

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2020 - * 001	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"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
A proposal to modify the delisting process for securities with a bid price below \$0.10 and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 or more to one over the prior two year period.				
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 *	Arnold	Last Name *	Golub	
Title *	Deputy General Counsel			
E-mail *	arnold.golub@nasdaq.com			
Telephone *	(301) 978-8075	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	01/02/2020	EVP and Chief Legal Counsel		
By	John Zecca	<input type="text"/>		
(Name *)		john.zecca@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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify the delisting process for securities with a bid price below \$0.10 and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on November 7, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Nasdaq proposes to modify the delisting process for securities with a bid price below \$0.10 for ten consecutive trading days and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period (meaning that an investor would hold one share for every 250 shares or more owned at the start of the period).

Currently, Nasdaq rules require that primary equity securities, preferred stocks and secondary classes of common stock maintain a minimum \$1.00 bid price for continued listing.³ Under Listing Rule 5810(c)(3)(A), a security is considered deficient with this requirement if its bid price closes below \$1.00 for a period of 30 consecutive business days. A company with a bid price deficiency has 180 calendar days from notification of the deficiency to regain compliance. A company generally can regain compliance with the bid price requirement by maintaining a \$1.00 closing bid price for a minimum of ten consecutive business days during the compliance period.⁴ Under Listing Rule 5810(c)(3)(A)(ii), a company that lists a security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, provided that on the last day of the first compliance period the company meets the market value of publicly held shares requirement for continued listing

³ See Listing Rules 5450(a)(1), 5460(a)(3), 5550(a)(2) and 5555(a)(1).

⁴ Under Listing Rule 5810(c)(3)(G), Nasdaq Staff could extend this ten-day period to a maximum of 20 days.

as well as all other applicable standards for initial listing on the Capital Market and notifies Nasdaq of its intent to cure the bid deficiency.

This process is designed to allow adequate time for a company facing temporary business issues, a temporary decrease in the market value of its securities, or temporary market conditions to come back into compliance with a bid price deficiency. Nasdaq has observed certain situations where, in Nasdaq's view, a company may be facing more serious issues and a compliance period of up to 360 days⁵ therefore may not be appropriate. Specifically, these situations involve: (i) securities with very low security prices (below \$0.10); and (ii) securities where the company has completed one or more reverse stock splits over the prior two year period that, when considered cumulatively, result in a ratio of 250 shares or more to one (meaning that an investor would receive one share for every 250 shares or more owned at the start of the period), and then fails to satisfy the bid price requirement.

In these situations, Nasdaq has observed that the challenges facing the company generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the bid price issues can be a leading indicator of other listing compliance concerns. As a result, these companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies frequently need to raise additional capital to fund their business operations and often do so by engaging in extremely dilutive transactions. Accordingly,

⁵ As noted above, under Listing Rule 5810(c)(3)(A) all companies are eligible for an initial compliance period of 180 calendar days from the notification of non-compliance with the bid price requirement and a company that lists its security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, for a total compliance period of up to 360 calendar days.

in order to enhance investor protection, Nasdaq proposes to modify the listing rules so that these companies are subject to shortened compliance periods, which could lead to earlier delisting, and enhanced review procedures.

With respect to securities with very low prices, Nasdaq proposes to modify the Listing Rules to provide that a company in a bid price compliance period (i.e., the company's security has already traded below \$1.00 for thirty consecutive days) will immediately receive a Staff Delisting Determination if the security trades below \$0.10 for a period of ten consecutive trading days, ending any otherwise applicable compliance period. Such a company could request review of the Delisting Determination by a Hearings Panel, and the Panel could grant the company additional time to complete a reverse stock split or otherwise regain compliance.⁶ Nasdaq believes that placing such companies immediately under the scrutiny of a Hearings Panel will serve to better protect investors.

Nasdaq also proposes to change the Listing Rules to require the issuance of a Staff Delisting Determination if a company falls out of compliance with the \$1.00 minimum bid price (i.e., it has had a closing bid price below \$1.00 for 30 consecutive business days) after completing one or more reverse stock splits resulting in a cumulative ratio 250 shares or more to one over the two year period before such non-compliance.⁷ In

⁶ Under Listing Rule 5815(c)(1)(A), a Hearings Panel can grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination.

