

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 091	Amendment No. (req. for Amendments *)
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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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
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 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"/>
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Description

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

a proposal to adopt a new rule permitting Nasdaq to halt trading in a security and request information from the company regarding the number of unrestricted publicly held shares in certain circumstances

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 * Amma Last Name * Anaman

Title * Assistant General Counsel

E-mail * amma.anaman@nasdaq.com

Telephone * (301) 978-8011 Fax

Signature

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

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

(Title *)

Date 11/21/2019

By John Zecca

EVP and Chief Legal Officer

john.zecca@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt a new rule permitting Nasdaq to halt trading in a security and request information from the company regarding the number of unrestricted publicly held shares when Nasdaq observes unusual trading characteristics in a security or a company announces an event that may cause a contraction in the number of unrestricted publicly held shares.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on July 16, 2019. No other action is necessary for the filing of the rule change.

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

Amma Anaman
Assistant General Counsel
Nasdaq, Inc.
301-978-8011

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Nasdaq’s listing requirements include a number of criteria designed to ensure that a listed security has adequate liquidity and is thus suitable for listing and trading on a national securities exchange. These requirements are intended to ensure that there are sufficient shares available for trading to facilitate proper price discovery in the secondary market. On July 5, 2019, the Commission approved Nasdaq’s proposed changes to enhance its initial listing standards related to liquidity (the “Approval Order”).³ Under the revised standards, securities subject to resale restrictions for any reason (“restricted securities”) are excluded from the calculation of publicly held shares for initial listing purposes.⁴ Nasdaq believes that, by excluding securities that are not freely transferrable or available for investors to purchase, the revised standards help the Exchange to ensure that companies seeking to list on Nasdaq have sufficient public float, investor base, and trading interest likely to generate depth and liquidity.

³ See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (approving SR-NASDAQ-2019-009).

⁴ Rule 5005(a)(37) defines “Restricted Securities” as “securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered “restricted securities” under Rule 144.”

These changes apply only to a company's initial listing, and do not apply to Nasdaq's calculation of publicly held shares for continued listing purposes.⁵ Instead, for continued listing purposes, a company is required to maintain a minimum number of publicly held shares, which means shares not held directly or indirectly by an officer, a director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding.⁶ Restricted securities are not excluded from the calculation of a listed company's publicly held shares.

Nasdaq believes that, as a result of the exclusion of restricted securities from the liquidity tests upon initial listing, securities listing on Nasdaq will be more likely to trade better after listing. However, while newly listing companies must satisfy the revised initial listing requirements, companies that were not required to meet those requirements upon initial listing may still have restricted securities that are not freely tradable. In addition, a listed company may conduct a transaction that decreases the number of unrestricted securities in its public float, such as a reverse stock split, tender offer, stock buyback, or entering into a contractual agreement such as a standstill or lockup. The Exchange believes that the new initial listing standards do not sufficiently address these concerns, which could potentially result in a security that is illiquid.

⁵ See Approval Order at 33112 (“Nasdaq states that it is not proposing to change the requirements for continued listing at this time, and believes that the proposed heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.”).

⁶ Rule 5005(a)(35) defines “Publicly Held Shares” as “shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.”

Illiquid securities may trade infrequently and in a more volatile manner and change hands at a price that may not reflect their true market value. Less liquid securities may also be more susceptible to price manipulation as a relatively small amount of trading activity can have an inordinate effect on market prices. Nasdaq has observed problems with a small number of listed companies that have a large number of restricted securities in their public float. Such companies may not have sufficient liquidity to meet investor demand, particularly upon announcement of material news, which may result in unusual trading characteristics, such as extreme price movements and unusually large bid-ask spreads.

While Nasdaq's existing rules allow it to apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements where there are indications that there is insufficient liquidity in the security to support fair and orderly trading,⁷ Nasdaq believes that it would enhance investor protection and the transparency of Nasdaq's regulatory process to adopt a rule specifying certain situations in which Nasdaq would act in this manner. Therefore, the Exchange is proposing to adopt a new Rule 5120, which would specifically permit Nasdaq to request information from a company regarding the number of unrestricted publicly held shares⁸ when Nasdaq

⁷ Rule 5101 provides, in part, that "Nasdaq may use [its broad discretionary authority] to ... 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." See also Approval Order at 33103 (footnote 9).

