

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 35	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2021 - * 045	Amendment No. (req. for Amendments *)
Filing by The Nasdaq Stock Market LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). A proposal to modify the requirement that a company can only sell shares in the Nasdaq opening auction during a direct listing with a capital raise at a price within the price range established in an effective registration statement.				
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 * Nikolai Last Name * Utochkin Title * Counsel – Listing and Governance E-mail * Nikolai.Utochkin@nasdaq.com Telephone * (301) 978-8029 Fax <input type="text"/>				
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. (Title *) Date 05/25/2021 By John Zecca (Name *) EVP and Chief Legal Counsel 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. john.zecca@nasdaq.com				

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 modify certain pricing limitations for companies listing in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq.

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 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

or

Arnold Golub
Deputy General Counsel

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Nasdaq, Inc.
301-978-8075

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

a. Purpose

Nasdaq recently adopted Listing Rule IM-5315-2 to permit a company to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a “Direct Listing with a Capital Raise”);³ created a new order type (the “CDL Order”), which is used during the Nasdaq Halt Cross (the “Cross”) for the shares offered by the company in a Direct Listing with a Capital Raise; and established requirements for disseminating information, establishing the opening price and initiating trading through the Cross in a Direct Listing with a Capital Raise.⁴ For a Direct Listing with a Capital Raise, Nasdaq rules currently require that the actual price calculated by the Cross be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement (the “Pricing Range Limitation”).

Nasdaq now proposes to modify the Pricing Range Limitation such that a Direct Listing with a Capital Raise can be executed in the Cross at a price that is at or above the price that is 20% below the lowest price and at or below the price that is 20% above the highest price of the price range established by the issuer in its effective registration

³ A Direct Listing with a Capital Raise includes situations where either: (i) only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction.

⁴ See Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (the “Approval Order”).

statement. In addition, Nasdaq proposes to modify the Pricing Range Limitation such that a Direct Listing with a Capital Raise can be executed in the Cross at a price above the price that is 20% above the highest price of such price range, provided that the company has certified to Nasdaq that such price would not materially change the company's previous disclosure in its effective registration statement. Nasdaq also proposes to make related conforming changes.

Listing Rule IM-5315-2 requires that securities listing in connection with a Direct Listing with a Capital Raise must begin trading on Nasdaq following the initial pricing through the Cross, which is described in Rules 4120(c)(8), 4120(c)(9) and 4753. To allow such initial pricing, the company must, in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed who is willing to perform certain functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. Rule 4120(c)(9) requires that in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade.

Currently, in the case of the Direct Listing with a Capital Raise, a security is not released for trading by Nasdaq unless the actual price calculated by the Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.⁵ Specifically, under Rule 4120(c)(9)(B) Nasdaq shall release the security for trading only if: (i) all market orders will be executed

⁵ See Rule 4120(c)(9)(B).

in the Cross; and (ii) the actual price calculated by the Cross complies with the Pricing Range Limitation.

If there is insufficient buy interest to satisfy the CDL Order and all other market orders, as required by the rule, or if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement, the Cross would not proceed and such security would not begin trading. In such event, because the Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify market participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms.

Proposed Change to Rule 4120(c)(9)(B)

While many companies are interested in alternatives to the traditional IPOs, based on conversations with companies and their advisors Nasdaq believes that there may be a reluctance to use the existing Direct Listing with a Capital Raise rules because of concerns about the Pricing Range Limitation.

One potential benefit of a Direct Listing with a Capital Raise as an alternative to a traditional IPO is that it could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors. Unlike an IPO where the offering price is informed by underwriter engagement with potential investors to gauge interest in the offering, but ultimately decided through negotiations between the issuer and the underwriters for the offering, in a Direct Listing with a Capital Raise the initial sale price is determined based on market interest and the matching of buy and sell orders

in an auction open to all market participants. In that regard, in the Approval Order the Commission stated that:

The opening auction in a Direct Listing with a Capital Raise provides for a different price discovery method for IPOs which may reduce the spread between the IPO price and subsequent market trades, a potential benefit to existing and potential investors. In this way, the proposed rule change may result in additional investment opportunities while providing companies more options for becoming publicly traded.

