

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 32	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2020 - * 100	Amendment No. (req. for Amendments *) 1
Filing by The Nasdaq Stock Market LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposal to modify the quorum requirement applicable to a non-U.S. company where such companys home country law is in direct conflict with Nasdaqs quorum requirement."/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Nikolai"/>	Last Name *	<input type="text" value="Utochkin"/>	
Title *	<input type="text" value="Counsel, Listing and Governance"/>			
E-mail *	<input type="text" value="nikolai.utochkin@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 978-8029"/>	Fax	<input type="text"/>	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="04/08/2021"/>	<input type="text" value="EVP and Chief Legal Counsel"/>		
By	<input type="text" value="John Zecca"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="john.zecca@nasdaq.com"/>				

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 \***

Add Remove View

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**

Add Remove View

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify the quorum requirement applicable to a non-U.S. company where such company's home country law is in direct conflict with Nasdaq’s quorum requirement.

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 set forth below. Proposed new language is underlined.

\* \* \* \* \*

**The Nasdaq Stock Market Rules**

\* \* \* \* \*

**5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(a) Exemptions to the Corporate Governance Requirements

(1) - (3) No change.

(4) Limited Partnerships

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

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

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) - (D) No change.

(E) Quorum

(i) In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above and cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception;

(b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

(F) - (J) No change

(5) - (6) No change.

(b) - (c) No change.

\* \* \* \* \*

**5620. Meetings of Shareholders**

\* \* \* \* \*

**(c) Quorum**

(i) Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

- (a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception
- (b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and
- (c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

\* \* \* \* \*

- (b) Not applicable.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Nikolai Utochkin  
Counsel, Listing and Governance  
Nasdaq, Inc.  
(301) 978-8029

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

a. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2020-100<sup>3</sup> in order to: (i) make minor technical changes to improve the structure, clarity and readability of this proposal; (ii) specify that Nasdaq will (rather than may) accept any quorum requirement for a non-U.S. Company, that is not a foreign private issuer, if the company's home country law mandates such quorum for the shareholders’ meeting and prohibits the company from establishing a higher quorum required by Nasdaq, and the company cannot obtain an exemption or waiver from that law; (iii) clarify that such acceptance of any quorum requirement is subject to Nasdaq’s discretionary authority under Listing Rule 5101; and (iv) add a provision that a company relying on the exception from the Nasdaq quorum requirement must:

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<sup>3</sup> Securities Exchange Act Release No. 90883 (January 11, 2021), 86 FR 4158 (January 15, 2021) (the “Initial Proposal”).

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq on or through the company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception;

(b) maintain the website disclosure for the period of time the company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq is proposing to modify Listing Rules 5620(c) and 5615(a)(4)(E) to allow Nasdaq to accept a quorum less than 33-1/3% of the outstanding shares of a company's common voting stock where the company is incorporated outside of the U.S. and such company's home country law prohibits the company from establishing a quorum that satisfies the such quorum rules.

Listing Rule 5620(c) establishes quorum requirements for an annual meeting of shareholders for Nasdaq companies listing common stock or voting preferred stock, and their equivalents.<sup>4</sup> Under this rule, each company that is not a limited partnership must provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than

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<sup>4</sup> Listing Rule 5620(a).

33 1/3% of the outstanding shares of the company's common voting stock.<sup>5</sup> Nasdaq notes that domestic listed companies are subject to quorum requirements under the laws of their states of incorporation.<sup>6</sup>

Nasdaq recently discovered that the laws of certain foreign jurisdictions are in direct conflict with the Nasdaq Quorum Requirement. In particular, Nasdaq was approached by a French company that took advantage of the foreign private issuer exception and relied on home country practices in lieu of the Nasdaq Quorum Requirement, but lost its foreign private issuer status and cannot comply with the Nasdaq Quorum Requirement due to certain French law requirements.<sup>7</sup> In that regard, Article L. 225-98 of the French Commercial code<sup>8</sup> provides that upon first notice, the ordinary

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<sup>5</sup> Listing Rule 5615(a)(4)(E) governing the quorum requirements for limited partnerships listed on Nasdaq similarly requires that in the event of a meeting of limited partners, the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding (together with the requirements of Listing Rule 5620(c), the “Nasdaq Quorum Requirement”).

