rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).

(A) A Company shall disclose either on or through the Company's website or in the proxy or information statement for the next ~~annual~~ shareholders' meeting at which directors are elected (or, if the Company does not file a proxy or information statements, in its Form 10-K or 20-F), the material terms of all agreements and arrangements between: (i) any director or nominee for director, and (ii) any person or entity other than the Company (the "Third Party"), ~~which provide for relating to compensation or other payment in connection with such person's candidacy or service as a director of the Company. A Company need not disclose pursuant to this rule agreements and arrangements that: (i) relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and are otherwise the nominee's relationship with the Third Party has been publicly disclosed in a proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year. Disclosure under this subparagraph should identify the material terms of the agreement or arrangement and shall continue until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement. Disclosure pursuant to Commission rule shall not relieve a Company of its annual obligation to make disclosure under subparagraph (B).~~



(B) A Company must make the disclosure required in subparagraph (A) at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.

(BC) If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) but was not, the Company must promptly make the required disclosure by filing a Form 8-K or 6-K, where required by SEC rules, or by issuing a press release. Remedial disclosure under this subparagraph, regardless of its timing, does not satisfy the ongoing annual disclosure requirements under subparagraph (B).

(CD) A Company shall not be considered deficient with respect to this paragraph for purposes of Rule 5810 if the Company has undertaken reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the disclosure required by subparagraph (BC) promptly upon discovery of the agreement or arrangement. In all other cases, the Company must submit a plan sufficient to satisfy Nasdaq staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.

(E) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(b)(3) by utilizing the process described in Rule 5615(a)(3).

(c) – (f) No change.

**IM-5250-1. Disclosure of Material Information - No change.**

**IM-5250-2. Disclosure of Third Party Director and Nominee Compensation**

Rule 5250(b)(3) requires listed companies to publicly disclose the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the Company) relating to compensation or other payment in connection with that person's candidacy or service as a director. The terms "compensation" and "other payment" as used in this rule are not limited to cash payments and are intended to be construed broadly.

Subject to exceptions provided in the rule, the disclosure must be made on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected in order to provide shareholders with information and sufficient time to help them make meaningful voting decisions. A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with such shareholders' meeting (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F). Disclosure made available on the Company's website or through it by hyperlinking to another website, must be continuously accessible. If the website hosting the disclosure

subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this rule.

Rule 5250(b)(3) does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholders' meeting at which directors are elected. In addition, for publicly disclosed agreements and arrangements that existed prior to the nominee's candidacy and thus not required to be disclosed in accordance with Rule 5250(b)(3)(A)(ii) but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the Company, only the difference between the new and previous level of compensation or other payment obligation needs be disclosed.

All references in this rule to proxy or information statements are to the definitive versions thereof.

\* \* \* \* \*

*Note: Unmarked text in Rule 5615 below is existing rule text that was not in the original Exhibit 5.*

## **5615. Exemptions from Certain Corporate Governance Requirements**

### **(a) Exemptions to the Corporate Governance Requirements**

**(1) – (2) No change.**

#### **(3) Foreign Private Issuers**

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to disclose third party director and nominee compensation set forth in Rule 5250(b)(3), and the requirement to distribute annual and interim reports set forth in Rule 5250(d), provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series.

(B) - No change.

#### **IM-5615-3. Foreign Private Issuers**

A Foreign Private Issuer (as defined in Rule 5005) listed on Nasdaq may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(b)(3), and Rule 5250(d), subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a

Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of Rules 5600, 5250(b)(3), or 5250(d) shall submit to Nasdaq a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

(4) - (5) No change.

(b) - (c) No change.

\* \* \* \* \*

#### **5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

**IM-5810-1** No change.

**(c) Types of Deficiencies and Notifications**

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through [(iv)](v) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through [(iii)](iv) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection [(iv)](v) must be provided generally within 60 calendar days. If a Company that is not subject to the All-Inclusive Annual Listing Fee described in IM-5910-1 or IM-5920-1 submits a plan of compliance under subsections (i), (iii), [or ](iv), or (v), it must also pay a compliance plan review fee of \$5,000. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance, but does not need to also pay the compliance plan review fee.

(i) – (iii) No change.

(iv) failure to make the disclosure required by Rule 5250(b)(3).

(v) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

**IM-5810-2.** No change.

(B) – (G) No change.

(3) No change.

(d) No change.

\* \* \* \* \*

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.