A successful initial public offering of shares requires sufficient investor interest. If an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. The Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of such a failed offering because the offering cannot proceed not only for the lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated. In the Approval Order, the Commission noted a frequent academic observation of traditional firm commitment underwritten offerings that the IPO price, established through negotiation between the underwriters and the issuer, is often lower than the price that the issuer could have obtained for the securities, based on a comparison of the IPO price to the closing price on the first day of trading. Nasdaq believes that the price range in a company's effective registration statement for a Direct Listing with a Capital Raise would similarly be determined by the company and its advisors and, therefore, there may be instances of offerings where the price determined by the Nasdaq opening auction will

exceed the highest price of the price range in the company's effective registration statement.

As explained above, a security subject to a Direct Listing with a Capital Raise cannot be released for trading by Nasdaq if the actual price calculated by the Cross is above the highest price of the price range established by the issuer in its effective registration statement. In this case, Nasdaq would have to cancel or postpone the offering until the company amends its effective registration statement. At a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event. In addition, as explained above, pricing of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which could make companies reluctant to use this alternative method of going public despite its expected potential benefits.

Accordingly, Nasdaq proposes to modify the Pricing Range Limitation such that in the case of the Direct Listing with a Capital Raise, such that a security shall not be released for trading by Nasdaq unless the actual price at which the Cross would occur (as defined in Rule 4120(c)(8)(A)(i)) is at or above the price that is 20% below the lowest price of the price range established by the issuer in its effective registration statement and at or below the price that is 20% above the highest price. In other words, Nasdaq would release the security for trading, provided all other necessary conditions are satisfied, even if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement; provided however that the actual price cannot be more than 20% below the lowest price and more than 20% above the highest price of such range; provided further that the company satisfies the 1933 Act Registration

requirements by specifying the quantity of shares registered, as permitted by Securities Act Rule 457, as explained below. In addition, there would be no limitation on releasing the security for trading at a price above the price that is 20% above the highest price of the price range established by the issuer in its effective registration statement if the company has certified to Nasdaq that such offering price would not materially change the company's previous disclosure in its effective registration statement.

Nasdaq believes that this approach is consistent with SEC Rule 430A and question 227.03 of the SEC Staff's Compliance and Disclosure Interpretations, last updated November 6, 2017, which generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.⁶ Nasdaq believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure.

Accordingly, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can satisfy the 1933 Act Registration requirements when an auction prices outside of the disclosed price range by using a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus,

⁶ Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount. Nasdaq expects that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. See also Compliance & Disclosure Interpretation of Securities Act Rules #227.03 at <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

or (ii) when there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased. Consistent with the Commission's guidance on Rule 430A, Nasdaq proposes to prescribe that this 20% threshold will be calculated using the high end of the price range in the prospectus at the time of effectiveness and may be measured from either the high end (in the case of an increase in the price) or low end (in the case of a decrease in the price) of that range.

Finally, given that, as proposed, there may be a Direct Listing with a Capital Raise that could price outside the price range of the company's effective registration statement and that there may be no upside limit above which the Cross could not proceed, Nasdaq will issue an industry wide trader alert to inform the participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such trader alert whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above, and will caution the market participants about the use of market orders.

Proposed Conforming Changes to Listing Rule IM-5315-2

Listing Rule IM-5315-2 allows a company that has not previously had its common equity securities registered under the Act to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange.

Listing Rule IM-5315-2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least \$110 million (or \$100 million, if the company has stockholders' equity of at least \$110 million).

Listing Rule IM-5315-2 further provides that, for this purpose, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.

Because Nasdaq proposes to allow the opening auction to price up to 20% below the lowest price of the price range established by the issuer in its effective registration statement, Nasdaq proposes make a conforming change to Listing Rule IM-5315-2 to provide that the price used to determine such company's compliance with the Market Value of Unrestricted Publicly Held Shares is the price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement as this is the minimum price at which the company could be listed. Nasdaq will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price.

