

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="55"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="009"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by The Nasdaq Stock Market LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			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 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"/>
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Description

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

Proposal to revise the Exchange initial listing standards related to liquidity.

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 * <input type="text" value="Arnold"/>	Last Name * <input type="text" value="Golub"/>
Title * <input type="text" value="Deputy General Counsel"/>	
E-mail * <input type="text" value="Arnold.Golub@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8075"/>	Fax <input type="text"/>

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.

(Title *)

Date <input type="text" value="02/15/2019"/>	<input type="text" value="Global Chief Legal and Policy Officer"/>
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

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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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

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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

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to revise the Exchange’s initial listing standards related to liquidity.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The Exchange’s comment solicitation related to the proposed rule change is attached as Exhibit 2. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on January 30, 2019. No other action is necessary for the filing of the rule change.

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

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

or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Amma Anaman
Assistant General Counsel
Nasdaq, Inc.
301-978-8011

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

a. Purpose

Nasdaq proposes several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. First, Nasdaq proposes to revise its initial listing criteria to exclude restricted securities from the Exchange's calculations of a company's publicly held shares, market value of publicly held shares and round lot holders ("Initial Liquidity Calculations"). To do so, Nasdaq proposes to add three new definitions to define "restricted securities", "unrestricted publicly held shares" and "unrestricted securities" and proposes to amend the definition of "round lot holder". Second, Nasdaq proposes to impose a new requirement that at least 50% of a company's round lot holders must each hold shares with a market value of at least \$2,500. Third, Nasdaq proposes to adopt a new listing rule requiring a minimum average daily trading volume for currently traded securities. Nasdaq is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.³ Each amendment is described in more detail below.

³ Nasdaq staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, Nasdaq would typically first allow the company to provide and implement a plan to increase its liquidity in the near term.

I. Restricted Securities

Nasdaq is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing.

Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. Because the current Initial Liquidity Calculations include restricted securities, this may result in a security with limited liquidity satisfying the Exchange's initial listing requirements related to liquidity and qualifying to list on the Exchange.

To address this concern, Nasdaq is proposing to adopt a new definition of "restricted securities" at Nasdaq Rule 5005(a)(37), which includes any securities subject to resale restrictions for any reason, including restricted securities acquired in private placements,⁴ acquired through an employee stock benefit plan,⁵ issued to non-U.S.

⁴ See, e.g., 17 CFR 230.144(a)(3)(i) and (ii), which states that securities issued in transactions that are not a public offering or under Regulation D are considered restricted securities.

⁵ See, e.g., 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

holders in reliance on Regulation S,⁶ subject to a lock up agreement or a similar contractual restriction,⁷ or otherwise restricted under Rule 144.⁸ Nasdaq is also proposing to adopt a new definition of “unrestricted securities” at Nasdaq Rule 5005(a)(46), which includes securities of a company that are not restricted securities. In connection with these amendments, Nasdaq is proposing to renumber the remaining provisions of Rule 5005 to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on Nasdaq are liquid and have sufficient investor interest to support an exchange listing. Nasdaq notes that in developing their index methodologies the FTSE Russell and S&P indices take a similar approach. As disclosed by FTSE Russell, “All FTSE Russell equity index constituents are free float adjusted in accordance with the index rules, to reflect the actual availability of stock in the market for public investment.”⁹ FTSE Russell excludes shares held within employee share plans, shares subject to a “lock-in”

⁶ See 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

⁷ Securities issued in such transactions would typically include a “restrictive” legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

⁸ See generally Securities and Exchange Commission Investor Publications: Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: <https://www.sec.gov/reportspubs/investor-publications/investorpubsrule144htm.html>.

⁹ See FTSE Russell, “Free-Float”, available at: <https://www.ftse.com/products/indices/free-float>.

clause, and shares subject to contractual restrictions.¹⁰ S&P Dow Jones adjusts its indices to “reflect only those shares available to investors rather than all of a company’s outstanding shares.”¹¹

A. Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum number of publicly held shares in order to list its primary equity securities on all tiers of the Exchange. A company is also required to have a minimum number of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq’s Global and Capital Market tiers; subscription receipts on Nasdaq’s Capital Market tier; or paired share units on Nasdaq’s Global Select Market tier. Currently, Nasdaq Rule 5005(a)(35) defines “publicly held shares” as “shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.” As discussed above, the current definition of publicly held shares does not exclude securities subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange’s initial listing requirements related to publicly held shares and qualifying to list on the Exchange.

¹⁰ See FTSE Russell, “Free Float Restrictions v2.0”, May 2018, available at: https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf.

¹¹ See S&P Dow Jones Indices, “Float Adjustment Methodology”, April 2018, available at: <https://us.spindices.com/documents/index-policies/methodology-sp-float-adjustment.pdf>.

Nasdaq proposes adding a new definition of “unrestricted publicly held shares” at Nasdaq Rule 5005(a)(45), which would be defined as publicly held shares excluding the newly defined “unrestricted securities.” Nasdaq proposes to revise references to “publicly held shares” to “unrestricted publicly held shares” in Rules 5315(e)(2), 5405(a)(2), 5415(a)(1), 5505(a)(2), 5510(a)(3), and 5520(g)(3).¹² As a result, only securities that are freely transferrable will be included in the calculation of publicly held shares to determine whether a company satisfies the Exchange’s initial listing criteria under these rules. Nasdaq believes that excluding restricted securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

In addition to the above, Nasdaq proposes revising references to “publicly held shares” to “unrestricted publicly held shares” in Rule 5310(d), which states that “in computing the number of publicly held shares for Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder of the

¹² A summary of these rules is below:

<u>Rule Number</u>	<u>Nasdaq Market Tier</u>	<u>Security Type</u>	<u>Current Required Number of Publicly Held Shares</u>
5315(e)(2)	Global Select	Primary Equity Security	At least 1,250,000
5405(a)(2)	Global	Primary Equity Security	At least 1,100,000
5415(a)(1)	Global	Preferred Stock or Secondary Class of Common Stock	At least 200,000
5505(a)(2)	Capital	Primary Equity Security	At least 1,000,000
5510(a)(3)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 200,000
5520(g)(3)	Capital	Subscription Receipts	At least 1,100,000

Company,” and Rule 5226(b) which requires a paired share unit to satisfy the security-level requirements of Rule 5315 or 5405, including the number of publicly held shares. Nasdaq also proposes to revise Rule 5205(g) to clarify that the computation of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.

