

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 91	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 009 Amendment No. (req. for Amendments *) 3
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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 type="checkbox"/>	Amendment * <input checked="" 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"/>
Pilot <input type="checkbox"/>			Rule		
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 \*).

**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 \* Amma Last Name \* Anamon  
 Title \* Assistant General Counsel  
 E-mail \* amma.anaman@nasdaq.com  
 Telephone \* (301) 978-8011 Fax

**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 07/01/2019  
 By Edward S. Knight  
 (Name \*)

Global Chief Legal & Policy Officer

edward.knight@nasdaq.com

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to 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

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

<sup>2</sup> 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 is filing this amendment to SR-NASDAQ-2019-009,<sup>3</sup> which was published for comment by the Commission on April 9, 2019, in order to (i) clarify Nasdaq's initial intent to impose a new requirement that at least 50% of a company's round lot holders must each hold unrestricted securities with a market value of at least \$2,500; (ii) clarify that the new listing rule requiring a minimum average daily trading volume for securities trading over-the-counter ("OTC") of at least 2,000 shares over the 30 day period prior to listing (with trading occurring on more than half of those 30 days) includes trading volume of the underlying security on the primary market with respect to an ADR; (iii) clarify that, in connection with a company applying to list on the Exchange through a direct listing that has not had sustained recent trading in a private placement market prior to listing, Nasdaq will determine that the company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable requirement and provides an independent third-party valuation evidencing a market value of publicly held shares of at least \$250,000,000; and (iv) make minor technical changes. This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq proposes several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. In

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<sup>3</sup> Securities Exchange Act Release No. 85503 (April 3, 2019), 84 FR 14172 (April 9, 2019) (the "Initial Proposal").

addition to the changes described above, 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". 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.<sup>4</sup> 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. Because the current Initial Liquidity Calculations include restricted securities, a security with a substantial number of restricted securities could satisfy the Exchange's initial listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is

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<sup>4</sup> 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.

illiquid. 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.

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 (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;<sup>5</sup> (2) acquired through an employee stock benefit plan or as compensation for professional services;<sup>6</sup> (3) acquired in reliance on Regulation S, which cannot be resold within the United States;<sup>7</sup> (4) subject to a lockup agreement or a similar contractual restriction;<sup>8</sup> or (5) considered “restricted securities” under Rule 144.<sup>9</sup> Nasdaq is also proposing to adopt a new definition of “unrestricted

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<sup>5</sup> See, e.g., 17 CFR 230.144(a)(3)(i) and (ii).

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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/investorpublications/investorpubsrule144htm.htm>

securities” at Nasdaq Rule 5005(a)(46), which includes securities 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.”<sup>10</sup> FTSE Russell excludes shares held within employee share plans, shares subject to a “lock-in” clause, and shares subject to contractual restrictions.<sup>11</sup> S&P Dow Jones adjusts its indices to “reflect only those shares available to investors rather than all of a company’s outstanding shares.”<sup>12</sup>

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ml. Nasdaq would consider a security as subject to a resale restriction until any restrictive legends are removed, even if a safe harbor is available that permits the sale of the security at an earlier date.

<sup>10</sup> See FTSE Russell, “Free-Float”, available at: <https://www.ftse.com/products/indices/free-float>.

<sup>11</sup> See FTSE Russell, “Free Float Restrictions v2.0”, May 2018, available at: [https://www.ftse.com/products/downloads/Free\\_Float\\_Restrictions.pdf](https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf).

<sup>12</sup> 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>.

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 (including American Depositary Receipts or “ADRs”)<sup>13</sup> 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;<sup>14</sup> subscription receipts on Nasdaq’s Capital Market tier; or paired share units on Nasdaq’s Global Select or Global Market tiers. 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.

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<sup>13</sup> Rule 5005(a)(33) defines “Primary Equity Security” as “a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).”

<sup>14</sup> There are no separate listing requirements on the Nasdaq Global Select Market for classes of securities other than primary equity securities. Instead, pursuant to Rule 5320, if the primary equity security is listed on the Nasdaq Global Select Market, generally any other security of that same company that qualifies for listing on the Nasdaq Global Market is also included in the Nasdaq Global Select Market.



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 “restricted securities.” Nasdaq proposes to revise references to “publicly held shares” to “unrestricted publicly held shares” in the following rules:

<b><u>Rule Number</u></b>	<b><u>Nasdaq Market Tier</u></b>	<b><u>Security Type</u></b>	<b><u>Current Required Number of Publicly Held Shares</u></b>
5315(e)(2)	Global Select	Primary Equity Security (including Paired Share Units and direct listings)	At least 1,250,000
5405(a)(2)	Global	Primary Equity Security (including Paired Share Units)	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

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<sup>15</sup> 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 reflect the change to “unrestricted publicly held shares.”<sup>16</sup> Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market, as discussed below.

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 (including ADRs) 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 or Global Market tiers. The calculation of “market

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<sup>15</sup> Rule 5005(a)(40) defines “Shareholder” as “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.”

<sup>16</sup> Rule 5205(g) currently states that “The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.”