Any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing

requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least \$4.00 at the time of initial listing.⁷

Proposed Conforming Changes to Rules 4753(a)(3) and 4753(b)(2)

Nasdaq proposes to amend Rules 4753(a)(3) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening action to price as much as 20% below the lowest price of the price range established by the issuer in its effective registration statement.

Specifically, Nasdaq proposes changes to Rules 4753(a)(3) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator, in the case of a Direct Listing with a Capital Raise and for how the price at which the Cross will execute. These rules currently provides that where there are multiple prices that would satisfy the conditions for determining a price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the price range disclosed by the issuer in its effective registration statement.

To conform these rules to the modification of the Pricing Range Limitation change, as described above, Nasdaq proposes to modify the fourth tie-breaker for a Direct

⁷ See Listing Rules 5315(f)(1), (e)(1) and (2), respectively. Rule 5315(f)(1) requires a security to have: (A) at least 550 total holders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (B) at least 2,200 total holders; or (C) a minimum of 450 round lot holders and at least 50% of such round lot holders must each hold unrestricted securities with a market value of at least \$2,500.

Listing with a Capital Raise, to use the price closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 amendment to modify the Pricing Range Limitation is consistent with the protection of investors because this approach is not substantively different from pricing of an IPO where an issuer is permitted to price outside of the price range disclosed by the issuer in its effective registration statement in accordance with the SEC's guidance, as described above. Specifically, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can satisfy the 1933 Act Registration requirements when an auction prices outside of the disclosed price range by using a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) when there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased. As a result, Nasdaq will allow the Cross to take place as low as 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement, but no lower, and so this is the minimum price at which the company could be listed. In addition, to better inform investors and market participants, Nasdaq will issue an industry wide trader alert to inform the participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such trader alert whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above, and will caution the market participants about the use of market orders.

The Commission Staff has already concluded that such pricing is appropriate for a company conducting an initial public offering notwithstanding it being outside of the range stated in an effective registration statement, and investors have become familiar with this approach at least since the Commission Staff last revised Compliance and Disclosure Interpretation 227.03 in January 2009.¹⁰

Nasdaq believes that the proposed amendments to Listing Rule IM-5315-2 and Rules 4573(a)(3) and 4753(b)(2) to conform these rules to the modification of the Pricing Range Limitation is consistent with the protection of investors. These amendments would simply substitute Nasdaq's reliance on the price equal to the lowest price of the price range disclosed by the issuer in its effective registration statement to the price that is 20% below such lowest price. In the case of Listing Rule IM-5315-2, a company listing in

¹⁰ <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

connection with a Direct Listing with a Capital Raise would still need to meet all applicable initial listing requirements based on the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement. In the case of the Rules 4573(a)(3) and 4753(b)(2) such price, which is the minimum price at which the Cross will occur, will serve as the fourth tie-breaker where there are multiple prices that would satisfy the conditions for determining the auction price, as described above.

Nasdaq believes that the proposal will also foster competition by eliminating an impediment to companies using a Direct Listing with a Capital Raise, thereby removing potential impediments to free and open markets consistent with Section 6(b)(5) of the Exchange Act while also supporting capital formation.

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 amendments would not impose any burden on competition, but would rather increase competition. Nasdaq believes that allowing listing venues to improve their rules enhances competition among exchanges. Nasdaq also believes that this proposed change will give issuers interested in this pathway to access the capital markets additional flexibility in becoming a public company, and in that way promote competition among service providers to such companies.

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-2021-045)

May __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify Certain Pricing Limitations Applicable to a Company Listing Through a Direct Listing with a Capital Raise

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 25, 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 certain pricing limitations for companies listing in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 recently adopted Listing Rule IM-5315-2 to permit a company to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a “Direct Listing with a Capital Raise”);³ created a new order type (the “CDL Order”), which is used during the Nasdaq Halt Cross (the “Cross”) for the shares offered by the company in a Direct Listing with a Capital Raise; and established requirements for disseminating information, establishing the opening price and initiating trading through the Cross in a Direct Listing with a Capital Raise.⁴ For a Direct Listing with a Capital Raise, Nasdaq rules currently require that the actual price calculated by the Cross be at or above the lowest price and at

³ A Direct Listing with a Capital Raise includes situations where either: (i) only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction.

