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

File No.* SR - 2013 - * 147
Amendment No. (req. for Amendments *)

Filing by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) ☐ Section 806(e)(2) ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

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

A proposed rule change to amend its listing rules on compensation committee composition.

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 * Erika Last Name * Moore
Title * Associate General Counsel
E-mail * erika.moore@nasdaqomx.com
Telephone * (301) 978-8490 Fax (301) 978-8472

Signature

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.

Date 11/26/2013
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

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.

Persona Not Validated - 1383935917270,

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	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 * Add Remove View	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 Add Remove View	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 Add Remove View Exhibit Sent As Paper Document ☐	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 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	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 4 - Marked Copies Add Remove View	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 Add Remove View	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 proposed rule change to amend its listing rules on compensation committee composition. Specifically, Nasdaq proposes to amend Nasdaq Listing Rule 5605(d)(2)(A) and IM-5605-6 to replace the prohibition on the receipt of compensatory fees by compensation committee members with a requirement that a board of directors instead consider the receipt of such fees when determining eligibility for compensation committee membership.

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 attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Exchange's Board of Directors (the "Board") on July 17, 2013. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

Questions and comments on the proposed rule change may be directed to Erika J. Moore, Associate General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8490 (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

As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")[3] and Rule 10C-1 under the Act,[4] Nasdaq amended its listing rules (the "Amended Rules") relating to compensation committee composition, responsibilities and authority earlier this year.[5] Rule 10C-1 required Nasdaq to consider, in determining independence requirements for compensation committee members, certain relevant factors, including the "source of compensation of a member of the board of directors of an issuer, including any consulting, advisory or other compensatory fee paid by the issuer to such member of the board of directors."[6] Following consideration of this factor, Nasdaq adopted a prohibition on the receipt of compensatory fees by

3 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

4 17 CFR 240.10C-1.

5 See Securities Exchange Act Release No. 68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (SR-NASDAQ-2012-109).

6 17 CFR 240.10C-1(b)(1)(ii)(A).

compensation committee members,[7] which is the same standard applicable to audit committee members under Nasdaq's listing rules and Rule 10A-3 under the Act.[8]

During the rulemaking process, Nasdaq received limited comment on the prohibition on the receipt of compensatory fees by compensation committee members.[9] Over the past few months, however, Nasdaq has received feedback from listed companies and others that the prohibition on compensatory fees creates a burden on issuers at a time when regulatory burdens are higher than ever before. For example, there are companies in some industries (e.g., the energy and banking industries) where it is common to have directors who do a de minimis amount of business with the issuer and would, therefore, be ineligible to serve on the compensation committee under the Nasdaq rules. These

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7 See Nasdaq Listing Rule 5605(d)(2)(A), which states that each compensation committee member must not accept directly or indirectly any consulting, advisory or other compensatory fee from the company or any subsidiary thereof.

8 See Nasdaq Listing Rule 5605(c)(2)(A), which states that each audit committee member must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act. Under this rule, audit committee members may not accept directly or indirectly any consulting, advisory or other compensatory fee from the issuer or any subsidiary thereof. See 17 CFR 240.10A-3(b)(1).

9 Specifically, Nasdaq received only two comments objecting to the prohibition. See (i) Letter from Harold R. Carpenter, CFO, Pinnacle Financial Partners, Nashville, Tennessee, dated November 5, 2012; and (ii) Letter from Robert B. Lamm, Chair, Securities Law Committee, Society of Corporate Secretaries and Governance Professionals, New York, New York, dated December 7, 2012. Nasdaq also received three comments that supported the prohibition, but argued that in considering a director's eligibility to serve on a compensation committee, a board should also consider fees paid to directors for service on the board and board committees. See (i) Letter from J. Robert Brown, Jr., University of Denver Sturm College of Law, dated October 30, 2012; (ii) Letter from Brandon J. Rees, Acting Director, Office of Investment, AFL-CIO, dated November 5, 2012; and (iii) Letter from Carin Zelenko, Director, Capital Strategies Department, International Brotherhood of Teamsters, dated November 5, 2012. All the comment letters are available at http://www.sec.gov/comments/sr-nasdaq-2012-109/nasdaq2012109.shtml.

companies may have difficulty recruiting a sufficient number of eligible directors to serve on their boards, given the different requirements for board, audit committee and compensation committee composition. Companies and their representatives have indicated that this additional burden could influence a company's choice of listing venue.