⁷ For example, a company could effect a reverse stock split in a ratio of 25 shares to one followed within the two-year period by a second reverse stock split in a ratio of 10 shares to one, resulting in a cumulative ratio of 250 shares to one. Alternatively, a company could effect three reverse stock splits in the two year period, with ratios of 10 shares to one, five shares to one, and five shares to one, respectively, resulting in a cumulative ratio of 250 shares to one.

these cases, Nasdaq believes it is inappropriate for a security to remain listed while relying on very large reverse stock splits to maintain compliance with the \$1.00 minimum bid price.

A company that is not eligible for a compliance period under these proposed rule changes would receive a Staff Delisting Determination, which it could appeal to a Hearings Panel, and the Panel could grant the company an exception to remain listed if it believes the company will be able to achieve and maintain compliance with the bid price requirement. However, Nasdaq also proposes to modify the Listing Rules so that following such a Panel exception the company would be subject to the procedures applicable to a company with recurring deficiencies as described in Rule 5815(d)(4)(B). As a result, if within one year of the date the company regains compliance the company again fails to maintain compliance with the price requirement, the company would not be eligible for a compliance period and instead the Listing Qualifications Department will issue a Staff Delisting Determination, which can be appealed to the Hearings Panel.

Nasdaq believes that it would be unfair to modify the rules impacting companies with securities that are already in a compliance period, and therefore proposes to implement these new rules for companies that first receive notification of non-compliance with the bid price requirement after the date of the Commission's approval of these changes. A company that has already received notification of non-compliance would be permitted to regain compliance under the existing rule, in the manner that the notification of non-compliance would have described.⁸

⁸ Nasdaq notes that under Listing Rule 5810(c)(3)(A)(ii), a company is not eligible for the second compliance period "if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency." As is currently the case,

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) and 6(b)(7) of the Act,¹⁰ in particular. The proposed rule change furthers the objectives of Section 6(b)(5) 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, by enhancing Nasdaq's listing requirements and limiting the time that a security can remain listed with a price below \$0.10 or following one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year period. In that regard, Nasdaq has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies often have a need to raise additional capital to fund their business operations at extremely low prices in dilutive transactions. While listed, these securities are exempt from the "Penny Stock Rules,"¹¹ which provide enhanced investor protections to prevent fraud and safeguard

Nasdaq may rely upon this language to deny the second compliance period to a company with a very low stock price or that has engaged in significant prior reverse stock splits, even though the company is not yet subject to the new rule.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5) and (7).

¹¹ See Exchange Act Rules 3a51-1, 17 CFR 240.3a51-1, and 15g-1 to 15g-100, 17 CFR 240.5g-1 et seq.

against potential market manipulation. In particular, the Penny Stock Rules generally require that broker-dealers provide a disclosure document to their customers describing the risk of investing in Penny Stocks and approve customer accounts for transactions in Penny Stocks. Nasdaq believes that an exemption from these Penny Stock requirements may not be appropriate for abnormally low priced stocks and stocks that are trading below \$1 after completing one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year period because these securities may have similar characteristics to Penny Stocks. Nasdaq therefore believes it is appropriate to subject these securities to heightened scrutiny given the availability of the exemption to securities listed on Nasdaq.

The proposed rule change furthers the objectives of Section 6(b)(7) of the Act in that it continues to provide a fair procedure for companies subject to these enhanced listing requirements. These companies can seek review of a Staff Delisting Determination from a Hearings Panel, which can afford the company additional time to regain compliance, and can appeal the Hearings Panel decision to the Nasdaq Listing and Hearing Review Council.¹² As a result, Nasdaq believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

Finally, Nasdaq believes that the ten consecutive trading day period that a company must trade below \$0.10 before the proposed rule would require issuance of a Staff Delisting Determination appropriately balances Nasdaq's obligation and desire to protect investors under Section 6(b)(5) with the need for a fair and equitable procedure

¹² See Listing Rules 5815 and 5820, respectively.

under Section 6(b)(7). The ten consecutive trading day period is long enough that a temporary decline below \$0.10 will not trigger the proposed heightened requirements. Moreover, the ten-day period is designed to parallel the timeframe, already a part of Nasdaq's rules, that a company must trade above \$1.00 to demonstrate compliance with the bid price requirement.

