

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="48"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="001"/>	Amendment No. (req. for Amendments *) <input type="text"/>
---	--	---	--

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

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

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

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

Description

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

Proposal to amend and clarify certain aspects of the listing process for Direct Listings.

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 * <input type="text" value="Nikolai"/>	Last Name * <input type="text" value="Utochkin"/>
Title * <input type="text" value="Counsel - Listing and Governance"/>	
E-mail * <input type="text" value="Nikolai.Utochkin@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8029"/>	Fax <input type="text"/>

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 <input type="text" value="02/13/2019"/>	<input type="text" value="Global Chief Legal and Policy Officer"/>
By <input type="text" value="Edward S. Knight"/>	<input type="text" value="edward.knight@nasdaq.com"/>

(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 *

Add Remove View

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 *

Add Remove View

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 *

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend and clarify certain aspects of the listing process for Direct Listings.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).

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 senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (“Board”) on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Nikolai Utochkin
Counsel – Listing and Governance
Nasdaq, Inc.
(301) 978-8029

or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Arnold Golub
Deputy General Counsel
Nasdaq, Inc.
301-978-8075

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

a. Purpose

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. In particular, a company whose stock is not previously registered under the Exchange Act may wish to list on the Nasdaq Global Select Market without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. The proposed Listing Rule IM-5315-1 sets forth listing requirements for such securities (a "Direct Listing") and describes how the Exchange will calculate compliance with the Nasdaq Global Select Market initial listing standards related to the requirements based on the price of a security, including the bid price, market capitalization and Market Value of Publicly Held Shares.

Nasdaq also proposes to modify Nasdaq Rule 4753 to more clearly describe the role of a broker-dealer serving as a financial advisor to the issuer of a security listing on the Nasdaq Global Select Market under proposed Rule IM-5315-1.

Calculation of Price-based Initial Listing Requirements

Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements

set forth in the Rule 5600 Series. To provide transparency to the initial listing process, the Exchange proposes to adopt Listing Rule IM-5315-1, which will state how the Exchange calculates the initial listing requirements based on the price of a security, including the bid price, market capitalization and market value of publicly held shares for a Direct Listing on the Nasdaq Global Select Market.³

Nasdaq also proposes to require that a company that lists on the Nasdaq Global Select Market through a Direct Listing do so at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares. This interpretative material would describe when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

Under IM-5315-1, Nasdaq would require that a company listing on the Nasdaq Global Select Market through a Direct Listing provide Nasdaq an independent third-party valuation (a “Valuation”). Any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the

³ This rule filing affects only companies listing on the Nasdaq Global Select Market. Nasdaq intends to subsequently file a proposed rule change under Section 19(b) of the Act to adopt requirements for the Nasdaq Capital and Global Markets applicable to companies which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and wish to list their securities to allow existing shareholders to sell their shares and clarify the use of the IPO Cross for initial pricing of such securities.

annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.⁴

Nasdaq proposes to require that a valuation agent will not be considered independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation. For purposes of this provision, "investment

⁴ In addition, under Listing Rule 5101 Nasdaq has broad discretionary authority to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

banking services” includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.

- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

For a security that has had sustained recent trading in a Private Placement Market⁵ prior to listing, Nasdaq will determine a company’s price, market capitalization and market value of publicly held shares based on the lesser of: (i) the value calculable based on the Valuation; and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

As set forth in IM-5315-1(d), to determine compliance with the price-based requirements and suitability for listing on the Exchange, Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq’s market value requirement. Nasdaq believes that the price from such sustained trading in a Private Placement Market for the issuer’s securities is predictive of

⁵ Nasdaq proposes to define “Private Placement Market” in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

Alternatively, in the absence of any recent sustained trading in a Private Placement Market over a period of several months,⁶ Nasdaq will determine that the company has met the market value of publicly held shares requirement for listing on the Nasdaq Global Select Market if the company provides a Valuation evidencing a market value of publicly held shares of at least \$250,000,000. Nasdaq believes that some companies that are clearly large enough to be suitable for listing on the Exchange do not have sustained trading in their securities on a Private Placement Market prior to going public and that a recent Valuation indicating at least \$250 million in market value of publicly held shares will give a significant degree of comfort that the company will meet the applicable market value of publicly held shares requirement upon commencement of trading.⁷ Nasdaq believes that it is unlikely that any Valuation would reach a conclusion that is incorrect to the degree necessary for a company using this provision to fail to meet the applicable requirement upon listing, in particular because any Valuation used for this purpose must be provided by a valuation agent that meets the independence requirements of proposed Listing Rule IM-5315-1(f) and has significant experience and demonstrable

⁶ Limited trading in the Private Placement Market may not be sufficient for the Exchange to reach a conclusion that the company meets the applicable price-based requirements.

