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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 019

Amendment No. (req. for Amendments *)

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<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
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposed rule change to Rules 5605, 5615 and 5810 to clarify and modify phase-in schedules for certain corporate governance requirements and clarify applicability of certain cure periods.

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 * Nikolai Last Name * Utochkin

Title * Counsel Listing and Governance

E-mail * Nikolai.Utochkin@Nasdaq.com

Telephone * (301) 978-8029 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 04/22/2024


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 Date: 2024.04.22 12:10:27 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2024-019 19b-4.docx

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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SR-NASDAQ-2024-019 Exhibit 1.docx

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-NASDAQ-2024-019 Exhibit 5.docx

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) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“Nasdaq”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to Rules 5605, 5615 and 5810 to clarify and modify phase-in schedules for certain corporate governance requirements and clarify applicability of certain cure periods.

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 Exchange’s Board of Directors (the “Board”). Nasdaq staff will advise the Board of Directors of Nasdaq of any action taken pursuant to delegated authority. No other action by Nasdaq 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

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 is proposing to clarify and modify the phase-in schedules to the independent director and committee requirement for certain companies. Nasdaq is also proposing to clarify the applicability of certain cure periods.

Initial Public Offerings

Nasdaq is proposing to clarify and modify the phase-in schedules to the independent director and committee requirements for IPOs. Specifically, Rule 5615(b)(1) currently references that a company listing in connection with an IPO is permitted to phase in its independent audit committee requirements in accordance with SEC Rule 10A-3(b)(1)(iv)(A) under the Act, but does not restate the provisions of this rule. Nasdaq proposes to amend Rule 5615(b)(1) by specifically restating the phase-in provisions in the text of the rule and state that a company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the date the company's securities first trade on Nasdaq (the “Listing Date”); (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement.³

Rule 5605(c)(2)(A) requires a company to have a minimum of three members on the audit committee. As a result, companies listed in connection with an IPO which are not required to have a fully independent audit committee until one year from the Listing

³ See 17 CFR 240.10A-3(b)(1)(iv)(A).

Date may appoint non-independent directors to the audit committee in order to satisfy the three-person minimum requirement. Nasdaq proposes to amend Rule 5615(b)(1) to provide that companies listing in conjunction with an IPO may also phase in compliance with the three-person minimum on the following schedule: at least one member by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date. This proposal is consistent with the approach of the NYSE.⁴ Nasdaq notes that in the NYSE Approval Order the Commission indicated that “permitting a company to have only one member on its audit committee by the listing date, at least two members within ninety days of the listing date, and three members within a year of the listing date, affords a reasonable accommodation for [affected] companies.”⁵

Rule 5615(b)(1) currently allows companies listing in connection with an IPO to phase in the requirements for their independent nominations and compensation committees but requires one member to satisfy the requirements at the time of listing. Some companies expressed a concern that this requirement interferes with a common practice to hold a meeting of a board of directors in order to appoint additional independent directors shortly after the Listing Date, but prior to the date IPO closes.⁶ To

⁴ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89) (the “NYSE Approval Order”).

⁵ The NYSE Approval Order at 63811.

⁶ See e.g. NYSE IPO Guide, page 41 at https://www.nyse.com/publicdocs/nyse/listing/nyse_ipo_guide.pdf#process-timeline (“After building a book of demand, the lead bookrunners will agree on the offering price with the company and shareholders, execute the underwriting agreement and allocate the IPO to investors. The following day, the company begins publicly trading on the NYSE or another exchange, rings the opening bell and hosts other key marketing events associated with being a public company. Two business days later, the IPO closes, at which point stock is delivered to investors against payment of the offering price, and various legal opinions are delivered by counsel.”)

accommodate this practice, Nasdaq proposes to amend Rule 5615(b)(1) to allow the companies to comply with the requirement to have one independent director on the compensation and nominations committees by appointing an independent director to such a committee no later than the earlier of the date of the initial public offering closes or five business days from the Listing Date. This proposal is consistent with the approach of the NYSE.⁷

Nasdaq is also proposing to correct a misleading rule reference in Rule 5615(b)(1), which allows a Company not to adopt a nominations committee but instead rely upon a majority of the Independent Directors to discharge responsibilities under Rule 5605(b). The responsibilities of the nominations committee are found in Rule 5605(e), not Rule 5605(b). Accordingly, new Rule 5615(b)(1)(C) allows a majority of the Independent Directors to discharge responsibilities of the nominations committee under Rule 5605(e).

Nasdaq is also proposing to eliminate the reference to Rule 5625 in Rule 5615(b)(1) which states that: “For purposes of ... Rule 5625, a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.” By its terms, Rule 5625 (Notification of Noncompliance) applies to any company listed on Nasdaq, including in conjunction with an IPO, and requires that a “Company must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes

⁷ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.” This notification of noncompliance requirement of Rule 5625 is not affected or modified in any way by the aforementioned reference in Rule 5615(b) because Rule 5625 applies to a Nasdaq-listed company regardless of whether it was listed “in conjunction with an initial public offering” or not. Moreover, Rule 5615(b)(1) does not provide an exemption from Rule 5625 for any company. Accordingly, Nasdaq proposes to eliminate the references to Rule 5625 in Rule 5615(b)(1) to simplify the rules to eliminate potential confusion without any substantive impact.

Companies Emerging from Bankruptcy

Rule 5615(b)(2) allows a company that is emerging from bankruptcy to phase in independent nominations and compensation committees and majority independent boards requirements. Nasdaq proposes to amend Rule 5615(b)(2) to codify its current position that a company emerging from bankruptcy must comply with the audit committee composition requirements set forth in Rule 5605(c)(2)⁸ by the Listing Date unless an exemption is available pursuant to Rule 10A-3. Nasdaq also proposes to make additional clarifications to improve the readability of the rule without changing its substance, including to provide that the applicable phase-in periods will be computed beginning on the Listing Date.

Companies Transferring from National Securities Exchanges

Rule 5615(b)(3) provides that companies transferring from other markets with a substantially similar requirement shall be afforded the balance of any grace period afforded by the other market. Rule 5615(b)(3) further provides that companies

⁸ Rule 5605(c)(2) requires a company to have, an audit committee of at least three members, which must meet certain independence, professional competence and other requirements as specified in the rule.

transferring from other listed markets that do not have a substantially similar requirement shall be afforded one year from the date of listing on Nasdaq.

Nasdaq proposes to clarify that the phase-in period currently contained in Rule 5615(b)(3) is applicable only to companies that transfer securities registered pursuant to Section 12(b) of the Act⁹ from another national securities exchange to Nasdaq and to specify requirements applicable to a company listing securities registered pursuant to Section 12(g) of the Act,¹⁰ as described below.