⁸ Rule 5005(a)(45) defines "Unrestricted Publicly Held Shares" as "the Publicly Held Shares that are Unrestricted Securities." Rule 5005(a)(46) defines "Unrestricted Securities" as "securities that are not Restricted Securities."

observes unusual trading characteristics of a security or if a company announces an event that may cause a contraction in the number of unrestricted publicly held shares. Nasdaq may also halt trading in the security in connection with such a request pursuant to Nasdaq's authority under Rule 4120(a)(5).⁹ If information provided by the company, or otherwise obtained by Nasdaq, indicates that the number of unrestricted publicly held shares is below the applicable publicly held shares requirement for continued listing of the security, Nasdaq generally will use its authority under Rule 5101 to apply more stringent criteria and request a plan to increase the number of unrestricted publicly held shares to an amount that is higher than the applicable publicly held shares requirement, as provided in the Rule 5800 Series.¹⁰

Under proposed Rule 5120, in considering whether there are unusual trading characteristics, Nasdaq may review volume, price movements, spread and the presence or absence of any news. Events that may cause a contraction in the number of unrestricted publicly held shares include reverse stock splits, tender offers, stock buybacks, or entering into contractual agreements such as standstills or lockups. Nasdaq is also proposing to revise Rule 5810(c)(2)(A) to correct punctuation within the rule and add a new subsection (vii) to provide that when Nasdaq requests a plan to increase the number

⁹ Rule 4120(a)(5) provides that Nasdaq "may halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (A) material news; (B) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Listing Rule 5000 Series; or (C) any other information which is necessary to protect investors and the public interest."

¹⁰ The Rule 5800 Series sets forth procedures for the independent review, suspension, and delisting of companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

of publicly held shares, such plan must generally be provided to Nasdaq within 45 calendar days of the date of the request.

The proposed rule would not impose any burden on companies, which may not otherwise regularly track or report the number of their unrestricted publicly held shares, to determine these amounts unless Nasdaq observed unusual trading characteristics or a change in the company's total shares outstanding. As such, Nasdaq believes that the proposed rule change is finely tailored to address the Exchange's concerns, without imposing an unnecessary burden on companies.

Finally, Nasdaq is proposing to revise the phrase "market value of publicly held shares" to "Market Value of Publicly Held Shares" in Rules 5810(c)(3)(A)(i) and 5810(c)(3)(A)(ii) to correct an inadvertent error and clarify that these references are to the term as defined in Rule 5005(a).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed change will enhance transparency and ensure that securities listed on Nasdaq are liquid and have sufficient freely tradable shares to meet investor demand, which will reduce trading volatility and price manipulation, thereby protecting investors and the public

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

interest and supporting fair and orderly trading. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

Nasdaq believes that it will protect investors and the public interest to halt trading in a security that exhibits unusual trading characteristics and request information from the company regarding its number of unrestricted publicly held shares in order to determine whether such unusual trading characteristics were caused by a large number of restricted securities. Nasdaq believes that it also will protect investors and the public interest to halt trading in a security and request information from the company regarding its number of unrestricted publicly held shares if the company has announced a liquidity-reducing event in order to determine whether a company has a sufficient number of unrestricted publicly held shares following such liquidity-reducing event. The Exchange believes that these changes will help Nasdaq to ensure that the security has enough liquidity to meet investor demand after the liquidity-reducing event, which will support fair and orderly trading.

Nasdaq currently monitors securities for unusual trading characteristics and receives notifications from companies regarding material news and changes in total shares outstanding. Therefore, the proposed rule would not require companies to report unrestricted publicly held shares to Nasdaq on an ongoing basis. As such, Nasdaq believes that the proposed rule change is finely tailored to address the Exchange's concerns, without imposing an unnecessary burden on companies.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.¹³ In particular, the Commission stated:

Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.¹⁴

Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the proposed changes will only apply to securities exhibiting unusual trading characteristics and companies which announce an event that may cause a contraction in the number of unrestricted publicly held shares of a listed security, they will apply equally to all such securities listed on Nasdaq and the Exchange believes that evidence of unusual trading characteristics is a non-discriminatory reason to apply additional criteria to these securities.

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. All companies and securities listed on Nasdaq will be affected in the same manner

¹³ Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-Nasdaq-2011-073 adopting additional listing requirements for companies applying to list after consummation of a “reverse merger” with a shell company).

