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

File No. * SR 2024 - * 037

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"/>
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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 proposal to amend Rule 5820 to codify the standards of review that govern appeals before the Nasdaq Listing and Hearing Review Council and calls for review by the Nasdaq Listing and Hearing Review Council.

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 * Katie Last Name * Hopkins

Title * Associate General Counsel

E-mail * katie.hopkins@nasdaq.com

Telephone * (301) 232-4067 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 07/03/2024

(Title *)

By John Zecca

EVP and Chief Legal Counsel

(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: 2024.07.03 14:00:16 -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-2024-037 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-2024-037 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-2024-037 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) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 5820 to codify the standards of review that govern appeals before the Nasdaq Listing and Hearing Review Council and calls for review by the Nasdaq Listing and Hearing Review Council.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on April 2, 2019. No other action is necessary for the filing of the rule change.

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

Katie Hopkins
Associate General Counsel
Nasdaq, Inc.
301-232-4067

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Nasdaq’s Listing Qualifications Department (the “Listing Qualifications Department”) evaluates Company compliance with quantitative and qualitative listing standards and determines eligibility for initial and continued listing of a company’s securities under Nasdaq’s Listing Rules (the “Listing Rules”). When the Listing Qualifications Department determines that a company does not meet the requirements to remain listed, the Listing Qualifications Department will issue a Staff Delisting Determination.³ Upon receipt of a Staff Delisting Determination or a Public Reprimand Letter, or when its application for initial listing is denied, a company may request that a Hearings Panel review the matter.⁴ After reviewing the written record and holding an oral hearing, if one is requested, a Hearings Panel will issue a decision, which is reviewed by the Nasdaq Listing and Hearing Review Council (the “Listing Council”), either on appeal or on its own initiative.⁵ The use of Hearings Panels and the Listing Council, along with the limited discretion given to the Listing Qualifications Department, helps address the perception of conflicts that may otherwise exist given Nasdaq’s status as both a self-regulatory organization and a for-profit entity.⁶

³ See Listing Rule 5810. The Listing Department may also issue a Public Reprimand Letter in certain circumstances.

⁴ See Listing Rule 5815.

⁵ See Listing Rule 5820. Pursuant to the Nasdaq Stock Market LLC By-Laws, the Listing Council is composed of non-Nasdaq-affiliated members, from both industry and non-industry backgrounds, who are nominated by Nasdaq management and approved by a Nominating Committee of its Board of Directors. See Bylaws of the Nasdaq Stock Market LLC, Article V.

⁶ The Exchange notes that the Listing Rules also provide an opportunity for the Board of Directors to review Listing Council decisions on its own initiative. See Listing Rule 5825.

Nasdaq's Listing Rules currently do not specify a standard of review that applies when the Listing Council reviews Hearings Panel decisions. In fact, the Listing Rules are ambiguous on this issue. On the one hand, Listing Rule 5820 charges the Listing Council with conducting a "review" and hearing an "appeal" of a Hearings Panel decision – language which suggests that the responsibility of the Listing Council is to determine whether the Hearings Panel's decisions were correct. On the other hand, Listing Rule 5820(d) gives the Listing Council broad discretion to "consider . . . failures previously not considered by the Hearings Panel" and Listing Rule 5820(e) states that the Listing Council may request additional evidence and hold additional hearings. This language suggests that the Listing Council's mandate is broader and that it may render decisions based upon facts and circumstances that were not before the Hearings Panels or that arose subsequent to the Hearings Panels' decisions.

The Exchange believes that it is important to address the absence of a clear standard of review in Listing Council matters. Doing so would provide clarity to all participants in the appeals process as to the appropriate role of the Listing Council vis-à-vis the Hearings Panels. It would help the Listing Council to understand whether and under what circumstances to consider companies' efforts to comply with applicable Listing Rules after the Hearings Panel has rendered its decision. Likewise, it would inform companies as to whether appeals to the Listing Council are likely to be viable or futile. Finally, the establishment of a standard of review would promote consistency in the Listing Council's decisions, which in turn is important to ensuring that the Listing Council is regarded as a fair and reasonable appellate body and that its decisions garner respect. For these reasons, the Exchange now proposes to amend Listing Rule 5820 to

adopt a standard of review for appeals of Hearings Panel decisions before the Listing Council and a separate standard of review for Hearings Panel decision called for review by the Listing Council.