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 the following rules:

<b><u>Rule Number</u></b>	<b><u>Nasdaq Market Tier</u></b>	<b><u>Security Type</u></b>	<b><u>Current Required Market Value</u></b>
5315(c)(1)-(3)	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family	(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 (including direct listings and Paired Share Units)	(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 (including Paired Share Units)	At least \$8 million (Income Standard)
5405(b)(2)(C)	Global	Primary Equity Securities (including Paired	At least \$18 million (Equity Standard)

		Share Units)	
5405(b)(3)(B)	Global	Primary Equity Securities (including Paired Share Units)	At least \$20 million (Market Value Standard)
5405(b)(4)(B)	Global	Primary Equity Securities (including Paired Share Units)	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)
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

As discussed above, Nasdaq believes that excluding restricted securities from the calculation of market value of publicly held shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, market value of publicly held shares is an indication of the size and investor interest in a company. When restricted securities are included in that calculation, a company could technically meet Nasdaq's requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices and a company's market value of publicly held shares.

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 Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.<sup>17</sup> Nasdaq also proposes to revise Rule 5205(g) to reflect that the computation for market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.<sup>18</sup>

Nasdaq also proposes revising references to “market value of publicly held shares” to “market value of unrestricted publicly held shares” in the preamble and subsections (a) and (b) of IM-5315-1, which currently set forth the Exchange’s method of determining bid price, market capitalization and market value of publicly held shares for a company applying to list on the Exchange through a direct listing.<sup>19</sup> Currently, IM-5315-1(a) states that “[i]f the Company’s security has had sustained recent trading in a Private Placement Market,<sup>20</sup> Nasdaq will attribute a price, market capitalization, and Market Value of Publicly Held Shares to the Company equal to the lesser of (i) the value

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<sup>17</sup> 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.

<sup>18</sup> Rule 5205(g) currently states that “The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.”

<sup>19</sup> A “direct listing” is the listing of a company that has sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing on Nasdaq.

<sup>20</sup> Rule 5005(a)(34) defines “Private Placement Market” as “a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.”

calculable based on an independent third-party valuation (a “Valuation”) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.” As a result of the proposed change, Nasdaq will attribute a market value of unrestricted publicly held shares to the company equal to the lesser of (i) the value calculable based on a Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

Currently, IM-5315-1(b) states that “[f]or a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq will determine that such Company has met the Market Value of Publicly Held Shares requirement if the Company provides a Valuation evidencing a Market Value of Publicly Held Shares of at least \$250,000,000. Nasdaq will also determine the bid price and market capitalization based on such Valuation.” Nasdaq is proposing to revise this rule to clarify that Nasdaq will determine that such company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable market value of unrestricted publicly held shares requirement and provides a Valuation evidencing a market value of publicly held shares of at least \$250,000,000. As a result, a company applying to list on the Exchange through a direct listing will be subject to all proposed changes in Rule 5315 to exclude restricted securities from the Exchange’s Initial Liquidity Calculations, but restricted securities will not be excluded for purposes of determining whether the Valuation evidences a market value of publicly held shares of at least \$250,000,000. Nasdaq believes that it is appropriate to include restricted securities in this calculation because this requirement is meant to measure the size of the entity, and not necessarily measure its liquidity, and restricted securities should be included in the measure of the

entity size. Furthermore, as discussed above, a direct listing would also need to comply with the initial listing standards set forth in Rule 5315 including the revised Initial Liquidity Calculations.

Lastly, Nasdaq proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the market value of unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below.

#### 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 (including ADRs), 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."<sup>21</sup> 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."<sup>22</sup> 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

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<sup>21</sup> Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

<sup>22</sup> Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

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 the following rules:

<b><u>Rule Number</u></b>	<b><u>Nasdaq Market Tier</u></b>	<b><u>Security Type</u></b>	<b><u>Current Required Number of Round Lot Holders</u></b>
5315(f)(1)(C)	Global Select	Primary Equity Security (including Paired Share Units and direct listings)	At least 450 round lot holders or a minimum number of total holders
5405(a)(3)	Global	Primary Equity Security (including Paired Share Units)	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
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

As a result of 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 investor interest in a listed security, which will result in a more liquid trading market and which will better protect investors. 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.

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. Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies this proposed change that determination of round lot holders be based on holders of unrestricted securities, Nasdaq will consider whether round lot holders of the underlying security hold unrestricted shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market, as discussed below. Nasdaq will also apply the new minimum value requirement for round lot holders to the underlying security, as

proposed below, in addition to the minimum number of round lot holders required by the applicable tier that the company is seeking to list on.

D. American Depositary Receipts

Lastly, Nasdaq proposes to revise Rule 5215(b) to specify how these new requirements apply to ADRs. Specifically, as under the current rule for calculating publicly held shares, market value of publicly held shares, and round lot holders, Nasdaq will continue to consider the underlying security in calculating the unrestricted publicly held shares and market value of unrestricted publicly held shares and in calculating the new definition of a round lot holder. In determining whether shares of the underlying security are “restricted” for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of “restricted securities” would restrict the underlying security from being freely sold or tradable on its home country market, Nasdaq would also consider such restrictions when calculating “unrestricted publicly held shares.” Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer’s underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market

value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.<sup>23</sup> Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S.