¹⁴ Id. at 70802.

by these changes, across all market tiers. To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

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.¹⁵

6. Extension of Time Period for Commission Action

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

¹⁵ On October 5, 2018, Nasdaq solicited comment on a number of proposals, including proposals to exclude restricted securities from the Exchange's calculations of a company's publicly held shares and market value of publicly held shares for initial listing purposes. Nasdaq stated that, at that time, Nasdaq was not proposing to change any of the liquidity requirements for continued listing purposes as the number of publicly held shares, the number of shareholders and the trading volume of an issuer's security generally increase over time. No comments were received in response to that comment solicitation.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-091)

November __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt a New Rule Permitting Nasdaq to Halt Trading in a Security and Request Information from the Company Regarding the Number of Unrestricted Publicly Held Shares in Certain Circumstances

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 November 21, 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 adopt a new rule permitting Nasdaq to halt trading in a security and request information from the company regarding the number of unrestricted publicly held shares when Nasdaq observes unusual trading characteristics in a security or a company announces an event that may cause a contraction in the number of unrestricted publicly held shares.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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's listing requirements include a number of criteria designed to ensure that a listed security has adequate liquidity and is thus suitable for listing and trading on a national securities exchange. These requirements are intended to ensure that there are sufficient shares available for trading to facilitate proper price discovery in the secondary market. On July 5, 2019, the Commission approved Nasdaq's proposed changes to enhance its initial listing standards related to liquidity (the "Approval Order").³ Under the revised standards, securities subject to resale restrictions for any reason ("restricted securities") are excluded from the calculation of publicly held shares for initial listing

³ See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (approving SR-NASDAQ-2019-009).

purposes.⁴ Nasdaq believes that, by excluding securities that are not freely transferrable or available for investors to purchase, the revised standards help the Exchange to ensure that companies seeking to list on Nasdaq have sufficient public float, investor base, and trading interest likely to generate depth and liquidity.

These changes apply only to a company's initial listing, and do not apply to Nasdaq's calculation of publicly held shares for continued listing purposes.⁵ Instead, for continued listing purposes, a company is required to maintain a minimum number of publicly held shares, which means shares not held directly or indirectly by an officer, a director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding.⁶ Restricted securities are not excluded from the calculation of a listed company's publicly held shares.

Nasdaq believes that, as a result of the exclusion of restricted securities from the liquidity tests upon initial listing, securities listing on Nasdaq will be more likely to trade

⁴ Rule 5005(a)(37) defines "Restricted Securities" as "securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered "restricted securities" under Rule 144."

⁵ See Approval Order at 33112 ("Nasdaq states that it is not proposing to change the requirements for continued listing at this time, and believes that the proposed heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.").

⁶ Rule 5005(a)(35) defines "Publicly Held Shares" as "shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act."

better after listing. However, while newly listing companies must satisfy the revised initial listing requirements, companies that were not required to meet those requirements upon initial listing may still have restricted securities that are not freely tradable. In addition, a listed company may conduct a transaction that decreases the number of unrestricted securities in its public float, such as a reverse stock split, tender offer, stock buyback, or entering into a contractual agreement such as a standstill or lockup. The Exchange believes that the new initial listing standards do not sufficiently address these concerns, which could potentially result in a security that is illiquid.

Illiquid securities may trade infrequently and in a more volatile manner and change hands at a price that may not reflect their true market value. Less liquid securities may also be more susceptible to price manipulation as a relatively small amount of trading activity can have an inordinate effect on market prices. Nasdaq has observed problems with a small number of listed companies that have a large number of restricted securities in their public float. Such companies may not have sufficient liquidity to meet investor demand, particularly upon announcement of material news, which may result in unusual trading characteristics, such as extreme price movements and unusually large bid-ask spreads.

While Nasdaq's existing rules allow it to apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements where there are indications that there is insufficient liquidity in the security to support fair and orderly trading,⁷ Nasdaq believes that it would enhance investor protection and the

⁷ Rule 5101 provides, in part, that "Nasdaq may use [its broad discretionary authority] to ... apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities

transparency of Nasdaq's regulatory process to adopt a rule specifying certain situations in which Nasdaq would act in this manner. Therefore, the Exchange is proposing to adopt a new Rule 5120, which would specifically permit Nasdaq to request information from a company regarding the number of unrestricted publicly held shares⁸ when Nasdaq observes unusual trading characteristics of a security or if a company announces an event that may cause a contraction in the number of unrestricted publicly held shares. Nasdaq may also halt trading in the security in connection with such a request pursuant to Nasdaq's authority under Rule 4120(a)(5).⁹ If information provided by the company, or otherwise obtained by Nasdaq, indicates that the number of unrestricted publicly held shares is below the applicable publicly held shares requirement for continued listing of the security, Nasdaq generally will use its authority under Rule 5101 to apply more stringent criteria and request a plan to increase the number of unrestricted publicly held shares to an amount that is higher than the applicable publicly held shares requirement, as provided in the Rule 5800 Series.¹⁰

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." See also Approval Order at 33103 (footnote 9).