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. While Nasdaq does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

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

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

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.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2020-001)

January __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Delisting Process for Securities with a Bid Price below \$0.10 and for Securities that Have Had One or More Reverse Stock Splits with a Cumulative Ratio of 250 or More to One over the Prior Two Year Period

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on January 2, 2020 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 modify the delisting process for securities with a bid price below \$0.10 and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Nasdaq proposes to modify the delisting process for securities with a bid price below \$0.10 for ten consecutive trading days and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period (meaning that an investor would hold one share for every 250 shares or more owned at the start of the period).

Currently, Nasdaq rules require that primary equity securities, preferred stocks and secondary classes of common stock maintain a minimum \$1.00 bid price for continued listing.³ Under Listing Rule 5810(c)(3)(A), a security is considered deficient with this requirement if its bid price closes below \$1.00 for a period of 30 consecutive business days. A company with a bid price deficiency has 180 calendar days from notification of the deficiency to regain compliance. A company generally can regain compliance with the bid price requirement by maintaining a \$1.00 closing bid price for a

³ See Listing Rules 5450(a)(1), 5460(a)(3), 5550(a)(2) and 5555(a)(1).

minimum of ten consecutive business days during the compliance period.⁴ Under Listing Rule 5810(c)(3)(A)(ii), a company that lists a security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, provided that on the last day of the first compliance period the company meets the market value of publicly held shares requirement for continued listing as well as all other applicable standards for initial listing on the Capital Market and notifies Nasdaq of its intent to cure the bid deficiency.

This process is designed to allow adequate time for a company facing temporary business issues, a temporary decrease in the market value of its securities, or temporary market conditions to come back into compliance with a bid price deficiency. Nasdaq has observed certain situations where, in Nasdaq's view, a company may be facing more serious issues and a compliance period of up to 360 days⁵ therefore may not be appropriate. Specifically, these situations involve: (i) securities with very low security prices (below \$0.10); and (ii) securities where the company has completed one or more reverse stock splits over the prior two year period that, when considered cumulatively, result in a ratio of 250 shares or more to one (meaning that an investor would receive one share for every 250 shares or more owned at the start of the period), and then fails to satisfy the bid price requirement.

⁴ Under Listing Rule 5810(c)(3)(G), Nasdaq Staff could extend this ten-day period to a maximum of 20 days.

⁵ As noted above, under Listing Rule 5810(c)(3)(A) all companies are eligible for an initial compliance period of 180 calendar days from the notification of non-compliance with the bid price requirement and a company that lists its security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, for a total compliance period of up to 360 calendar days.

In these situations, Nasdaq has observed that the challenges facing the company generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the bid price issues can be a leading indicator of other listing compliance concerns. As a result, these companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies frequently need to raise additional capital to fund their business operations and often do so by engaging in extremely dilutive transactions. Accordingly, in order to enhance investor protection, Nasdaq proposes to modify the listing rules so that these companies are subject to shortened compliance periods, which could lead to earlier delisting, and enhanced review procedures.

With respect to securities with very low prices, Nasdaq proposes to modify the Listing Rules to provide that a company in a bid price compliance period (i.e., the company's security has already traded below \$1.00 for thirty consecutive days) will immediately receive a Staff Delisting Determination if the security trades below \$0.10 for a period of ten consecutive trading days, ending any otherwise applicable compliance period. Such a company could request review of the Delisting Determination by a Hearings Panel, and the Panel could grant the company additional time to complete a reverse stock split or otherwise regain compliance.⁶ Nasdaq believes that placing such companies immediately under the scrutiny of a Hearings Panel will serve to better protect investors.

⁶ Under Listing Rule 5815(c)(1)(A), a Hearings Panel can grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination.

Nasdaq also proposes to change the Listing Rules to require the issuance of a Staff Delisting Determination if a company falls out of compliance with the \$1.00 minimum bid price (i.e., it has had a closing bid price below \$1.00 for 30 consecutive business days) after completing one or more reverse stock splits resulting in a cumulative ratio 250 shares or more to one over the two year period before such non-compliance.⁷ In these cases, Nasdaq believes it is inappropriate for a security to remain listed while relying on very large reverse stock splits to maintain compliance with the \$1.00 minimum bid price.