Appeals of Hearings Panel Decisions Before the Listing Council

Specifically, the proposed standard for appeals would first state a general principle that the Listing Council ordinarily shall not substitute its judgment for that of the Hearings Panel when reviewing Hearings Panels' decisions.⁷ The Exchange believes that deference to Hearings Panels is appropriate insofar as the Hearings Panels' decisions are based upon fulsome examinations of the law, rules, and facts applicable to matters, including through written briefs submitted by both parties as well as oral hearings at which Hearings Panels scrutinize the parties' assertions. By contrast, the Listing Council does not conduct its own independent factual examinations. Although the Listing Council has access to the full record of prior Hearings Panel proceedings and prior Listing Qualifications Department actions, as well as the appellate briefs submitted by both parties, the Listing Council typically focuses on discrete questions of law, rule, or fact raised in the appellate briefs and does not ordinarily hold oral hearings.⁸ Given the limited role that the Listing Council plays in the process relative to the Hearings Panels, the Exchange believes that the Listing Council should defer to the Hearings Panels' judgment in most instances.

⁷ In light of the proposed changes described herein, which circumscribe the authority of the Listing Council, the Exchange proposes to modify the first sentence of Listing Rule 5820(d)(1), which presently states that the Listing Council may "where it deems appropriate" affirm, modify, or reverse a Hearings Panel decision. The Exchange proposes to remove the phrase "where it deems appropriate" insofar as the proposal sets forth elsewhere the circumstances in which such actions would be appropriate for the Listing Council.

⁸ See Listing Rule 5820(e)(1), providing that the review generally will be on the written record, although the Listing Council has the ability, at its discretion, to hold additional hearings.

The proposed rule also provides that the Listing Council shall affirm a Panel Decision unless it determines that: (i) the specific grounds on which the Panel Decision is based did not exist, as a matter of fact; (ii) the Panel Decision is inconsistent with law or Nasdaq Rules; or (iii) there exist extraordinary circumstances that warrant reversal, modification or remand, consistent with the public interest and protection of investors.⁹ By proposing such standard, the Exchange seeks to limit frivolous and baseless appeals. Based on Nasdaq's experience, such appeals often consist of companies simply pleading to the Listing Council to grant them additional time beyond that which the Hearings Panel or Listing Qualifications Department had granted them to comply with the Listing Rules. Going forward, absent a showing of extraordinary circumstances (as described below), the Listing Council would not entertain such appeals, and that standard would be transparent to companies.

Likewise, by limiting the Listing Council's appellate authority to the consideration of circumstances that existed as of the time when the Hearings Panel rendered its decision, the Exchange would provide transparency to the effect of a company gaining compliance with applicable Listing Rules after the Hearings Panel has issued its decision. The pendency of a Listing Council appeal is not intended to be, and

⁹ The Exchange notes that the proposed standard is similar to the standard of review with respect to the Commission's review of self-regulatory organization decisions, which states that, "In any proceeding to review ... the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) *finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall dismiss the proceeding.*" See 15 U.S.C. 78s(f).

should not serve as, a de facto additional extension period during which a company may demonstrate compliance with applicable listing requirements. Instead, a company should satisfy the initial listing requirements and follow the application process if it wishes to be listed after it was properly removed by a Hearings Panel for non-compliance with a listing requirement. The Exchange's proposal will adopt this construct by stating that the Listing Council shall affirm a Panel Decision unless it determines that the specific grounds on which the Panel Decision is based did not exist, as a matter of fact, except as described below.

Notwithstanding the above, the Exchange recognizes that there may be certain circumstances that – as a matter of fundamental fairness or to protect investors and the market – warrant the Listing Council reversing, modifying, or remanding a Hearings Panel decision, even when the Hearings Panel decision was based on specific grounds that existed, as a matter of fact, and was consistent with law or Nasdaq Rules at the time it was rendered. The Exchange believes that such circumstances should be limited to those that are extraordinary, lest the exceptions will swallow the general rule that limits the scope of the Listing Council's review authority.

The Exchange proposes to define these "extraordinary circumstances," for purposes of proposed Listing Rule 5820(d)(1)(A), as those that are "unusual and infrequent" – so opposed to routine and common occurrences that a company should be expected to anticipate and address them within the normal course of their business.

Specifically, under proposed Listing Rule 5820(d)(1)(A), extraordinary circumstances mean unusual and infrequent circumstances that are either: (i) outside of the reasonable control of a company or anyone acting on its behalf (such as where non-

compliance with a Listing Rule is caused by a natural disaster or another force majeure event); or (ii) indicative of widespread difficulties among similarly situated companies in complying with the relevant Listing Rules, where delisting those companies' securities would pose an unnecessary burden on investors and the market.