⁷ See Listing Rule 5315(f)(2), which generally requires a market value of publicly held shares of at least \$110 million or \$100 million if the company has stockholders' equity of at least \$110 million.

competence in the provision of such valuations. Nasdaq will also determine the bid price and market capitalization based on such Valuation.⁸

Foreign Exchange Listings

For a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares, or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the company has met the applicable price-based requirements based on the recent trading in such market. Nasdaq believes that the price of the issuer's securities from such broad and liquid trading is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. While this is consistent with Nasdaq's current practice, Listing Rule IM-5315-1(c) will clarify that a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares or listing on Nasdaq while trading on such exchange is not subject to the new requirements applicable to Direct Listings.

Clarification of the Role of a Financial Advisor in a Direct Listing

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Halt Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and described the role of financial advisors in that process.⁹ At that

⁸ Nasdaq will calculate a per share price by dividing the Market Value of Publicly Held Shares evidenced by the Valuation by the number of Publicly Held Shares and the market capitalization by multiplying that per share price by the total number of shares outstanding.

⁹ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the "2014 Rule Change").

time, the Exchange added new Rule 4120(c)(9)¹⁰ to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the over the counter market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”). Prior to that rule change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.¹¹

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing where “a broker-dealer serving in the role of

¹⁰ In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-81). All references in this filing are to the renumbered rules, as currently in effect.

¹¹ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”¹²

Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.¹³ In each case, the applicable price could be determined based on the issuer’s IPO price.¹⁴ In the absence of an IPO price from the underwriter, Nasdaq believes that the only viable options are to rely on a price from recent sustained trading the Private Placement Market¹⁵ or one provided by the financial advisor to the company.

When Nasdaq added Rule 4120(c)(9) in 2014, it cross-referenced Rule 4753 but did not modify it. Nasdaq now proposes to amend Rule 4753, based on the same rationale that supported the 2014 Rule Change, to elaborate in its rules the role of a financial advisor to the issuer of a security that is listing under IM-5315-1.¹⁶ Nasdaq has

¹² Subsequent to the 2014 Rule Change Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 10, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

¹³ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

¹⁴ Rules 4753(a)(3)(A)(iv)a. and 4753(b)(2)(D)(i). The price closest to the “Issuer’s Initial Public Offering Price” is the fourth tie-breaker in these rules, applicable when no single price is determined from the three prior tests.

¹⁵ As described above, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer’s securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

¹⁶ Specifically, Nasdaq stated that “an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to

successfully employed, in limited circumstances, the IPO Cross for securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing since 2014¹⁷ and continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

Specifically, Nasdaq proposes to amend Rules 4753(a)(3)(A)(iv) and 4753(b)(2)(D)¹⁸ to state that in the case of the initial pricing of a Direct Listing (i.e., a security qualifying for listing under Listing Rule IM-5315-1), the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be: (i) for a security that has had recent sustained trading in a Private Placement Market prior to listing,¹⁹ the most recent transaction price in that market or, (ii) if there is not such sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9). As described above, where there is recent

provide advice on when the security should be released for trading.” The 2014 Rule Change at 21830.

¹⁷ Among other instances, Nasdaq utilized the IPO Cross for the initial pricing of the common stock of American Realty Capital Healthcare Trust, Inc. as indicated in the 2014 Rule Change.

¹⁸ Nasdaq also proposes to make non-substantive changes to renumber the subparagraphs of these rules to reflect the proposed additional rule text.