<sup>6</sup> For example, Delaware allows companies to establish their own quorum requirements in their certificates of incorporation or bylaws, provided that the quorum must be at least one-third of the shares entitled to vote on the matter. In the absence of a quorum provision in the company’s certificate of incorporation or bylaws, Delaware requires a quorum of more than 50% of the shares entitled to vote on the matter. See 8 Del. Code Sec. 216.

<sup>7</sup> Ordinary shares of at least one Nasdaq listed company DBV Technologies S.A. (DBV), are listed on Euronext Paris which is a regulated market under French and EU regulations. Accordingly, as explained below, DBV cannot amend its bylaws to increase the quorum requirement to comply with the Nasdaq Quorum Requirement. Since its IPO in 2014, DBV qualified as a foreign private issuer and relied on home country practices in lieu of complying with the Nasdaq Quorum Requirement. See also footnote 11 below.

<sup>8</sup> “It can only validly deliberate upon first notice if the shareholders present or represented own at least one fifth of the shares entitled to vote.” Available at <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000038799445&cidTexte=LEGITEXT000005634379&dateTexte=20190721>



shareholders' meeting shall have a quorum requirement of one-fifth (20%) of the shares entitled to vote. The Article further provides that by-laws of a French company whose shares are listed on a regulated market (which includes Euronext Paris) cannot provide for a higher quorum for shareholders' meetings than that set forth above. As this rule constitutes a public order under French law, it is required to be followed and compliance is enforced by the French courts and by the French stock exchange authority, the Autorité des marchés financiers. According to article L. 225-121, any decision taken in violation of the aforementioned rules on quorum is deemed null and void. As such, a French company listed on a regulated market cannot comply with the Nasdaq Quorum Requirement.

Listing Rule 5615(a)(3) allows a foreign private issuer<sup>9</sup> to follow its home country practice in lieu of the requirements of the Rule 5600 Series, including the Nasdaq Quorum Requirement, subject to certain disclosure requirements and the requirement that an independent counsel in such company's home country certify to Nasdaq that the company's practices are not prohibited by the home country's laws.<sup>10</sup> Accordingly, a French foreign private issuer could rely on Listing Rule 5615(a)(3) to remain in

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<sup>9</sup> The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and (ii) Any of the following: (A) The majority of the executive officers or directors are United States citizens or residents; (B) More than 50 percent of the assets of the issuer are located in the United States; or (C) The business of the issuer is administered principally in the United States. See Securities Act Rule 405 and Exchange Act Rule 3b-4.

<sup>10</sup> See Listing Rule 5615(a)(3)(B) and Listing Rule IM-5615-3.

compliance with the Nasdaq corporate governance requirements in the Rule 5600 Series.<sup>11</sup>

A non-U.S. company<sup>12</sup> that is not a foreign private issuer currently is required to comply with the Nasdaq Quorum Requirement without regard to the requirements of such company's home country laws. As described above, for some companies, including DBV, the company's home country law prohibits the company from establishing a higher quorum required by the Nasdaq Quorum Requirement.

Accordingly, Nasdaq proposes to modify the Nasdaq Quorum Requirement to allow Nasdaq to accept any quorum requirement for a non-U.S. company if such company's home country law mandates such quorum for the shareholders' meeting and prohibits the company from establishing the higher quorum required by the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law.<sup>13</sup> This rule change is consistent with the approach the Exchange takes in Listing Rule IM-5640 that allows Nasdaq to accept any action or issuance relating to the voting

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<sup>11</sup> As of December 31, 2019, approximately 62% of DBV's outstanding ordinary shares were held by U.S. residents. See company's Form 20-F filed on March 20, 2020. As of June 30, 2020, DBV determined that it no longer qualified as a foreign private issuer and would be required to comply with SEC rules for domestic issuers as of January 1, 2021.

