

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 36

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

File No. * SR 2023 - * 005

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 establish listing standards related to recovery of erroneously awarded executive compensation as required by SEC Rule 10D-1.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Nikolai Last Name * Utochkin

Title * Counsel Listing and Governance

E-mail * Nikolai.utochkin@nasdaq.com

Telephone * (301) 978-8029 Fax

Signature

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

Date 02/22/2023 (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: 2023.02.22
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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-2023-005 19b-4.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-2023-005 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-2023-005 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to establish listing standards related to recovery of erroneously awarded executive compensation as required by SEC Rule 10D-1.

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 February 1, 2023. No other action is necessary for the filing of the rule change.

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

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

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

The Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) added Section 10D to the Securities Exchange Act of 1934.³ In October 2022, the SEC adopted final Rule 10D-1⁴ instructing national securities exchanges to establish specific listing standards that require each issuer to adopt and comply with a written executive compensation recovery policy.⁵ Under Rule 10D-1, listed companies must recover from current and former executive officers incentive-based compensation received during the three fiscal years preceding the date on which the issuer is required to prepare an accounting restatement to correct a material error. As required by Rule 10D-1 and the Listing Standards Release, Nasdaq proposes to adopt Listing Rule 5608 (the “Rule”), titled, recovery of erroneously awarded compensation.

Proposed Listing Rule 5608(a) would introduce the requirements of the Rule in accordance with the Listing Standards Release. Nasdaq also proposes to adopt Listing Rule 5608(b), which sets forth the substantive requirements of Rule 10D-1(b), and Listing Rule 5608(d), which sets forth the defined terms applicable to the Rule. As provided in Rule 10D-1, Nasdaq proposes to define the term “executive officer” to include the issuer’s president, principal financial officer, principal accounting officer, any vice-president in charge of a principal business unit, division or function and any other

³ 15 U.S.C. 78j-4.

⁴ 17 CFR 240.10D-1.

⁵ Securities Exchange Act Release No. 96159 (October 26, 2022), 87 FR 73076 (November 28, 2022)(“Listing Standards Release”).

person (including executive officers of a parent or subsidiary) who performs similar policy-making functions for the issuer. The term “policy-making function” is not intended to include policy-making functions that are not significant.

The recovery of erroneously awarded compensation is required on a “no fault” basis, without regard to whether any misconduct occurred or an executive officer’s responsibility for the erroneous financial statements. A restatement due to material non-compliance with any financial reporting requirement under the securities laws triggers application of the recovery policy. As explained in the Listing Standards Release, the determination regarding materiality of an error should be based on facts and circumstances and existing judicial and administrative interpretations. The proposed Rule requires recovery for restatements that correct errors that are material to previously issued financial statements (commonly referred to as “Big R” restatements), as well as for restatements that correct errors that are not material to previously issued financial statements but would result in a material misstatement if the errors were left uncorrected in the current report or the error correction was recognized in the current period (commonly referred to as “little r” restatement).

Under the proposed Rule, listed companies will be required to recover the amount of incentive-based compensation received by an executive officer that exceeds the amount the executive officer would have received had the incentive-based compensation been determined based on the accounting restatement. Incentive-based compensation is deemed received⁶ in the fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the grant or

⁶ Nasdaq proposes to define the term “received” as provided in Rule 10D-1.

payment of the incentive-based compensation occurs after the end of that period. For incentive-based compensation based on stock price or total shareholder return, companies can use a reasonable estimate of the effect of the restatement on the applicable measure to determine the amount to be recovered.

As provided in Rule 10D-1, Nasdaq proposes to define the term “Incentive-based compensation” to mean any compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure. The term “financial reporting measures” is defined as measures that are determined and presented in accordance with the accounting principles used in an issuer’s financial statements, and any measures that are derived wholly or in part from such measures, as well as an issuer’s stock price and total shareholder return. Equity awards that vest exclusively upon completion of a specified employment period, without any performance condition, and bonus awards that are discretionary or based on subjective goals or goals unrelated to financial reporting measures, do not constitute incentive-based compensation.⁷ Incentive-based compensation received by an executive officer before the issuer had a class of securities listed on a national securities exchange or a national securities association would not be subject to the compensation recovery policy.

