

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2013 - * 128	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market 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"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) <input type="checkbox"/>		Section 806(e)(2) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
A proposal to amend the NASDAQ listing standards related to compliance determinations for Market Value of Listed Securities and Market Value of Publicly-Held Shares deficiencies				
<b>Contact Information</b>				
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 *	Arnold	Last Name *	Golub	
Title *	Vice President			
E-mail *	arnold.golub@nasdaqomx.com			
Telephone *	(301) 978-8075	Fax	(301) 978-8472	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	09/26/2013	Executive Vice President and General Counsel		
By	Edward S. Knight			
(Name *)		Edward S Knight,		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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

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

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

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

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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**

Add Remove View

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the NASDAQ listing standards related to compliance determinations for Market Value of Listed Securities and Market Value of Publicly-Held Shares deficiencies.

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

Proposed new language is underlined; deleted text is in brackets.

\* \* \* \* \*

**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.

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

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

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

expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

### **(c) Types of Deficiencies and Notifications**

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

(1) – (2) No change.

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

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

(A)– (B) No change.

### **(C) Market Value of Listed Securities**

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(F).

### **(D) Market Value of Publicly Held Shares**

A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive

business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(F).

(E) No change.

**(F) Staff Discretion Relating to the [Bid] Price-based Requirements**

If a Company fails to meet the Market Value of Listed Securities, Market Value of Publicly Held Shares, or Bid Price requirements, each of which is related to the Company's security price and collectively called the "Price-based Requirements," compliance is generally achieved by meeting the requirement for a minimum of ten consecutive business days. However, Staff may, in its discretion, require a Company to [maintain a bid price of at least \$1.00 per share] satisfy the applicable Price-based Requirement for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the Company has demonstrated an ability to maintain long-term compliance. In determining whether to require a Company to meet the [minimum \$1.00 bid price standard] applicable Price-based-requirement beyond ten business days, Staff [will] may consider all relevant facts and circumstances, including without limitation [the following four factors]:

(i) the margin of compliance (the amount by which a Company exceeds the [bid price is above the \$1.00 minimum standard] applicable Price-based Requirement);

(ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price);

(iii) the Market Maker montage (the number of Market Makers quoting at or above \$1.00 or the minimum price necessary to satisfy another Price-based Requirement; and the size of their quotes); and

(iv) the trend of the stock price (is it up or down).

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of NASDAQ approved the proposed rule change on August 20, 2013, which authorized the filing of the rule change with the Commission. No other action by NASDAQ is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Arnold Golub, Vice President, NASDAQ, at (301) 978-8075 (telephone) or (301) 978-8472 (fax).

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

a. Purpose

The purpose of this proposed rule change is to increase transparency of the fact that NASDAQ Staff (“Staff”) may consider periods longer than ten days when evaluating whether a company has regained compliance with the minimum Market Value of Listed Securities (“MVLS”) and Market Value of Publicly-Held Shares (“MVPHS”) requirements, while also generally limiting such review to twenty days. Currently, NASDAQ Rules provide that compliance with the MVLS and MVPHS requirements “can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days.” (emphasis added). As such, while a company cannot regain compliance in a period less than ten days, the rule does not require Staff to limit its review for compliance with the MVLS and MVPHS requirements to exactly ten days. Further, Staff’s broad discretionary authority under Rule 5101 supports Staff’s consideration of a longer period when necessary.<sup>3</sup>

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<sup>3</sup> Rule 5101 provides NASDAQ with broad discretionary authority over the initial and continued listing of securities, and allows the application of additional or more stringent criteria for the continued listing of particular securities based on any event, condition, or circumstance that exists or occurs, even though the

By contrast, Rule 5810(c)(3)(F) explicitly describes Staff's discretion to extend the compliance period for a bid price deficiency beyond ten days (but generally not more than 20 days) and identifies factors for Staff to consider in making a decision to do so.<sup>4</sup> In the ten years since adopting these factors,<sup>5</sup> Staff has found them useful in determining whether to extend the bid price compliance period beyond ten days and thus typically uses these same factors, and, generally, the 20 day limit, when evaluating compliance with the MVLS and MVPHS requirements. The proposed change to Rule 5810(c)(3)(F)<sup>6</sup> would describe this practice and thereby provide transparency to the manner in which Staff applies its existing discretion.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</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. The proposed rule change will add greater transparency to the rule administration process by permitting issuers to better

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securities meet all enumerated criteria for initial or continued listing on NASDAQ.

<sup>4</sup> These factors are: (i) the margin of compliance; (ii) the trading volume; (iii) the market maker montage; and (iv) the trend of the stock price.

<sup>5</sup> Current Rule 5810(c)(3)(F) was originally adopted in 2003 as Rule 4310(c)(8)(E). Exchange Act Release No. 47181 (January 14, 2003), 68 FR 3074 (January 22, 2003).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

understand how NASDAQ evaluates compliance with the MVLS and MVPHS listing rules. At the same time, it describes NASDAQ Staff discretion to apply a higher standard in determining which companies are suitable for continued listing on the exchange, thus protecting investors.

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. In this regard, NASDAQ notes that the competition among exchanges for listings is robust and vigorous, and the proposed rule change is not intended, nor is it expected, to reduce or diminish such competition. The rule brings added transparency to NASDAQ's vigilant enforcement of the Listing Rules, which already allow NASDAQ Staff to use discretion to apply more stringent listing standards. However, it does not allow the Staff any discretion to apply diminished listing standards in order to attract or retain listing business. The proposed rule change offers NASDAQ no advantages over its competitors beyond those created by enhancing the Exchange's regulatory effectiveness.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>9</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 proposed rule change will add greater transparency by clarifying how NASDAQ applies its existing authority to evaluate compliance with the MVLS and MVPHS listing rules for periods longer than ten consecutive business days. As such, given that the proposed change merely describes, and does not modify, NASDAQ's authority to determine compliance with the MVLS and MVPHS requirements, it does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

Furthermore, Rule 19b-4(f)(6)(iii) 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: (i) necessary or appropriate in the public interest; (ii) for

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

the protection of investors; or (iii) 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

The proposed rule change is not based on the rules of another Self-Regulatory Organization or of the Commission.