B. Market Value of Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to market value of publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum market value of publicly held shares in order to list its primary equity securities on all tiers of the Exchange. A company is also required to have a minimum market value of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq’s Global and Capital Market tiers; subscription receipts on Nasdaq’s Capital Market tier; or paired share units on Nasdaq’s Global Select Market tier. The calculation of “market value of publicly held shares” does not exclude stock subject to resale restrictions. As discussed above, restricted securities may not contribute to liquidity and therefore the current calculation of market value of publicly held shares may result in a security with limited true liquidity satisfying the listing requirements related to the market value of publicly held shares and qualifying to list.

Nasdaq proposes revising its initial listing requirements so that they are based on the market value of unrestricted publicly held shares, and therefore exclude restricted securities, in Rules 5315(c)(1)-(3), 5315(f)(2)(A)-(D), 5405(b)(1)(C), 5405(b)(2)(C), 5405(b)(3)(B), 5405(b)(4)(B), 5415(a)(2), 5505(b)(1)(B), 5505(b)(2)(C), 5505(b)(3)(C),

5510(a)(4) and 5520(g)(2).¹³ As discussed above, Nasdaq believes that excluding restricted securities will better reflect the true liquidity of a security because restricted securities are not freely transferrable.

¹³ A summary of these rules is below:

<u>Rule Number</u>	<u>Nasdaq Market Tier</u>	<u>Security Type</u>	<u>Current Required Market Value</u>
5315(c)(1)-(3)	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family ¹³	(i) a total market value of the fund family of at least \$220 million; (ii) an average market value of all funds in the fund family of at least \$50 million; and (iii) a market of each fund in the fund family of at least \$35 million
5315(f)(2)(A)-(D)	Global Select	Primary Equity Securities	(i) at least \$110 million; (ii) at least \$100 million, if the company has stockholders' equity of at least \$110 million; (iii) at least \$45 million in the case of an initial public offering or spin-off; or (iv) at least \$70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940
5405(b)(1)(C)	Global	Primary Equity Securities	At least \$8 million (Income Standard)
5405(b)(2)(C)	Global	Primary Equity Securities	At least \$18 million (Equity Standard)
5405(b)(3)(B)	Global	Primary Equity Securities	At least \$20 million (Market Value Standard)
5405(b)(4)(B)	Global	Primary Equity Securities	At least \$20 million (Total Assets/Total Revenue Standard)
5415(a)(2)	Global	Preferred Stock or Secondary Classes of Common Stock	At least \$4 million
5505(b)(1)(B)	Capital	Primary Equity Securities	At least \$15 million (Equity Standard)
5505(b)(2)(C)	Capital	Primary Equity Securities	At least \$15 million (Market Value Standard)

In addition to the above, Nasdaq proposes revising references to “market value of publicly held shares” to “market value of unrestricted publicly held shares” in Rule 5226(b), which requires a paired share unit listing on Nasdaq’s Global Select or Global Select Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.¹⁴ Nasdaq also proposes to revise Rule 5205(g) to clarify that the computation of market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.

C. Round Lot Holders

Nasdaq is proposing to revise the listing criteria related to the minimum number of round lot holders for companies seeking to initially list primary equity securities, preferred stock, secondary classes of common stock and warrants on the Exchange so that they are based on holders of unrestricted securities. Currently, Nasdaq defines a “round lot holder” as “a holder of a Normal Unit of Trading” and notes that “beneficial holders will be considered in addition to holders of record.”¹⁵ Nasdaq defines a “round lot or normal unit of trading” as “100 shares of a security unless, with respect to a particular

5505(b)(3)(C)	Capital	Primary Equity Securities	At least \$5 million (Net Income Standard)
5510(a)(4)	Capital	Preferred Stock or Secondary Classes of Common Stock	At least \$3.5 million
5520(g)(2)	Capital	Subscription Receipts	At least \$100 million

¹⁴ Nasdaq is also proposing to capitalize defined terms in Rule 5226(b) that were previously not capitalized for consistency and in order to maintain an organized rule book structure.

¹⁵ Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares.”¹⁶ A company is required to have a minimum number of round lot holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under the existing rule, all the shares held by a holder could be restricted securities that do not contribute to liquidity.

To address this concern, Nasdaq is proposing to revise the definition of “round lot holder” to mean a holder of a normal unit of trading of unrestricted securities. This change will impact Rule 5315(f)(1)(C), Rule 5405(a)(3), Rule 5410(d), Rule 5415(a)(4), Rule 5505(a)(3), Rule 5510(a)(2), Rule 5515(a)(4) and Rule 5520(g)(4).¹⁷ As a result of

¹⁶ Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

¹⁷ A summary of these rules is below:

<u>Rule Number</u>	<u>Nasdaq Market Tier</u>	<u>Security Type</u>	<u>Current Required Number of Round Lot Holders</u>
5315(f)(1)(C)	Global Select	Primary Equity Security	At least 450 round lot holders or a minimum number of total holders ¹⁷
5405(a)(3)	Global	Primary Equity Security	At least 400
5410(d)	Global	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering
5415(a)(4)	Global	Preferred Stock or Secondary Class of Common Stock	At least 100
5505(a)(3)	Capital	Primary Equity Securities	At least 300

these changes, a holder of only restricted securities would not be considered in the round lot holder count. Nasdaq believes that these amendments will help ensure adequate distribution and a liquid trading market of a security.

In addition to the above, Nasdaq proposes revising references to “holder” to “round lot holders” in Rule 5226(b), which requires a paired share unit applying to list on the Nasdaq Global Select or Global Market tiers to meet the security-level requirements of Rule 5315 or 5405, which includes the number of round lot holders.

II. Minimum Value Requirement for Holders

Nasdaq is also proposing to revise the listing rules related to round lot holders listed in Part I.C, above, to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a round lot, a shareholder may be considered a round lot holder by holding exactly 100 shares, which would be worth only \$400 in the case of a stock that is trading at the minimum bid price of \$4 per share.¹⁸ Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange, particularly if the shares held by the round lot holder are not freely transferrable due to resale

5510(a)(2)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 100
5515(a)(4)	Capital	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering
5520(g)(4)	Capital	Subscription Receipts	At least 400

¹⁸ On the Nasdaq Capital Market, certain companies are also eligible to list at \$2 or \$3 and the minimum value held by such a holder would be only \$200 or \$300, respectively. See Listing Rule 5505(a)(1)(B).

restrictions. To address this concern, Nasdaq proposes to require that for initial listing at least 50% of a company's required round lot holders must each hold shares with a market value of at least \$2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. Nasdaq has not observed problems with the trading of warrants.

Nasdaq believes that adopting this amendment will help ensure that a majority of the required minimum number of shareholders hold a meaningful value of stock and that a company has sufficient investor interest to support an exchange listing.