¹⁹ The term “recent sustained trading” in proposed Rules 4753(a)(3)(A)(iv)b. and (b)(2)(D)(ii) relies on the requirement in proposed Rule IM-5315-1(d) that there be a sustained history of trading over a period of several months prior to listing in order for Nasdaq to rely on a Private Placement Market price.

sustained trading in a Private Placement Market, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that it is therefore appropriate to use the price from such trading to determine the Current Reference Price and the price at which the Nasdaq Halt Cross will occur. In cases where there is not recent sustained trading in the Private Placement Market, Nasdaq believes that the financial advisor to the issuer of a Direct Listing security is well suited to advise the company and Nasdaq as to the appropriate price to determine the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur because of the financial advisor's market knowledge of buying and selling interest and understanding of the company and its security.²⁰

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to

²⁰ While Nasdaq and NYSE each have different market structures, the proposed calculation of Current Reference Price is similar to how "Reference Price" is calculated under NYSE Rule 15.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

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.

Calculation of Price-based Initial Listing Requirements

The proposed rule change to require a Valuation and describe how Nasdaq will calculate compliance with the price-based requirements for listing on the Nasdaq Global Select Market is designed to protect investors and the public interest because any company relying solely on a Valuation will have to evidence at least \$250 million in market value of publicly held shares, which will give a significant degree of comfort that the company will meet the applicable market value of publicly held shares requirement upon commencement of trading.²³ Nasdaq's existing requirements, including the generally applicable \$110 million requirement for market value of publicly held on the Nasdaq Global Select Market, are designed to protect investors and serve to help assure that securities listed on Nasdaq have sufficient investor interest and will trade in a liquid manner. In addition, establishing independence standards for the party providing a Valuation will ensure that the entity providing a Valuation for purposes of listing on Nasdaq will have a significant level of independence from the listing applicant and thereby enhance the reliability of such Valuation. Finally, in addition to the proposed new requirements, Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. As such, Nasdaq believes these

²³ See Listing Rule 5315(f)(2), which generally requires a market value of publicly held shares of at least \$110 million or \$100 million if the company has stockholders' equity of at least \$110 million.

provisions protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

The proposed rule change also protects investors and the public interest by requiring either that there be sustained recent trading in the Private Placement Market or that the company provide a Valuation demonstrating \$250 million market value of publicly held shares. Nasdaq believes that the price from such sustained trading in the Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that qualifying a company based on the lower of that trading price or the Valuation helps assure that the company satisfies Nasdaq's requirements. Alternatively, in the absence of recent sustained trading in the Private Placement Market, the requirement to demonstrate a market value of publicly held shares of at least \$250 million, similarly helps assure that the company satisfies Nasdaq's requirement by imposing a standard that is more than double the otherwise applicable standard.²⁴

The proposed requirement that a company that lists on the Nasdaq Global Select Market through a Direct Listing must do so at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares is designed to protect investors and the public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

²⁴ See footnote 7, above.

Finally, the proposal to rely on the price from the existing trading market for a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with the protection of investors because the price from the broad and liquid trading market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. This provision applies only where there is a broad, liquid market for the company's shares in its country of origin and is designed to clarify that a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange that satisfies Listing Rule IM-5315-1(c) is not subject to the new requirements applicable to Direct Listings. Enhancing transparency around this requirement will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

Clarification of the Role of a Financial Advisor in a Direct Listing

The proposed rule change to clarify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest by more fully describing the role of a financial advisor to the issuer of a Direct Listing security that is not the subject of an IPO, but that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq. The proposed rule change establishes that in such a case the Current Reference Price and price at which the Nasdaq

Halt Cross will occur will be the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. Where there has been sustained recent trading on a Private Placement Market over several months, Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq. Where there is not such sustained recent trading, Nasdaq notes that financial advisors have been performing the functions of the underwriter in the IPO Halt Cross on a limited basis since 2014 and have market knowledge of buying and selling interest and an understanding of the company and its security. As such, Nasdaq believes that the rule change will promote fair and orderly markets because these mechanisms of establishing the Current Reference Price and the price at which the Nasdaq Halt Cross will occur will help protect against volatility in the pricing and initial trading of the securities covered by the proposed rule change. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing.

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.

The proposed rule change to adopt IM-5315-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing that is appropriately protective of investors and is not designed to limit the ability of the issuers

of those securities to list them on any other national securities exchange. The market for listing services is extremely competitive and the proposed rule change adopts changes similar to those already approved for another market.²⁵ Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed listing standards impose a burden on competition.

