

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

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

Proposal to apply additional initial listing criteria for companies primarily operating in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S. listed companies.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

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

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 05/18/2020	EVP and Chief Legal Officer
By John Zecca	
(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 EFFS 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 apply additional initial listing criteria for companies primarily operating in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies.

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 May 18, 2020. 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

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's listing requirements include a number of criteria which, in the aggregate, are designed to ensure that a security listed on Nasdaq has sufficient liquidity and public interest to support a listing on a U.S. national securities exchange. These requirements are intended to ensure that there are sufficient shares available for trading to facilitate proper price discovery in the secondary market. In recent years, U.S. investors have increasingly sought exposure to emerging markets companies as part of a diversified portfolio. As a result of this interest, emerging market companies have sought to raise funds in the U.S. and list on Nasdaq. While many of these listings have similar trading attributes and rates of compliance concerns compared to U.S. companies with similar profiles, the lack of transparency from certain emerging markets raises concerns about the accuracy of disclosures, accountability, and access to information, particularly when a company is based in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a "Restrictive Market").

These concerns can be compounded when the company lists on Nasdaq through an initial public offering ("IPO") or business combination with a small offering size or a low public float percentage because such companies may not attract market attention and develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading. As a result, the securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. In

addition, foreign issuers are more likely to issue a portion of an offering to investors in their home country, which raises concerns that such investors will not contribute to the liquidity of the security in the U.S. secondary market.

Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. The risk of price manipulation due to insider trading is more acute when a company principally administers its business in a Restrictive Market (a “Restrictive Market Company”) because regulatory investigations into price manipulation, insider trading and compliance concerns may be impeded. In such cases, investor protections and remedies may be limited due to obstacles encountered by U.S. authorities in bringing or enforcing actions against the companies and insiders.³

Currently, Nasdaq may rely upon its discretionary authority provided under Rule 5101⁴ to deny initial listing or to apply additional and more stringent criteria when

³ See SEC Chairman Jay Clayton, PCAOB Chairman William D. Duhnke III, SEC Chief Accountant Sagar Teotia, SEC Division of Corporation Finance Director William Hinman, SEC Division of Investment Management Director Dalia Blass, *Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited* (April 21, 2020), available at <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting>.

⁴ Listing Rule 5101 provides Nasdaq with broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

Nasdaq is concerned that a small offering size for an IPO may not reflect the company's initial valuation or ensure sufficient liquidity to support trading in the secondary market. Nasdaq is proposing to adopt new Rules 5210(k)(i) and (ii) that would require a minimum offering size or public float for Restrictive Market Companies listing on Nasdaq in connection with an IPO or a business combination (as described in Rule 5110(a) or IM-5101-2). Nasdaq is also proposing to adopt a new Rule 5210(k)(iii) to permit Restrictive Market Companies to list on the Nasdaq Global Select or Nasdaq Global Markets if they are listing in connection with a Direct Listing (as defined in IM-5315-1). Such companies would not be permitted to list on the Nasdaq Capital Market, which has lower requirements for Unrestricted Publicly Held Shares, in connection with a Direct Listing.

I. Definition of Restrictive Market

Nasdaq proposes to adopt a new definition of Restrictive Market in Rule 5005(a)(37) to define a Restrictive Market as a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. Nasdaq also proposes to renumber the remainder of Rule 5005(a) to ensure consistency in its rulebook.

In determining whether a company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the company's: (a) principal business segments, operations or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees;

and (e) books and records.⁵ Nasdaq will consider these factors holistically, recognizing that a company's headquarters may not be the office from which it conducts its principal business activities.

For example, Company X's headquarters could be located in Country Y, while the majority of its senior management, employees, assets, operations and books and records are located in Country Z, which is a Restrictive Market. If Company X applies to list its Primary Equity Security on Nasdaq in connection with an IPO, Nasdaq would consider Company X's business to be principally administered in Country Z, and Company X would therefore be subject to the proposed additional requirements applicable to a Restrictive Market Company.

II. Minimum Offering Size or Public Float Percentage for an IPO

As proposed, Rule 5210(k)(i) would require a Company that is listing its Primary Equity Security⁶ on Nasdaq in connection with its IPO, and that principally administers its business in a Restrictive Market, to offer a minimum amount of securities in a Firm

⁵ This threshold would capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets. The factors that Nasdaq would consider when determining whether a business is principally administered in a Restrictive Market is supported by SEC guidance regarding foreign private issuer status, which suggests that a foreign company may consider certain factors including the locations of: the company's principal business segments or operations; its board and shareholders' meetings; its headquarters; and its most influential key executives (potentially a subset of all executives). See Division of Corporation Finance of the SEC, *Accessing the U.S. Capital Markets — A Brief Overview for Foreign Private Issuers* (February 13, 2013), available at <https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#IIA2c>.

⁶ Rule 5005(a)(33) defines "Primary Equity Security" as "a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS)."