⁴ See Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (the “Approval Order”).

or below the highest price of the price range established by the issuer in its effective registration statement (the “Pricing Range Limitation”).

Nasdaq now proposes to modify the Pricing Range Limitation such that a Direct Listing with a Capital Raise can be executed in the Cross at a price that is at or above the price that is 20% below the lowest price and at or below the price that is 20% above the highest price of the price range established by the issuer in its effective registration statement. In addition, Nasdaq proposes to modify the Pricing Range Limitation such that a Direct Listing with a Capital Raise can be executed in the Cross at a price above the price that is 20% above the highest price of such price range, provided that the company has certified to Nasdaq that such price would not materially change the company’s previous disclosure in its effective registration statement. Nasdaq also proposes to make related conforming changes.

Listing Rule IM-5315-2 requires that securities listing in connection with a Direct Listing with a Capital Raise must begin trading on Nasdaq following the initial pricing through the Cross, which is described in Rules 4120(c)(8), 4120(c)(9) and 4753. To allow such initial pricing, the company must, in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed who is willing to perform certain functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. Rule 4120(c)(9) requires that in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade.

Currently, in the case of the Direct Listing with a Capital Raise, a security is not released for trading by Nasdaq unless the actual price calculated by the Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.⁵ Specifically, under Rule 4120(c)(9)(B) Nasdaq shall release the security for trading only if: (i) all market orders will be executed in the Cross; and (ii) the actual price calculated by the Cross complies with the Pricing Range Limitation.

If there is insufficient buy interest to satisfy the CDL Order and all other market orders, as required by the rule, or if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement, the Cross would not proceed and such security would not begin trading. In such event, because the Cross cannot be conducted, the Exchange would postpone and reschedule the offering and notify market participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange would be cancelled back to the entering firms.

Proposed Change to Rule 4120(c)(9)(B)

While many companies are interested in alternatives to the traditional IPOs, based on conversations with companies and their advisors Nasdaq believes that there may be a reluctance to use the existing Direct Listing with a Capital Raise rules because of concerns about the Pricing Range Limitation.

One potential benefit of a Direct Listing with a Capital Raise as an alternative to a traditional IPO is that it could maximize the chances of more efficient price discovery of

⁵ See Rule 4120(c)(9)(B).

the initial public sale of securities for issuers and investors. Unlike an IPO where the offering price is informed by underwriter engagement with potential investors to gauge interest in the offering, but ultimately decided through negotiations between the issuer and the underwriters for the offering, in a Direct Listing with a Capital Raise the initial sale price is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants. In that regard, in the Approval Order the Commission stated that:

The opening auction in a Direct Listing with a Capital Raise provides for a different price discovery method for IPOs which may reduce the spread between the IPO price and subsequent market trades, a potential benefit to existing and potential investors. In this way, the proposed rule change may result in additional investment opportunities while providing companies more options for becoming publicly traded.

A successful initial public offering of shares requires sufficient investor interest. If an offering cannot be completed due to lack of investor interest, there is likely to be a substantial amount of negative publicity for the company and the offering may be delayed or cancelled. The Pricing Range Limitation imposed on a Direct Listing with a Capital Raise (but not on a traditional IPO) increases the probability of such a failed offering because the offering cannot proceed not only for the lack of investor interest, but also if investor interest is greater than the company and its advisors anticipated. In the Approval Order, the Commission noted a frequent academic observation of traditional firm commitment underwritten offerings that the IPO price, established through negotiation between the underwriters and the issuer, is often lower than the price that the

issuer could have obtained for the securities, based on a comparison of the IPO price to the closing price on the first day of trading. Nasdaq believes that the price range in a company's effective registration statement for a Direct Listing with a Capital Raise would similarly be determined by the company and its advisors and, therefore, there may be instances of offerings where the price determined by the Nasdaq opening auction will exceed the highest price of the price range in the company's effective registration statement.