In addition, the proposed change is designed to more fully describe the application of the IPO Halt Cross to a Direct Listing and the role of a financial advisor in the determination of the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur. The proposed rule change will have no impact on competition as it merely designed to insure that the Current Reference Price and the price at which the Nasdaq Halt Cross will occur is appropriately calculated for listings under IM-5315-1.

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.

²⁵ See Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (Approving SR-NYSE-2017-30 to amend NYSE Listed Company Manual to provide for the listing of companies that list without a prior Exchange Act registration and that are not listing in connection with an underwritten initial public offering and certain related changes).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²⁶ of the Act and Rule 19b-4(f)(6) thereunder²⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because proposed Listing Rule IM-5315-1 is based on rules recently adopted by NYSE and is designed to provide additional transparency to the listing process.²⁸ The proposed requirement to obtain a Valuation from an independent party, and to require the Valuation demonstrate at least \$250 million in Market Value of Publicly Held Shares where there is not recent sustained trading in a Private Placement Market, do not significantly affect the protection of investors or the public interest because they are each based on the NYSE rule and help assure compliance with Nasdaq's existing listing requirements. Further, adding a new requirement that a company can list securities on the Nasdaq Global Select Market in a Direct Listing only at the time of effectiveness of a registration statement filed under the Securities Act of

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ This proposed rule is based on the Section 102.01B (Footnote (E)) of the NYSE Listed Company Manual which was approved by the Commission following the statutory notice and comment period. See footnote 25 above.

1933 solely for the purpose of allowing existing shareholders to sell their shares is also based on the NYSE rule. This requirement merely adds transparency to the requirements for a Direct Listing as a company could not proceed without such a Securities Act of 1933 Act registration statement in circumstances where the Commission believes one is required in any event. Finally, Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because the proposed rule will clarify that the proposed new requirements for a Direct Listing do not apply to a company transferring from a foreign regulated exchange where there is a broad and liquid market or listing on Nasdaq while trading on such exchange. This provision is consistent with Section 103 of NYSE Listed Company Manual.

Nasdaq also believes that the proposed rule change does not significantly affect the protection of investors or the public interest because the proposal is designed to promote fair and orderly markets by providing a mechanism for the orderly opening of trading of a Direct Listing. Nasdaq believes that financial advisors are well suited to advise the company and Nasdaq as to the appropriate price to determine the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur because of the financial advisor's market knowledge of buying and selling interest and understanding of the company and its security. Similarly, the proposed rule change does not significantly affect the protection of investors or the public interest because the price from the sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and thus well suited as the forth tie-breaker in calculating the Current Reference Price and the price at which the Nasdaq

Halt Cross will occur. Nasdaq also believes that the proposed rule change to rely on the price from recent sustained trading the Private Placement Market, where available, or one provided by the financial advisor to the company in calculating the Current Reference Price and the price at which the Nasdaq Halt Cross will occur does not significantly affect the protection of investors or the public interest because it is similar to NYSE Rule 15(c)(1)(D).

Nasdaq further believes that the proposed rule change to adopt IM-5315-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing on the Nasdaq Global Select Market that is appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange. Further, the proposed change to Rule 4753 does not impose any significant burden on competition because the change does not impact the ability of any market participant or trading venue to compete, but rather is intended to clarify existing rule language and to promote fair and orderly markets in the trading of the securities covered by the rule change.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii),²⁹ however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay provided for in Rule 19b-4(f)(6)(iii). Waiving the delay requirement will allow Nasdaq to apply the amended rule to the initial listing and pricing of potential company listings on the Nasdaq Global Select Market where the company's stock is not previously registered under the Exchange Act and is seeking to list without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. Nasdaq believes that the additional requirements and transparency provided by the proposed Listing Rule IM-5315-1 are consistent with the protection of investors and the public interest and no benefit would be served by delaying the application of the rule. In addition, as noted above, the proposed changes are based on a prior NYSE rule filing, which was subject to notice and comment, and raise no new issues inconsistent with the protection of investors and the public interest.³⁰

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

The proposed rule change to adopt IM-5315-1 is based on Section 102.01B (Footnote (E)) of the NYSE Listed Company Manual as described in detail in SR-NYSE-

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ See footnote 25, above.