After weighing these comments, Nasdaq proposes to remove the prohibition on the receipt of compensatory fees by compensation committee members. Nasdaq proposes to state instead that in affirmatively determining the independence of any director who will serve on the compensation committee, a company's board must consider the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the company to the director.[10] In IM-5605-6, Nasdaq proposes to state that when considering the sources of a director's compensation in determining independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the company's executive compensation.

Nasdaq proposes to remove the exception in the current rule that states that compensatory fees do not include: (i) fees received as a member of the compensation

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10 Nasdaq also proposes to add language to IM-5605-6 to state that for purposes of the affirmative independence determination described in Rule 5605(d)(2)(A), any reference to the defined term "Company" includes any parent or subsidiary of the company. The term "parent or subsidiary" is intended to cover entities the company controls and consolidates with the company's financial statements as filed with the Commission (but not if the company reflects such entity solely as an investment in its financial statements). This language is copied from IM-5605, which explains the interpretation of the definition of Independent Director in Rule 5605(a)(2). Since Rule 5605(d)(2)(A) describes an additional independence test for compensation committee members, Nasdaq believes it would be useful to repeat its construction of the term "Company" for independence purposes in the interpretive material for this rule.

committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the company (provided that such compensation is not contingent in any way on continued service).[11] As a result, boards of director should consider such fees, in aggregate with all other sources of compensation of the director, to determine whether such compensation would impair the director's judgment as a member of the compensation committee. This proposal is consistent with the approach of other exchanges, which do not exempt any types of fees from the analysis of compensation committee eligibility.[12] In addition, during the rulemaking process on the Amended Rules, Nasdaq received several comments arguing that in determining eligibility for compensation committee membership, a board should consider the fees paid to directors for their service on the board or board committees.[13]

Nasdaq's overall proposal is consistent with the Dodd-Frank Act and Rule 10C-1, which required Nasdaq to consider compensatory fees when determining eligibility for compensation committee membership, but did not require a prohibition on such fees. Even with the proposed change, a compensation committee member will not be allowed to receive unlimited fees from a company since such a member must continue to be an Independent Director as defined under Nasdaq Listing Rule 5605(a)(2).[14] That definition

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11 See Nasdaq Listing Rule 5605(d)(2)(A).

12 See Section 303A.02(a)(ii)(A) of the NYSE Listed Company Manual; see also BATS Rule 14.10(c)(4)(A)(i)(a); see also NYSE Arca Equities Rule 5.3(k)(4)(ii); see also Section 805(c)(1) of the NYSE MKT Company Guide.

13 See footnote 9, supra.

14 See Nasdaq Listing Rule 5605(d)(2)(A).

excludes any director who: (i) accepted any compensation from the company in excess of $120,000 during any period of twelve consecutive months within the prior three years;[15] or (ii) is a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more.[16] Boards of directors would be required to consider, based on the company's and the director's unique circumstances, whether the receipt of any fees, even fees below these caps, would impair the director's ability to make independent judgments about the company's executive compensation, and therefore render the director ineligible to serve on the compensation committee.

In addition, the proposal is consistent with Nasdaq's approach to affiliation, which is the other specific factor enumerated in Rule 10C-1 that Nasdaq was required to consider in determining eligibility for compensation committee membership. The Amended Rules require that boards of directors consider affiliation in determining compensation committee membership, but they do not include any outright prohibitions in this regard.[17] Nasdaq is proposing some minor wording changes to Rule 5605(d)(2)(A) to make the affiliation prong more clear, in light of the revisions to the

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15 See Nasdaq Listing Rule 5605(a)(2)(B). Nasdaq notes that this rule excludes compensation for board or board committee service from the $120,000 cap. However, any compensation for board or board committee service still must be considered for purposes of affirmatively determining the independence of any director who will serve on the compensation committee.