Companies Listing Securities Previously Registered under Section 12(g)

Nasdaq proposes to modify Rule 5615(b)(3) to provide that a company with securities registered pursuant to Section 12(g) of the Act¹¹ that lists those securities on Nasdaq must satisfy the audit committee requirements set forth in the Rule 5605(c) except for the requirement to have at least three members on the audit committee, as described below, by the Listing Date, unless an exemption is available pursuant to Rule 10A-3 under the Act.

Nasdaq proposes to modify Rule 5615(b)(3) to also provide that a company with securities registered pursuant to Section 12(g) of the Act that lists those securities on Nasdaq will be provided a similar phase-in period as available to companies listing in connection with an IPO, other than the audit committee requirements. Like a company conducting an IPO, these companies would not have been subject to another exchange's corporate governance standards at the time of their listing. Therefore, Nasdaq proposes to allow these companies a similar phase-in period as currently provided to an IPO, other

⁹ 15 U.S.C. 781(b).

¹⁰ 15 U.S.C. 781(g).

¹¹ 15 U.S.C. 781(g).

than the audit committee requirements, and require, on the nominations and compensation committee, one independent director upon listing, a majority of independent directors within 90 days of Listing Date, and a fully independent committee within one year of Listing Date.¹² The company also would have twelve months from its Listing Date to comply with the majority independent board requirement set forth in Rule 5605(b).

Under the revised rule, for a company with securities registered pursuant to Section 12(g) of the Act that lists those securities on Nasdaq, only directors who are independent, as defined in Rule 5605(a)(2), and meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act would be permitted on the audit committee during the transition period (unless an exemption is available under Rule 10A-3 under the Act).¹³ However, a phase-in period would be permitted with respect to the committee size requirement: at least one independent director member is required as of the date of listing, two independent director members within ninety days of the Listing Date, and three independent director members within one year of the Listing Date.¹⁴ These changes adopt the same phase-in schedule for these companies as is in place for a similar

¹² The independent directors serving on the compensation committee would also be required to satisfy the requirements of Rule 10C-1 under the Act.

¹³ Each member of the audit committee must also: (1) not have participated in the preparation of the financial statements of the company or any current subsidiary of the company at any time during the past three years; and (2) be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. See Rule 5605(c)(2)(A).

¹⁴ During the phase-in period a company must comply with the requirement in Rule 5605(c)(2)(A) that every listed company's audit committee – without distinction as to the committee's size – have at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication.

company listing on the New York Stock Exchange (“NYSE”).¹⁵ The revised rule would also specify that a company’s compensation committee must have at least one member at the time of listing and at least two members within one year of listing.¹⁶

Companies Listing in Connection with a Carve-out or Spin-off Transaction

Nasdaq proposes to provide that a company listing in connection with a carve-out or spin-off transaction will have a similar phase-in period as currently available to companies listing in connection with an IPO. Like a company conducting an IPO, these companies would not have been subject to another exchange’s corporate governance standards at the time of their listing. Therefore, Nasdaq proposes to adopt Rule 5615(b)(4)¹⁷ specifying the phase-in provisions and stating that a company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement.

Nasdaq also proposes to allow these companies a similar phase-in period as an IPO and require that a company listing in connection with a carve-out or spin-off transaction shall have twelve months from its Listing Date to comply with the majority independent board requirement set forth in Rule 5605(b), and, on the nominations and

¹⁵ See Section 303A.00 of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

¹⁶ See Securities Exchange Act Release No. 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (Notice of Filing for SR-NASDAQ-2012-109) at footnote 67. See also Securities Exchange Act Release No. 34-68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (approving SR-NASDAQ-2012-109).

¹⁷ Nasdaq proposes to renumber current Rule 5615(b)(4) regarding phase-in schedule for a company ceasing to be a Smaller Reporting Company to Rule 5615(b)(5).

compensation committee, one independent director by the date the transaction closes, a majority of independent directors within 90 days of the Listing Date, and a fully independent committee within one year of the Listing Date.¹⁸ Nasdaq also proposes to provide that, regarding the requirement to have two members on the compensation committee, a company's compensation committee must have at least one member by the date the transaction closes and at least two members within one year of the Listing Date.¹⁹

Nasdaq's current policy is to treat companies listing in connection with a carve-out or spin-off transaction as IPOs for purposes of phase-in periods. Thus, Nasdaq allows such companies to phase in the requirements for their independent nominations and compensation committees, but require one member to satisfy the requirements at the time of listing. Some companies expressed a concern that this requirement interferes with a common practice to hold a meeting of a board of directors in order to appoint additional independent directors shortly after the Listing Date, but prior to the date a carve-out or spin-off transaction closes. To accommodate this practice, Nasdaq proposes to allow the companies to comply with the requirement to have one independent director on the compensation and nominations committees by appointing an independent director to such

¹⁸ The independent directors serving on the compensation committee would also be required to satisfy the requirements of SEC Rule 10C-1 under the Act.

¹⁹ See Securities Exchange Act Release No. 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (Notice of Filing for SR-NASDAQ-2012-109) at footnote 67. See also Securities Exchange Act Release No. 34-68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (approving SR-NASDAQ-2012-109).

a committee no later than the date such carve-out or spin-off transaction closes. This proposal is consistent with the approach of the NYSE.²⁰

Rule 5605(c)(2)(A) requires a company to have a minimum of three members on the audit committee. As a result, companies listed in connection with a carve-out or spin-off transaction which are not required to have a fully independent audit committee until one year from the Listing Date may appoint non-independent directors to the audit committee in order to satisfy the three-person minimum requirement. Nasdaq proposes to provide that companies listing in connection with a carve-out or spin-off transaction may also phase in compliance with the three-person minimum on the following schedule: at least one member by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date.²¹ This proposal is consistent with the approach of the NYSE.²²

Companies Ceasing to be to be a Smaller Reporting Company

Nasdaq proposes to amend the title of Rule 5615(b)(4), renumber it to Rule 5615(b)(5) and add an introductory sentence to improve the readability of the rule without changing its substance.

Companies Ceasing to Qualify as a Foreign Private Issuer

Pursuant to Rule 5615(a)(3), a Foreign Private Issuer, as defined under SEC Rule 3b-4 under the Exchange Act of 1934 (the “Act”), may follow its home country practice

²⁰ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

²¹ See footnote 15 above.

²² See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

in lieu of the requirements of the Rule 5600 Series, provided, however, that such a Company is required to comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), the Diverse Board Representation Rule (Rule 5605(f)), the Board Diversity Disclosure Rule (Rule 5606), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii).

