

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2019 - * 017	Amendment No. (req. for Amendments *)
Filing by The Nasdaq Stock Market LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule	
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposal to adopt an additional listing requirement for companies listing in connection with an offering under Regulation A under the Securities Act of 1933."/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Amma"/>	Last Name *	<input type="text" value="Anaman"/>	
Title *	<input type="text" value="Assistant General Counsel"/>			
E-mail *	<input type="text" value="Amma.Anaman@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 978-8011"/>	Fax	<input type="text"/>	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="03/14/2019"/>	<input type="text" value="Global Chief Legal and Policy Officer"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)		<input type="text" value="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 (“Exchange 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 adopt an additional listing requirement for companies listing in connection with an offering under Regulation A<sup>3</sup> under the Securities Act of 1933 (“Securities Act”)<sup>4</sup>.

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 set forth below. Proposed new language is underlined.

\* \* \* \* \*

**The Nasdaq Stock Market Rules**

\* \* \* \* \*

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

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

\* \* \* \* \*

**(j) Regulation A Offerings**

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

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

<sup>3</sup> 17 CFR 230.251-230.263.

<sup>4</sup> 15 U.S.C. 77a et seq.

Any Company listing on Nasdaq in connection with an offering under Regulation A of the Securities Act of 1933 must, at the time of approval, have a minimum operating history of two years.

\* \* \* \* \*

(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:

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

or

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

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

a. Purpose

The Exchange is proposing to adopt a new initial listing requirement that would require companies applying to list on the Exchange in connection with an offering under Regulation A of the Securities Act to have a minimum operating history of two years at the time of approval. Regulation A was amended in 2015 to implement provisions of the

Jumpstart Our Business Startups Act.<sup>5</sup> As amended, Regulation A provides an exemption from registration under the Securities Act for offerings up to \$50 million, for “Tier 2” offerings, and permits a company to sell securities to “non-accredited”, or retail, investors.<sup>6</sup> A company offering securities under Tier 2 may register its securities under the Exchange Act concurrently with the qualification of its Regulation A offering statement and list those securities on a national securities exchange, such as Nasdaq, if it meets applicable listing standards.<sup>7</sup>

To rely on the exemption under Regulation A, a company must file a Form 1-A with the SEC along with an offering statement, financial statements and other exhibits. The offering statement is reviewed and qualified by the SEC but requires less burdensome accounting and disclosure standards than a traditional initial public offering on Form S-1. For example, a Tier 2 issuer must file, among other things, audited financial statements for its previous two fiscal years or such shorter time that it has been in existence,<sup>8</sup> whereas Form S-1 requires a company (that is not a smaller reporting company or emerging growth company) to file such financial statements for its previous

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<sup>5</sup> Securities Exchange Act Release Nos. 74578 (March 25, 2015), 80 FR 21805 (April 20, 2015).

<sup>6</sup> 17 CFR 230.251-230.263.

<sup>7</sup> See General Instruction A(a)(2) of Form 8-A for Registration of Certain Classes of Securities pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934, available at <https://www.sec.gov/about/forms/form8-a.pdf>.

<sup>8</sup> Securities Exchange Act Release No. 33-10591 (December 19, 2018), 84 FR 520 (January 31, 2019).

three fiscal years<sup>9</sup> and selected financial data for its previous five fiscal years, or such shorter time that it has been in existence.<sup>10</sup>

While the amendments to Regulation A reflect the desire of Congress and the SEC to facilitate smaller companies' access to capital and provide investors with more investment choices,<sup>11</sup> the financial press,<sup>12</sup> Congress<sup>13</sup> and others<sup>14</sup> have raised concerns about the potential for fraud by companies conducting offerings under Regulation A. The Exchange has also observed problems with Regulation A companies. Most significantly, the Exchange believes that companies seeking to list in conjunction with a Regulation A offering are generally less mature companies with less developed business plans than other companies seeking to list. In addition, the Exchange believes that the Regulation A

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<sup>9</sup> 17 CFR 210.3-02(a).

<sup>10</sup> 17 CFR 229.301.

<sup>11</sup> See, e.g., “SEC Adopts Rules to Facilitate Smaller Companies Access to Capital” (March 25, 2015), available at <https://www.sec.gov/news/pressrelease/2015-49.html>.