16 See Nasdaq Listing Rule 5605(a)(2)(D).

17 See Nasdaq Listing Rule 5605(d)(2)(A).

prong relating to compensatory fees; however, Nasdaq believes that substantively, the affiliation prong will remain unchanged following this proposed rule change. Nasdaq also proposes to add text to IM-5605-6 to state that when considering any affiliate relationship a director has with the company, a subsidiary, or an affiliate of a subsidiary, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation.[18]

Nasdaq also proposes to add language to Rule 5605(d)(2)(A) to clarify that in affirmatively determining the independence of any director who will serve on the compensation committee, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member. Nasdaq does not believe this is a substantive change since the existing rule requires compensation committee members to be Independent Directors as defined under Rule 5605(a)(2). This definition requires,

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[18] Nasdaq proposes to retain existing language in IM-5605-6 that states that while a board may conclude differently with respect to individual facts and circumstances, Nasdaq does not believe that ownership of a company's stock by itself, or possession of a controlling interest through ownership of a company's stock, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

among other things, that a company's board make an affirmative determination that the director has no relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The responsibilities of a director who serves on the compensation committee would include any responsibilities relating to compensation committee membership. However, Nasdaq believes it will be helpful to clarify this requirement in the text of Rule 5605(d)(2)(A), which describes the requirements for compensation committee composition.

Finally, Nasdaq proposes a minor edit to the first sentence of Rule 5605(d)(2)(A) to split it into two sentences in light of the revisions to the rule described above.[19] This edit clarifies that each compensation committee must consist of at least two members, and each committee member must be an Independent Director as defined under Rule 5605(a)(2).

Companies are required to comply with the compensation committee composition aspects of the Amended Rules by the earlier of their first annual meeting after January 15, 2014, or October 31, 2014.[20] As a result, Nasdaq believes it is important to implement the proposed change now, before companies propose changes to board and committee composition in connection with their 2014 annual meetings.

b. Statutory Basis

[19] Nasdaq also proposes conforming edits to IM-5605-6.

[20] See Nasdaq Listing Rule 5605(d)(6). During the transition period, companies that are not yet required to comply with a particular provision of revised Rule 5605(d) and IM-5605-6 must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] 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. Specifically, the proposal removes impediments to and perfects the mechanism of a free and open market by allowing boards of directors greater flexibility in determining eligibility for compensation committee membership, consistent with the requirements of the Dodd-Frank Act and Rule 10C-1. Nasdaq will continue to protect investors and the public interest by maintaining overall caps on the amount of compensatory fees that may be received by a compensation committee member from a company. However, a board of directors must consider, given the particular circumstances of a company and/or a director, whether any fees, even fees below the overall caps, would impair the director's ability to make independent judgments about the company's executive compensation, and therefore render the director ineligible to serve on the compensation committee.

In addition, Nasdaq proposes other changes in the rule to clarify its interpretation of the additional independence test for compensation committee members in light of the change discussed above. Specifically, Nasdaq proposes to: (i) delete an exception for certain types of compensatory fees that may be received by a compensation committee member; (ii) clarify the standard a board must use when considering certain affiliate relationships of a compensation committee member; (iii) explicitly state that as part of

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21 15 U.S.C. 78f(b).

22 15 U.S.C. 78f(b)(5).

the independence test, a board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member; (iv) reiterate the definition of the term "Company" for purposes of the independence test; and (v) clarify that each compensation committee must be an Independent Director as defined under Rule 5605(a)(2). These changes will make Nasdaq's compensation committee composition requirements more transparent and easier to understand. As a result, the changes will protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Dodd-Frank Act and Rule 10C-1 under the Act required each national securities exchange to adopt similar rules to Nasdaq's Amended Rules. Like Nasdaq, each other exchange was required to consider compensatory fees when determining eligibility requirements for compensation committee membership. Other than Nasdaq and NASDAQ OMX BX,[23] which is not currently operational as a listing market, no other exchange prohibits compensatory fees to members of the compensation committee.[24] This change will harmonize Nasdaq's rule regarding compensation

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23 Like Nasdaq, NASDAQ OMX BX adopted an outright prohibition on the receipt of compensatory fees by compensation committee members. See BX Venture Market Listing Rule 5605(d)(2)(A). However, Nasdaq expects that NASDAQ OMX BX will file a proposed rule change to conform its rule to the Nasdaq rule.

24 See Section 303A.02(a)(ii)(A) of the NYSE Listed Company Manual; see also BATS Rule 14.10(c)(4)(A)(i)(a); see also NYSE Arca Equities Rule 5.3(k)(4)(ii); see also Section 805(c)(1) of the NYSE MKT Company Guide.

committee composition with the more flexible rules of the other exchanges. As a result, this proposal removes a potential competitive advantage for the other exchanges and thereby enhances competition among exchanges.

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

No written comments were either solicited or received.[25]

6. <u>Extension of Time Period for Commission Action</u>

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[26] of the Act and Rule 19b-4(f)(6) thereunder[27] 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.