A circumstance that is beyond the reasonable control of a company or someone acting on its behalf (such as an auditor, accountant, attorney, consultant, vendor, employee, officer, or director) might include, by way of illustration only, a storm, fire, war, terrorist act, or other force majeure event that, despite reasonable protective measures, destroys, damages, delays, or otherwise impedes the ability of a company to meet its obligations under the Listing Rules. By contrast, a circumstance that likely would not be beyond the control of a company would be an error by a company employee. Even if the company's management did not know about or specifically authorize the employee's action, a company is ordinarily responsible for supervising its employees. Likewise, unauthorized malfeasance by a company employee might be considered within the company's control if the misconduct occurred due to a lack of oversight.

An example of a widespread difficulty among similarly situated companies in complying with the Listing Rules might include a good faith misunderstanding or misinterpretation of a new or complex accounting standard that impacts a large number of public companies and requires them all to restate their financial statements. In such a circumstance, the Listing Council may determine that delisting all of the impacted companies for the same reason could unduly disrupt the market and result in greater harm than good for investors. The Exchange notes, however, that if a company knowingly or

willfully misapplied the accounting standard in the above example, or did not act diligently to restate its financial statements, then the Listing Council could determine that the company was not “similarly situated” with other listed companies and that it therefore is ineligible for additional time to regain compliance with the Listing Rules.

The Exchange notes that the question of what particular circumstances will qualify as “extraordinary” is a fact-specific inquiry that cannot be reduced to a comprehensive list. Accordingly, the question will be determined by the Listing Council on a case-by-case basis. In determining this question, the Listing Council will consider any recommendation made by the Hearings Panel or Listing Qualifications Department as to whether or not the circumstances surrounding the appeal are indeed extraordinary.

The Exchange notes that it proposes to grant the Listing Council authority to act in extraordinary circumstances only where the Listing Council otherwise has discretion under Listing Rule 5820(d) to provide the requested relief. That is, if a company asks the Listing Council for additional time to file a delinquent periodic report, but the company’s report is already more than 360 days late, then the Listing Council would be limited by Listing Rule 5820(d)(4) and would not have discretion to grant the company’s request, pursuant to proposed Listing Rule 5820(d)(1)(A), even if the Listing Council might otherwise agree that the company’s lateness was the result of extraordinary circumstances.

Calls for Review of Hearings Panel Decisions by the Listing Council

The Exchange proposes to adopt a separate standard of review in the event the Listing Council calls a matter for review. Specifically, proposed Listing Rule 5820(d)(1)(B) provides that if the Listing Council calls a matter for review, the Listing

Council shall conduct a de novo review of the matter and may consider circumstances that did not exist when the Hearings Panel rendered its decision. Should the Listing Council call a matter for review, the Exchange believes that it is appropriate to adopt a de novo review where the Council can consider facts and circumstances that did not exist at the time when the Panel rendered its decision. Moreover, the de novo standard will allow the Listing Council to draw different conclusions based on the facts than the Hearings Panel did, which the Exchange believes will best enable the Listing Council to perform its oversight responsibilities through the call for review function.¹⁰ Finally, the Exchange notes that calls for review are rare and are solely in the control of the Council.¹¹ Therefore, unlike the appeal process, there is nearly no risk of companies exploiting the review process to belatedly regain compliance.

Clarifying Changes

Lastly, and in addition to the above, the Exchange proposes to reorganize and clarify the existing text of Listing Rule 5820(d) so that it is easier to comprehend. Specifically, the Exchange proposes to relocate the second sentence of subparagraph (d)(1) – which sets forth the general authority of the Listing Council to grant an exception to the Listing Rules – to subparagraph (d)(4). As part of this reorganization, the Exchange also proposes to insert the existing text of subparagraph (d)(4) as subparagraph (d)(4)(A) and the existing text of subparagraph (d)(5) as subparagraph (d)(4)(B).

¹⁰ For example, the Listing Council could observe in its call for review process that a company was granted an exception to remain listed based on a plan of compliance where other companies with similar plans of compliance were not granted exceptions by different Hearings Panels. The ability to review the matter de novo will allow the Listing Council to call that matter for review and reverse the Hearings Panel's decision even though the Hearings Panel did not make a factual error in its decision and Nasdaq's Rules would allow the Hearings Panel to grant such an exception.

¹¹ From January 1, 2022 until June 30, 2024, only one matter was called for review by the Listing Council. That call for review was later withdrawn.