<sup>12</sup> See, e.g., “Most Mini-IPOs Fail the Market Test, Barron’s” (February 23, 2018), available at <https://www.barrons.com/articles/most-mini-ipos-fail-the-market-test-1518526753>. See also, “Longfin Collapse Puts Focus on Lax IPO Rules”, Wall Street Journal (April 3, 2018), available at [https://www.wsj.com/articles/longfin-collapse-puts-focus-on-lax-ipo-rules-1522788520?mod=cx\\_picks&cx\\_navSource=cx\\_picks&cx\\_tag=contextual&cx\\_artPos=5#cxrecs\\_s](https://www.wsj.com/articles/longfin-collapse-puts-focus-on-lax-ipo-rules-1522788520?mod=cx_picks&cx_navSource=cx_picks&cx_tag=contextual&cx_artPos=5#cxrecs_s).

<sup>13</sup> See, e.g., H.R. Rep. No. 206, 112th Cong. 1st Sess. at 13 (2011), available at <https://www.congress.gov/congressional-report/112th-congress/house-report/206>. See also Congressional Record Volume 157, Number 166 (Wednesday, Nov. 2, 2011), p. H7231, available at <https://www.congress.gov/congressional-record/2011/11/02/house-section/article/H7229-1>.

<sup>14</sup> See, e.g., Letter from the North American Securities Administrators Association, Inc., to Elizabeth M. Murphy (March 24, 2014), available at <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-File-S7-11-13-03242014.pdf>.

offering process may not adequately prepare companies for the rigors of operating a public company and satisfying the SEC and Exchange's disclosure requirements.<sup>15</sup>

In response to these concerns, Nasdaq staff has adopted heightened review procedures for companies applying to list on the Exchange in connection with an offering under Regulation A. However, the Exchange also believes that additional requirements for listing such companies are appropriate to help ensure that adequate safeguards are in place to better protect investors. Accordingly, Nasdaq proposes to enhance its initial listing standards by adopting a new requirement at Listing Rule 5210(j) that a company listing in connection with an offering under Regulation A must, at the time of approval, have a minimum operating history of two years. Nasdaq believes that this proposed requirement will help assure that companies have more established business plans and a history of operations upon which investors can rely. In addition, the proposed operating history requirement will help assure that the company has been able to fund the initial phase of its operations. Further, Nasdaq believes that these more seasoned companies are more likely to be ready for the rigors of being a public company, including satisfying the SEC and Exchange's disclosure requirements. Nasdaq believes that these are important benefits given the lighter disclosure requirements otherwise associated with a Regulation A offering.

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

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<sup>15</sup> See, e.g., *Securities and Exchange Commission vs. Longfin Corp.*, Case No. 18-cv-2977 (DLC) (S.D.N.Y., filed April 4, 2018), available at <https://www.sec.gov/litigation/complaints/2018/comp-pr2018-61.pdf>.

2018,<sup>16</sup> which provided companies with notice that Nasdaq was considering adopting a minimum operating history requirement for companies listing in connection with a Regulation A offering. The proposed 30-day delay from approval until operation of the proposed rule will allow companies that have substantially completed the Nasdaq review process or are near completion of their offering an opportunity to complete that offering before the new rules become effective.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, in general to protect investors and the public interest, because it is reasonably designed to enhance investor protection by imposing an additional requirement on a category of companies that are able to sell securities to non-accredited investors with limited accounting and disclosure requirements and noted potential for fraud. Nasdaq believes that the addition of an operating history requirement will help assure that companies listing in conjunction with a Regulation A offering are more likely to have a developed business plans upon which investors can rely, will have proven able

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<sup>16</sup> See [https://listingcenter.nasdaq.com/assets/Liquidity\\_Measures\\_Comment\\_Solicitation.pdf](https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

to successfully fund the initial phase of operations, and be better prepared to satisfy public company requirements, including the disclosure requirements.

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 Exchange Act. All companies seeking to list on the Exchange in connection with an offering under Regulation A would be affected in the same manner by this change.

While this is an additional requirement that would not apply to a company that does not rely upon Regulation A, Nasdaq believes that to the extent this distinction places a burden on competition between companies, such burden is minor and is appropriate in furtherance of the investor protection purposes of the Exchange Act. Nasdaq notes that this potential burden is minor because companies have a choice as to whether or not to rely upon Regulation A and, therefore, can control whether they are subject to the proposed requirement. Moreover, as described above, Nasdaq believes that the proposed requirement is necessary to enhance investor protection from companies with limited accounting and disclosure requirements and noted potential for fraud.