While relaxing a requirement for compensation committee eligibility, Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because Nasdaq's listing rules continue to include overall caps on the amount of compensatory fees that may be received by compensation

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[25] While no written comments were either solicited or received on this proposed rule change, Nasdaq did receive comments during the rulemaking process on the Amended Rules. <u>See</u> footnote 9, <u>supra</u>.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b-4(f)(6).

committee members. The proposal simply requires boards of directors to consider, based on the company's and the director's unique circumstances, whether the payment of any fees, even fees below these caps, would impair the director's ability to make independent judgments about the company's executive compensation, and therefore render the director ineligible to serve on the compensation committee. In addition, Nasdaq proposes other changes to Rule 5605(d)(2)(A) and IM-5605-6 to clarify the additional independence test for compensation committee members in light of the change discussed above. These changes will enhance investor protection by making Nasdaq's compensation committee composition requirements more transparent and easier to understand. Finally, the proposed rule change facilitates competition among exchanges by harmonizing Nasdaq's rule with the rules of other exchanges. In that regard, Nasdaq notes that the proposed rule change to Rule 5605(d)(2)(A) and IM-5605-6 is substantively identical to Section 303A.02(a)(ii) and the related commentary of the NYSE Listed Company Manual, which were subject to full notice and comment and approved by the Commission.[28]

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

[28] See Securities Exchange Act Release No. 68639 (January 11, 2013), 78 FR 4570 (January 22, 2013) (SR-NYSE-2012-49).

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 to Rule 5605(d)(2)(A) and IM-5605-6 is based on Section 303A.02(a)(ii) and the related commentary of the NYSE Listed Company Manual, which set forth the same affirmative independence test for compensation committee membership as Nasdaq's proposal. In addition, the proposed rule change is similar to the rules of several other exchanges that require boards of directors to consider compensatory fees in determining eligibility for compensation committee membership, rather than prohibiting such fees outright.[29]

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.

5. Text of the proposed rule change.

[29] See BATS Rule 14.10(c)(4)(A)(i)(a); see also NYSE Arca Equities Rule 5.3(k)(4)(ii); see also Section 805(c)(1) of the NYSE MKT Company Guide.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2013-147)

November ___, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Listing Rules on Compensation Committee Composition

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 November 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 its listing rules on compensation committee composition. Specifically, Nasdaq proposes to amend Nasdaq Listing Rule 5605(d)(2)(A) and IM-5605-6 to replace the prohibition on the receipt of compensatory fees by compensation committee members with a requirement that a board of directors instead consider the receipt of such fees when determining eligibility for compensation committee membership.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at http://nasdaq.cchwallstreet.com, at the principal office of the Exchange and at the Commission's Public Reference Room.

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

As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")[3] and Rule 10C-1 under the Act,[4] Nasdaq amended its listing rules (the "Amended Rules") relating to compensation committee composition, responsibilities and authority earlier this year.[5] Rule 10C-1 required Nasdaq to consider, in determining independence requirements for compensation committee members, certain relevant factors, including the "source of compensation of a member of the board of directors of an issuer, including any consulting, advisory or other compensatory fee paid

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3 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

4 17 CFR 240.10C-1.

5 See Securities Exchange Act Release No. 68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (SR-NASDAQ-2012-109).

by the issuer to such member of the board of directors."[6] Following consideration of this factor, Nasdaq adopted a prohibition on the receipt of compensatory fees by compensation committee members,[7] which is the same standard applicable to audit committee members under Nasdaq's listing rules and Rule 10A-3 under the Act.[8]

During the rulemaking process, Nasdaq received limited comment on the prohibition on the receipt of compensatory fees by compensation committee members.[9] Over the past few months, however, Nasdaq has received feedback from listed companies and others that the prohibition on compensatory fees creates a burden on issuers at a time when regulatory burdens are higher than ever before. For example, there are companies

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6 17 CFR 240.10C-1(b)(1)(ii)(A).

7 See Nasdaq Listing Rule 5605(d)(2)(A), which states that each compensation committee member must not accept directly or indirectly any consulting, advisory or other compensatory fee from the company or any subsidiary thereof.

8 See Nasdaq Listing Rule 5605(c)(2)(A), which states that each audit committee member must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act. Under this rule, audit committee members may not accept directly or indirectly any consulting, advisory or other compensatory fee from the issuer or any subsidiary thereof. See 17 CFR 240.10A-3(b)(1).