As also provided in Rule 10D-1, Nasdaq proposes to set forth the circumstances where listed companies would have limited discretion not to recover the excess incentive-based compensation. Specifically, Nasdaq proposes to provide that a company is required to recover compensation in compliance with its recovery policy, except to the extent that pursuit of recovery would be impracticable because: (1) the direct expense paid to a third

⁷ See the Listing Standards Release, at 73094.

party to assist in enforcing the policy would exceed the amount to be recovered, (2) recovery would violate home country law, where that law was adopted prior to November 28, 2022, based on an opinion of counsel acceptable to Nasdaq or (3) recovery would cause a broad-based retirement plan to fail to meet the tax-qualification requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder. Before concluding that pursuit is impracticable, a company must first make a reasonable attempt to recover the incentive-based compensation and provide that documentation to Nasdaq. The listed company's board is required to apply on a "no fault" basis any recovery policy consistently to executive officers and a listed company is prohibited from indemnifying any current or former executive officer for recovered compensation.

As provided in Rule 10D-1, Nasdaq proposes to require each listed company to file all disclosures with respect to its erroneously awarded executive compensation recovery policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings. As explained in the Listing Standards Release, each listed company is required to file its compensation recovery policy as an exhibit to its Exchange Act annual report. In addition, the Commission's rules require disclosure pursuant to Item 402 of Regulation S-K of the following items, among others, if, during the prior fiscal year, either a triggering restatement occurred or any balance of excess incentive-based compensation was outstanding:

- The date on which the listed issuer was required to prepare an accounting restatement and the aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement (including an analysis

- of how the recoverable amount was calculated) or, if the amount has not yet been determined, an explanation of the reasons and disclosure of the amount and related disclosures in the next filing that is subject to Item 402 of Regulation S-K;
- The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of its last completed fiscal year;
 - If the financial reporting measure related to a stock price or total shareholder return metric, the estimates used to determine the amount of erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;
 - If recovery would be impracticable pursuant to Rule 10D-1(b)(1)(iv), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; and
 - For each current and former named executive officer, disclose the amount of erroneously awarded compensation still owed that had been outstanding for 180 days or longer since the date the issuer determined the amount owed.

The additional disclosure requirements apply immediately following the effective date of the applicable listing standards.

Covered Companies

As provided in Rule 10D-1, Nasdaq proposes to apply the proposed listing standards related to recovery of erroneously awarded executive compensation to all listed companies (including but not limited to, foreign private issuers, emerging growth

companies, smaller reporting companies, controlled companies and issuers of listed debt whose stock is not also listed) except for certain registered investment companies to the extent they do not provide incentive-based compensation to their employees. As provided in Rule 10D-1, Nasdaq proposes to adopt Listing Rule 5608(c) to provide certain exemptions from the requirements related to recovery of erroneously awarded executive compensation. Specifically Rule 5608(c) will exempt any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2); and any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

For clarity, Nasdaq proposes to amend Listing Rule 5210 to indicate that any company newly listing on Nasdaq must comply with the requirements of proposed Listing Rule 5608 (Recovery of Erroneously Awarded Compensation). Nasdaq also proposes to similarly amend Listing Rule 5701 governing listing requirements for “other securities,” and Listing Rule 5702 governing listing requirements for “debt securities.”

Compliance with Compensation Recovery Policy

As described above, Nasdaq proposes to require that a company will be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with the policy’s recovery provisions. Rule 10D-1 requires that a listed company recover the amount of erroneously awarded incentive-based compensation reasonably

promptly,⁸ but does not specify the time by which the issuer must complete the recovery of excess incentive-based compensation; rather, Nasdaq would determine whether the steps an issuer is taking constitute compliance with its compensation recovery policy. The issuer's obligation to recover erroneously awarded incentive-based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Nasdaq proposes to amend Listing Rule 5810(c)(2)(A)(iii) to provide that a company that failed to comply with proposed Listing Rule 5608 is required to submit to Nasdaq Staff a plan to regain compliance. The administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies, and would allow Nasdaq Staff to provide the issuer up to 180 days to cure the deficiency. Thereafter, Nasdaq Staff would be required to issue a delisting letter,⁹

⁸ In that regard, the Commission stated that it “recognize[s] that what is reasonable may depend on the additional cost incident to recovery efforts. [The Commission] expect[s] that issuers and their directors and officers, in the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation), will pursue the most appropriate balance of cost and speed in determining the appropriate means to seek recovery.” The Listing Standards Release, at 73104.

