

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 22

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

File No. \* SR 2022 - \* 055

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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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 checked="" 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 extend Nasdaqs program providing Eligible Companies with complimentary board recruiting services.

### 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 \* Vivian Last Name \* Hui  
Title \* Regulatory Compliance Specialist  
E-mail \* vivian.hui@nasdaq.com  
Telephone \* (301) 978-8062 Fax

### Signature

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

Date 10/04/2022 (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: 2022.10.04 16:03:25 -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 EDFS website.

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

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SR-NASDAQ-2022-055 19b4.doc

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-2022-055 Exhibit 1.doc

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-2022-055 Exhibit 5.doc

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to extend Nasdaq’s program providing Eligible Companies with complimentary board recruiting services.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

Vivian Hui  
Regulatory Compliance Specialist  
Nasdaq, Inc.  
(301) 978-8062

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

<sup>2</sup> 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 extend its program, described in IM-5900-9, providing Eligible Companies<sup>3</sup> with complimentary board recruiting services. The rule currently requires Eligible Companies to request services by December 1, 2022; as revised that deadline would be extended to December 1, 2023. Nasdaq also proposes to make clarifying changes to reflect the approval of Rule 5605(f).

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<sup>3</sup> Under Nasdaq Rule IM-5900-9, an Eligible Company is:

(a) any listed Company, except as described below, that represents to Nasdaq that it does not have (i) at least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community;

(b) a listed Company that (i) is a Foreign Private Issuer (as defined in Rule 5005(a)(19), or (ii) is considered a foreign issuer under Rule 3b-4(b) under the Act and has its principal executive offices located outside of the United States, if it represents to Nasdaq that it does not have (i) at least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: female, an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the company's principal executive offices, or lesbian, gay, bisexual, transgender or as a member of the queer community; or

(c) a listed Company that is a Smaller Reporting Company (as defined in Rule 12b-2 under the Act), if it represents to Nasdaq that it does not have (i) at least one director who self-identifies as female, and (ii) at least one director who self-identifies as one or more of the following: female, Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community.

Under IM-5900-9,<sup>4</sup> Nasdaq provides Eligible Companies with one year of complimentary access for two users to a board recruiting service, which provides access to a network of board-ready diverse candidates for companies to identify and evaluate. Nasdaq believes that offering this board recruiting solution assists and encourages listed companies to increase diverse representation on their boards, which can result in improved corporate governance, thus strengthening the integrity of the market and building investor confidence.

Currently, Eligible Companies may request the board recruiting complimentary service on or before December 1, 2022. After evaluating the service and progress made in enhancing diversity, Nasdaq proposes to extend the program until December 1, 2023. Under Nasdaq Rule 5605(f)(7), the earliest that a Nasdaq listed company will need to explain why it does not have at least one Diverse<sup>5</sup> director, is August 6, 2023; and the earliest it will have to explain why it does not have at least two Diverse directors is August 6, 2025.<sup>6</sup> As such, Nasdaq believes it continues to be appropriate to offer the complimentary board recruiting service to Eligible Companies.

In addition, Nasdaq proposes to update the reference in Nasdaq Rule IM-5900-9 to Nasdaq's proposed rule contained in SR-Nasdaq-2020-081, as it pertains to the

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<sup>4</sup> Securities Exchange Act Release No. 92590 (August 6, 2021), 86 FR 44424 (August 12, 2021) (SR-NASDAQ-2020-082).

<sup>5</sup> Nasdaq Rule 5605(f)(1) provides the definition of "Diverse". "Diverse" means an individual who self-identifies in one or more of the following categories: Female, Underrepresented Minority, or LGBTQ+. "Female" means an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

<sup>6</sup> Nasdaq Rule 5065(f)(7)(A).

Diverse Board Representation, to instead reference the approved Nasdaq Rule 5605(f).