Commitment Offering⁷ in the U.S. to Public Holders⁸ that: (i) will result in gross proceeds to the Company of at least \$25 million; or (ii) will represent at least 25% of the Company's post-offering Market Value⁹ of Listed Securities,¹⁰ whichever is lower. For example, Company X is applying to list on Nasdaq Global Market. Company X principally administers its business in a Restrictive Market and its post-offering Market Value of Listed Securities is expected to be \$75,000,000. Since 25% of \$75,000,000 is \$18,750,000, which is lower than \$25,000,000, it would be eligible to list under the proposed rule based on a Firm Commitment Offering in the U.S. to Public Holders of at least \$18,750,000. In contrast, Company Y, which also principally administers its business in a Restrictive Market, is applying to list on the Nasdaq Global Select Market and its post-offering Market Value of Listed Securities is expected to be \$200,000,000. Since 25% of \$200,000,000 is \$50,000,000, which is higher than \$25,000,000, it would be eligible to list under the proposed rule based on a Firm Commitment Offering in the U.S. to Public Holders that will result in gross proceeds of at least \$25,000,000.

⁷ Rule 5005(a)(17) defines "Firm Commitment Offering" as "an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities."

⁸ Rule 5005(a)(36) defines "Public Holders" as "holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding."

⁹ Rule 5005(a)(23) defines "Market Value" as "the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company's Publicly Held Shares)."

¹⁰ Rule 5005(a)(22) defines "Listed Securities" as "securities listed on Nasdaq or another national securities exchange."

However, Company Y would also need to comply with the other applicable listing requirements of the Nasdaq Global Select Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$45 million.¹¹

The Exchange believes that the proposal to require a Restrictive Market Company conducting an IPO to offer a minimum amount of securities in the U.S. to Public Holders in a Firm Commitment Offering will provide greater support for the company's price, as determined through the offering, and will help assure that there will be sufficient liquidity, U.S. investor interest and distribution to support price discovery once a security is listed. Nasdaq believes there is a risk that substantial participation by foreign investors in an offering, combined with insiders retaining significant ownership, does not promote sufficient investor base and trading interest to support trading in the secondary market. The risk to U.S. investors is compounded when a company is located in a Restrictive Market due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information. Further, the Exchange has observed that Restrictive Market Companies listing on Nasdaq with an offering size below 25% or public float ratio below 25% have a higher rate of compliance concerns.

Nasdaq believes that these concerns may be mitigated by the Company conducting a Firm Commitment Offering of at least \$25 million or 25% of the Company's post-offering Market Value of Listed Securities, whichever is lower. Firm Commitment Offerings typically involve a book building process that helps to generate

¹¹ See Rule 5315(f)(2)(c).

an investor base and trading interest that promotes sufficient depth and liquidity to help support fair and orderly trading on the Exchange. Such offerings also typically involve more due diligence by the broker-dealer than would be done in connection with a best-efforts offering, which helps to ensure that third parties subject to U.S. regulatory oversight are conducting significant due diligence on the company, its registration statement and its financial statements.¹² The Exchange believes that the proposal will help ensure that Restrictive Market Companies seeking to list on the Exchange have sufficient investor base and public float to support fair and orderly trading on the Exchange.

III. Minimum Market Value of Publicly Held Shares for a Business Combination

Nasdaq believes that a business combination, as described in Rule 5110(a) or IM-5101-2, involving a Restrictive Market Company presents similar risks to U.S. investors

¹² Certain Restrictive Markets impose national barriers on access to information that limit the ability of U.S. regulators to effectively conduct regulatory oversight of U.S.-listed companies with operations in such countries, including the PCAOB's ability to inspect the audit work and practices of auditors in those countries. See SEC Chairman Jay Clayton, SEC Chief Accountant Wes Bricker and PCAOB Chairman William D. Duhnke III, *Statement on the Vital Role of Audit Quality and Regulatory Access to Audit and Other Information Internationally—Discussion of Current Information Access Challenges with Respect to U.S.-listed Companies with Significant Operations in China* (December 7, 2018), available at <https://www.sec.gov/news/public-statement/statement-vital-role-audit-quality-and-regulatory-access-audit-and-other> (“Some of these laws, for example, act to prohibit foreign-domiciled registrants in certain jurisdictions from responding directly to SEC requests for information and documents or doing so, in whole or in part, only after protracted delays in obtaining authorization. Other laws can prevent the SEC from being able to conduct any type of examination, either onsite or by correspondence... Positions taken by some foreign authorities currently prevent or significantly impair the PCAOB's ability to inspect non-U.S. audit firms in certain countries, even though these firms are registered with the PCAOB.”).

as IPOs of Restrictive Market Companies. However, such a business combination would typically not involve an offering. Therefore, Nasdaq proposes to adopt a new Rule 5210(k)(ii) that would impose a similar new requirement as applicable to IPOs, but would reflect that the listing would not typically be accompanied by an offering. Specifically, proposed Rule 5210(k)(ii) would require the listed company to have a minimum Market Value of Unrestricted Publicly Held Shares following the business combination equal to the lesser of: (i) \$25 million; or (ii) 25% of the post-business combination entity's Market Value of Listed Securities.