III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities, preferred stock, secondary classes of common stock and American Depositary Receipts ("ADRs"), previously trading OTC. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (i.e., at least 16 days). Nasdaq believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for the listed securities.

Nasdaq is proposing to implement this new requirement by making identical amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5404(a)(4); Rule 5415(a) to add a new Rule 5415(a)(6); Rule 5505(a) to add a new Rule 5505(a)(5); and Rule 5510(a) to add a new Rule 5510(a)(6). In connection with the foregoing amendments, Nasdaq is proposing to revise the cross-references in Rules 5415(a) and 5510(a) to add new Rules 5415(a)(6) and 5510(a)(6), respectively, and

renumber the remaining provisions of Rule 5505(a) to maintain an organized rule structure.

As noted above, the average daily trading volume requirement will also apply to ADRs. Nasdaq is proposing amend Rule 5215(b) to clarify that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations. Currently, Nasdaq considers the underlying security of an ADR when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, total assets and total revenue.

Nasdaq is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. Nasdaq believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. This exemption will be included in new Rules 5315(e)(4), 5404(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

Nasdaq proposes that all of the changes proposed herein be effective upon approval by the SEC. Nasdaq notes that it had originally solicited comment on similar

proposals in October 2018,¹⁹ which provided notice that Nasdaq was considering changes to the listing requirements and allowed companies to begin to prepare. Further, companies will have opportunity during the notice and comment period to make any necessary adjustments to comply with the proposed criteria, or can seek listing under the existing listing standards during the notice and comment period.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, as set forth below.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.²² In particular, the Commission stated:

Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and

¹⁹ See https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-Nasdaq-2011-073 adopting additional listing requirements for companies applying to list after consummation of a “reverse merger” with a shell company.)

trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²³

As described below, Nasdaq believes that the proposed rule changes in this filing is consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to better screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets.

I. Restricted Securities

The proposed amendments will adopt new definitions of “restricted securities” and “unrestricted securities” in order to exclude securities that are subject to resale restrictions from the Exchange’s Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange’s quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Commission has previously noted the importance of adequate liquidity in a security and the consequences for investors when a security is thinly traded. In *In the Matter of the Application of Rocky Mountain Power Company*, the Commission observed:

We note that the requirement concerning the number of shareholders is not only an important listing criterion but is also a standard used in conjunction with other standards to ensure that a stock has the investor following and liquid market necessary for trading. In response to the Panel’s questions, the Company’s president acknowledged that the market for Rocky Mountain’s shares would be initially “very, very small,” and that fewer than 20,000 of the Company’s over 700,000 shares outstanding were freely tradeable. While Rocky Mountain, as a technical matter, complied with the shareholder requirement, it failed to

²³

Id. at 70802.

demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.²⁴

Nasdaq believes that adopting the new definitions of restricted securities and unrestricted securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because securities subject to resale restrictions are not freely transferrable and therefore excluding restricted securities from the Exchange's Initial Liquidity Calculations will help ensure that Nasdaq lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange's listing criteria, which will better protect investors.

A. Publicly Held Shares

The proposed amendments will adopt a new definition of "unrestricted publicly held shares" which excludes restricted securities and revise Nasdaq's initial listing standards to conform the minimum number of publicly held shares to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

²⁴ See Rocky Mountain Power Co., Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 S.E.C. 979 (November 9, 1998).

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of “market value” to exclude restricted securities from the calculation of “market value of unrestricted publicly held shares” and revise Nasdaq’s initial listing standards to conform the minimum market value to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

C. Round Lot Holders

The proposed amendments will exclude restricted securities from the calculation of a round lot and the number of round lot holders required to meet the Exchange’s initial listing criteria by revising the definition of “round lot” to exclude unrestricted securities. Nasdaq believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security.

II. Minimum Value Requirement for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company’s round lot holders hold securities with a market value of at least \$2,500. Nasdaq believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a

national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security. The proposed amendments would not apply to warrants applying to list on the exchange. Nasdaq believes that excluding warrants will remove impediments to and perfect the mechanism of a free and open market because imposing this requirement on warrants would create an undue burden on companies seeking to list on the exchange.

III. Average Daily Trading Volume

The proposed amendments will impose a minimum average daily trading volume for primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC that apply to list on the Exchange, subject to a limited exemption for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. Nasdaq believes this will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. Moreover, Nasdaq believes that it is consistent with the protection of investors and the public interest to exempt from the proposed average daily trading volume requirement any securities listed in connection with a firm underwritten commitment public offering of at least \$4 million because underwriters facilitate appropriate price discovery and will generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market.

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. All companies seeking to list on Nasdaq's Global Select, Global or Capital Market tiers would be affected in the same manner by these changes. Further, to the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition.

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

On October 5, 2018, Nasdaq launched a formal comment solicitation on proposals to exclude restricted securities from the Exchange's Initial Liquidity Calculations and adopt a new initial listing criteria related to prior trading volume for securities that are currently trading over-the-counter ("2018 Solicitation"), a copy of which is attached hereto as Exhibit 2. No comments were received in response to the comment solicitation.

6. Extension of Time Period for Commission Action

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
2. A copy of the 2018 Solicitation.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-009)

February __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Revise the Exchange’s Initial Listing Standards Related to Liquidity

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 19, 2019, 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 revise the Exchange’s initial listing standards related to liquidity.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Nasdaq proposes several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. First, Nasdaq proposes to revise its initial listing criteria to exclude restricted securities from the Exchange's calculations of a company's publicly held shares, market value of publicly held shares and round lot holders ("Initial Liquidity Calculations"). To do so, Nasdaq proposes to add three new definitions to define "restricted securities", "unrestricted publicly held shares" and "unrestricted securities" and proposes to amend the definition of "round lot holder". Second, Nasdaq proposes to impose a new requirement that at least 50% of a company's round lot holders must each hold shares with a market value of at least \$2,500. Third, Nasdaq proposes to adopt a new listing rule requiring a minimum average daily trading volume for currently traded securities. Nasdaq is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced

liquidity for the companies that satisfy them on an ongoing basis.³ Each amendment is described in more detail below.

I. Restricted Securities

Nasdaq is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. Because the current Initial Liquidity Calculations include restricted securities, this may result in a security with limited liquidity satisfying the Exchange's initial listing requirements related to liquidity and qualifying to list on the Exchange.