A Foreign Private Issuer that ceases to qualify as such under SEC rules becomes subject to all relevant corporate governance requirements of Rule 5605. Depending on the type of issuer, these may include the requirement to have independent nominations and compensation committees and a majority of independent directors. In addition, the company's directors may be required to meet the definition of independence under Rule 5605(a). Rule 240.3b-4 under the Act, a company must test its status as a Foreign Private Issuer on an annual basis at the end of its most recently completed second fiscal quarter (for purposes of this subsection, the " Foreign Private Issuer Determination Date").

Nasdaq proposes to modify its rules to take into consideration Rule 3b-4 under the Act. Under this rule, a company's determination that it fails to qualify as a Foreign Private Issuer governs its eligibility to use the forms and rules designated for Foreign Private Issuers beginning on the first day of the fiscal year following the determination date, effectively providing the company with a six-month grace period. Similarly, Nasdaq proposes to require a company that ceases to be a Foreign Private Issuer to be in compliance with the domestic company requirements within the same timeframe of six months, except for the requirement set forth in Rule 5605(c)(2)(A)(ii).

Specifically, the company shall have six months from the Foreign Private Issuer Determination Date to comply with the majority independent board requirement set forth in Rule 5605(b); the independent compensation and nominations committee requirements set forth in Rules 5605(d)(2) and (e)(1)(B); and audit committee requirements set forth in Rule 5605(c)(2), including the three-person audit committee requirement. During the phase-in period, a company shall have an audit committee that satisfies Rule 5605(c)(3) and members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). This proposal is consistent with the approach of the NYSE.²³

Preamble to Phase-In Rules

Nasdaq proposes to add an introductory paragraph to Rule 5615(b) to improve the readability of the rules without changing its substance. Nasdaq also proposes to codify its current policy that a company that demonstrates compliance with a requirement during a phase-in period but subsequently falls out of compliance with that requirement before the end of the phase-in period, would not be considered deficient with the requirement until the end of the phase-in period. This treatment is consistent with treatment of a company that relied on a phase-in period throughout its duration.

Unavailability of Grace Periods Following the Expiration of Phase-in periods

Nasdaq proposes to amend Rules 5605(b)(1), 5605(c)(4), 5605(d)(4), and 5810(c)(3)(E) to codify its current position that a company relying on any phase-in period in Rule 5615(b) is not eligible for a cure period provided by Rule 5810(c)(3)(E),

²³ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

immediately following the expiration of the phase-in period, unless the company complied with the audit committee composition requirement in Rule 5605(c)(2)(A), the compensation committee composition requirement in Rule 5605(d)(2)(A), or the majority independent board requirement in Rule 5605(b)(1), as applicable, during such phase-in period but fell out of compliance with such requirement after having complied with the requirement before the end of the phase-in period. Nasdaq also proposes to codify its current policy that, if a company demonstrated compliance with the applicable requirement during the phase-in period, but subsequently fell out of compliance before the end of the phase-in period, for purposes of computing the applicable cure period, the event that caused the failure to comply is the event causing the company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period. In these circumstances, as described above, the company would not be considered deficient with the requirement until the end of the phase-in period.

In a situation where a company lists on Nasdaq or becomes subject to the requirements after it lists, relies on the phase-in period for one of the independent committees or the independent board requirements, and allows the phase-in period to run out without demonstrating compliance with the rule, Nasdaq believes it is not appropriate for the company to rely on the grace period immediately thereafter thus effectively extending the phase-in period. In such a case, Nasdaq will issue a Staff Delisting Determination letter to delist the Company's securities.

Nasdaq also proposes to amend Rule 5810(c)(3)(E) to describe procedures for administering a cure period in the event a company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one

vacancy. Specifically, as amended, Rule 5810(c)(3)(E) will provide that if a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance.

Renumbering of Certain Rules and Other Clarifications

Nasdaq proposes to amend Rule 5615(c)(3) to clarify that the applicable phase-in periods for companies ceasing to be a Controlled Company will be computed beginning on the date the company ceases to be a Controlled Company.

In light of the proposed clarifications and modifications described above and to promote a coherent structure of the Listing Rules, Nasdaq proposes to renumber Rules 5615(c)(1), 5615(c)(2), and 5615(c)(3) as 5615(a)(6)(A), 5615(a)(6)(B), and 5615(b)(7). Nasdaq also proposes to amend the title of the proposed Rule 5615(b)(7) to improve the readability of the rule without changing its substance and update cross references to account for renumbering of the rules.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of

Section 6 of the Act,²⁴ in general and with Sections 6(b)(5) of the Act,²⁵ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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 transactions 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. The Exchange further believes that the proposal is consistent with Rule 10A-3 under the Act concerning audit committee requirements for listed companies.

In approving substantially similar amendments by the NYSE, except for the clarification of the unavailability of a grace period following the expiration of a phase-in period, as described above, the Commission indicated that it believes that:

the proposed amendments relating to the phase-in period for specified companies newly listing on the [NYSE] (or newly becoming subject to certain corporate governance listing standards as a result of change in status) are reasonable. The proposed rules would permit a phase-in schedule similar to that allowed under the current rules for a company listing in conjunction with an IPO, and would extend such a phase-in schedule appropriately to companies listing in conjunction with spin-off and carve-out transactions, while offering an acceptable minimal tolerance for the special circumstances of each of these types of new listings with respect to the point in time that the standards would begin to apply. The

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78f(b)(5).

Commission notes that the [NYSE's] proposal does not make adjustments for compliance with any requirements of Rule 10A-3 under the Act.

...

The proposed rule change also would allow a company listing in conjunction with an IPO, a spin-off, or a carve-out a phase-in period with respect to the NYSE requirement that the audit committee of a listed company have at least three members. In the Commission's view, permitting a company to have only one member on its audit committee by the listing date, at least two members within ninety days of the listing date, and three members within a year of the listing date, affords a reasonable accommodation for such companies.²⁶

The proposed rule change is also consistent with the provisions of Section 6 of the Act,²⁷ in general and with Sections 6(b)(5) of the Act, in that it will clarify Nasdaq's current position as to the applicability of the phase-in periods for independent board and committee requirements for companies listing in connection with the IPO and codify treatment of a carve-out or spin-off transaction in this regard. The amended rules will also provide for treatment of companies that ceased to qualify as a foreign private issuer, the eventuality on which the rules are currently silent. This greater clarity and uniformity of treatment will promote just and equitable principles of trade. The proposed changes will enhance investor protection by making the impacted rules more transparent and easier to understand. In addition, Nasdaq will continue to protect investors and the public interest by maintaining the current requirements for the audit, nominations, and compensation committees, as well as the requirement for a majority independent board.

²⁶ See the NYSE Approval Order at 63,810.

²⁷ 15 U.S.C. 78f.