<sup>12</sup> For purposes of this rule, the term non-U.S. company refers to a company incorporated outside of the U.S. See also Listing Rules 5630 and IM-5640 that use this term.

<sup>13</sup> Nasdaq notes that under Listing Rule 5101 Nasdaq has broad discretionary authority 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.

rights structure of a non-U.S. company that is not prohibited by the company's home country law.<sup>14</sup> Nasdaq proposes to require that a company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such company's home country describing the home country law that conflicts with Nasdaq's quorum requirement. Nasdaq also proposes to require such counsel to certify that, as the result of the conflict with the home country law, the company is prohibited from complying with the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law. Finally, to assure appropriate disclosure, Nasdaq proposes to require that any company relying on this exception from the Nasdaq Quorum Requirement must make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception.

In addition, to help assure continuous transparency, Nasdaq proposes to require that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements. Finally, to help assure the exception remains appropriate, Nasdaq proposes to require the company to update the website disclosure at least annually to indicate that the company continues to be

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<sup>14</sup> The proposed modified Nasdaq Quorum Requirement will apply only in circumstances where the company's home country law specifically prohibits the company from establishing a higher quorum required by the Nasdaq Quorum Requirement, whereas Listing Rule IM-5640 allows Nasdaq to accept any voting rights structure of a non-U.S. company that is not prohibited by the company's home country law.

prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update.

Nasdaq also proposes to modify Listing Rule 5615(a)(4)(E) governing the quorum requirements for limited partnerships listed on Nasdaq to also reflect this change to the Nasdaq Quorum Requirement.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq believes that the proposed amendments to Listing Rules 5620(c) and 5615(a)(4)(E) are designed to protect investors and the public interest because the proposal would eliminate a conflict forcing a company to be in violation of the Nasdaq rule, with a result of delisting by following the law in its home jurisdiction. Nasdaq also believes that Nasdaq's long experience of listing foreign private issuers, including DBV, while allowing such companies to rely on home country practices in lieu of the Nasdaq Quorum Requirement provides evidence of an appropriate level of investor protection. In addition, this modification is consistent with the approach the Exchange takes in Listing Rule IM-5640 that allows Nasdaq to accept any action or issuance relating to the voting rights structure of a non-U.S. company that is not prohibited by the company's home

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

country law. Nasdaq also believes the proposed amendments to Listing Rules 5620(c) and 5615(a)(4)(E) are designed to protect investors and the public interest because any company relying on the proposed exception from the Nasdaq Quorum Requirement will be required to make public disclosure on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception.

Nasdaq believes that the proposed requirement that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements is designed to protect investors and the public interest because such website disclosure would help assure continuous transparency. Nasdaq also believes that the proposed requirement to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update is designed to protect investors and the public interest because such disclosure would help Nasdaq assure that the exception remains appropriate.

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. The proposed rule change will address conflicting requirements of jurisdictions currently affecting only one company, as described above; and as such, these changes are neither intended to, nor expected to, impose any burden on competition.

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

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)

Nasdaq requests accelerated effectiveness pursuant to Section 19(b)(2) of the Act<sup>17</sup> given that the proposed changes currently affect only one listed company, which has been listed on Nasdaq since 2014 and as a foreign private issuer relied on home country practices in lieu of the Nasdaq Quorum Requirement during that time until January 1, 2021 because it no longer qualified as foreign private issuer, as described above. As such, the proposed rule change would allow DBV to continue to follow French law quorum requirements, as it has been doing, while remaining listed on Nasdaq.

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.