In addition, Nasdaq proposes to revise the reference to Form S-12 in Rule 5215(b) to Form F-6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.<sup>24</sup>

## 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, except for those applicable to listing warrants, 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

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<sup>23</sup> For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the foreign issuer's home country market.

<sup>24</sup> Securities Exchange Act Release No. 34-19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

trading at the minimum bid price of \$4 per share.<sup>25</sup> Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. 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 unrestricted securities with a market value of at least \$2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.<sup>26</sup> Nonetheless, warrants are often issued as part of a unit and the common stock component of the unit would be required to satisfy the minimum value requirement. Further, in all cases, the security underlying a warrant must be listed on Nasdaq or be a covered security, as defined in Section 18(b) of the Securities Act of 1933.<sup>27</sup> 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 unrestricted securities and that a company has sufficient investor interest to support an exchange listing.

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<sup>25</sup> 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).

<sup>26</sup> Warrants issued as part of a unit must satisfy the initial listing requirements for warrants applying to list on the applicable market tier in accordance with Rule 5225.

<sup>27</sup> 15 U.S.C. 77r(b).

### III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, secondary classes of common stock and paired share units, previously trading OTC in the United States. 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 trading volume of the underlying security 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 additional amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5405(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).<sup>28</sup> 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. In addition, Nasdaq is proposing to revise Rule 5226(b) to clarify that the

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<sup>28</sup> Rule 5005(a)(33) defines “Primary Equity Security” as “a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).” The Exchange considers ADRs to be primary equity securities and therefore the Exchange’s initial listing requirements for preferred stock and secondary classes of common stock (including Rules 5415(a)(6) and 5510(a)(6)) do not apply to ADRs.

average daily trading volume requirement would apply to companies seeking to list paired share units on the Exchange.

As noted above, the average daily trading volume requirement will also apply to ADRs. 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 amend Rule 5215(b) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement. Nasdaq would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. Nasdaq believes that this will help demonstrate adequate investor interest in the foreign issuer and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.<sup>29</sup>

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.

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<sup>29</sup> ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security.

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. For these reasons, in part, Nasdaq's rules already provide similar exemptions in other situations involving a firm commitment underwritten offering.<sup>30</sup> Nasdaq believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Nasdaq also notes that the same volume requirement is being proposed for each of Nasdaq's Global Select, Global and Capital Market tiers, and that it is therefore appropriate to base the exemption on the same minimum \$4 million offering in each case, notwithstanding the different listing criteria generally applicable to companies seeking to list on each tier. Finally, Nasdaq believes that the proposed minimum \$4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, Nasdaq notes that the minimum \$4 million offering would be sufficient to satisfy Nasdaq's one million share public float requirement at the minimum \$4 price for listing on Capital Market. This exemption will be included in new Rules 5315(e)(4), 5405(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

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<sup>30</sup> For example, Rules 5410(d) and 5515(a)(4) provide an exemption from the minimum round lot holder requirement for warrants listed in connection with an initial firm commitment underwritten public offering. Rule 5110(c)(3) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least \$40 million.

Nasdaq proposes that this change be effective 30 days after approval by the SEC. Nasdaq notes that it had originally solicited comment on a similar proposal in October 2018,<sup>31</sup> which provided companies with notice that Nasdaq was considering adopting the proposed changes to the Exchange's Initial Liquidity Calculations. The proposed 30-day delay from approval until operation of the proposed rule will allow companies a short opportunity to complete an offering or transaction before the new rules become effective if they have substantially completed the Nasdaq review process or are near completion of an offering or transaction, and have relied on the existing rules.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>32</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>33</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, as set forth below. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>31</sup> See [https://listingcenter.nasdaq.com/assets/Liquidity\\_Measures\\_Comment\\_Solicitation.pdf](https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf).

<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

As described below, Nasdaq believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to help ensure that issuers seeking to list on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. 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.

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

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<sup>34</sup> 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.)

<sup>35</sup> Id. at 70802.

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 demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.<sup>36</sup>

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.

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<sup>36</sup> See *Rocky Mountain Power Co.*, Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 S.E.C. 979 (November 9, 1998).

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.

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 the number of round lot holders required to meet the Exchange’s initial listing criteria

by revising the definition of “round lot holder” to exclude restricted 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.

D. American Depositary Receipts

The proposed amendments will modify Nasdaq’s rules to state that when considering the security underlying an ADR, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market. However, any restrictions, including those provided as examples in the new definition of “restricted securities,” which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by Nasdaq when calculating “unrestricted publicly held shares.” Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer’s underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the

underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, Nasdaq believes that this provision 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.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under Nasdaq's rules, where Nasdaq looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the foreign issuer's underlying security, which is represented by the ADR.