To address this concern, Nasdaq is proposing to adopt a new definition of "restricted securities" at Nasdaq Rule 5005(a)(37), which includes any securities subject to resale restrictions for any reason, including restricted securities acquired in private

³ Nasdaq staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, Nasdaq would typically first allow the company to provide and implement a plan to increase its liquidity in the near term.

placements,⁴ acquired through an employee stock benefit plan,⁵ issued to non-U.S. holders in reliance on Regulation S,⁶ subject to a lock up agreement or a similar contractual restriction,⁷ or otherwise restricted under Rule 144.⁸ Nasdaq is also proposing to adopt a new definition of “unrestricted securities” at Nasdaq Rule 5005(a)(46), which includes securities of a company that are not restricted securities. In connection with these amendments, Nasdaq is proposing to renumber the remaining provisions of Rule 5005 to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on Nasdaq are liquid and have sufficient investor interest to support an exchange listing. Nasdaq notes that in developing their index methodologies the FTSE Russell and S&P indices take a similar approach. As disclosed by FTSE Russell, “All FTSE Russell

⁴ See, e.g., 17 CFR 230.144(a)(3)(i) and (ii), which states that securities issued in transactions that are not a public offering or under Regulation D are considered restricted securities.

⁵ See, e.g., 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

⁶ See 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

⁷ Securities issued in such transactions would typically include a “restrictive” legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

⁸ See generally Securities and Exchange Commission Investor Publications: Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: <https://www.sec.gov/reportspubs/investor-publications/investorpubsrule144htm.html>.

equity index constituents are free float adjusted in accordance with the index rules, to reflect the actual availability of stock in the market for public investment.”⁹ FTSE Russell excludes shares held within employee share plans, shares subject to a “lock-in” clause, and shares subject to contractual restrictions.¹⁰ S&P Dow Jones adjusts its indices to “reflect only those shares available to investors rather than all of a company’s outstanding shares.”¹¹

A. Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum number of publicly held shares in order to list its primary equity securities on all tiers of the Exchange. A company is also required to have a minimum number of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq’s Global and Capital Market tiers; subscription receipts on Nasdaq’s Capital Market tier; or paired share units on Nasdaq’s Global Select Market tier. Currently, Nasdaq Rule 5005(a)(35) defines “publicly held shares” as “shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with

⁹ See FTSE Russell, “Free-Float”, available at: <https://www.ftse.com/products/indices/free-float>.

¹⁰ See FTSE Russell, “Free Float Restrictions v2.0”, May 2018, available at: https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf.

¹¹ See S&P Dow Jones Indices, “Float Adjustment Methodology”, April 2018, available at: <https://us.spindices.com/documents/index-policies/methodology-sp-float-adjustment.pdf>.

Rule 13d-3 under the Act.” As discussed above, the current definition of publicly held shares does not exclude securities subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange’s initial listing requirements related to publicly held shares and qualifying to list on the Exchange.

Nasdaq proposes adding a new definition of “unrestricted publicly held shares” at Nasdaq Rule 5005(a)(45), which would be defined as publicly held shares excluding the newly defined “unrestricted securities.” Nasdaq proposes to revise references to “publicly held shares” to “unrestricted publicly held shares” in Rules 5315(e)(2), 5405(a)(2), 5415(a)(1), 5505(a)(2), 5510(a)(3), and 5520(g)(3).¹² As a result, only securities that are freely transferrable will be included in the calculation of publicly held shares to determine whether a company satisfies the Exchange’s initial listing criteria under these rules. Nasdaq believes that excluding restricted securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

¹² A summary of these rules is below:

<u>Rule Number</u>	<u>Nasdaq Market Tier</u>	<u>Security Type</u>	<u>Current Required Number of Publicly Held Shares</u>
5315(e)(2)	Global Select	Primary Equity Security	At least 1,250,000
5405(a)(2)	Global	Primary Equity Security	At least 1,100,000
5415(a)(1)	Global	Preferred Stock or Secondary Class of Common Stock	At least 200,000
5505(a)(2)	Capital	Primary Equity Security	At least 1,000,000
5510(a)(3)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 200,000
5520(g)(3)	Capital	Subscription Receipts	At least 1,100,000

In addition to the above, Nasdaq proposes revising references to “publicly held shares” to “unrestricted publicly held shares” in Rule 5310(d), which states that “in computing the number of publicly held shares for Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder of the Company,” and Rule 5226(b) which requires a paired share unit to satisfy the security-level requirements of Rule 5315 or 5405, including the number of publicly held shares. Nasdaq also proposes to revise Rule 5205(g) to clarify that the computation of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.

B. Market Value of Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to market value of publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum market value of publicly held shares in order to list its primary equity securities on all tiers of the Exchange. A company is also required to have a minimum market value of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq’s Global and Capital Market tiers; subscription receipts on Nasdaq’s Capital Market tier; or paired share units on Nasdaq’s Global Select Market tier. The calculation of “market value of publicly held shares” does not exclude stock subject to resale restrictions. As discussed above, restricted securities may not contribute to liquidity and therefore the current calculation of market value of publicly held shares may result in a security with limited true liquidity satisfying the listing requirements related to the market value of publicly held shares and qualifying to list.

Nasdaq proposes revising its initial listing requirements so that they are based on the market value of unrestricted publicly held shares, and therefore exclude restricted securities, in Rules 5315(c)(1)-(3), 5315(f)(2)(A)-(D), 5405(b)(1)(C), 5405(b)(2)(C), 5405(b)(3)(B), 5405(b)(4)(B), 5415(a)(2), 5505(b)(1)(B), 5505(b)(2)(C), 5505(b)(3)(C), 5510(a)(4) and 5520(g)(2).¹³ As discussed above, Nasdaq believes that excluding

¹³ A summary of these rules is below:

<u>Rule Number</u>	<u>Nasdaq Market Tier</u>	<u>Security Type</u>	<u>Current Required Market Value</u>
5315(c)(1)-(3)	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family ¹³	(i) a total market value of the fund family of at least \$220 million; (ii) an average market value of all funds in the fund family of at least \$50 million; and (iii) a market of each fund in the fund family of at least \$35 million
5315(f)(2)(A)-(D)	Global Select	Primary Equity Securities	(i) at least \$110 million; (ii) at least \$100 million, if the company has stockholders' equity of at least \$110 million; (iii) at least \$45 million in the case of an initial public offering or spin-off; or (iv) at least \$70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940
5405(b)(1)(C)	Global	Primary Equity Securities	At least \$8 million (Income Standard)
5405(b)(2)(C)	Global	Primary Equity Securities	At least \$18 million (Equity Standard)
5405(b)(3)(B)	Global	Primary Equity Securities	At least \$20 million (Market Value Standard)
5405(b)(4)(B)	Global	Primary Equity Securities	At least \$20 million (Total Assets/Total Revenue Standard)
5415(a)(2)	Global	Preferred Stock or Secondary Classes of Common Stock	At least \$4 million

restricted securities will better reflect the true liquidity of a security because restricted securities are not freely transferrable.