⁹ Listing Rule 5810 provides that notifications of deficiencies that allow for submission of a compliance plan may result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However Nasdaq believes that issuance of a Public Reprimand Letter is

which the issuer could appeal to the Hearings Panel, as provided in Listing Rule 5815. The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.

Implementation and Transition

As provided in Rule 10D-1, Nasdaq proposes to require that each Company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by this rule no later than 60 days following the effective date of this rule, and (ii) provide the disclosures required by this rule and in the applicable Commission filings on or after the effective date of this rule. Notwithstanding the look-back requirement in Rule 5608(b)(1)(i)(D), as provided in the Listing Standards Release, Nasdaq proposes to provide that a company is only required to apply the recovery policy to incentive-based compensation received on or after the effective date of this rule.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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.

inconsistent with the provisions of Rule 10D-1 and, therefore, proposes to amend Listing Rule 5805(j) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D-1. Nasdaq also proposes to modify Listing Rules 5810-5825 accordingly.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

As required by the Dodd-Frank Act and Rule 10D-1, Nasdaq is proposing amendments to its listing rules relating to recovery of erroneously awarded executive compensation. These proposals are, generally, required by SEC Rule 10D-1. Nasdaq believes that these proposals protect investors and the public interest by requiring companies, with certain exemptions, that, in the event the company is required to prepare an accounting restatement, the company will recover reasonably promptly erroneously awarded incentive-based compensation paid to its current or former executive officers based on any misstated financial reporting measure. Nasdaq also believes that these new requirements will help facilitate effective oversight of executive compensation and promote accountability to investors by not allowing executive officers to retain compensation that they were awarded erroneously. Finally, Nasdaq agrees with the Commission that the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which the Commission expects will further discourage such behavior.¹²

Nasdaq believes that the proposal to amend Listing Rule 5810(c)(2)(A)(iii) to provide that a company that failed to comply with proposed Listing Rule 5608 is required to submit to Nasdaq Staff a plan to regain compliance and be subject to the appeal process described above, is consistent with the investor protection objectives of Section 6(b)(5) of the Act¹³ because the administrative process for such deficiencies will follow

¹² See the Listing Standards Release, at 73077.

¹³ 15 U.S.C. 78f(b)(5).

the established pattern used for similar corporate governance deficiencies and Nasdaq has developed expertise administering this process.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, not necessary or appropriate in furtherance of the purposes of the Act, because the proposed listing standards will apply to all listed companies, except in limited circumstances described above, as required by the Dodd-Frank Act and the SEC Rule 10D-1.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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-2023-005)

February __, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 22, 2023, 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 establish listing standards related to recovery of erroneously awarded executive compensation as required by SEC Rule 10D-1.

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

The Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) added Section 10D to the Securities Exchange Act of 1934.³ In October 2022, the SEC adopted final Rule 10D-1⁴ instructing national securities exchanges to establish specific listing standards that require each issuer to adopt and comply with a written executive compensation recovery policy.⁵ Under Rule 10D-1, listed companies must recover from current and former executive officers incentive-based compensation received during the three fiscal years preceding the date on which the issuer is required to prepare an accounting restatement to correct a material error. As required by Rule 10D-1 and the Listing Standards Release, Nasdaq proposes to adopt Listing Rule 5608 (the “Rule”), titled, recovery of erroneously awarded compensation.

³ 15 U.S.C. 78j-4.

⁴ 17 CFR 240.10D-1.