9 Specifically, Nasdaq received only two comments objecting to the prohibition. See (i) Letter from Harold R. Carpenter, CFO, Pinnacle Financial Partners, Nashville, Tennessee, dated November 5, 2012; and (ii) Letter from Robert B. Lamm, Chair, Securities Law Committee, Society of Corporate Secretaries and Governance Professionals, New York, New York, dated December 7, 2012. Nasdaq also received three comments that supported the prohibition, but argued that in considering a director's eligibility to serve on a compensation committee, a board should also consider fees paid to directors for service on the board and board committees. See (i) Letter from J. Robert Brown, Jr., University of Denver Sturm College of Law, dated October 30, 2012; (ii) Letter from Brandon J. Rees, Acting Director, Office of Investment, AFL-CIO, dated November 5, 2012; and (iii) Letter from Carin Zelenko, Director, Capital Strategies Department, International Brotherhood of Teamsters, dated November 5, 2012. All the comment letters are available at http://www.sec.gov/comments/sr-nasdaq-2012-109/nasdaq2012109.shtml.

in some industries (e.g., the energy and banking industries) where it is common to have directors who do a de minimis amount of business with the issuer and would, therefore, be ineligible to serve on the compensation committee under the Nasdaq rules. These companies may have difficulty recruiting a sufficient number of eligible directors to serve on their boards, given the different requirements for board, audit committee and compensation committee composition. Companies and their representatives have indicated that this additional burden could influence a company's choice of listing venue.

After weighing these comments, Nasdaq proposes to remove the prohibition on the receipt of compensatory fees by compensation committee members. Nasdaq proposes to state instead that in affirmatively determining the independence of any director who will serve on the compensation committee, a company's board must consider the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the company to the director.[10] In IM-5605-6, Nasdaq proposes to state that when considering the sources of a director's compensation in determining independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair

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10 Nasdaq also proposes to add language to IM-5605-6 to state that for purposes of the affirmative independence determination described in Rule 5605(d)(2)(A), any reference to the defined term "Company" includes any parent or subsidiary of the company. The term "parent or subsidiary" is intended to cover entities the company controls and consolidates with the company's financial statements as filed with the Commission (but not if the company reflects such entity solely as an investment in its financial statements). This language is copied from IM-5605, which explains the interpretation of the definition of Independent Director in Rule 5605(a)(2). Since Rule 5605(d)(2)(A) describes an additional independence test for compensation committee members, Nasdaq believes it would be useful to repeat its construction of the term "Company" for independence purposes in the interpretive material for this rule.

the director's ability to make independent judgments about the company's executive compensation.

Nasdaq proposes to remove the exception in the current rule that states that compensatory fees do not include: (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the company (provided that such compensation is not contingent in any way on continued service).[11] As a result, boards of director should consider such fees, in aggregate with all other sources of compensation of the director, to determine whether such compensation would impair the director's judgment as a member of the compensation committee. This proposal is consistent with the approach of other exchanges, which do not exempt any types of fees from the analysis of compensation committee eligibility.[12] In addition, during the rulemaking process on the Amended Rules, Nasdaq received several comments arguing that in determining eligibility for compensation committee membership, a board should consider the fees paid to directors for their service on the board or board committees.[13]

Nasdaq's overall proposal is consistent with the Dodd-Frank Act and Rule 10C-1, which required Nasdaq to consider compensatory fees when determining eligibility for compensation committee membership, but did not require a prohibition on such fees.

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11 See Nasdaq Listing Rule 5605(d)(2)(A).

12 See Section 303A.02(a)(ii)(A) of the NYSE Listed Company Manual; see also BATS Rule 14.10(c)(4)(A)(i)(a); see also NYSE Arca Equities Rule 5.3(k)(4)(ii); see also Section 805(c)(1) of the NYSE MKT Company Guide.

13 See footnote 9, supra.

Even with the proposed change, a compensation committee member will not be allowed to receive unlimited fees from a company since such a member must continue to be an Independent Director as defined under Nasdaq Listing Rule 5605(a)(2).[14] That definition excludes any director who: (i) accepted any compensation from the company in excess of $120,000 during any period of twelve consecutive months within the prior three years;[15] or (ii) is a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more.[16] Boards of directors would be required to consider, based on the company's and the director's unique circumstances, whether the receipt of any fees, even fees below these caps, would impair the director's ability to make independent judgments about the company's executive compensation, and therefore render the director ineligible to serve on the compensation committee.