As explained above, a security subject to a Direct Listing with a Capital Raise cannot be released for trading by Nasdaq if the actual price calculated by the Cross is above the highest price of the price range established by the issuer in its effective registration statement. In this case, Nasdaq would have to cancel or postpone the offering until the company amends its effective registration statement. At a minimum, such a delay exposes the company to market risk of changing investor sentiment in the event of an adverse market event. In addition, as explained above, pricing of a traditional IPO is not subject to limitations similar to the Pricing Range Limitation for a Direct Listing with a Capital Raise, which could make companies reluctant to use this alternative method of going public despite its expected potential benefits.

Accordingly, Nasdaq proposes to modify the Pricing Range Limitation such that in the case of the Direct Listing with a Capital Raise, such that a security shall not be released for trading by Nasdaq unless the actual price at which the Cross would occur (as defined in Rule 4120(c)(8)(A)(i)) is at or above the price that is 20% below the lowest price of the price range established by the issuer in its effective registration statement and at or below the price that is 20% above the highest price. In other words, Nasdaq would

release the security for trading, provided all other necessary conditions are satisfied, even if the actual price calculated by the Cross is outside the price range established by the issuer in its effective registration statement; provided however that the actual price cannot be more than 20% below the lowest price and more than 20% above the highest price of such range; provided further that the company satisfies the 1933 Act Registration requirements by specifying the quantity of shares registered, as permitted by Securities Act Rule 457, as explained below. In addition, there would be no limitation on releasing the security for trading at a price above the price that is 20% above the highest price of the price range established by the issuer in its effective registration statement if the company has certified to Nasdaq that such offering price would not materially change the company's previous disclosure in its effective registration statement.

Nasdaq believes that this approach is consistent with SEC Rule 430A and question 227.03 of the SEC Staff's Compliance and Disclosure Interpretations, last updated November 6, 2017, which generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.⁶ Nasdaq believes such guidance also allows deviation above the price range beyond the 20% threshold if such change or deviation does not materially change the previous disclosure.

Accordingly, Nasdaq believes that a company listing in connection with a Direct Listing

⁶ Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount. Nasdaq expects that companies selling shares through a Direct Listing with a Capital Raise will register securities by specifying the quantity of shares registered and not a maximum offering amount. See also Compliance & Disclosure Interpretation of Securities Act Rules #227.03 at <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

with a Capital Raise can satisfy the 1933 Act Registration requirements when an auction prices outside of the disclosed price range by using a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) when there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased. Consistent with the Commission's guidance on Rule 430A, Nasdaq proposes to prescribe that this 20% threshold will be calculated using the high end of the price range in the prospectus at the time of effectiveness and may be measured from either the high end (in the case of an increase in the price) or low end (in the case of a decrease in the price) of that range.

Finally, given that, as proposed, there may be a Direct Listing with a Capital Raise that could price outside the price range of the company's effective registration statement and that there may be no upside limit above which the Cross could not proceed, Nasdaq will issue an industry wide trader alert to inform the participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such trader alert whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above, and will caution the market participants about the use of market orders.

Proposed Conforming Changes to Listing Rule IM-5315-2

Listing Rule IM-5315-2 allows a company that has not previously had its common equity securities registered under the Act to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange.

Listing Rule IM-5315-2 provides that in determining whether a company listing in connection with a Direct Listing with a Capital Raise satisfies the Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least \$110 million (or \$100 million, if the company has stockholders' equity of at least \$110 million).

Listing Rule IM-5315-2 further provides that, for this purpose, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.

Because Nasdaq proposes to allow the opening auction to price up to 20% below the lowest price of the price range established by the issuer in its effective registration statement, Nasdaq proposes make a conforming change to Listing Rule IM-5315-2 to provide that the price used to determine such company's compliance with the Market Value of Unrestricted Publicly Held Shares is the price per share equal to the price that is

20% below the lowest price of the price range disclosed by the issuer in its effective registration statement as this is the minimum price at which the company could be listed. Nasdaq will determine that the company has met the applicable bid price and market capitalization requirements based on the same per share price.