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 adopt additional initial listing criteria for companies applying to list on the Exchange in connection with an offering under Regulation A ("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 Exchange 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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2019-017)

March \_\_, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Additional Requirements for Listings in Connection with an Offering Under Regulation A of the Securities Act

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 March 14, 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 adopt an additional listing requirement for companies listing in connection with an offering under Regulation A<sup>3</sup> under the Securities Act of 1933 (“Securities Act”)<sup>4</sup>.

The text of the proposed rule change is set forth below. Proposed new language is underlined.

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

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

<sup>3</sup> 17 CFR 230.251-230.263.

<sup>4</sup> 15 U.S.C. 77a et seq.

\* \* \* \* \*

## **The Nasdaq Stock Market Rules**

\* \* \* \* \*

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

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

\* \* \* \* \*

#### **(j) Regulation A Offerings**

Any Company listing on Nasdaq in connection with an offering under Regulation A of the Securities Act of 1933 must, at the time of approval, have a minimum operating history of two years.

\* \* \* \* \*

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

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

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

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

1. Purpose

The Exchange is proposing to adopt a new initial listing requirement that would require companies applying to list on the Exchange in connection with an offering under Regulation A of the Securities Act to have a minimum operating history of two years at the time of approval. Regulation A was amended in 2015 to implement provisions of the Jumpstart Our Business Startups Act.<sup>5</sup> As amended, Regulation A provides an exemption from registration under the Securities Act for offerings up to \$50 million, for “Tier 2” offerings, and permits a company to sell securities to “non-accredited”, or retail, investors.<sup>6</sup> A company offering securities under Tier 2 may register its securities under the Exchange Act concurrently with the qualification of its Regulation A offering statement and list those securities on a national securities exchange, such as Nasdaq, if it meets applicable listing standards.<sup>7</sup>

To rely on the exemption under Regulation A, a company must file a Form 1-A with the SEC along with an offering statement, financial statements and other exhibits. The offering statement is reviewed and qualified by the SEC but requires less burdensome accounting and disclosure standards than a traditional initial public offering on Form S-1. For example, a Tier 2 issuer must file, among other things, audited financial

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<sup>5</sup> Securities Exchange Act Release Nos. 74578 (March 25, 2015), 80 FR 21805 (April 20, 2015).

<sup>6</sup> 17 CFR 230.251-230.263.

<sup>7</sup> See General Instruction A(a)(2) of Form 8-A for Registration of Certain Classes of Securities pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934, available at <https://www.sec.gov/about/forms/form8-a.pdf>.

statements for its previous two fiscal years or such shorter time that it has been in existence,<sup>8</sup> whereas Form S-1 requires a company (that is not a smaller reporting company or emerging growth company) to file such financial statements for its previous three fiscal years<sup>9</sup> and selected financial data for its previous five fiscal years, or such shorter time that it has been in existence.<sup>10</sup>

While the amendments to Regulation A reflect the desire of Congress and the SEC to facilitate smaller companies' access to capital and provide investors with more investment choices,<sup>11</sup> the financial press,<sup>12</sup> Congress<sup>13</sup> and others<sup>14</sup> have raised concerns

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<sup>8</sup> Securities Exchange Act Release No. 33-10591 (December 19, 2018), 84 FR 520 (January 31, 2019).

<sup>9</sup> 17 CFR 210.3-02(a).

<sup>10</sup> 17 CFR 229.301.

<sup>11</sup> See, e.g., “SEC Adopts Rules to Facilitate Smaller Companies Access to Capital” (March 25, 2015), available at <https://www.sec.gov/news/pressrelease/2015-49.html>.

<sup>12</sup> See, e.g., “Most Mini-IPOs Fail the Market Test, Barron’s” (February 23, 2018), available at <https://www.barrons.com/articles/most-mini-ipos-fail-the-market-test-1518526753>. See also, “Longfin Collapse Puts Focus on Lax IPO Rules”, Wall Street Journal (April 3, 2018), available at [https://www.wsj.com/articles/longfin-collapse-puts-focus-on-lax-ipo-rules-1522788520?mod=cx\\_picks&cx\\_navSource=cx\\_picks&cx\\_tag=contextual&cx\\_artPos=5#cxrecs\\_s](https://www.wsj.com/articles/longfin-collapse-puts-focus-on-lax-ipo-rules-1522788520?mod=cx_picks&cx_navSource=cx_picks&cx_tag=contextual&cx_artPos=5#cxrecs_s).