In addition to the above, Nasdaq proposes revising references to “market value of publicly held shares” to “market value of unrestricted publicly held shares” in Rule 5226(b), which requires a paired share unit listing on Nasdaq’s Global Select or Global Select Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.¹⁴ Nasdaq also proposes to revise Rule 5205(g) to clarify that the computation of market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.

C. Round Lot Holders

Nasdaq is proposing to revise the listing criteria related to the minimum number of round lot holders for companies seeking to initially list primary equity securities, preferred stock, secondary classes of common stock and warrants on the Exchange so that they are based on holders of unrestricted securities. Currently, Nasdaq defines a “round lot holder” as “a holder of a Normal Unit of Trading” and notes that “beneficial holders

5505(b)(1)(B)	Capital	Primary Equity Securities	At least \$15 million (Equity Standard)
5505(b)(2)(C)	Capital	Primary Equity Securities	At least \$15 million (Market Value Standard)
5505(b)(3)(C)	Capital	Primary Equity Securities	At least \$5 million (Net Income Standard)
5510(a)(4)	Capital	Preferred Stock or Secondary Classes of Common Stock	At least \$3.5 million
5520(g)(2)	Capital	Subscription Receipts	At least \$100 million

¹⁴ Nasdaq is also proposing to capitalize defined terms in Rule 5226(b) that were previously not capitalized for consistency and in order to maintain an organized rule book structure.

will be considered in addition to holders of record.”¹⁵ Nasdaq defines a “round lot or normal unit of trading” as “100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares.”¹⁶ A company is required to have a minimum number of round lot holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under the existing rule, all the shares held by a holder could be restricted securities that do not contribute to liquidity.

To address this concern, Nasdaq is proposing to revise the definition of “round lot holder” to mean a holder of a normal unit of trading of unrestricted securities. This change will impact Rule 5315(f)(1)(C), Rule 5405(a)(3), Rule 5410(d), Rule 5415(a)(4), Rule 5505(a)(3), Rule 5510(a)(2), Rule 5515(a)(4) and Rule 5520(g)(4).¹⁷ As a result of

¹⁵ Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

¹⁶ Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

¹⁷ A summary of these rules is below:

<u>Rule Number</u>	<u>Nasdaq Market Tier</u>	<u>Security Type</u>	<u>Current Required Number of Round Lot Holders</u>
5315(f)(1)(C)	Global Select	Primary Equity Security	At least 450 round lot holders or a minimum number of total holders ¹⁷
5405(a)(3)	Global	Primary Equity Security	At least 400
5410(d)	Global	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering

these changes, a holder of only restricted securities would not be considered in the round lot holder count. Nasdaq believes that these amendments will help ensure adequate distribution and a liquid trading market of a security.

In addition to the above, Nasdaq proposes revising references to “holder” to “round lot holders” in Rule 5226(b), which requires a paired share unit applying to list on the Nasdaq Global Select or Global Market tiers to meet the security-level requirements of Rule 5315 or 5405, which includes the number of round lot holders.

II. Minimum Value Requirement for Holders

Nasdaq is also proposing to revise the listing rules related to round lot holders listed in Part I.C, above, to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a round lot, a shareholder may be considered a round lot holder by holding exactly 100 shares, which would be worth only \$400 in the case of a stock that is trading at the minimum bid price of \$4 per

5415(a)(4)	Global	Preferred Stock or Secondary Class of Common Stock	At least 100
5505(a)(3)	Capital	Primary Equity Securities	At least 300
5510(a)(2)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 100
5515(a)(4)	Capital	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering
5520(g)(4)	Capital	Subscription Receipts	At least 400

share.¹⁸ Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange, particularly if the shares held by the round lot holder are not freely transferrable due to resale restrictions. To address this concern, Nasdaq proposes to require that for initial listing at least 50% of a company's required round lot holders must each hold shares with a market value of at least \$2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. Nasdaq has not observed problems with the trading of warrants.

Nasdaq believes that adopting this amendment will help ensure that a majority of the required minimum number of shareholders hold a meaningful value of stock and that a company has sufficient investor interest to support an exchange listing.

III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities, preferred stock, secondary classes of common stock and American Depositary Receipts ("ADRs"), previously trading OTC. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (i.e., at least 16 days). Nasdaq believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for the listed securities.

¹⁸ On the Nasdaq Capital Market, certain companies are also eligible to list at \$2 or \$3 and the minimum value held by such a holder would be only \$200 or \$300, respectively. See Listing Rule 5505(a)(1)(B).

Nasdaq is proposing to implement this new requirement by making identical amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5404(a)(4); Rule 5415(a) to add a new Rule 5415(a)(6); Rule 5505(a) to add a new Rule 5505(a)(5); and Rule 5510(a) to add a new Rule 5510(a)(6). In connection with the foregoing amendments, Nasdaq is proposing to revise the cross-references in Rules 5415(a) and 5510(a) to add new Rules 5415(a)(6) and 5510(a)(6), respectively, and renumber the remaining provisions of Rule 5505(a) to maintain an organized rule structure.

As noted above, the average daily trading volume requirement will also apply to ADRs. Nasdaq is proposing amend Rule 5215(b) to clarify that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations. Currently, Nasdaq considers the underlying security of an ADR when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, total assets and total revenue.

Nasdaq is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. Nasdaq believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the

creation of a liquid trading market. This exemption will be included in new Rules 5315(e)(4), 5404(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

Nasdaq proposes that all of the changes proposed herein be effective upon approval by the SEC. Nasdaq notes that it had originally solicited comment on similar proposals in October 2018,¹⁹ which provided notice that Nasdaq was considering changes to the listing requirements and allowed companies to begin to prepare. Further, companies will have opportunity during the notice and comment period to make any necessary adjustments to comply with the proposed criteria, or can seek listing under the existing listing standards during the notice and comment period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, as set forth below.

¹⁹ See https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.²² In particular, the

Commission stated:

Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²³

As described below, Nasdaq believes that the proposed rule changes in this filing is consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to better screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets.

I. Restricted Securities

The proposed amendments will adopt new definitions of “restricted securities” and “unrestricted securities” in order to exclude securities that are subject to resale restrictions from the Exchange’s Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange’s quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Commission

²² Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-Nasdaq-2011-073 adopting additional listing requirements for companies applying to list after consummation of a “reverse merger” with a shell company.)