2017-30.³¹ In addition, the proposed provision in Listing Rule IM-5315-1(c) describing the treatment of companies transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with Section 103 of NYSE Listed Company Manual. Finally, while Nasdaq and NYSE each have different market structures, the proposed changes to Rule 4753 to calculate the Current Reference Price of a security that is listing under IM-5315-1 based on the most recent price from recent sustained trading in a Private Placement Market, if any, or a price determined by the Exchange in consultation with a financial advisor to the issuer are similar to NYSE Rule 15.

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 Change for publication in the Federal Register.

5. Text of the proposed rule change.

³¹ See footnote 25, above.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-001)

February __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend and Clarify Certain Aspects of the Listing Process for Direct Listings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 13, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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 amend and clarify certain aspects of the listing process for Direct Listings.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. In particular, a company whose stock is not previously registered under the Exchange Act may wish to list on the Nasdaq Global Select Market without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. The proposed Listing Rule IM-5315-1 sets forth listing requirements for such securities (a "Direct Listing") and describes how the Exchange will calculate compliance with the Nasdaq Global Select Market initial listing standards related to the requirements based on the price of a security, including the bid price, market capitalization and Market Value of Publicly Held Shares.

Nasdaq also proposes to modify Nasdaq Rule 4753 to more clearly describe the role of a broker-dealer serving as a financial advisor to the issuer of a security listing on the Nasdaq Global Select Market under proposed Rule IM-5315-1.

Calculation of Price-based Initial Listing Requirements

Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. To provide transparency to the initial listing process, the Exchange proposes to adopt Listing Rule IM-5315-1, which will state how the Exchange calculates the initial listing requirements based on the price of a security, including the bid price, market capitalization and market value of publicly held shares for a Direct Listing on the Nasdaq Global Select Market.³

Nasdaq also proposes to require that a company that lists on the Nasdaq Global Select Market through a Direct Listing do so at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares. This interpretative material would describe when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

³ This rule filing affects only companies listing on the Nasdaq Global Select Market. Nasdaq intends to subsequently file a proposed rule change under Section 19(b) of the Act to adopt requirements for the Nasdaq Capital and Global Markets applicable to companies which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and wish to list their securities to allow existing shareholders to sell their shares and clarify the use of the IPO Cross for initial pricing of such securities.

Under IM-5315-1, Nasdaq would require that a company listing on the Nasdaq Global Select Market through a Direct Listing provide Nasdaq an independent third-party valuation (a “Valuation”). Any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company’s likely market value.⁴

Nasdaq proposes to require that a valuation agent will not be considered independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the

⁴ In addition, under Listing Rule 5101 Nasdaq has broad discretionary authority to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.

- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation. For purposes of this provision, “investment banking services” includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

For a security that has had sustained recent trading in a Private Placement Market⁵ prior to listing, Nasdaq will determine a company’s price, market capitalization and market value of publicly held shares based on the lesser of: (i) the value calculable based on the Valuation; and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

⁵ Nasdaq proposes to define “Private Placement Market” in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

As set forth in IM-5315-1(d), to determine compliance with the price-based requirements and suitability for listing on the Exchange, Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement. Nasdaq believes that the price from such sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

Alternatively, in the absence of any recent sustained trading in a Private Placement Market over a period of several months,⁶ Nasdaq will determine that the company has met the market value of publicly held shares requirement for listing on the Nasdaq Global Select Market if the company provides a Valuation evidencing a market value of publicly held shares of at least \$250,000,000. Nasdaq believes that some companies that are clearly large enough to be suitable for listing on the Exchange do not have sustained trading in their securities on a Private Placement Market prior to going public and that a recent Valuation indicating at least \$250 million in market value of publicly held shares will give a significant degree of comfort that the company will meet the applicable market value of publicly held shares requirement upon commencement of

⁶ Limited trading in the Private Placement Market may not be sufficient for the Exchange to reach a conclusion that the company meets the applicable price-based requirements.