In addition, the proposal is consistent with Nasdaq's approach to affiliation, which is the other specific factor enumerated in Rule 10C-1 that Nasdaq was required to consider in determining eligibility for compensation committee membership. The Amended Rules require that boards of directors consider affiliation in determining

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14 See Nasdaq Listing Rule 5605(d)(2)(A).

15 See Nasdaq Listing Rule 5605(a)(2)(B). Nasdaq notes that this rule excludes compensation for board or board committee service from the $120,000 cap. However, any compensation for board or board committee service still must be considered for purposes of affirmatively determining the independence of any director who will serve on the compensation committee.

16 See Nasdaq Listing Rule 5605(a)(2)(D).

compensation committee membership, but they do not include any outright prohibitions in this regard.[17] Nasdaq is proposing some minor wording changes to Rule 5605(d)(2)(A) to make the affiliation prong more clear, in light of the revisions to the prong relating to compensatory fees; however, Nasdaq believes that substantively, the affiliation prong will remain unchanged following this proposed rule change. Nasdaq also proposes to add text to IM-5605-6 to state that when considering any affiliate relationship a director has with the company, a subsidiary, or an affiliate of a subsidiary, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation.[18]

Nasdaq also proposes to add language to Rule 5605(d)(2)(A) to clarify that in affirmatively determining the independence of any director who will serve on the compensation committee, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the company which is

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17 See Nasdaq Listing Rule 5605(d)(2)(A).

18 Nasdaq proposes to retain existing language in IM-5605-6 that states that while a board may conclude differently with respect to individual facts and circumstances, Nasdaq does not believe that ownership of a company's stock by itself, or possession of a controlling interest through ownership of a company's stock, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

material to that director's ability to be independent from management in connection with the duties of a compensation committee member. Nasdaq does not believe this is a substantive change since the existing rule requires compensation committee members to be Independent Directors as defined under Rule 5605(a)(2). This definition requires, among other things, that a company's board make an affirmative determination that the director has no relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The responsibilities of a director who serves on the compensation committee would include any responsibilities relating to compensation committee membership. However, Nasdaq believes it will be helpful to clarify this requirement in the text of Rule 5605(d)(2)(A), which describes the requirements for compensation committee composition.

Finally, Nasdaq proposes a minor edit to the first sentence of Rule 5605(d)(2)(A) to split it into two sentences in light of the revisions to the rule described above.[19] This edit clarifies that each compensation committee must consist of at least two members, and each committee member must be an Independent Director as defined under Rule 5605(a)(2).

Companies are required to comply with the compensation committee composition aspects of the Amended Rules by the earlier of their first annual meeting after January 15, 2014, or October 31, 2014.[20] As a result, Nasdaq believes it is important to implement

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19 Nasdaq also proposes conforming edits to IM-5605-6.

20 See Nasdaq Listing Rule 5605(d)(6). During the transition period, companies that are not yet required to comply with a particular provision of revised Rule 5605(d) and IM-5605-6 must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

the proposed change now, before companies propose changes to board and committee composition in connection with their 2014 annual meetings.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] 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. Specifically, the proposal removes impediments to and perfects the mechanism of a free and open market by allowing boards of directors greater flexibility in determining eligibility for compensation committee membership, consistent with the requirements of the Dodd-Frank Act and Rule 10C-1. Nasdaq will continue to protect investors and the public interest by maintaining overall caps on the amount of compensatory fees that may be received by a compensation committee member from a company. However, a board of directors must consider, given the particular circumstances of a company and/or a director, whether any fees, even fees below the overall caps, would impair the director's ability to make independent judgments about the company's executive compensation, and therefore render the director ineligible to serve on the compensation committee.