For example, Company A is currently listed on the Nasdaq Capital Market and plans to acquire a company that principally administers its business in a Restrictive Market, in accordance with IM-5101-2. Following the business combination, Company A intends to transfer to the Nasdaq Global Select Market. Company A expects the post-business combination entity to have a Market Value of Listed Securities of \$250,000,000. Since 25% of \$250,000,000 is \$62,500,000, which is higher than \$25,000,000, to qualify for listing on the Global Select Market the post-business combination entity must have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25,000,000.

In contrast, Company B is currently listed on Nasdaq Capital Market and plans to combine with a non-Nasdaq entity that principally administers its business in a Restrictive Market, resulting in a change of control as defined in Rule 5110(a), whereby the non-Nasdaq entity will become the Nasdaq-listed company. Following the change of control, Company B expects the listed company to have a Market Value of Listed Securities of \$50,000,000. Since 25% of \$50,000,000 is \$12,500,000, which is lower than \$25,000,000, the listed company must have a minimum Market Value of

Unrestricted Publicly Held Shares following the change of control of at least \$12,500,000. However, the company would also need to comply with the other applicable listing requirements of the Nasdaq Capital Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$5 million under the Net Income Standard¹³ or \$15 million under the Equity Standard¹⁴ or Market Value of Listed Securities Standard.¹⁵

Market Value of Unrestricted Publicly Held Shares excludes securities subject to resale restrictions from the calculation of Publicly Held Shares because securities subject to resale restrictions are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing.¹⁶ Nasdaq believes that requiring the post-business combination entity to have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25 million or 25% of its Market Value of Listed Securities, whichever is lower, would help to provide an additional assurance that there are sufficient freely tradable shares and investor interest to support fair and orderly trading on the Exchange when the target company principally administers its business in a Restrictive Market. Nasdaq believes that this will help

¹³ See Rule 5505(b)(3)(C).

¹⁴ See Rule 5505(b)(1)(B).

¹⁵ See Rule 5505(b)(2)(C).

¹⁶ Market Value of Unrestricted Publicly Held Shares excludes securities subject to resale restrictions from the calculation of Publicly Held Shares because securities subject to resale restrictions are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. See Rule 5005(a)(45) (definition of "Unrestricted Publicly Held Shares"), Rule 5005(a)(46) (definition of "Unrestricted Securities"), and Rule 5005(a)(37) (definition of "Restricted Securities").

mitigate the unique risks that Restrictive Market Companies present to U.S. investors due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information.

IV. Direct Listings of Restrictive Market Companies

Nasdaq proposes to adopt Rule 5210(k)(iii) to clarify that a Restrictive Market Company is permitted to list on the Nasdaq Global Select Market or Nasdaq Global Market in connection with a Direct Listing (as defined in IM-5315-1), provided that the Company meets all applicable listing requirements for the Nasdaq Global Select Market and the additional requirements of IM-5315-1, or the applicable listing requirements for the Nasdaq Global Market and the additional requirements of IM-5405-1. Such companies would be not be permitted to list on the Nasdaq Capital Market in connection with a Direct Listing notwithstanding the fact that such companies may meet the applicable initial listing requirements for the Nasdaq Capital Market and the additional requirements of IM-5505-1.

Direct Listings are currently required to comply with enhanced listing standards pursuant to IM-5315-1 (Nasdaq Global Select Market) and IM-5405-1 (Nasdaq Global Market). For example, Nasdaq may require a Company listing on the Nasdaq Global Select Market to satisfy the applicable Market Value of Unrestricted Publicly Held Shares requirement and provide a Valuation¹⁷ evidencing a Market Value of Publicly

¹⁷ See Rule IM-5315-1(a).

Held Shares of at least \$250,000,000.¹⁸ For a Company applying to list on the Nasdaq Global Market, Nasdaq will generally require the Company to provide a Valuation that demonstrates a Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.¹⁹

Thus, companies listing in connection with a Direct Listing on the Nasdaq Global or Global Select Market tiers are already subject to heightened listing requirements and Nasdaq believes it is appropriate to permit Restrictive Market Companies to list through a Direct Listing on the Nasdaq Global Select Market or Nasdaq Global Market. On the other hand, while companies listing in connection with a Direct Listing on the Capital Market are also subject to heightened listing requirements, Nasdaq does not believe that these heightened requirements are sufficient to overcome concerns regarding sufficient liquidity and investor interest to support fair and orderly trading on the Exchange with respect to Restrictive Market Companies.²⁰ Nasdaq believes that Restrictive Market Companies present unique risks to U.S. investors due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information. Therefore, Nasdaq

¹⁸ See Rule IM-5315-1(b).

¹⁹ See Rule IM-5405-1(a)(2) (Nasdaq Global Market) and Rule IM-5505-1(a)(2) (Nasdaq Capital Market).