trading.⁷ Nasdaq believes that it is unlikely that any Valuation would reach a conclusion that is incorrect to the degree necessary for a company using this provision to fail to meet the applicable requirement upon listing, in particular because any Valuation used for this purpose must be provided by a valuation agent that meets the independence requirements of proposed Listing Rule IM-5315-1(f) and has significant experience and demonstrable competence in the provision of such valuations. Nasdaq will also determine the bid price and market capitalization based on such Valuation.⁸

Foreign Exchange Listings

For a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares, or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the company has met the applicable price-based requirements based on the recent trading in such market. Nasdaq believes that the price of the issuer's securities from such broad and liquid trading is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. While this is consistent with Nasdaq's current practice, Listing Rule IM-5315-1(c) will clarify that a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares or listing on Nasdaq while trading on such exchange is not subject to the new requirements applicable to Direct Listings.

⁷ See Listing Rule 5315(f)(2), which generally requires a market value of publicly held shares of at least \$110 million or \$100 million if the company has stockholders' equity of at least \$110 million.

⁸ Nasdaq will calculate a per share price by dividing the Market Value of Publicly Held Shares evidenced by the Valuation by the number of Publicly Held Shares and the market capitalization by multiplying that per share price by the total number of shares outstanding.

Clarification of the Role of a Financial Advisor in a Direct Listing

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Halt Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and described the role of financial advisors in that process.⁹ At that time, the Exchange added new Rule 4120(c)(9)¹⁰ to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the over the counter market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”). Prior to that rule change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.¹¹

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the over-

⁹ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the “2014 Rule Change”).

¹⁰ In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-81). All references in this filing are to the renumbered rules, as currently in effect.

¹¹ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”¹²

Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.¹³ In each case, the applicable price could be determined based on the issuer’s IPO price.¹⁴ In the absence of an IPO price from the underwriter, Nasdaq believes that the only viable options are to

¹² Subsequent to the 2014 Rule Change Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 10, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

¹³ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

¹⁴ Rules 4753(a)(3)(A)(iv)a. and 4753(b)(2)(D)(i). The price closest to the “Issuer’s Initial Public Offering Price” is the fourth tie-breaker in these rules, applicable when no single price is determined from the three prior tests.

rely on a price from recent sustained trading the Private Placement Market¹⁵ or one provided by the financial advisor to the company.

When Nasdaq added Rule 4120(c)(9) in 2014, it cross-referenced Rule 4753 but did not modify it. Nasdaq now proposes to amend Rule 4753, based on the same rationale that supported the 2014 Rule Change, to elaborate in its rules the role of a financial advisor to the issuer of a security that is listing under IM-5315-1.¹⁶ Nasdaq has successfully employed, in limited circumstances, the IPO Cross for securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing since 2014¹⁷ and continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

Specifically, Nasdaq proposes to amend Rules 4753(a)(3)(A)(iv) and 4753(b)(2)(D)¹⁸ to state that in the case of the initial pricing of a Direct Listing (i.e., a security qualifying for listing under Listing Rule IM-5315-1), the fourth tie-breaker in

¹⁵ As described above, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

¹⁶ Specifically, Nasdaq stated that "an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to provide advice on when the security should be released for trading." The 2014 Rule Change at 21830.

¹⁷ Among other instances, Nasdaq utilized the IPO Cross for the initial pricing of the common stock of American Realty Capital Healthcare Trust, Inc. as indicated in the 2014 Rule Change.

¹⁸ Nasdaq also proposes to make non-substantive changes to renumber the subparagraphs of these rules to reflect the proposed additional rule text.

calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be: (i) for a security that has had recent sustained trading in a Private Placement Market prior to listing,¹⁹ the most recent transaction price in that market or, (ii) if there is not such sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9). As described above, where there is recent sustained trading in a Private Placement Market, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that it is therefore appropriate to use the price from such trading to determine the Current Reference Price and the price at which the Nasdaq Halt Cross will occur. In cases where there is not recent sustained trading in the Private Placement Market, Nasdaq believes that the financial advisor to the issuer of a Direct Listing security is well suited to advise the company and Nasdaq as to the appropriate price to determine the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur because of the financial advisor's market knowledge of buying and selling interest and understanding of the company and its security.²⁰

¹⁹ The term "recent sustained trading" in proposed Rules 4753(a)(3)(A)(iv)b. and (b)(2)(D)(ii) relies on the requirement in proposed Rule IM-5315-1(d) that there be a sustained history of trading over a period of several months prior to listing in order for Nasdaq to rely on a Private Placement Market price.