## 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 unrestricted securities with a market value of at least \$2,500. Nasdaq believes that the proposed \$2,500 minimum value is reasonable because the Exchange has noticed problems with companies listing where a large number of round lot holders hold 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, or as little as \$200 in the

case of a stock listing under the alternative price criteria. Nasdaq notes that the proposed \$2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and Nasdaq believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, 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 requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

Nasdaq does not propose to impose this requirement on the initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. The value of warrants is derived from the value of the underlying security, which must be listed on Nasdaq or be a covered security and Nasdaq has not observed problems with the trading of warrants. As such, Nasdaq believes that it is not unfairly discriminatory to treat warrants differently under this proposal and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market.

### III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security 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). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC in the United States that apply to list on the Exchange. Nasdaq believes this proposed change 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. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. Nasdaq believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption 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. Further, Nasdaq believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum \$4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, Nasdaq would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. Nasdaq believes that this distinction is not unfairly discriminatory because the trading volume in the underlying security on the foreign issuer's primary market represents interest in the foreign issuer's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

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 domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes, across all market tiers. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary equity securities, but those differences reflect the unique characteristics of ADRs and does not impose an unnecessary burden on competition.

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 between exchanges.



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 OTC ("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.
4. Amended rule text indicating additions to or deletions from the immediately preceding filing.

5. Text of the proposed rule change.

**EXHIBIT 1**

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

July \_\_, 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")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 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.

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

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2019-009,<sup>3</sup> which was published for comment by the Commission on April 9, 2019, in order to (i) clarify Nasdaq's initial intent to impose a new requirement that at least 50% of a company's round lot holders must each hold unrestricted securities with a market value of at least \$2,500; (ii) clarify that the new listing rule requiring a minimum average daily trading volume for securities trading over-the-counter ("OTC") of at least 2,000 shares over the 30 day period prior to listing (with trading occurring on more than half of those 30 days) includes trading volume of the underlying security on the primary market with respect to an ADR; (iii) clarify that, in connection with a company applying to list on the Exchange through a direct listing that has not had sustained recent trading in a private placement market prior to listing, Nasdaq will determine that the company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable requirement and provides an independent third-party valuation evidencing a market value of publicly held shares of at least \$250,000,000; and (iv) make minor technical changes. This amendment supersedes and replaces the Initial Proposal in its entirety.

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<sup>3</sup> Securities Exchange Act Release No. 85503 (April 3, 2019), 84 FR 14172 (April 9, 2019) (the "Initial Proposal").

Nasdaq proposes several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. In addition to the changes described above, 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". 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.<sup>4</sup> 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. Because the current Initial Liquidity Calculations include restricted securities, a security with a substantial number of restricted securities could satisfy the Exchange's initial

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<sup>4</sup> 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.

listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is illiquid. 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.

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 (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;<sup>5</sup> (2) acquired through an employee stock benefit plan or as compensation for professional services;<sup>6</sup> (3) acquired in reliance on Regulation S, which cannot be resold within the United States;<sup>7</sup> (4) subject to a lockup agreement or a similar contractual restriction;<sup>8</sup> or (5) considered “restricted securities”

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<sup>5</sup> See, e.g., 17 CFR 230.144(a)(3)(i) and (ii).

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

under Rule 144.<sup>9</sup> Nasdaq is also proposing to adopt a new definition of “unrestricted securities” at Nasdaq Rule 5005(a)(46), which includes securities 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.”<sup>10</sup> FTSE Russell excludes shares held within employee share plans, shares subject to a “lock-in” clause, and shares subject to contractual restrictions.<sup>11</sup> S&P Dow Jones adjusts its indices to “reflect only those shares available to investors rather than all of a company’s outstanding shares.”<sup>12</sup>

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<sup>9</sup> 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/investorpublications/investorpubsrule144htm.html>. Nasdaq would consider a security as subject to a resale restriction until any restrictive legends are removed, even if a safe harbor is available that permits the sale of the security at an earlier date.

<sup>10</sup> See FTSE Russell, “Free-Float”, available at: <https://www.ftse.com/products/indices/free-float>.

<sup>11</sup> See FTSE Russell, “Free Float Restrictions v2.0”, May 2018, available at: [https://www.ftse.com/products/downloads/Free\\_Float\\_Restrictions.pdf](https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf).

<sup>12</sup> 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>.

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 (including American Depositary Receipts or “ADRs”)<sup>13</sup> 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;<sup>14</sup> subscription receipts on Nasdaq’s Capital Market tier; or paired share units on Nasdaq’s Global Select or Global Market tiers. 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.

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<sup>13</sup> Rule 5005(a)(33) defines “Primary Equity Security” as “a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).”

<sup>14</sup> There are no separate listing requirements on the Nasdaq Global Select Market for classes of securities other than primary equity securities. Instead, pursuant to Rule 5320, if the primary equity security is listed on the Nasdaq Global Select Market, generally any other security of that same company that qualifies for listing on the Nasdaq Global Market is also included in the Nasdaq Global Select Market.