²⁰ For example, the Nasdaq Global Select Market and Nasdaq Global Market require a company to have at least 1,250,000 and 1.1 million Unrestricted Publicly Held Shares, respectively, and a Market Value of Unrestricted Publicly Held Shares of at least \$45 million and \$8 million, respectively. In contrast, the Nasdaq Capital Market requires a company to have at least 1 million Unrestricted Publicly Held Shares and a Market Value of Unrestricted Publicly Held Shares of at least \$5 million.

believes that precluding a Restrictive Market Company from listing through a Direct Listing on the Capital Market will help to ensure that the company has sufficient public float, investor base, and trading interest likely to generate depth and liquidity necessary to promote fair and orderly trading on the secondary market.

V. Conclusion

Nasdaq believes that the U.S. capital markets can provide Restrictive Market Companies with access to additional capital to fund ground-breaking research and technological advancements. Further, such companies provide U.S. investors with opportunities to diversify their portfolio by providing exposure to Restrictive Markets. However, as discussed above, Nasdaq believes that Restrictive Market Companies present unique potential risks to U.S. investors due to national barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information.²¹ Nasdaq believes that the proposed rule changes will help to ensure that Restrictive Market Companies have sufficient investor base and public float to support fair and orderly trading on the Exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ in particular,

²¹ See supra note 3.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.²⁴ In particular, the Commission stated:

Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²⁵

Nasdaq believes that requiring a minimum offering size or public float percentage for Restrictive Market Companies seeking to list on Nasdaq through an IPO or business combination will ensure that a security to be listed on Nasdaq has adequate liquidity, distribution and U.S. investor interest to support fair and orderly trading in the secondary market, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

²⁴ Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-Nasdaq-2011-073 adopting additional listing requirements for companies applying to list after consummation of a “reverse merger” with a shell company).

²⁵ Id at 70802.

Similarly, Nasdaq believes that permitting Restrictive Market Companies to list on Nasdaq Global Select Market or Nasdaq Global Market, rather than the Nasdaq Capital Market, in connection with a Direct Listing will ensure that such companies satisfy more rigorous listing requirements, including the minimum amount of Publicly Held Shares and Market Value of Publicly Held Shares, which will help to ensure that the security has sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly trading, thereby protecting investors and the public interest.

While the proposal applies only to Restrictive Market Companies, the Exchange believes that the proposal is not designed to permit unfair discrimination among companies because Nasdaq believes that Restrictive Market Companies present unique potential risks to U.S. investors due to national barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information. In addition, such companies may not develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading, resulting in a security that is illiquid. Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value.

Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. Price manipulation is a particular concern when insiders retain a significant ownership

portion of the company. The risk of price manipulation due to insider trading is more acute when a company principally administers its business in a Restrictive Market and management lacks familiarity or experience with U.S. securities laws. Therefore, Nasdaq believes that it is not unfairly discriminatory to treat Restrictive Market Companies differently under this proposal because it will help ensure that securities of a Restrictive Market Company listed on Nasdaq have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets, thereby promoting investor protection and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, Restrictive Market Companies would be treated differently in some respects than other companies applying to list on Nasdaq, but those differences reflect the unique risks presented by Restrictive Market Companies and do not impose an unnecessary burden on competition.

To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

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

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-2020-027)

May __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Requirements for the Nasdaq Capital and Global Markets applicable to Direct Listings

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 May 19, 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 apply additional initial listing criteria for companies primarily operating in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies.

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's listing requirements include a number of criteria which, in the aggregate, are designed to ensure that a security listed on Nasdaq has sufficient liquidity and public interest to support a listing on a U.S. national securities exchange. These requirements are intended to ensure that there are sufficient shares available for trading to facilitate proper price discovery in the secondary market. In recent years, U.S. investors have increasingly sought exposure to emerging markets companies as part of a diversified portfolio. As a result of this interest, emerging market companies have sought to raise funds in the U.S. and list on Nasdaq. While many of these listings have similar trading attributes and rates of compliance concerns compared to U.S. companies with similar profiles, the lack of transparency from certain emerging markets raises concerns about the accuracy of disclosures, accountability, and access to information, particularly when a company is based in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a "Restrictive Market").

These concerns can be compounded when the company lists on Nasdaq through an initial public offering (“IPO”) or business combination with a small offering size or a low public float percentage because such companies may not attract market attention and develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading. As a result, the securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. In addition, foreign issuers are more likely to issue a portion of an offering to investors in their home country, which raises concerns that such investors will not contribute to the liquidity of the security in the U.S. secondary market.

Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. The risk of price manipulation due to insider trading is more acute when a company principally administers its business in a Restrictive Market (a “Restrictive Market Company”) because regulatory investigations into price manipulation, insider trading and compliance concerns may be impeded. In such cases, investor protections and remedies may be limited due to obstacles encountered by U.S. authorities in bringing or enforcing actions against the companies and insiders.³

³ See SEC Chairman Jay Clayton, PCAOB Chairman William D. Duhnke III, SEC Chief Accountant Sagar Teotia, SEC Division of Corporation Finance Director William Hinman, SEC Division of Investment Management Director Dalia Blass, *Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited* (April 21, 2020), available at <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting>.