In addition, Nasdaq proposes other changes in the rule to clarify its interpretation of the additional independence test for compensation committee members in light of the change discussed above. Specifically, Nasdaq proposes to: (i) delete an exception for

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[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

certain types of compensatory fees that may be received by a compensation committee member; (ii) clarify the standard a board must use when considering certain affiliate relationships of a compensation committee member; (iii) explicitly state that as part of the independence test, a board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member; (iv) reiterate the definition of the term "Company" for purposes of the independence test; and (v) clarify that each compensation committee must be an Independent Director as defined under Rule 5605(a)(2). These changes will make Nasdaq's compensation committee composition requirements more transparent and easier to understand. As a result, the changes will protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Dodd-Frank Act and Rule 10C-1 under the Act required each national securities exchange to adopt similar rules to Nasdaq's Amended Rules. Like Nasdaq, each other exchange was required to consider compensatory fees when determining eligibility requirements for compensation committee membership. Other than Nasdaq and NASDAQ OMX BX,[23] which is not currently operational as a listing market, no other exchange prohibits compensatory fees to members of the compensation

[23] Like Nasdaq, NASDAQ OMX BX adopted an outright prohibition on the receipt of compensatory fees by compensation committee members. See BX Venture Market Listing Rule 5605(d)(2)(A). However, Nasdaq expects that NASDAQ OMX BX will file a proposed rule change to conform its rule to the Nasdaq rule.

committee.[24] This change will harmonize Nasdaq's rule regarding compensation committee composition with the more flexible rules of the other exchanges. As a result, this proposal removes a potential competitive advantage for the other exchanges and thereby enhances competition among exchanges.

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.[25]

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[26] and subparagraph (f)(6) of Rule 19b-4 thereunder.[27]

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24 See Section 303A.02(a)(ii)(A) of the NYSE Listed Company Manual; see also BATS Rule 14.10(c)(4)(A)(i)(a); see also NYSE Arca Equities Rule 5.3(k)(4)(ii); see also Section 805(c)(1) of the NYSE MKT Company Guide.

25 While no written comments were either solicited or received on this proposed rule change, Nasdaq did receive comments during the rulemaking process on the Amended Rules. See footnote 9, supra.

26 15 U.S.C. 78s(b)(3)(a)(ii).

27 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.

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.

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-2013-147 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-2013-147. 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-2013-147 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.[28]

Kevin M O'Neill
Deputy Secretary

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[28] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Text of the Proposed Rule Change[1]

New language is <u>underlined</u>; deletions are in [brackets].

5605. Board of Directors and Committees

(a) – (c) No change.

(d) Compensation Committee Requirements

The provisions of this Rule 5605(d) and IM-5605-6 are operative only subject to the effective dates outlined in Rule 5605(d)(6). During the transition period until a Company is required to comply with a particular provision, the Company must continue to comply with the corresponding provision, if any, of Rule 5605A(d) and IM-5605A-6.

(1) No change.

(2) Compensation Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, a compensation committee of at least two members[, each of whom must: (i)]<u>. Each committee member must </u>be an Independent Director as defined under Rule 5605(a)(2)[; and (ii) not accept directly or indirectly any consulting, advisory or other compensatory fee from the Company or any subsidiary thereof. Compensatory fees shall not include: (i) fees received as a member of the compensation committee, the board of directors or any other board committee; or (ii) the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In determining whether a director is eligible to serve on the compensation committee, a Company's board also must consider whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee]. <u>In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of a board of directors, the board of</u>

[1] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at http://nasdaq.cchwallstreet.com.

directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:

(i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and

(ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company.

(B) No change.

(3) – (6) No change.

IM-5605-6. Independent Director Oversight of Executive Compensation

Independent oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors as defined under Rule 5605(a)(2).

[In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), compensation committee members must not accept any consulting, advisory or other compensatory fee from the Company, other than fees received for board or committee service or fixed amounts of compensation received under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In addition, a Company's board must consider, in determining whether a director is eligible to serve on the compensation committee, whether the director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company to determine whether such affiliation would impair the director's judgment as a member of the compensation committee.]In addition, Rule 5605(d)(2)(A) includes an additional independence test for compensation committee members. When considering the sources of a director's compensation for this purpose, the board should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the Company's executive compensation. Similarly, when considering any affiliate relationship a director has with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the Company or its senior management, or creates a direct

relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation. In that regard, while a board may conclude differently with respect to individual facts and circumstances, Nasdaq does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

For purposes of the additional independence test for compensation committee members described in Rule 5605(d)(2)(A), any reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements).

A Smaller Reporting Company must have a compensation committee with a minimum of two members[who are]. Each compensation committee member must be an Independent Director[s] as defined under Rule 5605(a)(2). In addition, each Smaller Reporting Company must have[and] a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in Rule 5605(d)(1)(A)-(C). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in Rule 5605(d)(2)(A), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3).

(e) No change.