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 “restricted securities.” Nasdaq proposes to revise references to “publicly held shares” to “unrestricted publicly held shares” in the following rules:

<b><u>Rule Number</u></b>	<b><u>Nasdaq Market Tier</u></b>	<b><u>Security Type</u></b>	<b><u>Current Required Number of Publicly Held Shares</u></b>
5315(e)(2)	Global Select	Primary Equity Security (including Paired Share Units and direct listings)	At least 1,250,000
5405(a)(2)	Global	Primary Equity Security (including Paired Share Units)	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

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<sup>15</sup> 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 reflect the change to “unrestricted publicly held shares.”<sup>16</sup> Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market, as discussed below.

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 (including ADRs) 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 or Global Market tiers. The calculation of “market

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<sup>15</sup> Rule 5005(a)(40) defines “Shareholder” as “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.”

<sup>16</sup> Rule 5205(g) currently states that “The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.”

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 the following rules:

<b><u>Rule Number</u></b>	<b><u>Nasdaq Market Tier</u></b>	<b><u>Security Type</u></b>	<b><u>Current Required Market Value</u></b>
5315(c)(1)-(3)	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family	(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 (including direct listings and Paired Share Units)	(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 (including Paired Share Units)	At least \$8 million (Income Standard)
5405(b)(2)(C)	Global	Primary Equity Securities (including Paired	At least \$18 million (Equity Standard)

		Share Units)	
5405(b)(3)(B)	Global	Primary Equity Securities (including Paired Share Units)	At least \$20 million (Market Value Standard)
5405(b)(4)(B)	Global	Primary Equity Securities (including Paired Share Units)	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)
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

As discussed above, Nasdaq believes that excluding restricted securities from the calculation of market value of publicly held shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, market value of publicly held shares is an indication of the size and investor interest in a company. When restricted securities are included in that calculation, a company could technically meet Nasdaq's requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices and a company's market value of publicly held shares.

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 Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.<sup>17</sup> Nasdaq also proposes to revise Rule 5205(g) to reflect that the computation for market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.<sup>18</sup>

Nasdaq also proposes revising references to “market value of publicly held shares” to “market value of unrestricted publicly held shares” in the preamble and subsections (a) and (b) of IM-5315-1, which currently set forth the Exchange’s method of determining bid price, market capitalization and market value of publicly held shares for a company applying to list on the Exchange through a direct listing.<sup>19</sup> Currently, IM-5315-1(a) states that “[i]f the Company’s security has had sustained recent trading in a Private Placement Market,<sup>20</sup> Nasdaq will attribute a price, market capitalization, and Market Value of Publicly Held Shares to the Company equal to the lesser of (i) the value

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<sup>17</sup> 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.

<sup>18</sup> Rule 5205(g) currently states that “The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.”

<sup>19</sup> A “direct listing” is the listing of a company that has sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing on Nasdaq.

<sup>20</sup> Rule 5005(a)(34) defines “Private Placement Market” as “a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.”

calculable based on an independent third-party valuation (a “Valuation”) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.” As a result of the proposed change, Nasdaq will attribute a market value of unrestricted publicly held shares to the company equal to the lesser of (i) the value calculable based on a Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

Currently, IM-5315-1(b) states that “[f]or a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq will determine that such Company has met the Market Value of Publicly Held Shares requirement if the Company provides a Valuation evidencing a Market Value of Publicly Held Shares of at least \$250,000,000. Nasdaq will also determine the bid price and market capitalization based on such Valuation.” Nasdaq is proposing to revise this rule to clarify that Nasdaq will determine that such company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable market value of unrestricted publicly held shares requirement and provides a Valuation evidencing a market value of publicly held shares of at least \$250,000,000. As a result, a company applying to list on the Exchange through a direct listing will be subject to all proposed changes in Rule 5315 to exclude restricted securities from the Exchange’s Initial Liquidity Calculations, but restricted securities will not be excluded for purposes of determining whether the Valuation evidences a market value of publicly held shares of at least \$250,000,000. Nasdaq believes that it is appropriate to include restricted securities in this calculation because this requirement is meant to measure the size of the entity, and not necessarily measure its liquidity, and restricted securities should be included in the measure of the

entity size. Furthermore, as discussed above, a direct listing would also need to comply with the initial listing standards set forth in Rule 5315 including the revised Initial Liquidity Calculations.

Lastly, Nasdaq proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the market value of unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below.

### 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 (including ADRs), 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."<sup>21</sup> 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."<sup>22</sup> 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

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<sup>21</sup> Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

<sup>22</sup> Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

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 the following rules:

<b><u>Rule Number</u></b>	<b><u>Nasdaq Market Tier</u></b>	<b><u>Security Type</u></b>	<b><u>Current Required Number of Round Lot Holders</u></b>
5315(f)(1)(C)	Global Select	Primary Equity Security (including Paired Share Units and direct listings)	At least 450 round lot holders or a minimum number of total holders
5405(a)(3)	Global	Primary Equity Security (including Paired Share Units)	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
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

As a result of 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 investor interest in a listed security, which will result in a more liquid trading market and which will better protect investors. 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.