Existing subparagraph (d)(4) prescribes a maximum time period for Listing Council exceptions for companies to regain compliance with periodic filing requirement, while existing subparagraph (d)(5) does the same with respect to exceptions for companies that fail to hold annual meetings. The proposed reorganization of these three provisions will clarify that the Listing Council's general authority to grant an exemption under (d)(4) will apply except where non-compliance involves delinquencies in filing periodic reports or failures to hold annual meetings, in which cases subparagraphs (d)(4)(A) or (d)(4)(B) will instead apply, respectively. This clarification will help to dispel confusion as to whether the Listing Council's authority to grant an exception in cases of filing delinquencies and annual meeting deficiencies is in addition to or in lieu of the Listing Council's general authority to grant exceptions. Finally, the Exchange proposes to relocate the last two sentences of existing subparagraph (d)(1) – which concern the issuance by the Listing Council of a public reprimand letter – to subparagraph (d)(5). This change is also intended to improve clarity.

Implementation

Following approval of this proposal, the Exchange proposes to apply the new standards of review to all matters that thereafter enter the Listing Council review process. The Exchange will apply the current rules to any matter that is pending Listing Council review at the time when the proposal becomes effective.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

As discussed above, the Listing Rules presently lack a clear standard of review to govern Listing Council reviews of Hearings Panel decisions. The absence of a standard of review can lead to inconsistent interpretations of the Listing Council's authority over time and has led to confusion by companies as to whether actions they take to comply with applicable Listing Rules after a Hearings Panel decision can allow them to be approved for initial listing or avoid delisting.

The Exchange's proposal will address these problems, to the benefit of the markets, investors, and the public, by adopting a transparent standard of review for Listing Council reviews of Hearings Panel decisions, which is consistent with the standard of review imposed on the Commission's review of Nasdaq listing decisions in Section 19 of the Act.¹⁴ The adoption of specified standards of review will help promote consistency and prevent unfair discrimination in the Listing Council's decisions, improve the clarity of the appellate process and the respective roles of the Hearings Panels and the Listing Council, and also improve the fairness of the process.

The proposal will also promote the equitable treatment of applicant and listed companies, and protect the market and investors, by preserving the Listing Council's

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(f). See footnote 9, supra.

discretionary authority (to the extent it otherwise exists) to grant relief in the appeals process to companies when extraordinary circumstances exist. When non-compliance with the Listing Rules is the result of unusual and infrequent occurrences that were beyond the reasonable control of a company, a decision to not approve for initial listing or delist a company's securities may be unduly harsh and unnecessarily harm the company's investors. Likewise, when a large group of similarly situated companies experience a common difficulty that occasions their non-compliance with the Listing Rules, delisting the securities of all those companies may result in undue disruption to the markets and harm to investors. The proposal grants the Listing Council discretion to avoid such unfair and imprudent results, albeit in a manner that is itself carefully calibrated to avoid granting discretion that is either too broad or too narrow.

In addition, the Exchange believes that its proposal to adopt a de novo standard of review in instances where the Listing Council calls a matter for review on its own accord will serve to protect the market and investors. As described above, calls for review are rare and solely under the control of the Council. Therefore, unlike the appeal process, there is nearly no risk of companies exploiting the review process to belatedly regain compliance.

Finally, the Exchange believes that it is consistent with the Act to amend Listing Rule 5820 to improve its overall clarity and organization. In particular, the Exchange believes that its proposal to reorganize language pertaining to the Listing Council's authorities to grant exceptions to the Listing Rules will help to dispel confusion as to the intended relationships between these authorities and thereby 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal will merely establish standards of review for Listing Council appeals and calls for review that will apply equally to all companies listed on the Exchange and all applicants for listing thereupon. If any listed company or applicant for listing finds the proposal or the review procedures to be unfair or to be otherwise unfavorable, such companies or applicants may freely apply to list their securities on other exchanges. In addition, this rule proposal does not burden competition with other venues, which are similarly free to align their appellate processes.¹⁵

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

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

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

Not applicable.

¹⁵ The Exchange notes that it offers an additional level of review via the Listing Council, an appellate layer that is not offered by certain competitors of the Exchange.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2024-037)

July __, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 5820 to Codify the Standards of Review that Govern Appeals before the Nasdaq Listing and Hearing Review Council and Calls for Review by the Nasdaq Listing and Hearing Review Council

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 July 3, 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 amend Rule 5820 to codify the standards of review that govern appeals before the Nasdaq Listing and Hearing Review Council and calls for review by the Nasdaq Listing and Hearing Review Council.