A company that is not eligible for a compliance period under these proposed rule changes would receive a Staff Delisting Determination, which it could appeal to a Hearings Panel, and the Panel could grant the company an exception to remain listed if it believes the company will be able to achieve and maintain compliance with the bid price requirement. However, Nasdaq also proposes to modify the Listing Rules so that following such a Panel exception the company would be subject to the procedures applicable to a company with recurring deficiencies as described in Rule 5815(d)(4)(B). As a result, if within one year of the date the company regains compliance the company again fails to maintain compliance with the price requirement, the company would not be eligible for a compliance period and instead the Listing Qualifications Department will issue a Staff Delisting Determination, which can be appealed to the Hearings Panel.

⁷ For example, a company could effect a reverse stock split in a ratio of 25 shares to one followed within the two-year period by a second reverse stock split in a ratio of 10 shares to one, resulting in a cumulative ratio of 250 shares to one. Alternatively, a company could effect three reverse stock splits in the two year period, with ratios of 10 shares to one, five shares to one, and five shares to one, respectively, resulting in a cumulative ratio of 250 shares to one.

Nasdaq believes that it would be unfair to modify the rules impacting companies with securities that are already in a compliance period, and therefore proposes to implement these new rules for companies that first receive notification of non-compliance with the bid price requirement after the date of the Commission's approval of these changes. A company that has already received notification of non-compliance would be permitted to regain compliance under the existing rule, in the manner that the notification of non-compliance would have described.⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) and 6(b)(7) of the Act,¹⁰ in particular. The proposed rule change furthers the objectives of Section 6(b)(5) 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, by enhancing Nasdaq's listing requirements and limiting the time that a security can remain listed with a price below \$0.10 or following one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year period. In that regard, Nasdaq has observed that the challenges facing such companies generally are not temporary and may be so severe that

⁸ Nasdaq notes that under Listing Rule 5810(c)(3)(A)(ii), a company is not eligible for the second compliance period "if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency." As is currently the case, Nasdaq may rely upon this language to deny the second compliance period to a company with a very low stock price or that has engaged in significant prior reverse stock splits, even though the company is not yet subject to the new rule.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5) and (7).

the company is not likely to regain compliance within the prescribed compliance period. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies often have a need to raise additional capital to fund their business operations at extremely low prices in dilutive transactions. While listed, these securities are exempt from the “Penny Stock Rules,”¹¹ which provide enhanced investor protections to prevent fraud and safeguard against potential market manipulation. In particular, the Penny Stock Rules generally require that broker-dealers provide a disclosure document to their customers describing the risk of investing in Penny Stocks and approve customer accounts for transactions in Penny Stocks. Nasdaq believes that an exemption from these Penny Stock requirements may not be appropriate for abnormally low priced stocks and stocks that are trading below \$1 after completing one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year period because these securities may have similar characteristics to Penny Stocks. Nasdaq therefore believes it is appropriate to subject these securities to heightened scrutiny given the availability of the exemption to securities listed on Nasdaq.

The proposed rule change furthers the objectives of Section 6(b)(7) of the Act in that it continues to provide a fair procedure for companies subject to these enhanced listing requirements. These companies can seek review of a Staff Delisting Determination from a Hearings Panel, which can afford the company additional time to regain compliance, and can appeal the Hearings Panel decision to the Nasdaq Listing and

¹¹ See Exchange Act Rules 3a51-1, 17 CFR 240.3a51-1, and 15g-1 to 15g-100, 17 CFR 240.5g-1 *et seq.*

Hearing Review Council.¹² As a result, Nasdaq believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

Finally, Nasdaq believes that the ten consecutive trading day period that a company must trade below \$0.10 before the proposed rule would require issuance of a Staff Delisting Determination appropriately balances Nasdaq's obligation and desire to protect investors under Section 6(b)(5) with the need for a fair and equitable procedure under Section 6(b)(7). The ten consecutive trading day period is long enough that a temporary decline below \$0.10 will not trigger the proposed heightened requirements. Moreover, the ten-day period is designed to parallel the timeframe, already a part of Nasdaq's rules, that a company must trade above \$1.00 to demonstrate compliance with the bid price requirement.