Currently, Nasdaq may rely upon its discretionary authority provided under Rule 5101⁴ to deny initial listing or to apply additional and more stringent criteria when Nasdaq is concerned that a small offering size for an IPO may not reflect the company's initial valuation or ensure sufficient liquidity to support trading in the secondary market. Nasdaq is proposing to adopt new Rules 5210(k)(i) and (ii) that would require a minimum offering size or public float for Restrictive Market Companies listing on Nasdaq in connection with an IPO or a business combination (as described in Rule 5110(a) or IM-5101-2). Nasdaq is also proposing to adopt a new Rule 5210(k)(iii) to permit Restrictive Market Companies to list on the Nasdaq Global Select or Nasdaq Global Markets if they are listing in connection with a Direct Listing (as defined in IM-5315-1). Such companies would not be permitted to list on the Nasdaq Capital Market, which has lower requirements for Unrestricted Publicly Held Shares, in connection with a Direct Listing.

I. Definition of Restrictive Market

Nasdaq proposes to adopt a new definition of Restrictive Market in Rule 5005(a)(37) to define a Restrictive Market as a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations

⁴ Listing Rule 5101 provides Nasdaq with broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

restricting access to information by regulators of U.S.-listed companies in such jurisdiction. Nasdaq also proposes to renumber the remainder of Rule 5005(a) to ensure consistency in its rulebook.

In determining whether a company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the company's: (a) principal business segments, operations or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.⁵ Nasdaq will consider these factors holistically, recognizing that a company's headquarters may not be the office from which it conducts its principal business activities.

For example, Company X's headquarters could be located in Country Y, while the majority of its senior management, employees, assets, operations and books and records are located in Country Z, which is a Restrictive Market. If Company X applies to list its Primary Equity Security on Nasdaq in connection with an IPO, Nasdaq would consider Company X's business to be principally administered in Country Z, and Company X

⁵ This threshold would capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets. The factors that Nasdaq would consider when determining whether a business is principally administered in a Restrictive Market is supported by SEC guidance regarding foreign private issuer status, which suggests that a foreign company may consider certain factors including the locations of: the company's principal business segments or operations; its board and shareholders' meetings; its headquarters; and its most influential key executives (potentially a subset of all executives). See Division of Corporation Finance of the SEC, *Accessing the U.S. Capital Markets — A Brief Overview for Foreign Private Issuers* (February 13, 2013), available at <https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#IIA2c>.

would therefore be subject to the proposed additional requirements applicable to a Restrictive Market Company.

II. Minimum Offering Size or Public Float Percentage for an IPO

As proposed, Rule 5210(k)(i) would require a Company that is listing its Primary Equity Security⁶ on Nasdaq in connection with its IPO, and that principally administers its business in a Restrictive Market, to offer a minimum amount of securities in a Firm Commitment Offering⁷ in the U.S. to Public Holders⁸ that: (i) will result in gross proceeds to the Company of at least \$25 million; or (ii) will represent at least 25% of the Company's post-offering Market Value⁹ of Listed Securities,¹⁰ whichever is lower. For example, Company X is applying to list on Nasdaq Global Market. Company X principally administers its business in a Restrictive Market and its post-offering Market Value of Listed Securities is expected to be \$75,000,000. Since 25% of \$75,000,000 is

⁶ Rule 5005(a)(33) defines "Primary Equity Security" as "a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS)."

⁷ Rule 5005(a)(17) defines "Firm Commitment Offering" as "an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities."

⁸ Rule 5005(a)(36) defines "Public Holders" as "holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding."

⁹ Rule 5005(a)(23) defines "Market Value" as "the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company's Publicly Held Shares)."

¹⁰ Rule 5005(a)(22) defines "Listed Securities" as "securities listed on Nasdaq or another national securities exchange."

\$18,750,000, which is lower than \$25,000,000, it would be eligible to list under the proposed rule based on a Firm Commitment Offering in the U.S. to Public Holders of at least \$18,750,000. In contrast, Company Y, which also principally administers its business in a Restrictive Market, is applying to list on the Nasdaq Global Select Market and its post-offering Market Value of Listed Securities is expected to be \$200,000,000. Since 25% of \$200,000,000 is \$50,000,000, which is higher than \$25,000,000, it would be eligible to list under the proposed rule based on a Firm Commitment Offering in the U.S. to Public Holders that will result in gross proceeds of at least \$25,000,000. However, Company Y would also need to comply with the other applicable listing requirements of the Nasdaq Global Select Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$45 million.¹¹

The Exchange believes that the proposal to require a Restrictive Market Company conducting an IPO to offer a minimum amount of securities in the U.S. to Public Holders in a Firm Commitment Offering will provide greater support for the company's price, as determined through the offering, and will help assure that there will be sufficient liquidity, U.S. investor interest and distribution to support price discovery once a security is listed. Nasdaq believes there is a risk that substantial participation by foreign investors in an offering, combined with insiders retaining significant ownership, does not promote sufficient investor base and trading interest to support trading in the secondary market. The risk to U.S. investors is compounded when a company is located in a Restrictive Market due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and

¹¹ See Rule 5315(f)(2)(c).

non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information. Further, the Exchange has observed that Restrictive Market Companies listing on Nasdaq with an offering size below 25% or public float ratio below 25% have a higher rate of compliance concerns.