The proposed rule change is also designed to provide companies that are newly listing on Nasdaq and becoming subject to certain corporate governance listing standards as a result of this change in status a reasonable transition period, similar to that allowed under the current rules for a company listing in conjunction with an IPO and to that allowed by the NYSE. In this regard, the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change makes no adjustments for compliance with any requirements of SEC Rules 10A-3 or 10C-1 under the Act, nor does the proposed rule change grant an exemption or phase-in period with respect to the requirement in Rule 5605(c)(2)(A) that every listed company's audit committee – without distinction as to the committee's size – have at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication. The revised rules will also require that, for a company with securities registered pursuant to Section 12(g) of the Act that lists those securities on Nasdaq, only independent directors, as defined in Rule 5605(a)(2), be permitted on the audit committee during the transition period. In addition, SEC Rule 10A-3 under the Act requires at least one member of a listed company's audit committee to be independent as of the Listing Date, even when the company is allowed a phase-in period with respect to the other audit committee members.²⁸ As a result, Nasdaq believes that the proposed rule change is

²⁸ See 17 CFR 240.10A-3(b)(1)(iv) (providing an exemption for an issuer that was not required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act).

designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

To improve the readability of the rules Nasdaq proposes to renumber certain rules and make other clarifying and conforming changes without changing the substance of such rules. Nasdaq believes that the improved readability of the rules will perfect the mechanism of a free and open market by making the rules easier to understand and apply.

Finally, Nasdaq proposes to amend Listing Rules 5605(b)(1), 5605(c)(4), 5605(d)(4), and 5810(c)(3)(E) to codify its current position that a company relying on any phase-in period in Rule 5615(b) is not eligible for a cure period provided by Rule 5810(c)(3)(E), immediately following the expiration of the phase-in period, unless the Company demonstrated compliance with the applicable requirement during such phase-in period. In a situation where a company lists on Nasdaq, relies on the phase-in period for one of the independent committees or the independent board requirements, and allows the phase-in period to run out without gaining compliance with the rule, Nasdaq believes it is not appropriate for the Company to rely on the grace period immediately thereafter thus effectively extending the phase-in period. Nasdaq believes that this rule change will protect investors and the public interest by limiting the maximum time a company may remain listed without fully complying with independent committees or the independent board requirements.

Finally, Nasdaq believes that codifying Nasdaq's position regarding the computation of the applicable phase-in periods, as well as other clarifying changes will perfect the mechanism of a free and open market by making the rules easier to understand and apply.

4. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will have little or no impact on competition as it merely eliminates potential confusion, clarifies Nasdaq current position as to the applicability of its rules, and harmonizes Nasdaq's rules regarding the applicability of the phase-in periods for audit, nominations, and compensation committees, as well as the requirement for a majority independent board with the requirements of the NYSE.²⁹ Similarly, Nasdaq believes that the proposed amendments will have little or no impact on the intra market competition.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

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

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

Not applicable.

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

The proposed rule change, except for the clarification of the unavailability of a grace period following the expiration of a phase-in period (and certain other non-

²⁹ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

substantive changes), as described above, is based on Section 303A.00 of the NYSE Listed Company Manual.³⁰

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act
Not applicable.
10. Advanced 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.

³⁰ See Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2024-019)

April __, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Rules 5605, 5615 and 5810 to Clarify and Modify Phase-In Schedules for Certain Corporate Governance Requirements and Clarify Applicability of Certain Cure Periods

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 April 22, 2024, 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 change Rules 5605, 5615 and 5810 to clarify and modify phase-in schedules for certain corporate governance requirements and clarify applicability of certain cure periods.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 is proposing to clarify and modify the phase-in schedules to the independent director and committee requirement for certain companies. Nasdaq is also proposing to clarify the applicability of certain cure periods.

Initial Public Offerings

In defining what constitutes an initial public offering (“IPO”), Nasdaq’s rules currently maintain a dichotomy between Rules 5605(c)(2)(A)(ii) and 5625 on the one hand and all other Rule 5600 Series on the other. Nasdaq proposes to simplify this dichotomy by eliminating the reference to Rule 5625. Whereas a different treatment of Rule 5605(c)(2)(A)(ii) relates to its specific reference to Rule 10A-3(b)(1)(iv)(A) under the Act, the different treatment of Rule 5625 is not warranted. Rule 5625 requires that a “Company must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.” This requirement applies to all listed companies and does not depend in any way on the company’s status of an IPO. Accordingly,

Nasdaq proposes to eliminate the references to Rule 5625 in the preamble to the IPO phase-in schedules.

Rule 5615(b)(1) currently implies that a company listing in connection with an IPO is permitted to phase in its independent audit committee requirements in accordance with SEC Rule 10A-3(b)(1)(iv)(A) under the Act, but does not restate the provisions of this rule. Nasdaq proposes to clarify the phase-in requirements by specifically restating such provisions in the text of the rule and state that a company shall be permitted to phase in its compliance with the audit committee requirements set forth in the Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the listing date; (2) a majority of members must satisfy the requirement within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirement within one year of the effective date of its registration statement.

Rule 5605(c)(2)(A) requires a company to have a minimum of three members on the audit committee. As a result, companies listed in connection with an IPO which are not required to have a fully independent audit committee until one year from the listing date may be forced to appoint non-independent directors to the audit committee in order to satisfy the three-person minimum requirement. Nasdaq proposes to provide that companies listing in conjunction with an IPO may also phase in compliance with the three-person minimum on the following schedule: at least one member by the listing date, at least two members within 90 days of the listing date and at least three members within

one year of the listing date. This proposal is consistent with the approach of other exchanges.³

Nasdaq's rules currently allow companies listing in connection with an IPO to phase in the requirements for their independent nominations and compensation committees, but require one member to satisfy the requirements at the time of listing. Some companies expressed a concern that this requirement interferes with a common practice to hold a meeting of a board of directors in order to appoint additional independent directors shortly after the listing date, but prior to the date IPO closes. To accommodate this practice, Nasdaq proposes to allow the companies to comply with the requirement to have one independent director on the compensation and nominations committees by appointing an independent director to such a committee no later than the earlier of the date of the initial public offering closes or five business days from the listing date. This proposal is consistent with the approach of other exchanges.⁴

Nasdaq is also proposing to correct a misleading rule reference in the current Rule 5615(b)(1), which allows a Company not to adopt a nominations committee but instead rely upon a majority of the Independent Directors to discharge responsibilities under Rule 5605(b). The responsibilities of the nominations committee are found in Rule 5605(e), not Rule 5605(b). Accordingly, new Rule 5615(b)(1)(C) allows a majority of the Independent Directors to discharge responsibilities of the nominations committee under Rule 5605(e).

³ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

⁴ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

Companies Emerging from Bankruptcy

Rule 5605(b)(2) allows a company that is emerging from bankruptcy to phase in independent nominations and compensation committees and majority independent boards requirements. Nasdaq proposes to codify its current position that a Company emerging from bankruptcy must comply with the audit committee requirements set forth in Rule 5605(c)(2) by the listing date unless an exemption is available pursuant to Rule 10A-3. Nasdaq also proposes to make additional clarifications to improve the readability of the rule without changing its substance.

Companies Transferring from National Securities Exchanges

Nasdaq proposes to clarify that the phase-in period currently contained in Rule 5615(b)(3) is applicable only to companies that transfer securities registered pursuant to Section 12(b) of the Act⁵ from another national securities exchange to Nasdaq.⁶

Companies Listing Securities Previously Registered under Section 12(g)

Nasdaq proposes to modify Rule 5615(b)(3) to provide that a company with securities registered pursuant to Section 12(g) of the Act⁷ that transfers those securities to Nasdaq will have a similar phase-in period, other than the audit committee composition requirement, as available to companies listing in connection with an IPO. Like a company conducting an IPO, these companies would not have been subject to another exchange's corporate governance standards at the time of their listing. Therefore, Nasdaq

⁵ 15 U.S.C. 78I(b).

⁶ This existing phase in period allows a company one year from the date of transfer to comply with a requirement to the extent the prior listing market did not have a substantially similar requirement or the balance of any transition period that would have been available to the company on the other market if that market has a substantially similar requirement.

⁷ 15 U.S.C. 78I(g).

proposes to allow these companies a similar phase-in period as an IPO, other than the audit committee composition requirement, and require, on the nominations and compensation committee, one independent director upon listing, a majority of independent directors within 90 days of listing, and a fully independent committee within one year of listing.⁸ The company also would have twelve months from its listing date to comply with the majority independent board requirement set forth in Rule 5605(b).

Under the revised rule, only independent directors, as defined in Rule 5605(a)(2), would be permitted on the audit committee during the transition period (unless an exemption is available under Rule 10A-3 under the Act), but a phase-in period would be permitted with respect to the committee size requirement: at least one independent director member is required as of the date of listing, two independent director members within ninety days of the listing date, and three independent director members within one year of the listing date.⁹ These changes adopt the same phase-in schedule for these companies as is in place for a similar company listing on the New York Stock Exchange (“NYSE”).¹⁰ The revised rule would also specify that a company’s compensation committee must have at least one member at the time of listing and at least two members within one year of listing.¹¹

⁸ The independent directors serving on the compensation committee would also be required to satisfy the requirements of Rule 10C-1 under the Act.

⁹ During the phase-in period a company must comply with the requirement in Rule 5605(c)(2)(A) that every listed company’s audit committee – without distinction as to the committee’s size – have at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication.

¹⁰ See Section 303A.00 of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

¹¹ See Securities Exchange Act Release No. 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (Notice of Filing for SR-NASDAQ-2012-109) at footnote 67. See also Securities Exchange

Companies Listing in Connection with a Carve-out or Spin-off Transaction

Nasdaq proposes to provide that a company listing in connection with a carve-out or spin-off transaction will have a similar phase-in period as available to companies listing in connection with an IPO. Like a company conducting an IPO, these companies would not have been subject to another exchange's corporate governance standards at the time of their listing. Therefore, Nasdaq proposes to allow these companies a similar phase-in period as an IPO and require, on the nominations and compensation committee, one independent director upon listing, a majority of independent directors within 90 days of listing, and a fully independent committee within one year of listing.¹² Nasdaq also proposes to provide that a company's compensation committee must have at least one member at the time of listing and at least two members within one year of listing.¹³ The company also would have twelve months from its listing date to comply with the majority independent board requirement set forth in Rule 5605(b).

Nasdaq's current policy is to treat companies listing in connection with a carve-out or spin-off transaction as IPOs for purposes of phase-in periods. Thus, Nasdaq allows such companies to phase in the requirements for their independent nominations and compensation committees, but require one member to satisfy the requirements at the time of listing. Some companies expressed a concern that this requirement interferes with a

Act Release No. 34-68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (approving SR-NASDAQ-2012-109).

¹² The independent directors serving on the compensation committee would also be required to satisfy the requirements of SEC Rule 10C-1 under the Act.

¹³ See Securities Exchange Act Release No. 68013 (October 9, 2012), 77 FR 62563 (October 15, 2012) (Notice of Filing for SR-NASDAQ-2012-109) at footnote 67. See also Securities Exchange Act Release No. 34-68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (approving SR-NASDAQ-2012-109).

common practice to hold a meeting of a board of directors in order to appoint additional independent directors shortly after the listing date, but prior to the date a carve-out or spin-off transaction closes. To accommodate this practice, Nasdaq proposes to allow the companies to comply with the requirement to have one independent director on the compensation and nominations committees by appointing an independent director to such a committee no later than the date such carve-out or spin-off transaction closes. This proposal is consistent with the approach of other exchanges.¹⁴

Rule 5605(c)(2)(A) requires a company to have a minimum of three members on the audit committee. As a result, companies listed in connection with a carve-out or spin-off transaction which are not required to have a fully independent audit committee until one year from the listing date may be forced to appoint non-independent directors to the audit committee in order to satisfy the three-person minimum requirement. Nasdaq proposes to provide that companies listing in connection with a carve-out or spin-off transaction may also phase in compliance with the three-person minimum on the following schedule: at least one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date. This proposal is consistent with the approach of other exchanges.¹⁵

Companies Ceasing to be to be a Smaller Reporting Company

Nasdaq proposes to amend the title of this rule and add an introductory sentence to improve the readability of the rule without changing its substance.

¹⁴ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

¹⁵ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

Companies Ceasing to Qualify as a Foreign Private Issuer

A Foreign Private Issuer, as defined under SEC Rule 3b-4 under the Exchange Act of 1934 (the “Act”), may follow its home country practice in lieu of the requirements of the Rule 5600 Series, provided, however, that such a Company is required to comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), the Diverse Board Representation Rule (Rule 5605(f)), the Board Diversity Disclosure Rule (Rule 5606), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii).

A Foreign Private Issuer that ceases to qualify as such under SEC rules becomes subject to all relevant corporate governance requirements of Rule 5605. Depending on the type of issuer, these may include the requirement to have independent nominations and compensation committees and a majority of independent directors. In addition, the company’s directors may be required to meet the definition of independence under Rule 5605(a). Under SEC Rule 240.3b-4, a company must test its status as a Foreign Private Issuer on an annual basis at the end of its most recently completed second fiscal quarter (for purposes of this subsection, the " Foreign Private Issuer Determination Date").