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’s Listing Qualifications Department (the “Listing Qualifications Department”) evaluates Company compliance with quantitative and qualitative listing standards and determines eligibility for initial and continued listing of a company’s securities under Nasdaq’s Listing Rules (the “Listing Rules”). When the Listing Qualifications Department determines that a company does not meet the requirements to remain listed, the Listing Qualifications Department will issue a Staff Delisting Determination.³ Upon receipt of a Staff Delisting Determination or a Public Reprimand Letter, or when its application for initial listing is denied, a company may request that a Hearings Panel review the matter.⁴ After reviewing the written record and holding an oral hearing, if one is requested, a Hearings Panel will issue a decision, which is reviewed by the Nasdaq Listing and Hearing Review Council (the “Listing Council”), either on

³ See Listing Rule 5810. The Listing Department may also issue a Public Reprimand Letter in certain circumstances.

⁴ See Listing Rule 5815.

appeal or on its own initiative.⁵ The use of Hearings Panels and the Listing Council, along with the limited discretion given to the Listing Qualifications Department, helps address the perception of conflicts that may otherwise exist given Nasdaq’s status as both a self-regulatory organization and a for-profit entity.⁶

Nasdaq’s Listing Rules currently do not specify a standard of review that applies when the Listing Council reviews Hearings Panel decisions. In fact, the Listing Rules are ambiguous on this issue. On the one hand, Listing Rule 5820 charges the Listing Council with conducting a “review” and hearing an “appeal” of a Hearings Panel decision – language which suggests that the responsibility of the Listing Council is to determine whether the Hearings Panel’s decisions were correct. On the other hand, Listing Rule 5820(d) gives the Listing Council broad discretion to “consider . . . failures previously not considered by the Hearings Panel” and Listing Rule 5820(e) states that the Listing Council may request additional evidence and hold additional hearings. This language suggests that the Listing Council’s mandate is broader and that it may render decisions based upon facts and circumstances that were not before the Hearings Panels or that arose subsequent to the Hearings Panels’ decisions.

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⁵ See Listing Rule 5820. Pursuant to the Nasdaq Stock Market LLC By-Laws, the Listing Council is composed of non-Nasdaq-affiliated members, from both industry and non-industry backgrounds, who are nominated by Nasdaq management and approved by a Nominating Committee of its Board of Directors. See Bylaws of the Nasdaq Stock Market LLC, Article V.

⁶ The Exchange notes that the Listing Rules also provide an opportunity for the Board of Directors to review Listing Council decisions on its own initiative. See Listing Rule 5825.

under what circumstances to consider companies' efforts to comply with applicable Listing Rules after the Hearings Panel has rendered its decision. Likewise, it would inform companies as to whether appeals to the Listing Council are likely to be viable or futile. Finally, the establishment of a standard of review would promote consistency in the Listing Council's decisions, which in turn is important to ensuring that the Listing Council is regarded as a fair and reasonable appellate body and that its decisions garner respect. For these reasons, the Exchange now proposes to amend Listing Rule 5820 to adopt a standard of review for appeals of Hearings Panel decisions before the Listing Council and a separate standard of review for Hearings Panel decision called for review by the Listing Council.

Appeals of Hearings Panel Decisions Before the Listing Council

Specifically, the proposed standard for appeals would first state a general principle that the Listing Council ordinarily shall not substitute its judgment for that of the Hearings Panel when reviewing Hearings Panels' decisions.⁷ The Exchange believes that deference to Hearings Panels is appropriate insofar as the Hearings Panels' decisions are based upon fulsome examinations of the law, rules, and facts applicable to matters, including through written briefs submitted by both parties as well as oral hearings at which Hearings Panels scrutinize the parties' assertions. By contrast, the Listing Council does not conduct its own independent factual examinations. Although the Listing Council has access to the full record of prior Hearings Panel proceedings and prior

⁷ In light of the proposed changes described herein, which circumscribe the authority of the Listing Council, the Exchange proposes to modify the first sentence of Listing Rule 5820(d)(1), which presently states that the Listing Council may "where it deems appropriate" affirm, modify, or reverse a Hearings Panel decision. The Exchange proposes to remove the phrase "where it deems appropriate" insofar as the proposal sets forth elsewhere the circumstances in which such actions would be appropriate for the Listing Council.

Listing Qualifications Department actions, as well as the appellate briefs submitted by both parties, the Listing Council typically focuses on discrete questions of law, rule, or fact raised in the appellate briefs and does not ordinarily hold oral hearings.⁸ Given the limited role that the Listing Council plays in the process relative to the Hearings Panels, the Exchange believes that the Listing Council should defer to the Hearings Panels' judgment in most instances.