Nasdaq believes that these concerns may be mitigated by the Company conducting a Firm Commitment Offering of at least \$25 million or 25% of the Company's post-offering Market Value of Listed Securities, whichever is lower. Firm Commitment Offerings typically involve a book building process that helps to generate an investor base and trading interest that promotes sufficient depth and liquidity to help support fair and orderly trading on the Exchange. Such offerings also typically involve more due diligence by the broker-dealer than would be done in connection with a best-efforts offering, which helps to ensure that third parties subject to U.S. regulatory oversight are conducting significant due diligence on the company, its registration statement and its financial statements.¹² The Exchange believes that the proposal will

¹² Certain Restrictive Markets impose national barriers on access to information that limit the ability of U.S. regulators to effectively conduct regulatory oversight of U.S.-listed companies with operations in such countries, including the PCAOB's ability to inspect the audit work and practices of auditors in those countries. See SEC Chairman Jay Clayton, SEC Chief Accountant Wes Bricker and PCAOB Chairman William D. Duhnke III, *Statement on the Vital Role of Audit Quality and Regulatory Access to Audit and Other Information Internationally—Discussion of Current Information Access Challenges with Respect to U.S.-listed Companies with Significant Operations in China* (December 7, 2018), available at <https://www.sec.gov/news/public-statement/statement-vital-role-audit-quality-and-regulatory-access-audit-and-other> ("Some of these laws, for example, act to prohibit foreign-domiciled registrants in certain jurisdictions from responding directly to SEC requests for information and documents or doing so, in whole or in part, only after protracted delays in obtaining authorization. Other laws can prevent the SEC from being able to conduct any type of examination, either onsite or by correspondence... Positions taken by some foreign authorities currently prevent or significantly impair the PCAOB's ability to inspect non-U.S. audit

help ensure that Restrictive Market Companies seeking to list on the Exchange have sufficient investor base and public float to support fair and orderly trading on the Exchange.

III. Minimum Market Value of Publicly Held Shares for a Business Combination

Nasdaq believes that a business combination, as described in Rule 5110(a) or IM-5101-2, involving a Restrictive Market Company presents similar risks to U.S. investors as IPOs of Restrictive Market Companies. However, such a business combination would typically not involve an offering. Therefore, Nasdaq proposes to adopt a new Rule 5210(k)(ii) that would impose a similar new requirement as applicable to IPOs, but would reflect that the listing would not typically be accompanied by an offering. Specifically, proposed Rule 5210(k)(ii) would require the listed company to have a minimum Market Value of Unrestricted Publicly Held Shares following the business combination equal to the lesser of: (i) \$25 million; or (ii) 25% of the post-business combination entity's Market Value of Listed Securities.

For example, Company A is currently listed on the Nasdaq Capital Market and plans to acquire a company that principally administers its business in a Restrictive Market, in accordance with IM-5101-2. Following the business combination, Company A intends to transfer to the Nasdaq Global Select Market. Company A expects the post-business combination entity to have a Market Value of Listed Securities of \$250,000,000. Since 25% of \$250,000,000 is \$62,500,000, which is higher than \$25,000,000, to qualify

firms in certain countries, even though these firms are registered with the PCAOB.”).

for listing on the Global Select Market the post-business combination entity must have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25,000,000.

In contrast, Company B is currently listed on Nasdaq Capital Market and plans to combine with a non-Nasdaq entity that principally administers its business in a Restrictive Market, resulting in a change of control as defined in Rule 5110(a), whereby the non-Nasdaq entity will become the Nasdaq-listed company. Following the change of control, Company B expects the listed company to have a Market Value of Listed Securities of \$50,000,000. Since 25% of \$50,000,000 is \$12,500,000, which is lower than \$25,000,000, the listed company must have a minimum Market Value of Unrestricted Publicly Held Shares following the change of control of at least \$12,500,000. However, the company would also need to comply with the other applicable listing requirements of the Nasdaq Capital Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$5 million under the Net Income Standard¹³ or \$15 million under the Equity Standard¹⁴ or Market Value of Listed Securities Standard.¹⁵

Market Value of Unrestricted Publicly Held Shares excludes securities subject to resale restrictions from the calculation of Publicly Held Shares because securities subject to resale restrictions are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing.¹⁶

¹³ See Rule 5505(b)(3)(C).

¹⁴ See Rule 5505(b)(1)(B).

¹⁵ See Rule 5505(b)(2)(C).