Any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements, including the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least \$4.00 at the time of initial listing.⁷

Proposed Conforming Changes to Rules 4753(a)(3) and 4753(b)(2)

Nasdaq proposes to amend Rules 4753(a)(3) and 4753(b)(2) to conform the requirements for disseminating information and establishing the opening price through the Cross in a Direct Listing with a Capital Raise to the proposed amendment to allow the opening action to price as much as 20% below the lowest price of the price range established by the issuer in its effective registration statement.

Specifically, Nasdaq proposes changes to Rules 4753(a)(3) and 4753(b)(2) to make adjustments to the calculation of the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator, in the case of a Direct Listing with a Capital Raise and for how the price at which the Cross will execute. These rules

⁷ See Listing Rules 5315(f)(1), (e)(1) and (2), respectively. Rule 5315(f)(1) requires a security to have: (A) at least 550 total holders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or (B) at least 2,200 total holders; or (C) a minimum of 450 round lot holders and at least 50% of such round lot holders must each hold unrestricted securities with a market value of at least \$2,500.

currently provides that where there are multiple prices that would satisfy the conditions for determining a price, the fourth tie-breaker for a Direct Listing with a Capital Raise is the price that is closest to the lowest price of the price range disclosed by the issuer in its effective registration statement.

To conform these rules to the modification of the Pricing Range Limitation change, as described above, Nasdaq proposes to modify the fourth tie-breaker for a Direct Listing with a Capital Raise, to use the price closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 amendment to modify the Pricing Range Limitation is consistent with the protection of investors because this approach is not substantively different from pricing of an IPO where an issuer is permitted to price outside of the price range disclosed by the issuer in its effective registration statement in accordance with the SEC's guidance, as described above. Specifically, Nasdaq believes that a company listing in connection with a Direct Listing with a Capital Raise can satisfy

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

the 1933 Act Registration requirements when an auction prices outside of the disclosed price range by using a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) when there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased. As a result, Nasdaq will allow the Cross to take place as low as 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement, but no lower, and so this is the minimum price at which the company could be listed. In addition, to better inform investors and market participants, Nasdaq will issue an industry wide trader alert to inform the participants that the auction could price up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. Nasdaq will also indicate in such trader alert whether or not there is an upside limit above which the Cross could not proceed, based on the company's certification, as described above, and will caution the market participants about the use of market orders.

The Commission Staff has already concluded that such pricing is appropriate for a company conducting an initial public offering notwithstanding it being outside of the range stated in an effective registration statement, and investors have become familiar with this approach at least since the Commission Staff last revised Compliance and Disclosure Interpretation 227.03 in January 2009.¹⁰

¹⁰ <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

Nasdaq believes that the proposed amendments to Listing Rule IM-5315-2 and Rules 4573(a)(3) and 4753(b)(2) to conform these rules to the modification of the Pricing Range Limitation is consistent with the protection of investors. These amendments would simply substitute Nasdaq's reliance on the price equal to the lowest price of the price range disclosed by the issuer in its effective registration statement to the price that is 20% below such lowest price. In the case of Listing Rule IM-5315-2, a company listing in connection with a Direct Listing with a Capital Raise would still need to meet all applicable initial listing requirements based on the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement. In the case of the Rules 4573(a)(3) and 4753(b)(2) such price, which is the minimum price at which the Cross will occur, will serve as the fourth tie-breaker where there are multiple prices that would satisfy the conditions for determining the auction price, as described above.

Nasdaq believes that the proposal will also foster competition by eliminating an impediment to companies using a Direct Listing with a Capital Raise, thereby removing potential impediments to free and open markets consistent with Section 6(b)(5) of the Exchange Act while also supporting capital formation.

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 amendments would not impose any burden on competition, but would rather increase competition. Nasdaq believes that allowing listing venues to improve their rules enhances competition among exchanges. Nasdaq also believes that this proposed change will give issuers interested in this pathway to access the capital markets

additional flexibility in becoming a public company, and in that way promote competition among service providers to such companies.