The proposed rule also provides that the Listing Council shall affirm a Panel Decision unless it determines that: (i) the specific grounds on which the Panel Decision is based did not exist, as a matter of fact; (ii) the Panel Decision is inconsistent with law or Nasdaq Rules; or (iii) there exist extraordinary circumstances that warrant reversal, modification or remand, consistent with the public interest and protection of investors.⁹ By proposing such standard, the Exchange seeks to limit frivolous and baseless appeals. Based on Nasdaq's experience, such appeals often consist of companies simply pleading to the Listing Council to grant them additional time beyond that which the Hearings Panel or Listing Qualifications Department had granted them to comply with the Listing Rules. Going forward, absent a showing of extraordinary circumstances (as described

⁸ See Listing Rule 5820(e)(1), providing that the review generally will be on the written record, although the Listing Council has the ability, at its discretion, to hold additional hearings.

⁹ The Exchange notes that the proposed standard is similar to the standard of review with respect to the Commission's review of self-regulatory organization decisions, which states that, "In any proceeding to review ... the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) *finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall dismiss the proceeding.*" See 15 U.S.C. 78s(f).

below), the Listing Council would not entertain such appeals, and that standard would be transparent to companies.

Likewise, by limiting the Listing Council's appellate authority to the consideration of circumstances that existed as of the time when the Hearings Panel rendered its decision, the Exchange would provide transparency to the effect of a company gaining compliance with applicable Listing Rules after the Hearings Panel has issued its decision. The pendency of a Listing Council appeal is not intended to be, and should not serve as, a de facto additional extension period during which a company may demonstrate compliance with applicable listing requirements. Instead, a company should satisfy the initial listing requirements and follow the application process if it wishes to be listed after it was properly removed by a Hearings Panel for non-compliance with a listing requirement. The Exchange's proposal will adopt this construct by stating that the Listing Council shall affirm a Panel Decision unless it determines that the specific grounds on which the Panel Decision is based did not exist, as a matter of fact, except as described below.

Notwithstanding the above, the Exchange recognizes that there may be certain circumstances that – as a matter of fundamental fairness or to protect investors and the market – warrant the Listing Council reversing, modifying, or remanding a Hearings Panel decision, even when the Hearings Panel decision was based on specific grounds that existed, as a matter of fact, and was consistent with law or Nasdaq Rules at the time it was rendered. The Exchange believes that such circumstances should be limited to those that are extraordinary, lest the exceptions will swallow the general rule that limits the scope of the Listing Council's review authority.

The Exchange proposes to define these “extraordinary circumstances,” for purposes of proposed Listing Rule 5820(d)(1)(A), as those that are “unusual and infrequent” – so opposed to routine and common occurrences that a company should be expected to anticipate and address them within the normal course of their business.

Specifically, under proposed Listing Rule 5820(d)(1)(A), extraordinary circumstances mean unusual and infrequent circumstances that are either: (i) outside of the reasonable control of a company or anyone acting on its behalf (such as where non-compliance with a Listing Rule is caused by a natural disaster or another force majeure event); or (ii) indicative of widespread difficulties among similarly situated companies in complying with the relevant Listing Rules, where delisting those companies’ securities would pose an unnecessary burden on investors and the market.

A circumstance that is beyond the reasonable control of a company or someone acting on its behalf (such as an auditor, accountant, attorney, consultant, vendor, employee, officer, or director) might include, by way of illustration only, a storm, fire, war, terrorist act, or other force majeure event that, despite reasonable protective measures, destroys, damages, delays, or otherwise impedes the ability of a company to meet its obligations under the Listing Rules. By contrast, a circumstance that likely would not be beyond the control of a company would be an error by a company employee. Even if the company’s management did not know about or specifically authorize the employee’s action, a company is ordinarily responsible for supervising its employees. Likewise, unauthorized malfeasance by a company employee might be considered within the company’s control if the misconduct occurred due to a lack of oversight.

An example of a widespread difficulty among similarly situated companies in complying with the Listing Rules might include a good faith misunderstanding or misinterpretation of a new or complex accounting standard that impacts a large number of public companies and requires them all to restate their financial statements. In such a circumstance, the Listing Council may determine that delisting all of the impacted companies for the same reason could unduly disrupt the market and result in greater harm than good for investors. The Exchange notes, however, that if a company knowingly or willfully misapplied the accounting standard in the above example, or did not act diligently to restate its financial statements, then the Listing Council could determine that the company was not “similarly situated” with other listed companies and that it therefore is ineligible for additional time to regain compliance with the Listing Rules.

The Exchange notes that the question of what particular circumstances will qualify as “extraordinary” is a fact-specific inquiry that cannot be reduced to a comprehensive list. Accordingly, the question will be determined by the Listing Council on a case-by-case basis. In determining this question, the Listing Council will consider any recommendation made by the Hearings Panel or Listing Qualifications Department as to whether or not the circumstances surrounding the appeal are indeed extraordinary.