Nasdaq proposes to modify its rules to take into consideration SEC Rule 3b-4 of the Act. Under this rule, a company’s determination that it fails to qualify as a Foreign Private Issuer governs its eligibility to use the forms and rules designated for Foreign Private Issuers beginning on the first day of the fiscal year following the determination date, effectively providing the company with a six-month grace period. Similarly, Nasdaq proposes to require a company that ceases to be a Foreign Private Issuer to be in

compliance with the domestic company requirements within the same timeframe of six months.

Specifically, the company shall have six months from the Foreign Private Issuer Determination Date to comply with the majority independent board requirement set forth in Rule 5605(b); the independent compensation and nominations committee requirements set forth in Rules 5605(d)(2) and (e)(1)(B); and audit committee requirements set forth in the Rule 5605(c)(2), including the three-person audit committee requirement. During the phase-in period, a company shall have an audit committee that satisfies Rule 5605(c)(3) and members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). This proposal is consistent with the approach of other exchanges.¹⁶

Preamble to Phase-In Rules

Nasdaq proposes to add an introductory paragraph to the phase-in section of the rules to improve the readability of the rules without changing its substance. Nasdaq also proposes to codify its current policy that a company that demonstrates compliance with a requirement during a phase-in period but subsequently falls out of compliance with that requirement before the end of the phase-in period, would not be considered deficient with

¹⁶ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

the requirement until the end of the phase-in period. This treatment is consistent with treatment of a company that relied on a phase-in period throughout its duration.

Unavailability of Grace Periods Following the Expiration of Phase-in periods

Nasdaq proposes to amend Listing Rules 5605(b)(1), 5605(c)(4), 5605(d)(4), and 5810(c)(3)(E) to codify its current position that a company relying on any phase-in period in Rule 5615(b) is not eligible for a cure period provided by Rule 5810(c)(3)(E), immediately following the expiration of the phase-in period, unless the company demonstrated compliance with the audit committee composition requirements in Rule 5605(c)(2)(A), the compensation committee composition requirements in Rule 5605(d)(2)(A), or the majority independent board requirement in Rule 5605(b)(1), as applicable, during such phase-in period but fell out of compliance with such requirement after having complied with the requirement before the end of the phase-in period. Nasdaq also proposes to codify its current policy that, if a company demonstrated compliance with the applicable requirement during the phase-in period, but subsequently fell out of compliance before the end of the phase-in period, for purposes of computing the applicable cure period, the event that caused the failure to comply is the event causing the company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period. In these circumstances, as described above, the company would not be considered deficient with the requirement until the end of the phase-in period.

In a situation where a company lists on Nasdaq or becomes subject to the requirements after it lists, relies on the phase-in period for one of the independent committees or the independent board requirements, and allows the phase-in period to run

out without demonstrating compliance with the rule, Nasdaq believes it is not appropriate for the company to rely on the grace period immediately thereafter thus effectively extending the phase-in period. In such a case, Nasdaq will issue a Staff Delisting Determination letter to delist the Company's securities.

Nasdaq also proposes to amend Rule 5810(c)(3)(E) to describe procedures for administering a cure period in the event a company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy.

Renumbering of Certain Rules

In light of the proposed clarifications and modifications described above and to promote a coherent structure of the Listing Rules, Nasdaq proposes to renumber Rules 5615(c)(1), 5615(c)(2), and 5615(c)(3) as 5615(a)(6)(A), 5615(a)(6)(B), and 5615(b)(7). Nasdaq also proposes to amend the title of the proposed Rule 5615(b)(7) to improve the readability of the rule without changing its substance and update cross references to account for renumbering of the rules.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁷ in general and with Sections 6(b)(5) of the Act,¹⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

facilitating transactions 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. The proposed rule change is consistent with these provisions in that it will clarify Nasdaq's current position as to the applicability of the phase-in periods for independent board and committee requirements for companies listing in connection with the IPO and codify treatment of a carve-out or spin-off transaction in this regard. The amended rules will also provide for treatment of companies that ceased to qualify as a foreign private issuer, the eventuality on which the rules are currently silent. This greater clarity and uniformity of treatment will promote just and equitable principles of trade. The proposed changes will enhance investor protection by making the impacted rules more transparent and easier to understand. In addition, Nasdaq will continue to protect investors and the public interest by maintaining the current requirements for the audit, nominations, and compensation committees, as well as the requirement for a majority independent board. The proposed rule change is also designed to provide companies that are newly listing on Nasdaq and becoming subject to certain corporate governance listing standards as a result of this change in status a reasonable transition period, similar to that allowed under the current rules for a company listing in conjunction with an IPO and to that allowed by the NYSE. In this regard, the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change makes no adjustments for compliance with any requirements of SEC Rules 10A-3 or 10C-1 under the Act, nor does the proposed rule change grant an exemption or phase-in period with respect to the requirement in Rule

5605(c)(2)(A) that every listed company's audit committee – without distinction as to the committee's size – have at least one member who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication. The revised rules will also require that only independent directors, as defined in Rule 5605(a)(2), be permitted on the audit committee during the transition period. In addition, SEC Rule 10A-3 under the Act requires at least one member of a listed company's audit committee to be independent as of the listing date, even when the company is allowed a phase-in period with respect to the other audit committee members.¹⁹ As a result, Nasdaq believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

To improve the readability of the rules Nasdaq proposes to renumber certain rules and make other clarifying and conforming changes without changing the substance of such rules. Nasdaq believes that the improved readability of the rules will perfect the mechanism of a free and open market by making the rules easier to understand and apply.

Finally, Nasdaq proposes to amend Listing Rules 5605(b)(1), 5605(c)(4), 5605(d)(4), and 5810(c)(3)(E) to codify its current position that a company relying on any phase-in period in Rule 5615(b) is not eligible for a cure period provided by Rule 5810(c)(3)(E), immediately following the expiration of the phase-in period, unless the Company demonstrated compliance with the applicable requirement during such phase-in

¹⁹ See 17 CFR 240.10A-3(b)(1)(iv) (providing an exemption for an issuer that was not required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act).

period. In a situation where a company lists on Nasdaq, relies on the phase-in period for one of the independent committees or the independent board requirements, and allows the phase-in period to run out without gaining compliance with the rule, Nasdaq believes it is not appropriate for the Company to rely on the grace period immediately thereafter thus effectively extending the phase-in period. Nasdaq believes that this rule change will protect investors and the public interest by limiting the maximum time a company may remain listed without fully complying with independent committees or the independent board requirements.