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

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<sup>17</sup> 15 U.S.C. 78s(b)(2).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2020-100)

April \_\_, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Quorum Requirement Applicable to a Non-U.S. Company

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 8, 2021, 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 quorum requirement applicable to a non-U.S. company where such company's home country law is in direct conflict with Nasdaq’s quorum requirement.

The text of the proposed rule change is detailed below: proposed new language is underlined and proposed deletions are in brackets.

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

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

## The Nasdaq Stock Market Rules

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### 5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

#### (a) Exemptions to the Corporate Governance Requirements

(1) - (3) No change.

#### (4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) - (D) No change.

#### (E) Quorum

(i) In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the



Company from establishing a higher quorum required by paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above and cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception;

(b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

(F) - (J) No change

(5) - (6) No change.

(b) - (c) No change.

\* \* \* \* \*

## 5620. Meetings of Shareholders

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### (c) Quorum

(i) Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

- (a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception
- (b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and
- (c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

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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 is filing this amendment to SR-NASDAQ-2020-100<sup>3</sup> in order to: (i) make minor technical changes to improve the structure, clarity and readability of this proposal;

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<sup>3</sup> Securities Exchange Act Release No. 90883 (January 11, 2021), 86 FR 4158 (January 15, 2021) (the "Initial Proposal").

(ii) specify that Nasdaq will (rather than may) accept any quorum requirement for a non-U.S. Company, that is not a foreign private issuer, if the company's home country law mandates such quorum for the shareholders' meeting and prohibits the company from establishing a higher quorum required by Nasdaq, and the company cannot obtain an exemption or waiver from that law; (iii) clarify that such acceptance of any quorum requirement is subject to Nasdaq's discretionary authority under Listing Rule 5101; and (iv) add a provision that a company relying on the exception from the Nasdaq quorum requirement must:

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq on or through the company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception;

(b) maintain the website disclosure for the period of time the company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq is proposing to modify Listing Rules 5620(c) and 5615(a)(4)(E) to allow Nasdaq to accept a quorum less than 33-1/3% of the outstanding shares of a company's common voting stock where the company is incorporated outside of the U.S. and such

company's home country law prohibits the company from establishing a quorum that satisfies the such quorum rules.

Listing Rule 5620(c) establishes quorum requirements for an annual meeting of shareholders for Nasdaq companies listing common stock or voting preferred stock, and their equivalents.<sup>4</sup> Under this rule, each company that is not a limited partnership must provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3% of the outstanding shares of the company's common voting stock.<sup>5</sup> Nasdaq notes that domestic listed companies are subject to quorum requirements under the laws of their states of incorporation.<sup>6</sup>

Nasdaq recently discovered that the laws of certain foreign jurisdictions are in direct conflict with the Nasdaq Quorum Requirement. In particular, Nasdaq was approached by a French company that took advantage of the foreign private issuer exception and relied on home country practices in lieu of the Nasdaq Quorum Requirement, but lost its foreign private issuer status and cannot comply with the Nasdaq

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<sup>4</sup> Listing Rule 5620(a).

<sup>5</sup> Listing Rule 5615(a)(4)(E) governing the quorum requirements for limited partnerships listed on Nasdaq similarly requires that in the event of a meeting of limited partners, the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding (together with the requirements of Listing Rule 5620(c), the “Nasdaq Quorum Requirement”).

<sup>6</sup> For example, Delaware allows companies to establish their own quorum requirements in their certificates of incorporation or bylaws, provided that the quorum must be at least one-third of the shares entitled to vote on the matter. In the absence of a quorum provision in the company’s certificate of incorporation or bylaws, Delaware requires a quorum of more than 50% of the shares entitled to vote on the matter. See 8 Del. Code Sec. 216.