²³ Id. at 70802.

has previously noted the importance of adequate liquidity in a security and the consequences for investors when a security is thinly traded. In *In the Matter of the Application of Rocky Mountain Power Company*, the Commission observed:

We note that the requirement concerning the number of shareholders is not only an important listing criterion but is also a standard used in conjunction with other standards to ensure that a stock has the investor following and liquid market necessary for trading. In response to the Panel's questions, the Company's president acknowledged that the market for Rocky Mountain's shares would be initially "very, very small," and that fewer than 20,000 of the Company's over 700,000 shares outstanding were freely tradeable. While Rocky Mountain, as a technical matter, complied with the shareholder requirement, it failed to demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.²⁴

Nasdaq believes that adopting the new definitions of restricted securities and unrestricted securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because securities subject to resale restrictions are not freely transferrable and therefore excluding restricted securities from the Exchange's Initial Liquidity Calculations will help ensure that Nasdaq lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange's listing criteria, which will better protect investors.

A. Publicly Held Shares

The proposed amendments will adopt a new definition of "unrestricted publicly held shares" which excludes restricted securities and revise Nasdaq's initial listing standards to conform the minimum number of publicly held shares to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade,

²⁴ See Rocky Mountain Power Co., Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 S.E.C. 979 (November 9, 1998).

remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of “market value” to exclude restricted securities from the calculation of “market value of unrestricted publicly held shares” and revise Nasdaq’s initial listing standards to conform the minimum market value to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

C. Round Lot Holders

The proposed amendments will exclude restricted securities from the calculation of a round lot and the number of round lot holders required to meet the Exchange’s initial listing criteria by revising the definition of “round lot” to exclude unrestricted securities. Nasdaq believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security.

II. Minimum Value Requirement for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company's round lot holders hold securities with a market value of at least \$2,500. Nasdaq believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security. The proposed amendments would not apply to warrants applying to list on the exchange. Nasdaq believes that excluding warrants will remove impediments to and perfect the mechanism of a free and open market because imposing this requirement on warrants would create an undue burden on companies seeking to list on the exchange.

III. Average Daily Trading Volume

The proposed amendments will impose a minimum average daily trading volume for primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC that apply to list on the Exchange, subject to a limited exemption for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. Nasdaq believes this will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. Moreover, Nasdaq believes that it is consistent with the protection of investors and the public interest to exempt from the proposed average daily trading volume requirement any securities listed in connection with a firm underwritten commitment public offering of at least \$4 million because underwriters facilitate appropriate price discovery and will

generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market.

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. All companies seeking to list on Nasdaq's Global Select, Global or Capital Market tiers would be affected in the same manner by these changes. Further, to the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition.

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

On October 5, 2018, Nasdaq launched a formal comment solicitation on proposals to exclude restricted securities from the Exchange's Initial Liquidity Calculations and adopt a new initial listing criteria related to prior trading volume for securities that are currently trading over-the-counter ("2018 Solicitation"), a copy of which is attached hereto as Exhibit 2. No comments were received in response to the comment solicitation.

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

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

disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-009 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2019-009. 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-2019-009 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.²⁵

Eduardo A. Aleman
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).

**SOLICITATION OF COMMENTS
ON BEHALF OF THE NASDAQ LISTING AND HEARING REVIEW COUNCIL**

**Potential Changes to the Initial Listing Requirements
to Enhance Investor Protection and
the Liquidity of Listed Securities**

October 5, 2018

Nasdaq's listing requirements include a number of criteria, which in the aggregate are designed to ensure that securities have adequate liquidity and public interest to support an exchange listing. These criteria include the number of holders of the security, the number of shares held by the public and the aggregate value of the securities held by the public. As part of Nasdaq's ongoing efforts to review its listing requirements, engage with the public and foster a dialogue about Nasdaq rules, Nasdaq believes it is appropriate and timely to review these requirements to consider whether they can be updated and improved.

In order to assist with this review, Nasdaq is seeking comment, input and guidance from the public, including investors and companies, and their representatives. These comments will be reviewed by Nasdaq staff and the Nasdaq Listing and Hearing Review Council (the "Listing Council"). The Listing Council is a standing independent advisory committee appointed by the Board of Directors of the Nasdaq Stock Market, whose mission is to review the application of Nasdaq's listing rules and public policy issues related to listing, and, where appropriate, suggest new or modified rules for consideration by the Board. The Listing Council is comprised of individuals with diverse credentials and includes institutional investors, company representatives, lawyers, accountants, securities industry professionals and academics. Each Listing Council member is a respected leader in his or her field, committed to working with Nasdaq to enhance investor protection and the integrity of the Nasdaq Stock Market.

While all comments on the subject are welcome, the following discussion identifies a number of discrete proposed rule changes on which Nasdaq is specifically soliciting comment. Nasdaq asks for views on the impact of these potential changes on investor protection and the public interest, as well as on capital formation. Nasdaq also solicits comment on other changes to its rules that would help enhance investor protections, provide additional clarity about the requirements, and reduce unnecessary costs.

In addition, as capital markets have changed, Nasdaq has seen an increase in companies seeking to list following a transaction other than a traditional initial public offering. In particular, Nasdaq has received a number of applications from companies seeking to list pursuant to a Regulation A+ ("Reg A+") offering or pursuant to a business combination with a special purpose acquisition company ("SPAC"). As part of its review, Nasdaq believes it is appropriate and timely to consider whether these types of applicants raise unique concerns for investors, or face particular difficulties in satisfying Nasdaq's requirements, such that different considerations should apply to them.

For the avoidance of doubt, please note that at this time we are not considering changes to any of these requirements for continued listing purposes. Over time, the number of freely trading shares, the number of public shareholders and the trading volume of an issuer's security generally increase. In addition, it may be difficult to monitor compliance with these criteria as information, in particular about shares subject to resale restrictions, may not be readily available on an ongoing basis.

The comment period will run until November 16, 2018. Email responses are preferred and may be addressed to comments@nasdaq.com. Mail responses may be sent to:

Nasdaq Listing Qualifications
c/o William Slattery
805 King Farm Blvd.
Rockville, MD 20850

Following review of the comments, if Nasdaq determines to proceed with a proposed rule change, that proposal will be subject to public notice and comment as part of the Securities and Exchange Commission's review and approval process. Please note that Nasdaq must include any comments provided in response to this comment solicitation as part of its filing with the SEC and therefore any comments submitted could become publicly available.

Nasdaq and the Listing Council express gratitude for your comments and your attention to this important matter.

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Restricted Shares

Nasdaq's listing rules define Publicly Held Shares as "shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding." This definition does not exclude stock subject to resale restrictions.

Nasdaq's listing rules also require applicants seeking initial listing to have a minimum number of shareholders that hold at least 100 shares of stock (a "round lot"). Similar to the definition of publicly held shares, the definition of a round lot shareholder does not exclude holders of shares that are subject to resale restrictions.