⁵ Securities Exchange Act Release No. 96159 (October 26, 2022), 87 FR 73076 (November 28, 2022)(“Listing Standards Release”).

Proposed Listing Rule 5608(a) would introduce the requirements of the Rule in accordance with the Listing Standards Release. Nasdaq also proposes to adopt Listing Rule 5608(b), which sets forth the substantive requirements of Rule 10D-1(b), and Listing Rule 5608(d), which sets forth the defined terms applicable to the Rule. As provided in Rule 10D-1, Nasdaq proposes to define the term “executive officer” to include the issuer’s president, principal financial officer, principal accounting officer, any vice-president in charge of a principal business unit, division or function and any other person (including executive officers of a parent or subsidiary) who performs similar policy-making functions for the issuer. The term “policy-making function” is not intended to include policy-making functions that are not significant.

The recovery of erroneously awarded compensation is required on a “no fault” basis, without regard to whether any misconduct occurred or an executive officer’s responsibility for the erroneous financial statements. A restatement due to material non-compliance with any financial reporting requirement under the securities laws triggers application of the recovery policy. As explained in the Listing Standards Release, the determination regarding materiality of an error should be based on facts and circumstances and existing judicial and administrative interpretations. The proposed Rule requires recovery for restatements that correct errors that are material to previously issued financial statements (commonly referred to as “Big R” restatements), as well as for restatements that correct errors that are not material to previously issued financial statements but would result in a material misstatement if the errors were left uncorrected in the current report or the error correction was recognized in the current period (commonly referred to as “little r” restatement).

Under the proposed Rule, listed companies will be required to recover the amount of incentive-based compensation received by an executive officer that exceeds the amount the executive officer would have received had the incentive-based compensation been determined based on the accounting restatement. Incentive-based compensation is deemed received⁶ in the fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the grant or payment of the incentive-based compensation occurs after the end of that period. For incentive-based compensation based on stock price or total shareholder return, companies can use a reasonable estimate of the effect of the restatement on the applicable measure to determine the amount to be recovered.

As provided in Rule 10D-1, Nasdaq proposes to define the term “Incentive-based compensation” to mean any compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measure. The term “financial reporting measures” is defined as measures that are determined and presented in accordance with the accounting principles used in an issuer’s financial statements, and any measures that are derived wholly or in part from such measures, as well as an issuer’s stock price and total shareholder return. Equity awards that vest exclusively upon completion of a specified employment period, without any performance condition, and bonus awards that are discretionary or based on subjective goals or goals unrelated to financial reporting measures, do not constitute incentive-based compensation.⁷ Incentive-based compensation received by an executive officer before the issuer had a class of

⁶ Nasdaq proposes to define the term “received” as provided in Rule 10D-1.

⁷ See the Listing Standards Release, at 73094.

securities listed on a national securities exchange or a national securities association would not be subject to the compensation recovery policy.

As also provided in Rule 10D-1, Nasdaq proposes to set forth the circumstances where listed companies would have limited discretion not to recover the excess incentive-based compensation. Specifically, Nasdaq proposes to provide that a company is required to recover compensation in compliance with its recovery policy, except to the extent that pursuit of recovery would be impracticable because: (1) the direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered, (2) recovery would violate home country law, where that law was adopted prior to November 28, 2022, based on an opinion of counsel acceptable to Nasdaq or (3) recovery would cause a broad-based retirement plan to fail to meet the tax-qualification requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder. Before concluding that pursuit is impracticable, a company must first make a reasonable attempt to recover the incentive-based compensation and provide that documentation to Nasdaq. The listed company's board is required to apply on a "no fault" basis any recovery policy consistently to executive officers and a listed company is prohibited from indemnifying any current or former executive officer for recovered compensation.