Quorum Requirement due to certain French law requirements.<sup>7</sup> In that regard, Article L. 225-98 of the French Commercial code<sup>8</sup> provides that upon first notice, the ordinary shareholders' meeting shall have a quorum requirement of one-fifth (20%) of the shares entitled to vote. The Article further provides that by-laws of a French company whose shares are listed on a regulated market (which includes Euronext Paris) cannot provide for a higher quorum for shareholders' meetings than that set forth above. As this rule constitutes a public order under French law, it is required to be followed and compliance is enforced by the French courts and by the French stock exchange authority, the Autorité des marchés financiers. According to article L. 225-121, any decision taken in violation of the aforementioned rules on quorum is deemed null and void. As such, a French company listed on a regulated market cannot comply with the Nasdaq Quorum Requirement.

Listing Rule 5615(a)(3) allows a foreign private issuer<sup>9</sup> to follow its home country practice in lieu of the requirements of the Rule 5600 Series, including the Nasdaq

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<sup>7</sup> Ordinary shares of at least one Nasdaq listed company DBV Technologies S.A. (DBV), are listed on Euronext Paris which is a regulated market under French and EU regulations. Accordingly, as explained below, DBV cannot amend its bylaws to increase the quorum requirement to comply with the Nasdaq Quorum Requirement. Since its IPO in 2014, DBV qualified as a foreign private issuer and relied on home country practices in lieu of complying with the Nasdaq Quorum Requirement. See also footnote 11 below.

<sup>8</sup> "It can only validly deliberate upon first notice if the shareholders present or represented own at least one fifth of the shares entitled to vote." Available at <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000038799445&cidTexte=LEGITEXT000005634379&dateTexte=20190721>

<sup>9</sup> The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and (ii) Any of the

Quorum Requirement, subject to certain disclosure requirements and the requirement that an independent counsel in such company's home country certify to Nasdaq that the company's practices are not prohibited by the home country's laws.<sup>10</sup> Accordingly, a French foreign private issuer could rely on Listing Rule 5615(a)(3) to remain in compliance with the Nasdaq corporate governance requirements in the Rule 5600 Series.<sup>11</sup>

A non-U.S. company<sup>12</sup> that is not a foreign private issuer currently is required to comply with the Nasdaq Quorum Requirement without regard to the requirements of such company's home country laws. As described above, for some companies, including DBV, the company's home country law prohibits the company from establishing a higher quorum required by the Nasdaq Quorum Requirement.

Accordingly, Nasdaq proposes to modify the Nasdaq Quorum Requirement to allow Nasdaq to accept any quorum requirement for a non-U.S. company if such company's home country law mandates such quorum for the shareholders' meeting and

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following: (A) The majority of the executive officers or directors are United States citizens or residents; (B) More than 50 percent of the assets of the issuer are located in the United States; or (C) The business of the issuer is administered principally in the United States. See Securities Act Rule 405 and Exchange Act Rule 3b-4.

<sup>10</sup> See Listing Rule 5615(a)(3)(B) and Listing Rule IM-5615-3.

<sup>11</sup> As of December 31, 2019, approximately 62% of DBV's outstanding ordinary shares were held by U.S. residents. See company's Form 20-F filed on March 20, 2020. As of June 30, 2020, DBV determined that it no longer qualified as a foreign private issuer and would be required to comply with SEC rules for domestic issuers as of January 1, 2021.

<sup>12</sup> For purposes of this rule, the term non-U.S. company refers to a company incorporated outside of the U.S. See also Listing Rules 5630 and IM-5640 that use this term.

prohibits the company from establishing the higher quorum required by the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law.<sup>13</sup> This rule change is consistent with the approach the Exchange takes in Listing Rule IM-5640 that allows Nasdaq to accept any action or issuance relating to the voting rights structure of a non-U.S. company that is not prohibited by the company's home country law.<sup>14</sup> Nasdaq proposes to require that a company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such company's home country describing the home country law that conflicts with Nasdaq's quorum requirement. Nasdaq also proposes to require such counsel to certify that, as the result of the conflict with the home country law, the company is prohibited from complying with the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law. Finally, to assure appropriate disclosure, Nasdaq proposes to require that any company relying on this exception from the Nasdaq Quorum Requirement must make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing

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<sup>13</sup> Nasdaq notes that under Listing Rule 5101 Nasdaq has broad discretionary authority 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.