¹⁶ Market Value of Unrestricted Publicly Held Shares excludes securities subject to resale restrictions from the calculation of Publicly Held Shares because securities

Nasdaq believes that requiring the post-business combination entity to have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25 million or 25% of its Market Value of Listed Securities, whichever is lower, would help to provide an additional assurance that there are sufficient freely tradable shares and investor interest to support fair and orderly trading on the Exchange when the target company principally administers its business in a Restrictive Market. Nasdaq believes that this will help mitigate the unique risks that Restrictive Market Companies present to U.S. investors due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information.

IV. Direct Listings of Restrictive Market Companies

Nasdaq proposes to adopt Rule 5210(k)(iii) to clarify that a Restrictive Market Company is permitted to list on the Nasdaq Global Select Market or Nasdaq Global Market in connection with a Direct Listing (as defined in IM-5315-1), provided that the Company meets all applicable listing requirements for the Nasdaq Global Select Market and the additional requirements of IM-5315-1, or the applicable listing requirements for the Nasdaq Global Market and the additional requirements of IM-5405-1. Such companies would be not be permitted to list on the Nasdaq Capital Market in connection with a Direct Listing notwithstanding the fact that such companies may meet the

subject to resale restrictions are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. See Rule 5005(a)(45) (definition of "Unrestricted Publicly Held Shares"), Rule 5005(a)(46) (definition of "Unrestricted Securities"), and Rule 5005(a)(37) (definition of "Restricted Securities").

applicable initial listing requirements for the Nasdaq Capital Market and the additional requirements of IM-5505-1.

Direct Listings are currently required to comply with enhanced listing standards pursuant to IM-5315-1 (Nasdaq Global Select Market) and IM-5405-1 (Nasdaq Global Market). For example, Nasdaq may require a Company listing on the Nasdaq Global Select Market to satisfy the applicable Market Value of Unrestricted Publicly Held Shares requirement and provide a Valuation¹⁷ evidencing a Market Value of Publicly Held Shares of at least \$250,000,000.¹⁸ For a Company applying to list on the Nasdaq Global Market, Nasdaq will generally require the Company to provide a Valuation that demonstrates a Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.¹⁹

Thus, companies listing in connection with a Direct Listing on the Nasdaq Global or Global Select Market tiers are already subject to heightened listing requirements and Nasdaq believes it is appropriate to permit Restrictive Market Companies to list through a Direct Listing on the Nasdaq Global Select Market or Nasdaq Global Market. On the other hand, while companies listing in connection with a Direct Listing on the Capital Market are also subject to heightened listing requirements, Nasdaq does not believe that these heightened requirements are sufficient to overcome concerns regarding sufficient liquidity and investor interest to support fair and orderly trading on the Exchange with

¹⁷ See Rule IM-5315-1(a).

¹⁸ See Rule IM-5315-1(b).

¹⁹ See Rule IM-5405-1(a)(2) (Nasdaq Global Market) and Rule IM-5505-1(a)(2) (Nasdaq Capital Market).

respect to Restrictive Market Companies.²⁰ Nasdaq believes that Restrictive Market Companies present unique risks to U.S. investors due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information. Therefore, Nasdaq believes that precluding a Restrictive Market Company from listing through a Direct Listing on the Capital Market will help to ensure that the company has sufficient public float, investor base, and trading interest likely to generate depth and liquidity necessary to promote fair and orderly trading on the secondary market.

V. Conclusion

Nasdaq believes that the U.S. capital markets can provide Restrictive Market Companies with access to additional capital to fund ground-breaking research and technological advancements. Further, such companies provide U.S. investors with opportunities to diversify their portfolio by providing exposure to Restrictive Markets. However, as discussed above, Nasdaq believes that Restrictive Market Companies present unique potential risks to U.S. investors due to national barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create

²⁰ For example, the Nasdaq Global Select Market and Nasdaq Global Market require a company to have at least 1,250,000 and 1.1 million Unrestricted Publicly Held Shares, respectively, and a Market Value of Unrestricted Publicly Held Shares of at least \$45 million and \$8 million, respectively. In contrast, the Nasdaq Capital Market requires a company to have at least 1 million Unrestricted Publicly Held Shares and a Market Value of Unrestricted Publicly Held Shares of at least \$5 million.

concerns about the accuracy of disclosures, accountability and access to information.²¹

Nasdaq believes that the proposed rule changes will help to ensure that Restrictive Market Companies have sufficient investor base and public float to support fair and orderly trading on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.²⁴ In particular, the Commission stated:

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

²¹ See supra note 3.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-Nasdaq-2011-073 adopting additional listing requirements for companies applying to list after consummation of a “reverse merger” with a shell company).

trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²⁵

Nasdaq believes that requiring a minimum offering size or public float percentage for Restrictive Market Companies seeking to list on Nasdaq through an IPO or business combination will ensure that a security to be listed on Nasdaq has adequate liquidity, distribution and U.S. investor interest to support fair and orderly trading in the secondary market, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

Similarly, Nasdaq believes that permitting Restrictive Market Companies to list on Nasdaq Global Select Market or Nasdaq Global Market, rather than the Nasdaq Capital Market, in connection with a Direct Listing will ensure that such companies satisfy more rigorous listing requirements, including the minimum amount of Publicly Held Shares and Market Value of Publicly Held Shares, which will help to ensure that the security has sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly trading, thereby protecting investors and the public interest.