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. Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies this proposed change that determination of round lot holders be based on holders of unrestricted securities, Nasdaq will consider whether round lot holders of the underlying security hold unrestricted shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market, as discussed below. Nasdaq will also apply the new minimum value requirement for round lot holders to the underlying security, as

proposed below, in addition to the minimum number of round lot holders required by the applicable tier that the company is seeking to list on.

D. American Depositary Receipts

Lastly, Nasdaq proposes to revise Rule 5215(b) to specify how these new requirements apply to ADRs. Specifically, as under the current rule for calculating publicly held shares, market value of publicly held shares, and round lot holders, Nasdaq will continue to consider the underlying security in calculating the unrestricted publicly held shares and market value of unrestricted publicly held shares and in calculating the new definition of a round lot holder. In determining whether shares of the underlying security are “restricted” for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of “restricted securities” would restrict the underlying security from being freely sold or tradable on its home country market, Nasdaq would also consider such restrictions when calculating “unrestricted publicly held shares.” Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer’s underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market

value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.<sup>23</sup> Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S.

In addition, Nasdaq proposes to revise the reference to Form S-12 in Rule 5215(b) to Form F-6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.<sup>24</sup>

## 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, except for those applicable to listing warrants, 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

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<sup>23</sup> For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the foreign issuer's home country market.

<sup>24</sup> Securities Exchange Act Release No. 34-19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

trading at the minimum bid price of \$4 per share.<sup>25</sup> Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. 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 unrestricted securities with a market value of at least \$2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.<sup>26</sup> Nonetheless, warrants are often issued as part of a unit and the common stock component of the unit would be required to satisfy the minimum value requirement. Further, in all cases, the security underlying a warrant must be listed on Nasdaq or be a covered security, as defined in Section 18(b) of the Securities Act of 1933.<sup>27</sup> 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 unrestricted securities and that a company has sufficient investor interest to support an exchange listing.

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<sup>25</sup> 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).

<sup>26</sup> Warrants issued as part of a unit must satisfy the initial listing requirements for warrants applying to list on the applicable market tier in accordance with Rule 5225.

<sup>27</sup> 15 U.S.C. 77r(b).

### III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, secondary classes of common stock and paired share units, previously trading OTC in the United States. 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 trading volume of the underlying security 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 additional amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5405(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).<sup>28</sup> 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. In addition, Nasdaq is proposing to revise Rule 5226(b) to clarify that the

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<sup>28</sup> Rule 5005(a)(33) defines “Primary Equity Security” as “a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).” The Exchange considers ADRs to be primary equity securities and therefore the Exchange’s initial listing requirements for preferred stock and secondary classes of common stock (including Rules 5415(a)(6) and 5510(a)(6)) do not apply to ADRs.

average daily trading volume requirement would apply to companies seeking to list paired share units on the Exchange.

As noted above, the average daily trading volume requirement will also apply to ADRs. 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 amend Rule 5215(b) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement. Nasdaq would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. Nasdaq believes that this will help demonstrate adequate investor interest in the foreign issuer and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.<sup>29</sup>

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.

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<sup>29</sup> ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security.

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. For these reasons, in part, Nasdaq's rules already provide similar exemptions in other situations involving a firm commitment underwritten offering.<sup>30</sup> Nasdaq believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Nasdaq also notes that the same volume requirement is being proposed for each of Nasdaq's Global Select, Global and Capital Market tiers, and that it is therefore appropriate to base the exemption on the same minimum \$4 million offering in each case, notwithstanding the different listing criteria generally applicable to companies seeking to list on each tier. Finally, Nasdaq believes that the proposed minimum \$4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, Nasdaq notes that the minimum \$4 million offering would be sufficient to satisfy Nasdaq's one million share public float requirement at the minimum \$4 price for listing on Capital Market. This exemption will be included in new Rules 5315(e)(4), 5405(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

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<sup>30</sup> For example, Rules 5410(d) and 5515(a)(4) provide an exemption from the minimum round lot holder requirement for warrants listed in connection with an initial firm commitment underwritten public offering. Rule 5110(c)(3) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least \$40 million.

Nasdaq proposes that this change be effective 30 days after approval by the SEC. Nasdaq notes that it had originally solicited comment on a similar proposal in October 2018,<sup>31</sup> which provided companies with notice that Nasdaq was considering adopting the proposed changes to the Exchange's Initial Liquidity Calculations. The proposed 30-day delay from approval until operation of the proposed rule will allow companies a short opportunity to complete an offering or transaction before the new rules become effective if they have substantially completed the Nasdaq review process or are near completion of an offering or transaction, and have relied on the existing rules.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>32</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>33</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, as set forth below. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>31</sup> See [https://listingcenter.nasdaq.com/assets/Liquidity Measures Comment Solicitation.pdf](https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf).

<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

As described below, Nasdaq believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to help ensure that issuers seeking to list on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. 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.

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

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<sup>34</sup> 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.)

<sup>35</sup> Id. at 70802.

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 demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.<sup>36</sup>

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.

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<sup>36</sup> See Rocky Mountain Power Co., Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 S.E.C. 979 (November 9, 1998).

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.