As provided in Rule 10D-1, Nasdaq proposes to require each listed company to file all disclosures with respect to its erroneously awarded executive compensation recovery policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings. As explained in the Listing Standards Release, each listed company is required to file its compensation recovery policy as an exhibit to its Exchange Act annual report. In addition, the

Commission's rules require disclosure pursuant to Item 402 of Regulation S-K of the following items, among others, if, during the prior fiscal year, either a triggering restatement occurred or any balance of excess incentive-based compensation was outstanding:

- The date on which the listed issuer was required to prepare an accounting restatement and the aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement (including an analysis of how the recoverable amount was calculated) or, if the amount has not yet been determined, an explanation of the reasons and disclosure of the amount and related disclosures in the next filing that is subject to Item 402 of Regulation S-K;
- The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of its last completed fiscal year;
- If the financial reporting measure related to a stock price or total shareholder return metric, the estimates used to determine the amount of erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;
- If recovery would be impracticable pursuant to Rule 10D-1(b)(1)(iv), for each current and former named executive officer and for all other current and former executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the listed registrant decided in each case not to pursue recovery; and

- For each current and former named executive officer, disclose the amount of erroneously awarded compensation still owed that had been outstanding for 180 days or longer since the date the issuer determined the amount owed.

The additional disclosure requirements apply immediately following the effective date of the applicable listing standards.

Covered Companies

As provided in Rule 10D-1, Nasdaq proposes to apply the proposed listing standards related to recovery of erroneously awarded executive compensation to all listed companies (including but not limited to, foreign private issuers, emerging growth companies, smaller reporting companies, controlled companies and issuers of listed debt whose stock is not also listed) except for certain registered investment companies to the extent they do not provide incentive-based compensation to their employees. As provided in Rule 10D-1, Nasdaq proposes to adopt Listing Rule 5608(c) to provide certain exemptions from the requirements related to recovery of erroneously awarded executive compensation. Specifically Rule 5608(c) will exempt any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2); and any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

For clarity, Nasdaq proposes to amend Listing Rule 5210 to indicate that any company newly listing on Nasdaq must comply with the requirements of proposed

Listing Rule 5608 (Recovery of Erroneously Awarded Compensation). Nasdaq also proposes to similarly amend Listing Rule 5701 governing listing requirements for “other securities,” and Listing Rule 5702 governing listing requirements for “debt securities.”

Compliance with Compensation Recovery Policy

As described above, Nasdaq proposes to require that a company will be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with the policy’s recovery provisions. Rule 10D-1 requires that a listed company recover the amount of erroneously awarded incentive-based compensation reasonably promptly,⁸ but does not specify the time by which the issuer must complete the recovery of excess incentive-based compensation; rather, Nasdaq would determine whether the steps an issuer is taking constitute compliance with its compensation recovery policy. The issuer’s obligation to recover erroneously awarded incentive-based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer. In evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is

⁸ In that regard, the Commission stated that it “recognize[s] that what is reasonable may depend on the additional cost incident to recovery efforts. [The Commission] expect[s] that issuers and their directors and officers, in the exercise of their fiduciary duty to safeguard the assets of the issuer (including the time value of any potentially recoverable compensation), will pursue the most appropriate balance of cost and speed in determining the appropriate means to seek recovery.” The Listing Standards Release, at 73104.

securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.

Nasdaq proposes to amend Listing Rule 5810(c)(2)(A)(iii) to provide that a company that failed to comply with proposed Listing Rule 5608 is required to submit to Nasdaq Staff a plan to regain compliance. The administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies, and would allow Nasdaq Staff to provide the issuer up to 180 days to cure the deficiency. Thereafter, Nasdaq Staff would be required to issue a delisting letter,⁹ which the issuer could appeal to the Hearings Panel, as provided in Listing Rule 5815. The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.

Implementation and Transition

As provided in Rule 10D-1, Nasdaq proposes to require that each Company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by this rule no later than 60 days following the effective date of this rule, and (ii) provide the disclosures required by this rule and in the applicable Commission filings on or after the effective date of this rule. Notwithstanding the look-back requirement in Rule 5608(b)(1)(i)(D), as provided in the Listing Standards Release,

⁹ Listing Rule 5810 provides that notifications of deficiencies that allow for submission of a compliance plan may result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However Nasdaq believes that issuance of a Public Reprimand Letter is inconsistent with the provisions of Rule 10D-1 and, therefore, proposes to amend Listing Rule 5805(j) to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D-1. Nasdaq also proposes to modify Listing Rules 5810-5825 accordingly.