²⁰ While Nasdaq and NYSE each have different market structures, the proposed calculation of Current Reference Price is similar to how "Reference Price" is calculated under NYSE Rule 15.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.

Calculation of Price-based Initial Listing Requirements

The proposed rule change to require a Valuation and describe how Nasdaq will calculate compliance with the price-based requirements for listing on the Nasdaq Global Select Market is designed to protect investors and the public interest because any company relying solely on a Valuation will have to evidence at least \$250 million in market value of publicly held shares, which will give a significant degree of comfort that the company will meet the applicable market value of publicly held shares requirement upon commencement of trading.²³ Nasdaq's existing requirements, including the generally applicable \$110 million requirement for market value of publicly held on the Nasdaq Global Select Market, are designed to protect investors and serve to help assure that securities listed on Nasdaq have sufficient investor interest and will trade in a liquid

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ See Listing Rule 5315(f)(2), which generally requires a market value of publicly held shares of at least \$110 million or \$100 million if the company has stockholders' equity of at least \$110 million.

manner. In addition, establishing independence standards for the party providing a Valuation will ensure that the entity providing a Valuation for purposes of listing on Nasdaq will have a significant level of independence from the listing applicant and thereby enhance the reliability of such Valuation. Finally, in addition to the proposed new requirements, Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. As such, Nasdaq believes these provisions protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

The proposed rule change also protects investors and the public interest by requiring either that there be sustained recent trading in the Private Placement Market or that the company provide a Valuation demonstrating \$250 million market value of publicly held shares. Nasdaq believes that the price from such sustained trading in the Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that qualifying a company based on the lower of that trading price or the Valuation helps assure that the company satisfies Nasdaq's requirements. Alternatively, in the absence of recent sustained trading in the Private Placement Market, the requirement to demonstrate a market value of publicly held shares of at least \$250 million, similarly helps assure that the company satisfies Nasdaq's requirement by imposing a standard that is more than double the otherwise applicable standard.²⁴

²⁴ See footnote 7, above.

The proposed requirement that a company that lists on the Nasdaq Global Select Market through a Direct Listing must do so at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares is designed to protect investors and the public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

Finally, the proposal to rely on the price from the existing trading market for a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with the protection of investors because the price from the broad and liquid trading market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. This provision applies only where there is a broad, liquid market for the company's shares in its country of origin and is designed to clarify that a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange that satisfies Listing Rule IM-5315-1(c) is not subject to the new requirements applicable to Direct Listings. Enhancing transparency around this requirement will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

Clarification of the Role of a Financial Advisor in a Direct Listing

The proposed rule change to clarify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest by more fully describing the role of a financial advisor to the issuer of a Direct Listing security that is not the subject of an IPO, but that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq. The proposed rule change establishes that in such a case the Current Reference Price and price at which the Nasdaq Halt Cross will occur will be the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. Where there has been sustained recent trading on a Private Placement Market over several months, Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq. Where there is not such sustained recent trading, Nasdaq notes that financial advisors have been performing the functions of the underwriter in the IPO Halt Cross on a limited basis since 2014 and have market knowledge of buying and selling interest and an understanding of the company and its security. As such, Nasdaq believes that the rule change will promote fair and orderly markets because these mechanisms of establishing the Current Reference Price and the price at which the Nasdaq Halt Cross will occur will help protect against volatility in the pricing and initial trading of the securities covered by the proposed rule change. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the

public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing.

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.

The proposed rule change to adopt IM-5315-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing that is appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange. The market for listing services is extremely competitive and the proposed rule change adopts changes similar to those already approved for another market.²⁵ Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed listing standards impose a burden on competition.

In addition, the proposed change is designed to more fully describe the application of the IPO Halt Cross to a Direct Listing and the role of a financial advisor in the determination of the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur. The proposed rule change will have no impact on competition as it merely designed to insure that the

²⁵ See Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (Approving SR-NYSE-2017-30 to amend NYSE Listed Company Manual to provide for the listing of companies that list without a prior Exchange Act registration and that are not listing in connection with an underwritten initial public offering and certain related changes).