<sup>14</sup> The proposed modified Nasdaq Quorum Requirement will apply only in circumstances where the company's home country law specifically prohibits the company from establishing a higher quorum required by the Nasdaq Quorum Requirement, whereas Listing Rule IM-5640 allows Nasdaq to accept any voting rights structure of a non-U.S. company that is not prohibited by the company's home country law.



a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception.

In addition, to help assure continuous transparency, Nasdaq proposes to require that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements. Finally, to help assure the exception remains appropriate, Nasdaq proposes to require the company to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update.

Nasdaq also proposes to modify Listing Rule 5615(a)(4)(E) governing the quorum requirements for limited partnerships listed on Nasdaq to also reflect this change to the Nasdaq Quorum Requirement.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq believes that the proposed amendments to Listing Rules 5620(c) and 5615(a)(4)(E) are designed to protect investors and the public interest because the proposal would eliminate a conflict forcing a company to be in violation of the Nasdaq

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

rule, with a result of delisting by following the law in its home jurisdiction. Nasdaq also believes that Nasdaq's long experience of listing foreign private issuers, including DBV, while allowing such companies to rely on home country practices in lieu of the Nasdaq Quorum Requirement provides evidence of an appropriate level of investor protection. In addition, this modification is consistent with the approach the Exchange takes in Listing Rule IM-5640 that allows Nasdaq to accept any action or issuance relating to the voting rights structure of a non-U.S. company that is not prohibited by the company's home country law. Nasdaq also believes the proposed amendments to Listing Rules 5620(c) and 5615(a)(4)(E) are designed to protect investors and the public interest because any company relying on the proposed exception from the Nasdaq Quorum Requirement will be required to make public disclosure on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception.

Nasdaq believes that the proposed requirement that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements is designed to protect investors and the public interest because such website disclosure would help assure continuous transparency. Nasdaq also believes that the proposed requirement to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update is designed to protect investors and the public interest because such disclosure would help Nasdaq assure that the exception remains appropriate.

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. The proposed rule change will address conflicting requirements of jurisdictions currently affecting only one company, as described above; and as such, these changes are neither intended to, nor expected to, impose any burden on competition.

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-100 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-2020-100. 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-2020-100 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 4**

## Changes to the Proposed Rule Text

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

**The Nasdaq Stock Market Rules**

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**5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

**(a) Exemptions to the Corporate Governance Requirements**

(1) - (3) No change.

(4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

(A) - (D) No change.

(E) Quorum

(i) In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq ~~may will~~ accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to

Nasdaq a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above and cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

(a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception;

(b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

(F) - (J) No change

(5) - (6) No change.

(b) - (c) No change.

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## **5620. Meetings of Shareholders**

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### **(c) Quorum**

(i) Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

(ii) Notwithstanding the quorum requirements in paragraph (i) above, Nasdaq may will accept any quorum requirement for a non-U.S. Company, that is not a Foreign Private Issuer, if the Company's home country law mandates such quorum for the shareholders' meeting and prohibits the Company from establishing a higher quorum required by paragraph (i) above, and the Company

cannot obtain an exemption or waiver from that law. A Company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such Company's home country describing the home country law that conflicts with Nasdaq's quorum requirement and certifying that, as the result, the Company is prohibited from complying with the quorum requirements in paragraph (i) above, and the Company cannot obtain an exemption or waiver from that law. Any Company relying on this exception from the quorum requirements must:

- (a) make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception
- (b) maintain the website disclosure for the period of time the Company continues to rely on this exception from the quorum requirements; and
- (c) update the website disclosure at least annually to indicate that the Company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

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