The Exchange notes that it proposes to grant the Listing Council authority to act in extraordinary circumstances only where the Listing Council otherwise has discretion under Listing Rule 5820(d) to provide the requested relief. That is, if a company asks the Listing Council for additional time to file a delinquent periodic report, but the company’s report is already more than 360 days late, then the Listing Council would be limited by Listing Rule 5820(d)(4) and would not have discretion to grant the company’s request,

pursuant to proposed Listing Rule 5820(d)(1)(A), even if the Listing Council might otherwise agree that the company's lateness was the result of extraordinary circumstances.

Calls for Review of Hearings Panel Decisions by the Listing Council

The Exchange proposes to adopt a separate standard of review in the event the Listing Council calls a matter for review. Specifically, proposed Listing Rule 5820(d)(1)(B) provides that if the Listing Council calls a matter for review, the Listing Council shall conduct a de novo review of the matter and may consider circumstances that did not exist when the Hearings Panel rendered its decision. Should the Listing Council call a matter for review, the Exchange believes that it is appropriate to adopt a de novo review where the Council can consider facts and circumstances that did not exist at the time when the Panel rendered its decision. Moreover, the de novo standard will allow the Listing Council to draw different conclusions based on the facts than the Hearings Panel did, which the Exchange believes will best enable the Listing Council to perform its oversight responsibilities through the call for review function.¹⁰ Finally, the Exchange notes that calls for review are rare and are solely in the control of the Council.¹¹ Therefore, unlike the appeal process, there is nearly no risk of companies exploiting the review process to belatedly regain compliance.

¹⁰ For example, the Listing Council could observe in its call for review process that a company was granted an exception to remain listed based on a plan of compliance where other companies with similar plans of compliance were not granted exceptions by different Hearings Panels. The ability to review the matter de novo will allow the Listing Council to call that matter for review and reverse the Hearings Panel's decision even though the Hearings Panel did not make a factual error in its decision and Nasdaq's Rules would allow the Hearings Panel to grant such an exception.

¹¹ From January 1, 2022 until June 30, 2024, only one matter was called for review by the Listing Council. That call for review was later withdrawn.

Clarifying Changes

Lastly, and in addition to the above, the Exchange proposes to reorganize and clarify the existing text of Listing Rule 5820(d) so that it is easier to comprehend. Specifically, the Exchange proposes to relocate the second sentence of subparagraph (d)(1) – which sets forth the general authority of the Listing Council to grant an exception to the Listing Rules – to subparagraph (d)(4). As part of this reorganization, the Exchange also proposes to insert the existing text of subparagraph (d)(4) as subparagraph (d)(4)(A) and the existing text of subparagraph (d)(5) as subparagraph (d)(4)(B). Existing subparagraph (d)(4) prescribes a maximum time period for Listing Council exceptions for companies to regain compliance with periodic filing requirement, while existing subparagraph (d)(5) does the same with respect to exceptions for companies that fail to hold annual meetings. The proposed reorganization of these three provisions will clarify that the Listing Council’s general authority to grant an exemption under (d)(4) will apply except where non-compliance involves delinquencies in filing periodic reports or failures to hold annual meetings, in which cases subparagraphs (d)(4)(A) or (d)(4)(B) will instead apply, respectively. This clarification will help to dispel confusion as to whether the Listing Council’s authority to grant an exception in cases of filing delinquencies and annual meeting deficiencies is in addition to or in lieu of the Listing Council’s general authority to grant exceptions. Finally, the Exchange proposes to relocate the last two sentences of existing subparagraph (d)(1) – which concern the issuance by the Listing Council of a public reprimand letter – to subparagraph (d)(5). This change is also intended to improve clarity.

Implementation

Following approval of this proposal, the Exchange proposes to apply the new standards of review to all matters that thereafter enter the Listing Council review process. The Exchange will apply the current rules to any matter that is pending Listing Council review at the time when the proposal becomes effective.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

As discussed above, the Listing Rules presently lack a clear standard of review to govern Listing Council reviews of Hearings Panel decisions. The absence of a standard of review can lead to inconsistent interpretations of the Listing Council's authority over time and has led to confusion by companies as to whether actions they take to comply with applicable Listing Rules after a Hearings Panel decision can allow them to be approved for initial listing or avoid delisting.