This change is non-substantive, and clarifies the rules.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with this provision because it is not designed to permit unfair discrimination between issuers. Nasdaq also believes that the proposed rule change is consistent with the provisions of Sections 6(b)(4)<sup>9</sup> and 6(b)(8)<sup>10</sup>, in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq believes that research surrounding the value of diversity on a company's board and investor interest in more diverse boards<sup>11</sup> supports the fact that the proposal to offer access to a board recruiting solution promotes just and equitable principles of trade

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(4).

<sup>10</sup> 15 U.S.C. 78f(8).

<sup>11</sup> Securities Exchange Act Release No. 92590 (August 6, 2021), 86 FR 44424 (August 12, 2021)(SR-NASDAQ-2020-082)

and protects investors and the public interest. Nasdaq believes that by making this service available for a longer duration, more companies will seek to enhance the diversity of their boards to achieve these benefits. However, no company is required to use this service. Nasdaq believes it is reasonable, and not unfairly discriminatory, to offer the board recruiting solution only to Eligible Companies because these companies have the greatest need to identify diverse board candidates. They will need to identify diverse board candidates if they wish to satisfy that requirement instead of explaining why they do not satisfy it. Further, Nasdaq believes that companies that already have two Diverse directors will already be familiar with the benefits of board diversity and have demonstrated that they do not need Nasdaq's assistance in identifying diverse candidates.

Under Nasdaq Rule 5605(f), companies will have until August 6, 2023 to have, or explain why they do not have, at least one Diverse director and until August 6, 2025 to have, or explain why they do not have, at least two Diverse directors. Some Eligible Companies have already requested the service, other Eligible Companies may first use an alternate approach to identify a Diverse director. Therefore, to provide Eligible Companies with adequate time to determine whether to utilize the complimentary service before they first need to comply with Nasdaq Rule 5605(f), Nasdaq believes it is reasonable to extend the expiration date until December 1, 2023 to begin using the service.

Nasdaq faces competition in the market for listing services,<sup>12</sup> and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to

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<sup>12</sup> The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After

continue to offer this complimentary service as a tool to attract and retain listings as part of this competition. In particular, Nasdaq believes some companies will view the proposed board recruiting solution as a valuable tool to help achieve diversity, to the potential benefit of the company and its investors. Nasdaq also believes that offering this complimentary service will help it compete to attract and retain listings in light of the additional requirements contained in Rule 5065(f).

For these reasons, Nasdaq believes it is not an inequitable allocation of fees, unfairly discriminatory, nor an unnecessary or inappropriate burden on competition to continue to extend the offer of board recruiting solution only to Eligible Companies until December 1, 2023. Nasdaq represents that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.<sup>13</sup>

In addition, the proposal to reflect the approval of SR-Nasdaq-2020-081, and to directly reference the now-approved Nasdaq Rule 5605(f), is non-substantive, and simply clarifies the rules. The Exchange believes that this is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act.<sup>15</sup>

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Justice Department Threatens Lawsuit” (May 16, 2011), available at [http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

<sup>13</sup> See Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)).

<sup>14</sup> Ibid 9.

<sup>15</sup> Ibid 10.



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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule change reflects competition, but does not impose any burden on the competition with other exchanges. Rather, Nasdaq believes that some companies will find the proposed board recruiting solution an attractive offering and therefore make listing or remaining listed on Nasdaq more attractive, which will enhance competition for listings.

Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the proposal to reflect the approval of Nasdaq Rule 5605(f), is non-substantive, and simply aligns the rules in a clear and consistent manner. Nasdaq does not believe this change will impose any burden on competition.

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

Not applicable.

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

The foregoing rule change has become effective pursuant to Section

19(b)(3)(A)(iii)<sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>17</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The rule filing does not significantly affect the protection of investors or the public interest because it merely extends the existing board recruiting complimentary service provided to Eligible Companies to December 1, 2023. The board recruiting solution provided to Eligible Companies remains the same as previously approved by the Commission.

As described above, the rule filing does not impose any significant burden on competition because other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. The proposal to update references to reflect the approval of Nasdaq Rule 5605(f), is non-substantive, and simply aligns the rules in a clear and consistent manner. Nasdaq does not believe the change will impose any burden on competition.

Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange act.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

Furthermore, Rule 19b-4(f)(6)(iii)<sup>18</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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.

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<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2022-055)

October \_\_, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Nasdaq's Program Providing Eligible Companies with Complimentary Board Recruiting Services

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 2022, 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 extend Nasdaq's program providing Eligible Companies with complimentary board recruiting services.

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

1. Purpose

Nasdaq is proposing to extend its program, described in IM-5900-9, providing Eligible Companies<sup>3</sup> with complimentary board recruiting services. The rule currently

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<sup>3</sup> Under Nasdaq Rule IM-5900-9, an Eligible Company is:

(a) any listed Company, except as described below, that represents to Nasdaq that it does not have (i) at least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community;

(b) a listed Company that (i) is a Foreign Private Issuer (as defined in Rule 5005(a)(19), or (ii) is considered a foreign issuer under Rule 3b-4(b) under the Act and has its principal executive offices located outside of the United States, if it represents to Nasdaq that it does not have (i) at least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: female, an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the company's principal executive offices, or lesbian, gay, bisexual, transgender or as a member of the queer community; or

(c) a listed Company that is a Smaller Reporting Company (as defined in Rule 12b-2 under the Act), if it represents to Nasdaq that it does not have (i) at least one director who self-identifies as female, and (ii) at least one director who self-identifies as one or more of the following: female, Black or African American,

requires Eligible Companies to request services by December 1, 2022; as revised that deadline would be extended to December 1, 2023. Nasdaq also proposes to make clarifying changes to reflect the approval of Rule 5605(f).

Under IM-5900-9,<sup>4</sup> Nasdaq provides Eligible Companies with one year of complimentary access for two users to a board recruiting service, which provides access to a network of board-ready diverse candidates for companies to identify and evaluate. Nasdaq believes that offering this board recruiting solution assists and encourages listed companies to increase diverse representation on their boards, which can result in improved corporate governance, thus strengthening the integrity of the market and building investor confidence.

Currently, Eligible Companies may request the board recruiting complimentary service on or before December 1, 2022. After evaluating the service and progress made in enhancing diversity, Nasdaq proposes to extend the program until December 1, 2023. Under Nasdaq Rule 5605(f)(7), the earliest that a Nasdaq listed company will need to explain why it does not have at least one Diverse<sup>5</sup> director, is August 6, 2023; and the earliest it will have to explain why it does not have at least two Diverse directors is

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Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community.

<sup>4</sup> Securities Exchange Act Release No. 92590 (August 6, 2021), 86 FR 44424 (August 12, 2021) (SR-NASDAQ-2020-082).

<sup>5</sup> Nasdaq Rule 5605(f)(1) provides the definition of “Diverse”. “Diverse” means an individual who self-identifies in one or more of the following categories: Female, Underrepresented Minority, or LGBTQ+. “Female” means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.

August 6, 2025.<sup>6</sup> As such, Nasdaq believes it continues to be appropriate to offer the complimentary board recruiting service to Eligible Companies.

In addition, Nasdaq proposes to update the reference in Nasdaq Rule IM-5900-9 to Nasdaq's proposed rule contained in SR-Nasdaq-2020-081, as it pertains to the Diverse Board Representation, to instead reference the approved Nasdaq Rule 5605(f). This change is non-substantive, and clarifies the rules.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with this provision because it is not designed to permit unfair discrimination between issuers. Nasdaq also believes that the proposed rule change is consistent with the provisions of Sections 6(b)(4)<sup>9</sup> and 6(b)(8)<sup>10</sup>, in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and

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<sup>6</sup> Nasdaq Rule 5065(f)(7)(A).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(4).