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 for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2013-128)

September \_\_, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend the NASDAQ Listing Standards Related to Compliance Determinations for Market Value of Listed Securities and Market Value of Publicly-Held Shares Deficiencies

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 September 26, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NASDAQ listing standards related to compliance determinations for Market Value of Listed Securities and Market Value of Publicly-Held Shares deficiencies. The text of the proposed rule change is below.

Proposed new language is underlined; proposed deletions are in brackets.

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

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

**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.

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.

**(c) Types of Deficiencies and Notifications**

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

- (1) – (2) No change.

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

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

- (A)– (B) No change.

**(C) Market Value of Listed Securities**

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(F).

**(D) Market Value of Publicly Held Shares**

A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(F).

(E) No change.

**(F) Staff Discretion Relating to the [Bid] Price-based Requirements**

If a Company fails to meet the Market Value of Listed Securities, Market Value of Publicly Held Shares, or Bid Price requirements, each of which is related to the Company's security price and collectively called the "Price-based Requirements," compliance is generally achieved by meeting the requirement for a minimum of ten consecutive business days. However, Staff may, in its discretion, require a Company to [maintain a bid price of at least \$1.00 per share] satisfy the applicable Price-based Requirement for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the Company has demonstrated an ability to maintain long-term compliance. In determining whether to require a Company to meet the [minimum \$1.00 bid price standard] applicable Price-based-requirement beyond ten business days, Staff [will] may consider all relevant facts and circumstances, including without limitation [the following four factors]:

- (i) the margin of compliance (the amount by which a Company exceeds the [bid price is above the \$1.00 minimum standard] applicable Price-based Requirement);

(ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price);

(iii) the Market Maker montage (the number of Market Makers quoting at or above \$1.00 or the minimum price necessary to satisfy another Price-based Requirement; and the size of their quotes); and

(iv) the trend of the stock price (is it up or down).

\* \* \* \* \*

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 purpose of this proposed rule change is to increase transparency of the fact that NASDAQ Staff (“Staff”) may consider periods longer than ten days when evaluating whether a company has regained compliance with the minimum Market Value of Listed Securities (“MVLS”) and Market Value of Publicly-Held Shares (“MVPHS”) requirements, while also generally limiting such review to twenty days. Currently, NASDAQ Rules provide that compliance with the MVLS and MVPHS requirements “can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days.” (emphasis added). As such, while a company cannot regain compliance in a period less than ten days, the rule does not require Staff to limit its review for

compliance with the MVLS and MVPHS requirements to exactly ten days. Further, Staff's broad discretionary authority under Rule 5101 supports Staff's consideration of a longer period when necessary.<sup>3</sup>

By contrast, Rule 5810(c)(3)(F) explicitly describes Staff's discretion to extend the compliance period for a bid price deficiency beyond ten days (but generally not more than 20 days) and identifies factors for Staff to consider in making a decision to do so.<sup>4</sup> In the ten years since adopting these factors,<sup>5</sup> Staff has found them useful in determining whether to extend the bid price compliance period beyond ten days and thus typically uses these same factors, and, generally, the 20 day limit, when evaluating compliance with the MVLS and MVPHS requirements. The proposed change to Rule 5810(c)(3)(F) would describe this practice and thereby provide transparency to the manner in which Staff applies its existing discretion.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it

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<sup>3</sup> Rule 5101 provides NASDAQ with broad discretionary authority over the initial and continued listing of securities, and allows the application of additional or more stringent criteria for the continued listing of particular securities based on any event, condition, or circumstance that exists or occurs, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ.

<sup>4</sup> These factors are: (i) the margin of compliance; (ii) the trading volume; (iii) the market maker montage; and (iv) the trend of the stock price.

<sup>5</sup> Current Rule 5810(c)(3)(F) was originally adopted in 2003 as Rule 4310(c)(8)(E). Exchange Act Release No. 47181 (January 14, 2003), 68 FR 3074 (January 22, 2003).

<sup>6</sup> 15 U.S.C. 78f(b).

is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change will add greater transparency to the rule administration process by permitting issuers to better understand how NASDAQ evaluates compliance with the MVLS and MVPHS listing rules. At the same time, it describes NASDAQ Staff discretion to apply a higher standard in determining which companies are suitable for continued listing on the exchange, thus protecting investors.

**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. In this regard, NASDAQ notes that the competition among exchanges for listings is robust and vigorous, and the proposed rule change is not intended, nor is it expected, to reduce or diminish such competition. The rule brings added transparency to NASDAQ's vigilant enforcement of the Listing Rules, which already allow NASDAQ Staff to use discretion to apply more stringent listing standards. However, it does not allow the Staff any discretion to apply diminished listing standards in order to attract or retain listing business. The proposed rule change offers NASDAQ no advantages over its competitors beyond those created by enhancing the Exchange's regulatory effectiveness.

**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.

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

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)(ii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> The proposed rule change will add greater transparency by clarifying how NASDAQ applies its existing authority to evaluate compliance with the MVLS and MVPHS listing rules for periods longer than ten consecutive business days. As such, given that the proposed change merely describes, and does not modify, NASDAQ's authority to determine compliance with the MVLS and MVPHS requirements, it does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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>8</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>9</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-2013-128 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-128. 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-2013-128 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>10</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).