<sup>13</sup> See, e.g., H.R. Rep. No. 206, 112th Cong. 1st Sess. at 13 (2011), available at <https://www.congress.gov/congressional-report/112th-congress/house-report/206>. See also Congressional Record Volume 157, Number 166 (Wednesday, Nov. 2, 2011), p. H7231, available at <https://www.congress.gov/congressional-record/2011/11/02/house-section/article/H7229-1>.

<sup>14</sup> See, e.g., Letter from the North American Securities Administrators Association, Inc., to Elizabeth M. Murphy (March 24, 2014), available at <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Comment-File-S7-11-13-03242014.pdf>.

about the potential for fraud by companies conducting offerings under Regulation A. The Exchange has also observed problems with Regulation A companies. Most significantly, the Exchange believes that companies seeking to list in conjunction with a Regulation A offering are generally less mature companies with less developed business plans than other companies seeking to list. In addition, the Exchange believes that the Regulation A offering process may not adequately prepare companies for the rigors of operating a public company and satisfying the SEC and Exchange's disclosure requirements.<sup>15</sup>

In response to these concerns, Nasdaq staff has adopted heightened review procedures for companies applying to list on the Exchange in connection with an offering under Regulation A. However, the Exchange also believes that additional requirements for listing such companies are appropriate to help ensure that adequate safeguards are in place to better protect investors. Accordingly, Nasdaq proposes to enhance its initial listing standards by adopting a new requirement at Listing Rule 5210(j) that a company listing in connection with an offering under Regulation A must, at the time of approval, have a minimum operating history of two years. Nasdaq believes that this proposed requirement will help assure that companies have more established business plans and a history of operations upon which investors can rely. In addition, the proposed operating history requirement will help assure that the company has been able to fund the initial phase of its operations. Further, Nasdaq believes that these more seasoned companies are more likely to be ready for the rigors of being a public company, including satisfying the SEC and Exchange's disclosure requirements. Nasdaq believes that these are important

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<sup>15</sup> See, e.g., *Securities and Exchange Commission vs. Longfin Corp.*, Case No. 18-cv-2977 (DLC) (S.D.N.Y., filed April 4, 2018), available at <https://www.sec.gov/litigation/complaints/2018/comp-pr2018-61.pdf>.

benefits given the lighter disclosure requirements otherwise associated with a Regulation A offering.

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>16</sup> which provided companies with notice that Nasdaq was considering adopting a minimum operating history requirement for companies listing in connection with a Regulation A offering. The proposed 30-day delay from approval until operation of the proposed rule will allow companies that have substantially completed the Nasdaq review process or are near completion of their offering an opportunity to complete that offering before the new rules become effective.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, in general to protect investors and the public interest, because it is reasonably designed to enhance investor protection by imposing an additional requirement on a category of companies that are able to sell securities to non-accredited investors with limited accounting and disclosure requirements and noted potential for

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<sup>16</sup> See [https://listingcenter.nasdaq.com/assets/Liquidity\\_Measures\\_Comment\\_Solicitation.pdf](https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

fraud. Nasdaq believes that the addition of an operating history requirement will help assure that companies listing in conjunction with a Regulation A offering are more likely to have a developed business plans upon which investors can rely, will have proven able to successfully fund the initial phase of operations, and be better prepared to satisfy public company requirements, including the disclosure requirements.

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 Exchange Act. All companies seeking to list on the Exchange in connection with an offering under Regulation A would be affected in the same manner by this change. While this is an additional requirement that would not apply to a company that does not rely upon Regulation A, Nasdaq believes that to the extent this distinction places a burden on competition between companies, such burden is minor and is appropriate in furtherance of the investor protection purposes of the Exchange Act. Nasdaq notes that this potential burden is minor because companies have a choice as to whether or not to rely upon Regulation A and, therefore, can control whether they are subject to the proposed requirement. Moreover, as described above, Nasdaq believes that the proposed requirement is necessary to enhance investor protection from companies with limited accounting and disclosure requirements and noted potential for fraud.

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 adopt additional initial listing criteria for companies applying to list on the Exchange in connection with an offering under Regulation A ("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-2019-017 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-2019-017. 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-2019-017 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>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</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.

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## Restricted Shares

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

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

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

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

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

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

### Minimum Investment Value for Holders

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

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

## Trading Volume

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

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

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

## Reg A+ Listings and SPACs

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

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