Finally, Nasdaq believes that codifying Nasdaq's position regarding the computation of the applicable phase-in periods, as well as other clarifying changes will perfect the mechanism of a free and open market by making the rules easier to understand and apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will have little or no impact on competition as it merely eliminates potential confusion, clarifies Nasdaq current position as to the applicability of its rules, and harmonizes Nasdaq's rules regarding the applicability of the phase-in periods for audit, nominations, and compensation committees, as well as the requirement for a majority independent board with the requirements of other exchanges.²⁰

²⁰ See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-019 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-2024-019. This file number should be included on the subject line if email 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-019 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

5605. Board of Directors and Committees

(a) No change

IM-5605. Definition of Independence - Rule 5605(a)(2)

No change.

(b) Independent Directors**(1) Majority Independent Board**

A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2). The Company, other than a Foreign Private Issuer, must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).

(A) Cure Period for Majority Independent Board

If a Company fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, except as provided in paragraph (B) below, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

(B) Prior Reliance on a Phase-in Period

A Company is not eligible for the cure period provided for in paragraph (A) above, immediately following the expiration of a phase-in period under Rule 5615(b) upon which the Company was relying, unless:

(i) the Company complied with the majority independent board requirement during the phase-in period; and

(ii) the Company fell out of compliance with the majority independent board requirement after having complied with the requirement before the end of the phase-in period.

In these circumstances, as provided in Rule 5615(b), the Company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the Company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period.

IM-5605-1. Majority Independent Board

No change.

(2) No change.

IM-5605-2. Executive Sessions of Independent Directors

No change.

(c) Audit Committee Requirements

(1) - (3) No change.

IM-5605-5. The Audit Committee Responsibilities and Authority

No change.

(4) Cure Periods for Audit Committee

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, except as provided in paragraph (C) below, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, except as provided in paragraph (C) below, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

(C) A Company is not eligible for the cure periods provided for under Rule 5605(c)(4)(A) or (B) immediately following the expiration of a phase-in period under Rule 5615(b) upon which the Company was relying, unless:

(i) the Company complied with the audit committee composition requirement during the phase-in period; and

(ii) the Company fell out of compliance with the audit committee composition requirement after having complied with the requirement before the end of the phase-in period.

In these circumstances, as provided in Rule 5615(b), the Company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the Company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period.

(5) No change.

(d) Compensation Committee Requirements

(1) – (3) No change.

(4) Cure Period for Compensation Committee

(A) If a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, except as provided in paragraph (B) below, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this

provision shall provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

(B) A Company is not eligible for the cure period provided for in paragraph (A) above, immediately following the expiration of a phase-in period under Rule 5615(b) upon which the Company was relying, unless:

(i) the Company complied with the compensation committee composition requirement during the phase-in period; and

(ii) the Company fell out of compliance with the majority independent board requirement after having complied with the requirement before the end of the phase-in period.

In these circumstances, as provided in Rule 5615(b), the Company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the Company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period.

(5) No change.

* * * * *

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, including Controlled Companies, and sets forth the phase-in schedules for Companies listing in connection with initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and national securities exchanges, Companies listing in connection with a spin-off transaction, and Companies ceasing to be Smaller Reporting Companies, Foreign Private Issuers, or Controlled Companies. [This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.]

(a) No change.

(1) - (6) No change.

(7) Controlled Companies

(A) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

(B) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rules 5605(b), (d) and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors. A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(b) Phase-In Schedules

As set forth in this Rule 5615(b), certain Companies initially listing on Nasdaq, or undergoing changes in their reporting requirements, are eligible for phase-in periods before they are required to fully comply with provisions of the majority independent board requirement of Rule 5605(b), the audit committee requirements for Rule 5605(c)(2), and the independent nominations and compensation committee requirements of Rules 5605(d)(2) and 5605(e)(1)(B). This section describes the applicable phase-in periods. If a Company demonstrates compliance with a requirement during a phase-in period but subsequently falls out of compliance before the end of the phase-in period, the Company will not be considered deficient with the requirement until the end of the phase-in period.

(1) A Company Listing in Connection with Initial Public Offerings

A Company listing on Nasdaq in connection with its initial public offering shall be permitted to phase in its compliance as provided in this Rule 5615(b)(1). Except as set forth below related to the audit committee requirements, for purposes of the Rule 5600 Series a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act.

(A) A Company shall have twelve months from the date the Company's securities first trade on Nasdaq (the "Listing Date") to comply with the majority independent board requirement set forth in Rule 5605(b).

(B) A Company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration

statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement. Regarding the requirement to have at least three members on the audit committee, the Company must have at least one member on its audit committee by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date.

Pursuant to Rule 10A-3(b)(1)(iii) management investment companies registered under the Investment Company Act of 1940 are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act and therefore cannot rely on the phase-in periods in this Rule 5615(b).

For purposes of Rule 5605(c)(2)(A)(ii), which requires each member of the audit committee to meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(C) A Company [listing in connection with its initial public offering] shall be permitted to phase in its compliance with the independent compensation and nominations committee requirements set forth in Rules 5605(d)(2) and (e)(1)(B) [on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act. Accordingly, a Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the committee composition requirements set forth in Rule 5605(d)(2) and (e)(1)(B)] as follows: (1) one member must satisfy the requirements [at the time of listing] by the earlier of the date the initial public offering closes or five business days from the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the [1]Listing Date; and (3) all members must satisfy the requirements within one year of the [1]Listing Date. Regarding the requirement to have a two-member compensation committee, the Company must have at least one member on its compensation committee by the Listing Date and at least two members within one year of the Listing Date. A Company may choose not to adopt a nominations committee and may instead rely upon a majority of the Independent Directors to discharge responsibilities under Rule 5605(e).

[Furthermore, a Company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in Rule 5605(b). It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act. Companies may choose not to adopt a nomination committee and may instead rely upon a majority of the Independent

Directors to discharge responsibilities under Rule 5605(b). For purposes of the Rule 5600 Series other than Rules 5605(c)(2)(A)(ii) and 5625, a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of Rule 5605(c)(2)(A)(ii) and Rule 5625, a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.]

(2) [Companies] A Company Emerging from Bankruptcy

A Company[ies] that [are] is emerging from bankruptcy shall be permitted to phase in the majority independent board and independent nominations and compensation committees requirements[and majority independent boards] on the same schedule as described in paragraphs (b)(1)(A) and (C) for Companies listing in conjunction with their initial public offering, except that the applicable phase-in periods will be computed beginning on the Listing Date. A Company emerging from bankruptcy must comply with the audit committee requirements set forth in Rule 5605(c)(2) by the Listing Date unless an exemption is available pursuant to Rule 10A-3 under the Act.