Current Reference Price and the price at which the Nasdaq Halt Cross will occur is appropriately calculated for listings under IM-5315-1.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁷

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

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-001 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2019-001. 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-2019-001 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.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules

* * * * *

4753. Nasdaq Halt Cross**(a) Definitions.**

For the purposes of this rule the term:

(1) – (2) No change.

(3) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) "Current Reference Price" shall mean:

(i) – (iii) No change.

(iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean:

a. In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

b. In the case of the initial pricing of a security listing under Listing Rule IM-5315-1, for a security that has had recent sustained trading in a Private Placement Market (as defined in Rule 5005(a)(34)) prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9).

[b]c. In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

[c]d. In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

Notwithstanding the foregoing, the Order Imbalance Indicator will not include the Current Reference Price if there is a Market Order Imbalance.

(B) – (F) No change.

(4) – (6) No change.

(b) Processing of Nasdaq Halt Cross. For Nasdaq-listed securities that are the subject of a trading halt or pause initiated pursuant to Rule 4120(a)(1), (4), (5), (6), (7) or (11), the Nasdaq Halt Cross shall occur at the time specified by Nasdaq pursuant to Rule 4120, and Market hours trading shall commence when the Nasdaq Halt Cross concludes.

(1) No change.

(2)

(A) – (C) No change.

(D) If more than one price exists under subparagraph (C), the Nasdaq Halt Cross shall occur at:

(i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

(ii) In the case of the initial pricing of a security listing under Listing Rule IM-5315-1, for a security that has had recent sustained trading in a Private Placement Market (as defined in Rule 5005(a)(34)) prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9).

[(ii)](iii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

[(iii)](iv) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

(3) – (4) No change.

(c) – (d) No change.

* * * * *

5005. Definitions

(a) The following is a list of definitions used throughout the Nasdaq Listing Rules. This section also lists various terms together with references to other rules where they are

specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1) – (33) No change.

(34) “Private Placement Market” is a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

~~[(34)]~~(35) "Publicly Held Shares" means 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. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.

~~[(35)]~~(36) "Public Holders" means holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

~~[(36)]~~(37) "Reverse Merger" means any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company satisfying the requirements of IM-5101-2 or a business combination described in Rule 5110(a). In determining whether a Company is a shell company, Nasdaq will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

~~[(37)]~~(38) "Round Lot" or "Normal Unit of Trading" means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol.

~~[(38)]~~(39) "Round Lot Holder" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

~~[(39)]~~(40) "Shareholder" means a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

~~[(40)]~~(41) "Substantial Shareholder" is defined in Rule 5635(e)(3).

~~[(41)]~~(42) "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights. A Substitution Listing Event also includes the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider).

~~[(42)]~~(43) "Total Holders" means holders of a security that includes both beneficial holders and holders of record.

* * * * *

IM-5315-1. Determination of Price-Based Requirements for Direct Listings

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities on Nasdaq. Such companies are permitted to list on the Nasdaq Global Select Market, provided the Company meets all applicable initial listing requirements and lists at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Select Market based on the price of a security, including the bid price, market capitalization and Market Value of Publicly Held Shares requirements, Nasdaq will determine the security's price as follows:

- (a) If the Company's security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, market capitalization, and Market Value of Publicly Held Shares to the Company equal to the lesser of (i) the value calculable based on an independent third-party valuation (a "Valuation") and (ii) the value calculable based on the most recent trading price in a Private Placement Market.
- (b) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq will determine that such Company has met the Market Value of Publicly Held Shares requirement if the Company provides a Valuation evidencing a Market Value of Publicly Held Shares of at least \$250,000,000. Nasdaq will also determine the bid price and market capitalization based on such Valuation.
- (c) For a Company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the Company has met the applicable price-based requirements based on the most recent trading price in such market. This provision applies only where there is a broad, liquid market for the Company's shares in its country of origin.
- (d) Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement.
- (e) Any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the Company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the Company had diminished since the date of the Valuation and will continue to monitor the Company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.
- (f) A valuation agent shall not be considered independent if:

(1) At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.

(2) The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date

of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.

(3) The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

* * * * *