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 the number of round lot holders required to meet the Exchange’s initial listing criteria

by revising the definition of “round lot holder” to exclude restricted 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.

D. American Depositary Receipts

The proposed amendments will modify Nasdaq’s rules to state that when considering the security underlying an ADR, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market. However, any restrictions, including those provided as examples in the new definition of “restricted securities,” which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by Nasdaq when calculating “unrestricted publicly held shares.” Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer’s underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the

underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, Nasdaq believes that this provision 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.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under Nasdaq's rules, where Nasdaq looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the foreign issuer's underlying security, which is represented by the ADR.

## 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 unrestricted securities with a market value of at least \$2,500. Nasdaq believes that the proposed \$2,500 minimum value is reasonable because the Exchange has noticed problems with companies listing where a large number of round lot holders hold 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, or as little as \$200 in the

case of a stock listing under the alternative price criteria. Nasdaq notes that the proposed \$2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and Nasdaq believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, 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 requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

Nasdaq does not propose to impose this requirement on the initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. The value of warrants is derived from the value of the underlying security, which must be listed on Nasdaq or be a covered security and Nasdaq has not observed problems with the trading of warrants. As such, Nasdaq believes that it is not unfairly discriminatory to treat warrants differently under this proposal and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market.

### III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security 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). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC in the United States that apply to list on the Exchange. Nasdaq believes this proposed change 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. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. Nasdaq believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption 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. Further, Nasdaq believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum \$4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, Nasdaq would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. Nasdaq believes that this distinction is not unfairly discriminatory because the trading volume in the underlying security on the foreign issuer's primary market represents interest in the foreign issuer's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

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 domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes, across all market tiers. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary equity securities, but those differences reflect the unique characteristics of ADRs and does not impose an unnecessary burden on competition.

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 between exchanges.



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 OTC ("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](mailto: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.<sup>37</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>37</sup> 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](mailto: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.

\* \* \* \* \*

## 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 4**

## Changes to the Proposed Rule Text

Text is marked to show changes to proposed rule language in the original filing. Additions to original filing are double underlined; deletions from original filing are ~~stricken through~~.

\* \* \* \* \*

**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) 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.

\* \* \* \* \*

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

### **5205. The Applications and Qualifications Process**

(a) – (f) No change.

(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.

(h) – (i) No change.

\* \* \* \* \*

### **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 depository or any other person deemed to be an issuer for purposes of Form [S-12]F-6 under the Securities Act of 1933. The underlying security will be considered when determining annual income from continuing operations, Publicly Held Shares, Unrestricted Publicly Held Shares, Market Value of Publicly Held Shares, Market Value of Unrestricted 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. When calculating the Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares and Round Lot Holders of the underlying security, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's foreign issuer's home country market.

\* \* \* \* \*

### **5226. Paired Share Units**

\* \* \* \* \*

(a) No change.

(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, average daily trading volume and M[m]arket M[m]aker requirements), as applicable.

(c) – (h) No change.

\* \* \* \* \*

**5300. The Nasdaq Global Select Market**

\* \* \* \* \*

**5310. Definitions and Computations**

(a) – (c) No change.

(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.

(e) – (j) No change.

\* \* \* \* \*

**5315. Initial Listing Requirements for Primary Equity Securities**

Rule 5310 provides guidance about computations made under this Rule 5315.

(a) – (b) No change.

(c) A closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser or whose investment advisers are "affiliated persons" as defined in the Investment Company Act of 1940 (a "Fund Family") shall be eligible if:

(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) No change.

(e) The Primary Equity Security shall meet all of the following:

(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 trading volume of the underlying security 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 underwritten public offering of at least \$4 million.

(f)

**(1) Ownership Requirement**

The Primary Equity Security shall meet no less than one of the following:

**(A) - (B)** No change.

**(C)** A minimum of 450 Round Lot Holders and at least 50% of such Round Lot Holders must each hold Unrestricted Securities 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.

**(3)** No change.

**IM-5315-1. Determination of Price-Based Requirements for Direct Listings**

\* \* \* \* \*

In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Select Market based on the price of a security, including the bid price, market capitalization and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security's price as follows:

(a) If the Company's security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, market capitalization, and Market Value of Unrestricted Publicly Held Shares to the Company equal to the lesser of (i) the value

calculable based on an independent third-party valuation (a “Valuation”) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

(b) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq will determine that such Company has met the Market Value of Unrestricted Publicly Held Shares requirement if the Company satisfies the applicable Market Value of Unrestricted Publicly Held Shares requirement and provides a Valuation evidencing a Market Value of Unrestricted Publicly Held Shares of at least \$250,000,000. Nasdaq will also determine the bid price and market capitalization based on such Valuation.

(c) – (f) No change.

\* \* \* \* \*

#### **5400. The Nasdaq Global Market**

\* \* \* \* \*

#### **5405. Initial Listing Requirements and Standards for Primary Equity Securities**

\* \* \* \* \*

(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 Unrestricted Securities shares with a Market Value of at least \$2,500; 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 trading volume of the underlying security 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 underwritten 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.