\* \* \* \* \*

**5250. Obligations for Companies Listed on The Nasdaq Stock Market**

(a) No change.

**(b) Obligation to Make Public Disclosure**

(1) – (2) No change.

**(3) Disclosure of Third Party Director and Nominee Compensation**

Companies must disclose all agreements and arrangements in accordance with this rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).

(A) A Company shall disclose either on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected (or, if the Company does not file proxy or information statements, in its Form 10-K or 20-F), the material terms of all agreements and arrangements between any director or nominee for director, and any person or entity other than the Company (the "Third Party"), relating to compensation or other payment in connection with such person's candidacy or service as a director of the Company. A Company need not disclose pursuant to this rule agreements and arrangements that: (i) relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominee's relationship with the Third Party has been publicly disclosed in a proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year. Disclosure pursuant to Commission rule shall not relieve a Company of its annual obligation to make disclosure under subparagraph (B).

(B) A Company must make the disclosure required in subparagraph (A) at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.

(C) If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) but was not, the Company must promptly make the required disclosure by filing a Form 8-K or 6-K, where required by SEC

rules, or by issuing a press release. Remedial disclosure under this subparagraph, regardless of its timing, does not satisfy the annual disclosure requirements under subparagraph (B).

(D) A Company shall not be considered deficient with respect to this paragraph for purposes of Rule 5810 if the Company has undertaken reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the disclosure required by subparagraph (C) promptly upon discovery of the agreement or arrangement. In all other cases, the Company must submit a plan sufficient to satisfy Nasdaq staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.

(E) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(b)(3) by utilizing the process described in Rule 5615(a)(3).

(c) – (f) No change.

**IM-5250-1. Disclosure of Material Information - No change.**

**IM-5250-2. Disclosure of Third Party Director and Nominee Compensation**

Rule 5250(b)(3) requires listed companies to publicly disclose the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the Company) relating to compensation or other payment in connection with that person's candidacy or service as a director. The terms "compensation" and "other payment" as used in this rule are not limited to cash payments and are intended to be construed broadly.

Subject to exceptions provided in the rule, the disclosure must be made on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected in order to provide shareholders with information and sufficient time to help them make meaningful voting decisions. A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with such shareholders' meeting (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F). Disclosure made available on the Company's website or through it by hyperlinking to another website, must be continuously accessible. If the website hosting the disclosure subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this rule.

Rule 5250(b)(3) does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholders' meeting at which directors are elected. In addition, for publicly disclosed agreements and arrangements that existed prior to the nominee's candidacy and

thus not required to be disclosed in accordance with Rule 5250(b)(3)(A)(ii) but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the Company, only the difference between the new and previous level of compensation or other payment obligation needs be disclosed.

All references in this rule to proxy or information statements are to the definitive versions thereof.

\* \* \* \* \*

## **5615. Exemptions from Certain Corporate Governance Requirements**

### **(a) Exemptions to the Corporate Governance Requirements**

**(1) – (2) No change.**

#### **(3) Foreign Private Issuers**

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to disclose third party director and nominee compensation set forth in Rule 5250(b)(3), and the requirement to distribute annual and interim reports set forth in Rule 5250(d), provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series.

(B) - No change.

#### **IM-5615-3. Foreign Private Issuers**

A Foreign Private Issuer (as defined in Rule 5005) listed on Nasdaq may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(b)(3), and Rule 5250(d), subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of Rules 5600, 5250(b)(3), or 5250(d) shall submit to Nasdaq a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws. In the case of new listings, this certification is required at the time



of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

(4) - (5) No change.

(b) - (c) No change.

\* \* \* \* \*

#### **5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

**IM-5810-1** No change.

#### **(c) Types of Deficiencies and Notifications**

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination

is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through [(iv)](v) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through [(iii)](iv) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection [(iv)](v) must be provided generally within 60 calendar days. If a Company that is not subject to the All-Inclusive Annual Listing Fee described in IM-5910-1 or IM-5920-1 submits a plan of compliance under subsections (i), (iii), [or ](iv), or (v), it must also pay a compliance plan review fee of \$5,000. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance, but does not need to also pay the compliance plan review fee.

(i) – (iii) No change.

(iv) failure to make the disclosure required by Rule 5250(b)(3).

(v) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

**IM-5810-2.** No change.

(B) – (G) No change.

(3) No change.

(d) No change.

\* \* \* \* \*