While the proposal applies only to Restrictive Market Companies, the Exchange believes that the proposal is not designed to permit unfair discrimination among companies because Nasdaq believes that Restrictive Market Companies present unique potential risks to U.S. investors due to national barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce

²⁵ Id at 70802.

actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information. In addition, such companies may not develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading, resulting in a security that is illiquid. Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value.

Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices. Price manipulation is a particular concern when insiders retain a significant ownership portion of the company. The risk of price manipulation due to insider trading is more acute when a company principally administers its business in a Restrictive Market and management lacks familiarity or experience with U.S. securities laws. Therefore, Nasdaq believes that it is not unfairly discriminatory to treat Restrictive Market Companies differently under this proposal because it will help ensure that securities of a Restrictive Market Company listed on Nasdaq have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets, thereby promoting investor protection and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, Restrictive Market Companies would be treated differently in some respects than other companies applying to list on Nasdaq, but those differences

reflect the unique risks presented by Restrictive Market Companies and do not impose an unnecessary burden on competition.

To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

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

No written comments were either solicited or received.

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-2020-027 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-2020-027. 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-2020-027 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.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

* * * * *

5005. Definitions

(a) The following is a list of definitions used throughout the Nasdaq Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1) – (36) No change.

(37) “Restrictive Market” means a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. In determining whether a Company’s business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the Company’s: (a) principal business segments, operations or assets; (b) board and shareholders’ meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.

~~(37)~~**38** “Restricted Securities” means securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered “restricted securities” under Rule 144.

~~(38)~~**39** “Reverse Merger” means any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company satisfying the requirements of IM-5101-2 or a business combination described in Rule 5110(a). In determining whether a Company is a shell company, Nasdaq will look to a number of factors, including but not limited to: whether the Company is considered a “shell company” as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly

announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

([39]40) “Round Lot” or “Normal Unit of Trading” means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol.

([40]41) “Round Lot Holder” means a holder of a Normal Unit of Trading of Unrestricted Securities. The number of beneficial holders will be considered in addition to holders of record.

([41]42) “Shareholder” means a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term “Shareholder” includes, for example, a limited partner, the owner of a depository receipt, or unit.

([42]43) “Substantial Shareholder” is defined in Rule 5635(e)(3).

([43]44) “Substitution Listing Event” means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights. A Substitution Listing Event also includes the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider).

([44]45) “Total Holders” means holders of a security that includes both beneficial holders and holders of record.

([45]46) “Unrestricted Publicly Held Shares” means the Publicly Held Shares that are Unrestricted Securities.

([46]47) “Unrestricted Securities” are securities that are not Restricted Securities.

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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:

(a) - (j) No change.¹

(k) Offering Size or Public Float

(i) Any Company that is listing its Primary Equity Security on Nasdaq in connection with its initial public offering, and that principally administers its business in a Restrictive Market, must offer a minimum amount of securities in a Firm Commitment Offering in the United States to Public Holders that: (i) will result in gross proceeds to the Company of at least \$25 million; or (ii) will represent at least 25% of the Company's post-offering Market Value of Listed Securities, whichever is lower.

(ii) Any Company that is conducting a business combination, as described in Rule 5110(a) or IM-5101-2, with an entity that principally administers its business in a Restrictive Market, must have a minimum Market Value of Unrestricted Publicly Held Shares following the business combination equal to the lesser of: (i) \$25 million; or (ii) 25% of the post-business combination entity's Market Value of Listed Securities.

(iii) Any Company that is listing its Primary Equity Security on Nasdaq in connection with a Direct Listing, as defined in IM-5315-1, and that principally administers its business in a Restrictive Market, is permitted to list on the Nasdaq Global Select Market or Nasdaq Global Market, provided that the Company meets all applicable listing requirements for the Nasdaq Global Market and the additional requirements of IM-5315-1, or the applicable listing requirements for the Nasdaq Global Market and the additional requirements of IM-5405-1. A Company that principally administers its business in a Restrictive Market will not be permitted to list on the Nasdaq Capital Market in connection with a Direct Listing notwithstanding the fact that such companies may meet the applicable initial listing requirements for the Nasdaq Capital Market and the additional requirements of IM-5505-1.

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¹ Nasdaq has a pending rule filing (SR-Nasdaq-2020-026) to adopt new Rule 5210(c), which would also renumber existing Rule 5210(j) as Rule 5210(k). If the changes proposed herein are adopted before that filing is approved, Nasdaq will file an immediately effective rule change to temporarily reserve Rule 5210(j).