⁸ Rule 5005(a)(45) defines "Unrestricted Publicly Held Shares" as "the Publicly Held Shares that are Unrestricted Securities." Rule 5005(a)(46) defines "Unrestricted Securities" as "securities that are not Restricted Securities."

⁹ Rule 4120(a)(5) provides that Nasdaq "may halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (A) material news; (B) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Listing Rule 5000 Series; or (C) any other information which is necessary to protect investors and the public interest."

¹⁰ The Rule 5800 Series sets forth procedures for the independent review, suspension, and delisting of companies that fail to satisfy one or more standards

Under proposed Rule 5120, in considering whether there are unusual trading characteristics, Nasdaq may review volume, price movements, spread and the presence or absence of any news. Events that may cause a contraction in the number of unrestricted publicly held shares include reverse stock splits, tender offers, stock buybacks, or entering into contractual agreements such as standstills or lockups. Nasdaq is also proposing to revise Rule 5810(c)(2)(A) to correct punctuation within the rule and add a new subsection (vii) to provide that when Nasdaq requests a plan to increase the number of publicly held shares, such plan must generally be provided to Nasdaq within 45 calendar days of the date of the request.

The proposed rule would not impose any burden on companies, which may not otherwise regularly track or report the number of their unrestricted publicly held shares, to determine these amounts unless Nasdaq observed unusual trading characteristics or a change in the company's total shares outstanding. As such, Nasdaq believes that the proposed rule change is finely tailored to address the Exchange's concerns, without imposing an unnecessary burden on companies.

Finally, Nasdaq is proposing to revise the phrase "market value of publicly held shares" to "Market Value of Publicly Held Shares" in Rules 5810(c)(3)(A)(i) and 5810(c)(3)(A)(ii) to correct an inadvertent error and clarify that these references are to the term as defined in Rule 5005(a).

for initial or continued listing, and thus are "deficient" with respect to the listing standards.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed change will enhance transparency and ensure that securities listed on Nasdaq are liquid and have sufficient freely tradable shares to meet investor demand, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest and supporting fair and orderly trading. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

Nasdaq believes that it will protect investors and the public interest to halt trading in a security that exhibits unusual trading characteristics and request information from the company regarding its number of unrestricted publicly held shares in order to determine whether such unusual trading characteristics were caused by a large number of restricted securities. Nasdaq believes that it also will protect investors and the public interest to halt trading in a security and request information from the company regarding its number of unrestricted publicly held shares if the company has announced a liquidity-reducing

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

event in order to determine whether a company has a sufficient number of unrestricted publicly held shares following such liquidity-reducing event. The Exchange believes that these changes will help Nasdaq to ensure that the security has enough liquidity to meet investor demand after the liquidity-reducing event, which will support fair and orderly trading.

Nasdaq currently monitors securities for unusual trading characteristics and receives notifications from companies regarding material news and changes in total shares outstanding. Therefore, the proposed rule would not require companies to report unrestricted publicly held shares to Nasdaq on an ongoing basis. As such, Nasdaq believes that the proposed rule change is finely tailored to address the Exchange's concerns, without imposing an unnecessary burden on companies.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.¹³ In particular, the Commission stated:

Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.¹⁴

Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the proposed

¹³ Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-Nasdaq-2011-073 adopting additional listing requirements for companies applying to list after consummation of a "reverse merger" with a shell company).

¹⁴ Id. at 70802.

changes will only apply to securities exhibiting unusual trading characteristics and companies which announce an event that may cause a contraction in the number of unrestricted publicly held shares of a listed security, they will apply equally to all such securities listed on Nasdaq and the Exchange believes that evidence of unusual trading characteristics is a non-discriminatory reason to apply additional criteria to these securities.