Nasdaq proposes to provide that a company is only required to apply the recovery policy to incentive-based compensation received on or after the effective date of this rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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 required by the Dodd-Frank Act and Rule 10D-1, Nasdaq is proposing amendments to its listing rules relating to recovery of erroneously awarded executive compensation. These proposals are, generally, required by SEC Rule 10D-1. Nasdaq believes that these proposals protect investors and the public interest by requiring companies, with certain exemptions, that, in the event the company is required to prepare an accounting restatement, the company will recover reasonably promptly erroneously awarded incentive-based compensation paid to its current or former executive officers based on any misstated financial reporting measure. Nasdaq also believes that these new requirements will help facilitate effective oversight of executive compensation and promote accountability to investors by not allowing executive officers to retain compensation that they were awarded erroneously. Finally, Nasdaq agrees with the Commission that the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which the Commission expects will further discourage such behavior.¹²

Nasdaq believes that the proposal to amend Listing Rule 5810(c)(2)(A)(iii) to provide that a company that failed to comply with proposed Listing Rule 5608 is required to submit to Nasdaq Staff a plan to regain compliance and be subject to the appeal process described above, is consistent with the investor protection objectives of Section 6(b)(5) of the Act¹³ because the administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies and Nasdaq has developed expertise administering this process.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, not necessary or appropriate in furtherance of the purposes of the Act, because the proposed listing standards will apply to all listed companies, except in limited circumstances described above, as required by the Dodd-Frank Act and the SEC Rule 10D-1.

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

No written comments were either solicited or received.

¹² See the Listing Standards Release, at 73077.

¹³ 15 U.S.C. 78f(b)(5).

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

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2023-005 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-2023-005. 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-2023-005 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

THE NASDAQ STOCK MARKET LLC RULES

* * * * *

5210. Prerequisites for Applying to List on The Nasdaq Stock Market

All Companies applying to list on The Nasdaq Stock Market must meet the following prerequisites:

(a) – (k) No change.

(l) As required by SEC Rule 10D-1, any Company listing on Nasdaq must comply with the requirements of Rule 5608 (Recovery of Erroneously Awarded Compensation).

* * * * *

5601. Preamble to the Corporate Governance Requirements

In addition to meeting the quantitative requirements in the Rule 5200, 5300, 5400 and 5500 Series, Companies applying to list and listed on Nasdaq must meet the qualitative requirements outlined in this Rule 5600 Series. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive compensation and the director nomination process; recovery of erroneously awarded compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; and shareholder approval, including voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

Nasdaq maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5602.

* * * * *

5608. Recovery of Erroneously Awarded Compensation

(a) Preamble. As required by SEC Rule 10D-1, this Rule 5608 requires Companies to adopt a compensation recovery policy, comply with that policy, and provide the compensation recovery policy disclosures required by this rule and in the applicable Commission filings.

(b) Recovery of Erroneously Awarded Compensation. Each Company must:

(1) Adopt and comply with a written policy providing that the Company will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

(i) The Company's recovery policy must apply to all incentive-based compensation received by a person:

(A) After beginning service as an executive officer;

(B) Who served as an executive officer at any time during the performance period for that incentive-based compensation;

(C) While the Company has a class of securities listed on a national securities exchange or a national securities association; and

(D) During the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

(ii) For purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule is the earlier to occur of:

(A) The date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (b)(1) of this Rule; or

(B) The date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (b)(1) of this Rule.

(iii) The amount of incentive-based compensation that must be subject to the Company's recovery policy ("erroneously awarded compensation") is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not

subject to mathematical recalculation directly from the information in an accounting restatement:

(A) The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and

(B) The Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to Nasdaq.

(iv) The Company must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that the conditions of paragraphs (b)(1)(iv)(A), (B), or (C) of this Rule are met, and the Company's Compensation Committee, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

(A) The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to Nasdaq.