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. While Nasdaq does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

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

No written comments were either solicited or received.

¹² See Listing Rules 5815 and 5820, respectively.

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

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-001 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-2020-001. 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-2020-001 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.¹³

Jill M. Peterson
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

- (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
- (2) notifications of deficiencies for which a Company may submit a plan of compliance for staff review;
- (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and
- (4) Public Reprimand Letters, except such notification type is not available for unresolved deficiencies from the standards of Rules 5250(c){Obligation to File Periodic Financial Reports}, 5615(a)(4)(D) {Partner Meetings of Limited Partnerships} and 5620(a) {Meetings of Shareholders}.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

IM-5810-1. No change.

(c) Types of Deficiencies and Notifications

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

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies;
- an Equity Investment Tracking Stock fails to comply with the additional continued listing requirements in Rule 5222(c) or a Staff Delisting Determination has been issued with respect to the security such Equity Investment Tracking Stock tracks;
- the common stock of the REIT in a Paired Share Unit listed under Rule 5226 becomes separately tradable from the common stock of the Parent;
- An issuer of non-convertible bonds listed on Nasdaq fails to meet its obligations on the non-convertible bonds, as set forth in Rule 5702(b)(2); [or]
- a Subscription Receipt listed under Rule 5520 fails to comply with the continued listing requirements in Rule 5565 or a Staff Delisting Determination has been issued with respect to the security such Subscription Receipt is exchangeable for; [or]
- a security fails to meet the continued listing requirement for minimum bid price and is not eligible to receive a compliance period as described under Rule 5810(c)(3)(A)(iii) or (iv); or
- Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) No change.

IM-5810-2. No change.

(B) – (G) No change.

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

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

(A) Bid Price

A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any

compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(G).

(i) Global Select Market and Global Market

If a Company listed on The Nasdaq Global Market has not been deemed in compliance prior to the expiration of the 180 day compliance period, it may transfer to The Nasdaq Capital Market, provided that it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market (except for the bid price requirement) based on the Company's most recent public filings and market information and notifies Nasdaq of its intent to cure this deficiency. Following a transfer to The Nasdaq Capital Market, the Company will be afforded the remainder of the applicable compliance period set forth in Rule 5810(c)(3)(A)(ii), unless it does not appear to Nasdaq that it is possible for the Company to cure the deficiency. The Company may also request a hearing to remain on The Nasdaq Global Market pursuant to the Rule 5800 Series. Any time spent in the hearing process will not extend the length of the remaining applicable compliance periods on The Nasdaq Capital Market afforded by this rule.

(ii) Capital Market

If a Company listed on the Capital Market is not deemed in compliance before the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day of the first compliance period it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable standards for initial listing on the Capital Market (except the bid price requirement) based on the Company's most recent public filings and market information and notifies Nasdaq of its intent to cure this deficiency. If a Company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency, the Company will not be eligible for the second grace period. If the Company has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable listing criteria, it shall not be eligible for the additional compliance period under this rule.

(iii) Low Priced Stocks

Notwithstanding the foregoing, if during any compliance period specified in this Rule 5810(c)(3)(A) a Company's security has a closing bid price of \$0.10 or less for ten consecutive trading days, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810 with respect to that security.

(iv) Excessive Reverse Stock Splits

Notwithstanding the foregoing, if a Company's security fails to meet the continued listing requirement for minimum bid price and the Company has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one, then the Company shall not be eligible for any compliance period specified in this Rule 5810(c)(3)(A)

and the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810 with respect to that security.

(B) – (G) No change.

(4) No change.

(d) No change.

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5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) – (c) No change.

(d) Hearings Panel Procedures

(1) – (3) No change.

(4) Procedures Applicable for Recurring Deficiencies

(A) No change.

(B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to maintain certain levels of stockholders' equity, [or] to timely file periodic reports, or with the bid price requirement where the company was ineligible for a compliance period under Rule 5810(c)(3)(A)(iii) or (iv) and within one year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(5) No change.

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