(3) A Company Transfer[s]ring from a National Securities Exchange or other Market[s]

(A) [Companies transferring from other markets] A Company that transfers securities registered pursuant to Section 12(b) of the Act from another national securities exchange with a substantially similar requirements to those in Rule 5605 shall be afforded the balance of any grace period afforded by the other [market] exchange. [Companies transferring from other listed markets that do] A Company transferring securities registered pursuant to Section 12(b) of the Act from another national securities exchange that does not have [a] substantially similar requirements to those in Rule 5605 shall be afforded one year from the date of listing on Nasdaq to comply with such requirements. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(B) A Company whose securities were registered pursuant to Section 12(g) of the Act immediately prior to listing on Nasdaq shall be permitted the following phase-in periods:

(i) The Company shall have twelve months from its Listing Date to comply with the majority independent board requirement set forth in Rule 5605(b);

(ii) The Company must satisfy the audit committee requirements set forth in Rule 5605(c) by the Listing Date, unless an exemption is available pursuant to Rule 10A-3 under the Act. However, with respect only to the requirement to have at least three members on the audit committee, as set forth in Rule 5605(c)(2)(A), the Company must have at least one member on its audit committee by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date; and

(iii) The Company must satisfy the independent compensation and nominations committee composition requirements set forth in Rules 5605(d)(2) and (e)(1)(B) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the Listing Date; and (3) all members must satisfy the requirements within one year of the Listing Date. Regarding the requirement to have two members on the compensation committee set forth in Rule 5605(d)(2)(A), the Company must have at least one member on its compensation committee by the Listing Date and at least two members within one year of the Listing Date.

(4) A Company Listing in Connection with a Carve-out or Spin-off Transaction

(A) A Company listing in connection with a carve-out or spin-off transaction shall have twelve months from its Listing Date to comply with the majority independent board requirement set forth in Rule 5605(b);

(B) The Company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the Listing Date; (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement. Regarding the requirement to have at least three members on the audit committee, the Company must have at least one member on its audit committee by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date; and

(C) The Company must satisfy the independent compensation and nominations committee composition requirements set forth in Rules 5605(d)(2) and (e)(1)(B) as follows: (1) one member must satisfy the requirements by the date the transaction closes; (2) a majority of members must satisfy the requirements within 90 days of the Listing Date; and (3) all members must satisfy the requirements within one year of the Listing Date. Regarding the requirement to have two members on the compensation committee set forth in Rule 5605(d)(2)(A), the Company must have at least one member on its compensation committee by the

date the transaction closes and at least two members within one year of the Listing Date.

(5) [Phase-In Schedule for a]A Company Ceasing to be a Smaller Reporting Company

A Company that ceases to qualify as a Smaller Reporting Company under SEC rules shall be permitted to phase in its compliance as provided in this Rule 5615(b)(5). Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis as of the last business day of its most recently completed second fiscal quarter (for purposes of this Rule, the "Determination Date"). A Company which ceases to meet the requirements for smaller reporting company status as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

By six months from the Start Date, a Company must comply with Rule 5605(d)(3) and certify to Nasdaq that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)- (D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition.

A Company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the requirements of Rule 5605(d)(2)(A) relating to minimum committee size or that the committee consist only of Independent Directors as defined under Rule 5605(a)(2).

During this phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with Rule 5605(d)(5).

(6) A Company Ceasing to be a Foreign Private Issuer

A Company that ceases to qualify as a Foreign Private Issuer under SEC rules shall be permitted to phase in its compliance as provided in this Rule 5615(b)(6). Rule 240.3b-4 under the Act requires, a Foreign Private Issuer to test on an annual basis at

the end of its most recently completed second fiscal quarter whether it continues to qualify a Foreign Private Issuer (for purposes of this Rule, the "Foreign Private Issuer Determination Date").

If a Company ceases to qualify as a Foreign Private Issuer, the Company will have six months from the Foreign Private Issuer Determination Date to comply with the majority independent board and executive sessions requirements set forth in Rule 5605(b); the independent compensation and nominations committee requirements set forth in Rules 5605(d)(2) and (e)(1)(B); and the audit committee requirements set forth in Rule 5605(c)(2) except for the requirement set forth in Rule 5605(c)(2)(A)(ii), including the requirement to have three members on the audit committee. During the phase-in period, the Company must continue to have an audit committee that satisfies Rule 5605(c)(3) and members of such audit committee must meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act).

(7) A Company Ceasing to be a Controlled Company

[(c) How the Rules Apply to a Controlled Company

(1) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rules 5605(b), (d) and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors. A Controlled Company, other than a Foreign Private Issuer, relying upon this exemption must comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) that it is a Controlled Company and the basis for that determination.

(3) Phase-In Schedule for a Company Ceasing to be a Controlled Company]

A Company that has ceased to be a Controlled Company within the meaning of Rule 5615(a)(c)(7)(1) shall be permitted to phase[-] in its independent nominations and compensation committees and majority independent board on the same schedule as Companies listing in conjunction with their initial public offering, except that the applicable phase-in periods will be computed beginning on the date the Company ceases to be a Controlled Company. It should be noted, however, that a Company that has ceased to be a Controlled Company within the

meaning of Rule 5615(a)(c)(7)(1) must comply with the audit committee requirements of Rule 5605(c) as of the date it [ceased]ceases to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 5605(b)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

IM-5615-5. Controlled Company Exemption - No change.

* * * * *

5810. Notification of Deficiency by the Listing Qualifications Department

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

- (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
- (2) notifications of deficiencies for which a Company may submit a plan of compliance for staff review;
- (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and
- (4) Public Reprimand Letters, except such notification type is not available for unresolved deficiencies from the standards of Rules 5250(c)Obligation to File Periodic Financial Reports, 5615(a)(4)(D) Partner Meetings of Limited Partnerships and 5620(a) Meetings of Shareholders.

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

- (a) - (b) No change.

IM-5810-1. Disclosure of Written Notice of Staff Determination

No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is

entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) - (2) No change.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) - (F) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) - (D) No change.

(E) Independent Director, [and] Audit, and Compensation Committee Rules

If a Company fails to meet the majority board independence requirement in Rule 5605(b)(1) due to one vacancy, or because one director ceases to be independent for reasons beyond his/her reasonable control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the event that caused the deficiency to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the Company and inform it [that] has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then

the Company has 180 days from the event that caused the deficiency to cure it.

If a Company fails to comply with the compensation committee composition requirement under Rule 5605(d)(2)(A) due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond the member's reasonable control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance.

A Company is not eligible for this cure period immediately following the expiration of a phase-in period the Company relied on under Rule 5615(b) upon which the Company was relying, except as provided for in Rules 5605(b)(1)(B) and 5605(c)(4)(C) and 5605(d)(4)(B). If a Company is not eligible for this cure period, the Listing Qualifications Department will issue a Staff Delisting Determination letter to delist the Company's securities.

(F) - (H) No change.

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