(B) Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to Nasdaq, that recovery would result in such a violation, and must provide such opinion to Nasdaq.

(C) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

(v) The Company is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.

(2) File all disclosures with respect to such recovery policy in accordance with the requirements of the Federal securities laws, including the disclosure required by the applicable Commission filings.

(c) General Exemptions. The requirements of this Rule 5608 do not apply to the listing of:

(1) Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2); and
(2) Any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

(d) Definitions. Unless the context otherwise requires, the following definitions apply for purposes of this Rule 5608 (and only for purposes of this Rule 5608):

Executive Officer. An executive officer is the Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive officers of the Company's parent(s) or subsidiaries are deemed executive officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

Financial Reporting Measures. Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

Incentive-Based Compensation. Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

Received. Incentive-based compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

(e) Effective Date. Each Company is required to (i) adopt a policy governing the recovery of erroneously awarded compensation as required by this rule no later than 60 days following the effective date of this rule, which is {insert the date of the Commission's approval of SR-NASDAQ-2023-005}, and (ii) provide the disclosures required by this rule and in the applicable Commission filings on or after the effective date of this rule, which is {insert the date of the Commission's approval of SR-NASDAQ-2023-005}. Notwithstanding the look-back requirement in Rule 5608(b)(1)(i)(D), a Company is only required to apply the recovery policy to incentive-based compensation received on or after the effective date of this rule, which is {insert the date of the Commission's approval of SR-NASDAQ-2023-005}.

* * * * *

5701. Preamble to the Listing Requirements for Other Securities

(a)-(d) No change.

(e) The requirements of Listing Rule 5608 (Recovery of Erroneously Awarded Compensation) apply to any security listed under the Rule 5700 Series, except for:

(1) Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2);

(2) Any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded incentive-based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company

5702. Debt Securities (Other than Convertible Debt)

(a) – (d) No change.

(e) An issuer of non-convertible bonds listed under this Rule 5702 is subject to the requirements of Listing Rule 5608 (Recovery of Erroneously Awarded Compensation).

* * * * *

5805. Definitions

(a) - (i) No change.

(j) "Public Reprimand Letter" means a letter issued by Staff or a Decision of an Adjudicatory Body 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[of] the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body 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.

(k) No change.

5810. Notification of Deficiency by the Listing Qualifications Department

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

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

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

(a) - (b) No change.

IM-5810-1. Disclosure of Written Notice of Staff Determination No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

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

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (vi) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iv)

and (vi) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance.

(i) - (ii) No change.

(iii) deficiencies from the standards of Rules 5620(a) Meetings of Shareholders, 5620(c) Quorum, 5630 Review of Related Party Transactions, 5635 Shareholder Approval, 5250(c)(3) Auditor Registration, 5255(a) Direct Registration Program, 5608 Recovery of Erroneously Awarded Compensation, 5610 Code of Conduct, 5615(a)(4)(D) Partner Meetings of Limited Partnerships, 5615(a)(4)(E) Quorum of Limited Partnerships, 5615(a)(4)(G) Related Party Transactions of Limited Partnerships, or 5640 Voting Rights; or

(iv) - (vi) No change.

IM-5810-2. Staff Review of Deficiencies No change.

(B) - (G) No change.

(3) No change.

(4) Public Reprimand Letter

Staff's notification may be in the form of 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[of the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department 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.

(d) No change.

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a

Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) - (b) No change.

(c) Scope of the Hearings Panel's Discretion

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) - (C) No change.

(D) 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[of] the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel 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;

(E) - (G) No change.

(2) - (4) No change.

(d) No change.

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[of] 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.

(2) - (6) No change.

(e) No change.

5825. Discretionary Review by Nasdaq Board

(a) - (c) No change.

(d) Board Decision

If the Nasdaq Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Nasdaq Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Nasdaq Board 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[of] the Act) and the Nasdaq Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Nasdaq Board 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. The Decision of the Nasdaq Board will take immediate effect, unless it specifies to the contrary, and represents the final action of Nasdaq. If the Nasdaq Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Nasdaq Board specifies to the contrary, and Nasdaq will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.

* * * * *