The Exchange's proposal will address these problems, to the benefit of the markets, investors, and the public, by adopting a transparent standard of review for Listing Council reviews of Hearings Panel decisions, which is consistent with the standard of review imposed on the Commission's review of Nasdaq listing decisions in

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

Section 19 of the Act.¹⁴ The adoption of specified standards of review will help promote consistency and prevent unfair discrimination in the Listing Council's decisions, improve the clarity of the appellate process and the respective roles of the Hearings Panels and the Listing Council, and also improve the fairness of the process.

The proposal will also promote the equitable treatment of applicant and listed companies, and protect the market and investors, by preserving the Listing Council's discretionary authority (to the extent it otherwise exists) to grant relief in the appeals process to companies when extraordinary circumstances exist. When non-compliance with the Listing Rules is the result of unusual and infrequent occurrences that were beyond the reasonable control of a company, a decision to not approve for initial listing or delist a company's securities may be unduly harsh and unnecessarily harm the company's investors. Likewise, when a large group of similarly situated companies experience a common difficulty that occasions their non-compliance with the Listing Rules, delisting the securities of all those companies may result in undue disruption to the markets and harm to investors. The proposal grants the Listing Council discretion to avoid such unfair and imprudent results, albeit in a manner that is itself carefully calibrated to avoid granting discretion that is either too broad or too narrow.

In addition, the Exchange believes that its proposal to adopt a de novo standard of review in instances where the Listing Council calls a matter for review on its own accord will serve to protect the market and investors. As described above, calls for review are rare and solely under the control of the Council. Therefore, unlike the appeal process,

¹⁴ 15 U.S.C. 78s(f). See footnote 9, supra.

there is nearly no risk of companies exploiting the review process to belatedly regain compliance.

Finally, the Exchange believes that it is consistent with the Act to amend Listing Rule 5820 to improve its overall clarity and organization. In particular, the Exchange believes that its proposal to reorganize language pertaining to the Listing Council's authorities to grant exceptions to the Listing Rules will help to dispel confusion as to the intended relationships between these authorities and thereby 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal will merely establish standards of review for Listing Council appeals and calls for review that will apply equally to all companies listed on the Exchange and all applicants for listing thereupon. If any listed company or applicant for listing finds the proposal or the review procedures to be unfair or to be otherwise unfavorable, such companies or applicants may freely apply to list their securities on other exchanges. In addition, this rule proposal does not burden competition with other venues, which are similarly free to align their appellate processes.¹⁵

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.

¹⁵ The Exchange notes that it offers an additional level of review via the Listing Council, an appellate layer that is not offered by certain competitors of the Exchange.

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-2024-037 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-2024-037. 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-2024-037 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.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

THE NASDAQ STOCK MARKET LLC RULES

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The Qualification, Listing and Delisting of Companies

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5800. Failure to Meet Listing Standards

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5820. Appeal to the Nasdaq Listing and Hearing Review Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) – (c) No change.

(d) Scope of Listing Council's Discretion

(1) The Listing Council may[, where it deems appropriate,] affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. [The Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.]

(A) Appeal. In reviewing a Panel Decision, the Listing Council ordinarily shall not substitute its judgment for that of the Hearings Panel. In that regard, the Listing Council shall affirm a Panel Decision unless it determines that: (i) the specific grounds on which the Panel Decision is based did not exist, as a matter of

fact; (ii) the Panel Decision is inconsistent with law or Nasdaq Rules; or (iii) there exist extraordinary circumstances that warrant reversal, modification or remand, consistent with the public interest and protection of investors. The question of whether a Company's circumstances are "extraordinary" shall be determined solely by the Listing Council based on the specific facts and circumstances described in the record on review. In determining whether extraordinary circumstances exist, the Listing Council shall consider any recommendation made by the Hearings Panel or the Listing Qualifications Department. For purposes of this Rule, the term "extraordinary circumstances" shall mean unusual and infrequent circumstances that: (i) were outside of the reasonable control of the Company or anyone acting on its behalf (such as where non-compliance with a Listing Rule is caused by a natural disaster or another force majeure event); or (ii) are indicative of widespread difficulties among similarly situated Companies in complying with the relevant Listing Rules and could pose an unnecessary burden on investors and the market.

(B) Call for Review. Should the Listing Council call a matter for review in accordance with section (b) of this Rule, the Listing Council shall conduct a de novo review of the matter and may consider circumstances that did not exist when the Hearings Panel rendered the Panel Decision.

(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the Company's securities been trading on Nasdaq at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

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

(4) Except as provided below, the Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted.

(A) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the

length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

[(5)](B) In the case of a Company that fails to hold an annual meeting, the Listing Council may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).

(5) The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 or Rule 10D-1 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(6) The Listing Council may also recommend that the Nasdaq Board consider the matter.

(e) No change.

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