Restricted securities include securities sold in unregistered offerings by an issuer or an affiliate such as in private placements, Regulation D offerings, or securities issued as part of an employee stock benefit plan or as compensation for professional services. This category also includes securities that are subject to resale restrictions for any other reason, such as securities that are subject to a lock up agreement or a similar contractual restriction.

The publicly held shares, market value of publicly held shares and round lot shareholder requirements are designed, in part, to help assure adequate liquidity and shareholder interest in applicant companies. Restricted securities may not contribute to liquidity and therefore we are considering whether to amend Nasdaq's initial listing criteria to exclude restricted securities from the definition of publicly held shares and market value of publicly held shares and from the minimum round lot shareholder requirement.

- Do commenters believe it would be appropriate to exclude restricted shares from the definition of publicly held shares and market value of publicly held shares? Why or why not.
- Do commenters believe it would be appropriate to exclude shareholders who only hold restricted shares from the minimum shareholder requirements? Why or why not.
- Do commenters suggest any alternative ways to help assure that listed securities will have sufficient liquidity to warrant a listing on Nasdaq?

- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a business combination with a SPAC in evaluating: (1) whether to exclude restricted shares from the definition of publicly held shares and market value of publicly held shares; and (2) whether to exclude shareholders who only hold restricted shares from the minimum shareholder requirements? If so, what are they?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a Reg A+ offering in evaluating: (1) whether to exclude restricted shares from the definition of publicly held shares and market value of publicly held shares; and (2) whether to exclude shareholders who only hold restricted shares from the minimum shareholder requirements? If so, what are they?

Minimum Investment Value for Holders

As noted, to help assure adequate liquidity and shareholder interest, Nasdaq listing rules require applicants seeking initial listing to have a minimum number of round lot shareholders. This can be achieved with an investment by a shareholder of \$400 at the time of listing, representing 100 shares at the \$4 minimum price requirement for initial listing on the Nasdaq Capital Market, or less if the company qualifies based on the alternative price requirement. Such a small investment may not be an adequate indicator to demonstrate sufficient investor interest to warrant listing on Nasdaq, and we are therefore considering changes to the shareholder requirement intended to help ensure that holders demonstrate a meaningful level of interest in the company. Specifically, we are seeking comment on a proposal to require at least half of the holders making up the required round lot shareholder count to have a minimum holding with a market value equal to or in excess of \$2,500.

- Do commenters believe that an additional requirement that a majority of an applicant's required minimum holders own stock with a market value of at least \$2,500 would be appropriate? Why or why not.
- Do commenters suggest any alternative ways to help assure that listed securities have demonstrated investor interest sufficient to warrant a listing on Nasdaq?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a business combination with a SPAC in evaluating whether to adopt a requirement that a majority of an applicant's required minimum holders own stock with a market value of at least \$2,500? If so, what are they?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a Reg A+ offering in evaluating whether to adopt a requirement that a majority of an applicant's required minimum holders own stock with a market value of at least \$2,500? If so, what are they?

Trading Volume

In the case of a company that is currently listed on another exchange or traded in the over-the-counter (“OTC”) market, Nasdaq looks to the trading in a security on the existing exchange or OTC to establish that the issuer meets Nasdaq’s share price requirement and all measures derived from that. In some cases trading of these issuers may be very light and the price not necessarily representative of the security’s value. Further, light trading volume in the OTC market may be indicative of insufficient liquidity upon listing on Nasdaq. To address these concerns, we are considering a new rule with respect to companies currently traded in the OTC to help validate the price of the security to be listed, and all listing measures derived from that price, by assuring it is based on sufficient trading.

Specifically, we are considering a new minimum trading volume requirement for OTC-traded companies seeking to list on Nasdaq of 2,000 shares average daily trading volume over the 30 trading day period prior to listing, with trading occurring on most of those 30 trading days. We would exclude from this requirement any company that lists in connection with a firm commitment public offering of at least \$4 million. In the case of an OTC-traded ADR, we would consider trading on the primary market as well as trading of the ADR.

- Do commenters believe that it would be appropriate to have an additional requirement that OTC-traded companies seeking to list on Nasdaq maintain a minimum of 2,000 shares average daily trading volume over the 30 trading day period prior to listing, with trading occurring on most of those 30 trading days? Why or why not.
- Do commenters believe that it would be appropriate to exclude from this requirement any company that lists in connection with a firm commitment public offering of at least \$4 million? Why or why not.
- Do commenters believe that, in the case of OTC-traded ADRs, it would be appropriate to consider trading on the primary market as well as trading of the ADR? Why or why not.
- Do commenters suggest any alternative ways to help assure that OTC-traded securities will have a liquid market upon listing on Nasdaq?
- Do commenters believe there are any special considerations applicable to a company listing in conjunction with a business combination with a SPAC in evaluating whether to adopt a minimum trading volume requirement? If so, what are they?

Reg A+ Listings and SPACs

As noted above, companies are more frequently seeking to list pursuant to a Reg A+ offering or pursuant to a business combination with a SPAC.

- Do commenters believe there are any other considerations or standards that should apply to a company listing in conjunction with a Reg A+ offering?
- Do commenters believe it would be appropriate to require a minimum operating history for a company listing in conjunction with a Reg A+ offering?
- Do commenters believe there are any other considerations or standards that should apply to a company listing in conjunction with a business combination with a SPAC?

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

5005. Definitions

(a) No change.

(1) – (36) No change.

(37) “Restricted Securities” means securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) of domestic issuers acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered “restricted securities” under Rule 144.

~~[(37)]~~(38) "Reverse Merger" means any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company satisfying the requirements of IM-5101-2 or a business combination described in Rule 5110(a). In determining whether a Company is a shell company, Nasdaq will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

~~[(38)]~~(39) "Round Lot" or "Normal Unit of Trading" means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol.

~~[(39)]~~(40) “Round Lot Holder” means a holder of a Normal Unit of Trading of Unrestricted Securities. The number of beneficial holders will be considered in addition to holders of record.

~~[(40)]~~(41) "Shareholder" means a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

~~[(41)]~~(42) "Substantial Shareholder" is defined in Rule 5635(e)(3).

~~[(42)]~~(43) "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights. A Substitution Listing Event also includes the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider).

~~[(43)]~~(44) "Total Holders" means holders of a security that includes both beneficial holders and holders of record.

(45) "Unrestricted Publicly Held Shares" means the Publicly Held Shares that are Unrestricted Securities.

(46) "Unrestricted Securities" are the securities of a Company that are not Restricted Securities.