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-2021-045 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-2021-045. 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-2021-045 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

4120. Limit Up-Limit Down Plan and Trading Halts

(a) – (b) No change.

(c) Procedure for Initiating and Terminating a Trading Halt

(1) – (8) No change.

(9) (A) – (B) No change.

(C) Notwithstanding the requirement in paragraph (B) above that the actual price calculated by the Cross must be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement, Nasdaq will also release the security for trading in the following circumstances, provided that the Company satisfies the 1933 Act registration requirements by specifying the quantity of shares registered, as permitted by Securities Act Rule 457:

- (i) if the actual price calculated by the Cross is at or above the price that is 20% below the lowest price and at or below the price that is 20% above the highest price of such price range; or
- (ii) if the actual price calculated by the Cross is at a price above the price that is 20% above the highest price of such price range, provided that the Company has certified to Nasdaq that such price would not materially change the Company's previous disclosure in its effective registration statement.

For purposes of this paragraph (C), the 20% threshold will be calculated using the high end of the price range in the prospectus at the time of effectiveness and will be measured from either the high end (in the case of an increase in the price) or low end (in the case of a decrease in the price) of that range.

(10) No change.

* * * * *

4753. Nasdaq Halt Cross

(a) Definitions.

For the purposes of this rule the term:

(1) – (2) No change.

(3) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) "Current Reference Price" shall mean:

(i) – (iii) No change.

(iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean:

a. – b. No change.

c. In the case of the initial pricing of a security listing under Listing Rule IM-5315-2, the price that is closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement;

d. - f. No change.

Notwithstanding the foregoing, the Order Imbalance Indicator will not include the Current Reference Price if there is a Market Order Imbalance.

(B) – (G) No change.

(4) – (6) No change.

(b) Processing of Nasdaq Halt Cross. For Nasdaq-listed securities that are the subject of a trading halt or pause initiated pursuant to Rule 4120(a)(1), (4), (5), (6), (7) or (11), the Nasdaq Halt Cross shall occur at the time specified by Nasdaq pursuant to Rule 4120, and Market hours trading shall commence when the Nasdaq Halt Cross concludes.

(1) No change.

(2)

(A) – (C) No change.

(D) If more than one price exists under subparagraph (C), the Nasdaq Halt Cross shall occur at:

(i) - (ii) No change.

(iii) In the case of the initial pricing of a security listing under Listing Rule IM-5315-2, the price that is closest to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement;

(iv) - (vi) No change.

(E) No change.

(3) – (4) No change.

(c) – (d) No change.

* * * * *

IM-5315-2. Determination of Price-Based Requirements for Direct Listings with a Capital Raise

As described in Listing Rule IM-5315-1, Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities on Nasdaq. Such companies may list on the Nasdaq Global Select Market without an attendant initial public offering of equity securities by the Company if the Company meets the applicable initial listing requirements and the additional requirements in Listing Rule IM-5315-1.

In addition, in certain cases, a Company that has not previously had its common equity securities registered under the Exchange Act may wish to list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the Company will sell shares itself in the opening auction on the first day of trading on the Exchange in addition to or instead of facilitating sales by selling shareholders. Any such listing is referred to as a “Direct Listing with a Capital Raise” where either: (i) only the Company itself is selling shares in the opening auction on the first day of trading; or (ii) the Company is selling shares and selling shareholders may also sell shares in such opening auction.

In determining whether such a Company satisfies the Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, the Exchange will deem such Company to have met the applicable requirement if the amount of the Company’s Unrestricted Publicly Held Shares before the offering along with the market

value of the shares to be sold by the Company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least \$110 million (or \$100 million, if the Company has stockholders' equity of at least \$110 million).

For this purpose, the Market Value of Unrestricted Publicly Held Shares will be calculated using a price per share equal to the price that is 20% below the lowest price of the price range disclosed by the issuer in its effective registration statement. Nasdaq will determine that the Company has met the applicable bid price and market capitalization requirements based on the same per share price.

Securities qualified for listing under this IM-5315-2 must begin trading on Nasdaq following the initial pricing through the mechanism outlined in Rule 4120(c)(8) and Rule 4753.

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