\* \* \* \* \*

#### **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 Unrestricted Securities 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 underwritten public offering of at least \$4 million.

\* \* \* \* \*

#### **5500. The Nasdaq Capital Market**

\* \* \* \* \*

#### **5505. Initial Listing of Primary Equity Securities**

\* \* \* \* \*

(a) No change.

(1) No change.

(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 Unrestricted Securities shares with a Market Value of at least \$2,500;

(4) No change.

(5) If the security is trading in the U.S. 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 trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days, unless such securities are security is listed on the Exchange in connection with a firm commitment underwritten public offering of at least \$4 million; and

(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.

\* \* \* \* \*

### **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 Unrestricted Securities 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 in the U.S. 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 underwritten public offering of at least \$4 million.

(b) No change.

\* \* \* \* \*

### **5520. Initial Listing Requirements for Subscription Receipts**

Subscription Receipts are securities used to raise money for a specific acquisition. Nasdaq will list Subscription Receipts on The Nasdaq Capital Market subject to the following requirements:



(a) – (f) No change.

(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; and

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

(h) No change.

\* \* \* \* \*

**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) 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 securities that are not Restricted Securities.

\* \* \* \* \*

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

### **5205. The Applications and Qualifications Process**

(a) – (f) No change.

(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.

(h) – (i) No change.

\* \* \* \* \*

### **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 depository or any other person deemed to be an issuer for purposes of Form [S-12]F-6 under the Securities Act of 1933. The underlying security will be considered when determining annual income from continuing operations, Publicly Held Shares, Unrestricted Publicly Held Shares, Market Value of Publicly Held Shares, Market Value of Unrestricted 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. When calculating the Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares and Round Lot Holders of the underlying security, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market.

\* \* \* \* \*

#### **5226. Paired Share Units**

\* \* \* \* \*

(a) No change.

(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, average daily trading volume and M[m]arket M[m]aker requirements), as applicable.

(c) – (h) No change.

\* \* \* \* \*

#### **5300. The Nasdaq Global Select Market**

\* \* \* \* \*

#### **5310. Definitions and Computations**

(a) – (c) No change.

(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.

(e) – (j) No change.

\* \* \* \* \*

### **5315. Initial Listing Requirements for Primary Equity Securities**

Rule 5310 provides guidance about computations made under this Rule 5315.

(a) – (b) No change.

(c) A closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser or whose investment advisers are "affiliated persons" as defined in the Investment Company Act of 1940 (a "Fund Family") shall be eligible if:

(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) No change.

(e) The Primary Equity Security shall meet all of the following:

(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 trading volume of the underlying security 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 underwritten public offering of at least \$4 million.

(f)

(1) Ownership Requirement

The Primary Equity Security shall meet no less than one of the following:

(A) - (B) No change.

(C) A minimum of 450 Round Lot Holders and at least 50% of such Round Lot Holders must each hold Unrestricted Securities 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.

(3) No change.

**IM-5315-1. Determination of Price-Based Requirements for Direct Listings**

\* \* \* \* \*

In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Select Market based on the price of a security, including the bid price, market capitalization and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security's price as follows:

(a) If the Company's security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, market capitalization, and Market Value of Unrestricted Publicly Held Shares to the Company equal to the lesser of (i) the value calculable based on an independent third-party valuation (a "Valuation") and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

(b) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq will determine that such Company has met the Market Value of Unrestricted Publicly Held Shares requirement if the Company satisfies the applicable Market Value of Unrestricted Publicly Held Shares requirement and provides a Valuation

evidencing a Market Value of Publicly Held Shares of at least \$250,000,000. Nasdaq will also determine the bid price and market capitalization based on such Valuation.

(c) – (f) No change.

\* \* \* \* \*

#### **5400. The Nasdaq Global Market**

\* \* \* \* \*

#### **5405. Initial Listing Requirements and Standards for Primary Equity Securities**

\* \* \* \* \*

(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 Unrestricted Securities with a Market Value of at least \$2,500; 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 trading volume of the underlying security 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 underwritten 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.

\* \* \* \* \*

#### **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 Unrestricted Securities 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 underwritten public offering of at least \$4 million.



\* \* \* \* \*

**5500. The Nasdaq Capital Market**

\* \* \* \* \*

**5505. Initial Listing of Primary Equity Securities**

\* \* \* \* \*

(a) No change.

(1) No change.

(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 Unrestricted Securities with a Market Value of at least \$2,500;

(4) No change.

(5) If the security is trading in the U.S. 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 trading volume of the underlying security 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 underwritten public offering of at least \$4 million; and

(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.

\* \* \* \* \*

### **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 Unrestricted Securities 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 in the U.S. 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 underwritten public offering of at least \$4 million.

(b) No change.

\* \* \* \* \*

### **5520. Initial Listing Requirements for Subscription Receipts**

Subscription Receipts are securities used to raise money for a specific acquisition. Nasdaq will list Subscription Receipts on The Nasdaq Capital Market subject to the following requirements:

(a) – (f) No change.

(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; and

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

**(h)** No change.

\* \* \* \* \*