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. All companies and securities listed on Nasdaq will be affected in the same manner by these changes, across all market tiers. To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-091 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-2019-091. 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-2019-091 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.¹⁵

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

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5120. Nasdaq Authority in Connection with Unusual Trading Characteristics or Contraction of Unrestricted Publicly Held Shares

A Company's security must have a minimum number of Unrestricted Publicly Held Shares for initial listing and a minimum number of Publicly Held Shares for continued listing. While Nasdaq will not ordinarily consider the number of Unrestricted Publicly Held Shares of a listed Company's security, if Nasdaq observes unusual trading characteristics in the security, or if the Company has announced an event that may cause a contraction in the number of Unrestricted Publicly Held Shares, Nasdaq may request information from the Company regarding the number of Unrestricted Publicly Held Shares. Pursuant to Nasdaq's authority under Rule 4120(a)(5), Nasdaq may also halt trading in the security in connection with such a request.

If information provided by the Company, or otherwise obtained by Nasdaq, indicates that the number of Unrestricted Publicly Held Shares is below the applicable Publicly Held Shares requirement for continued listing of the security, Nasdaq generally will use its authority under Rule 5101 to apply more stringent criteria and request a plan to increase the number of Unrestricted Publicly Held Shares to an amount that is higher than the applicable Publicly Held Shares requirement. As provided in the Rule 5800 Series, such plan must generally be provided within 45 calendar days of the date of the request.

In considering whether there are unusual trading characteristics in a security, Nasdaq may review volume, price movements, spread and the presence or absence of any news. Events that may cause a contraction in the number of Unrestricted Publicly Held Shares include reverse stock splits, tender offers, stock buybacks or entering into contractual agreements such as standstills or lockups.

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5810. Notification of Deficiency by the Listing Qualifications Department

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(a) - (b) No change.

(c) No change.

(1) No change.

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

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (vii) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iv), [and] (vi) and (vii) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance.

(i) all quantitative deficiencies from standards that do not provide a compliance period;

(ii) deficiencies from the standards of Rules 5605 {Board of Directors and Committees} or 5615(a)(4)(C) {Independent Directors/Audit Committee of Limited Partnerships} where the cure period of the Rule is not applicable;

(iii) deficiencies from the standards of Rules 5620(a) {Meetings of Shareholders}, 5620(c) {Quorum}, 5630 {Review of Related Party Transactions}, 5635 {Shareholder Approval}, 5250(c)(3) {Auditor Registration}, 5255(a) {Direct Registration Program}, 5610 {Code of Conduct}, 5615(a)(4)(D) {Partner Meetings of Limited Partnerships}, 5615(a)(4)(E) {Quorum of Limited Partnerships}, 5615(a)(4)(G) {Related Party Transactions of Limited Partnerships}, or 5640 {Voting Rights}; [or]

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

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

(vi) failure to meet a continued listing requirement contained in the Rule 5700 Series[.];
or

(vii) where Nasdaq determines that the number of Unrestricted Publicly Held Shares is below the applicable Publicly Held Shares requirement for continued listing of the security, as described in Rule 5120.

IM-5810-2. No change.

(B) – (G)

(3) No change.

(A) No change.

(i) Global Select Market and Global Market

If a Company listed on The Nasdaq Global Market has not been deemed in compliance prior to the expiration of the 180 day compliance period, it may transfer to The Nasdaq Capital Market, provided that it meets the applicable [m]Market [v]Value of [p]Publicly [h]Held [s]Shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market (except for the bid price requirement) based on the Company's most recent public filings and market information and notifies Nasdaq of its intent to cure this deficiency. Following a transfer to The Nasdaq Capital Market, the Company will be afforded the remainder of the applicable compliance period set forth in Rule 5810(c)(3)(A)(ii), unless it does not appear to Nasdaq that it is possible for the Company to cure the deficiency. The Company may also request a hearing to remain on The Nasdaq Global Market pursuant to the Rule 5800 Series. Any time spent in the hearing process will not extend the length of the remaining applicable compliance periods on The Nasdaq Capital Market afforded by this rule.

(ii) Capital Market

If a Company listed on the Capital Market is not deemed in compliance before the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day of the first compliance period it meets the applicable [m]Market [v]Value of [p]Publicly [h]Held [s]Shares requirement for continued listing and all other applicable standards for initial listing on the Capital Market (except the bid price requirement) based on the Company's most recent public filings and market information and notifies Nasdaq of its intent to cure this deficiency. If a Company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency, the Company will not be eligible for the second grace period. If the Company has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable listing criteria, it shall not be eligible for the additional compliance period under this rule.

(B) – (G) No change.

(4) No change.

(d) No change.

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