<sup>10</sup> 15 U.S.C. 78f(8).

that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq believes that research surrounding the value of diversity on a company's board and investor interest in more diverse boards<sup>11</sup> supports the fact that the proposal to offer access to a board recruiting solution promotes just and equitable principles of trade and protects investors and the public interest. Nasdaq believes that by making this service available for a longer duration, more companies will seek to enhance the diversity of their boards to achieve these benefits. However, no company is required to use this service. Nasdaq believes it is reasonable, and not unfairly discriminatory, to offer the board recruiting solution only to Eligible Companies because these companies have the greatest need to identify diverse board candidates. They will need to identify diverse board candidates if they wish to satisfy that requirement instead of explaining why they do not satisfy it. Further, Nasdaq believes that companies that already have two Diverse directors will already be familiar with the benefits of board diversity and have demonstrated that they do not need Nasdaq's assistance in identifying diverse candidates.

Under Nasdaq Rule 5605(f), companies will have until August 6, 2023 to have, or explain why they do not have, at least one Diverse director and until August 6, 2025 to have, or explain why they do not have, at least two Diverse directors. Some Eligible Companies have already requested the service, other Eligible Companies may first use an alternate approach to identify a Diverse director. Therefore, to provide Eligible Companies with adequate time to determine whether to utilize the complimentary service before they first need to comply with Nasdaq Rule 5605(f), Nasdaq believes it is

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<sup>11</sup> Securities Exchange Act Release No. 92590 (August 6, 2021), 86 FR 44424 (August 12, 2021)(SR-NASDAQ-2020-082)



reasonable to extend the expiration date until December 1, 2023 to begin using the service.

Nasdaq faces competition in the market for listing services,<sup>12</sup> and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to continue to offer this complimentary service as a tool to attract and retain listings as part of this competition. In particular, Nasdaq believes some companies will view the proposed board recruiting solution as a valuable tool to help achieve diversity, to the potential benefit of the company and its investors. Nasdaq also believes that offering this complimentary service will help it compete to attract and retain listings in light of the additional requirements contained in Rule 5065(f).

For these reasons, Nasdaq believes it is not an inequitable allocation of fees, unfairly discriminatory, nor an unnecessary or inappropriate burden on competition to continue to extend the offer of board recruiting solution only to Eligible Companies until December 1, 2023. Nasdaq represents that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.<sup>13</sup>

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<sup>12</sup> The Justice Department has noted the intense competitive environment for exchange listings. See “NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit” (May 16, 2011), available at [http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

<sup>13</sup> See Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)).

In addition, the proposal to reflect the approval of SR-Nasdaq-2020-081, and to directly reference the now-approved Nasdaq Rule 5605(f), is non-substantive, and simply clarifies the rules. The Exchange believes that this is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act.<sup>15</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule change reflects competition, but does not impose any burden on the competition with other exchanges. Rather, Nasdaq believes that some companies will find the proposed board recruiting solution an attractive offering and therefore make listing or remaining listed on Nasdaq more attractive, which will enhance competition for listings.

Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, the proposal to reflect the approval of Nasdaq Rule 5605(f), is non-substantive, and simply aligns the rules in a clear and consistent manner. Nasdaq does not believe this change will impose any burden on competition.

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<sup>14</sup> Ibid 9.

<sup>15</sup> Ibid 10.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

#### IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-055 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-2022-055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2022-055 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 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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**IM-5900-9. Board Diversity Services**

[On December 1, 2020, Nasdaq filed a proposal (SR-Nasdaq-2020-081) to ]Nasdaq Rule 5605(f) requires each listed Company, subject to certain exceptions, to have, or explain why it does not have, at least two diverse directors on its board (the “Diversity Objective”). A company with five or fewer directors on its board [would have to]must have, or explain why it does not have, at least one diverse director on its board. In order to help advance diversity on Company boards and to help Companies prepare for and[, if approved,] comply with the Diversity Objective, Nasdaq offers Eligible Companies complimentary access to two seats of a board recruiting solution, which will allow Companies to identify and evaluate diverse board candidates. Until December 1, [2022] 2023, any Eligible Company that requests access to this service through the Nasdaq Listing Center will receive complimentary access for one-year from the initiation of the service. This service has a retail value of approximately \$10,000 per year.

An Eligible Company is:

(a) – (c) No change