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5200. General Procedures and Prerequisites for Initial and Continued Listing on The Nasdaq Stock Market

5205. The Applications and Qualifications Process

(g) The computation of Publicly Held Shares, Unrestricted Publicly Held Shares, [and] Market Value of Publicly Held Shares and Market Value of Unrestricted Publicly Held Shares shall be as of the date of application of the Company.

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5215. American Depositary Receipts

(a) No change.

(b) Computations

In the case of American Depositary Receipts, annual income from continuing operations and Stockholders' Equity shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining annual income from continuing operations, Publicly Held Shares, Market Value of Publicly Held Shares, Stockholders' Equity, Round Lot or Public Holders, operating history, Market Value of Listed Securities, average daily trading volume, [and] total assets and total revenue.

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5226. Paired Share Units

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(b) For initial listing, the Parent and the REIT must each separately satisfy the entity level requirements of Rule 5315(f)(3) or Rule 5405(b) (e.g., the stockholders' equity, income, market capitalization, assets, revenue and operating history requirements), as applicable, and the Paired Share Unit must satisfy the security-level requirements of Rule 5315 or Rule 5405 (e.g., the price, Unrestricted P[p]ublicly H[h]eld S[s]hares, Round Lot H[h]olders, M[m]arket V[v]alue of Unrestricted P[p]ublicly H[h]eld S[s]hares and M[m]arket M[m]aker requirements), as applicable.

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5300. The Nasdaq Global Select Market

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5310. Definitions and Computations

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(d) In computing the number of Unrestricted Publicly Held Shares for Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder of the Company.

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5315. Initial Listing Requirements for Primary Equity Securities

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(c) No change.

(1) the total Market Value of Unrestricted Publicly Held Shares in such Fund Family is at least \$220 million;

(2) the average Market Value of Unrestricted Publicly Held Shares for all funds in the Fund Family is \$50 million; and

(3) each fund in the Fund Family has a Market Value of Unrestricted Publicly Held Shares of at least \$35 million.

(d)-(e) No change.

(1) No change.

(2) At least 1,250,000 Unrestricted Publicly Held Shares; [and]

(3) Market Makers

A Company that meets the requirements of the NGM Income Standard (Rule 5405(b)(1)) or the NGM Equity Standard (Rule 5405(b)(2)) shall have at least three registered and active Market Makers. Otherwise, a Company shall have at least four registered and active Market Makers;[.] and

(4) If the security is trading in the U.S. over-the-counter market as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment public offering of at least \$4 million.

(f)

(1) No change.

(A)-(B) No change.

(C) A minimum of 450 Round Lot Holders and at least 50% of such Round Lot Holders must each hold shares with a Market Value of at least \$2,500.

(2) Market Value Requirement

The Unrestricted Publicly Held Shares shall meet one of the following:

(A)-(D) No change.

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5400. The Nasdaq Global Market

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5405. Initial Listing Requirements and Standards for Primary Equity Securities

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(a) No change.

(1) No change.

(2) At least 1,100,000 Unrestricted Publicly Held Shares; [and]

(3) At least 400 Round Lot Holders[.] and at least 50% of such Round Lot Holders must each hold shares with a Market Value of at least \$2,500;

(4) If the security is trading in the U.S. over-the-counter market as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment public offering of at least \$4 million.

(b) No change.

(1) No change.

(A)-(B) No change.

(C) Market Value of Unrestricted Publicly Held Shares of at least \$8 million; and

(D) No change.

(2) No change.

(A)-(B) No change

(C) Market Value of Unrestricted Publicly Held Shares of at least \$18 million; and

(D) No change.

(3) No change.

(A) No change.

(B) Market Value of Unrestricted Publicly Held Shares of at least \$20 million; and

(C) No change.

(4) No change.

(A) No change.

(B) Market Value of Unrestricted Publicly Held Shares of at least \$20 million; and

(C) No change.

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5415. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Primary Equity Security of the Company is listed on the Global Market or is a Covered Security, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through ([5]6) below.

(1) At least 200,000 Unrestricted Publicly Held Shares;

(2) A Market Value of Unrestricted Publicly Held Shares of at least \$4,000,000;

(3) No change.

(4) At least 100 Round Lot Holders and at least 50% of such Round Lot Holders must each hold shares with a Market Value of at least \$2,500; [and]

(5) At least three registered and active Market Makers[.]; and

(6) If the security is trading in the U.S. over-the-counter market as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing, with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment public offering of at least \$4 million.

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5500. The Nasdaq Capital Market

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5505. Initial Listing of Primary Equity Securities

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(2) At least 1,000,000 Unrestricted Publicly Held Shares;

(3) At least 300 Round Lot Holders and at least 50% of such Round Lot Holders must each hold shares with a Market Value of at least \$2,500;

(4) No change.

(5) If the security is trading over-the-counter as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days, unless such securities are listed on the Exchange in connection with a firm commitment public offering of at least \$4 million; and

~~(5)~~(6) In the case of ADRs, at least 400,000 issued.

(b) No change.

(1) No change.

(A) No change.

(B) Market Value of Unrestricted Publicly Held Shares of at least \$15 million; and

(C) No change.

(2) No change.

(A)-(B) No change.

(C) Market Value of Unrestricted Publicly Held Shares of at least \$15 million.

(3) No change.

(A)-(B) No change.

(C) Market Value of Unrestricted Publicly Held Shares of at least \$5 million.

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5510. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Primary Equity Security is listed on the Capital Market or is a Covered Security, a Company's preferred stock or secondary class of common stock must meet all of the requirements in Rules (1) through ([5]6) below in order to be listed.

(1) No change.

(2) At least 100 Round Lot Holders and at least 50% of such Round Lot Holders must each hold shares with a Market Value of at least \$2,500;

(3) At least 200,000 Unrestricted Publicly Held Shares;

(4) Market Value of Unrestricted Publicly Held Shares of at least \$3.5 million; [and]

(5) At least three registered and active Market Makers[.]; and

(6) If the security is trading over-the-counter as of the date of application, such security must have a minimum average daily trading volume of 2,000 shares over the 30 trading day period prior to listing, with trading occurring on more than half of those 30 days, unless such security is listed on the Exchange in connection with a firm commitment public offering of at least \$4 million.

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5520. Initial Listing Requirements for Subscription Receipts

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(g) No change.

(1) No change.

(2) a minimum Market Value of Unrestricted Publicly Held Shares of \$100 million;

(3) At least 1,100,000 Unrestricted Publicly Held Shares;

(4) At least 400 Round Lot Holders and at least 50% of such Unrestricted Round Lot Holders must each hold warrants with a Market Value of at least \$2,500.

(h) No change.

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