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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 099

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"/>
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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) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend Rule 5815 regarding the use of a Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel.

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 * Aravind Last Name * Menon

Title * Senior Associate General Counsel

E-mail * aravind.menon@nasdaq.com

Telephone * (301) 978-8416 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/10/2021


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2021.12.10 10:53:01 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SR-NASDAQ-2021-099 19b-4.doc

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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SR-NASDAQ-2021-099 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

SR-NASDAQ-2021-099 Exhibit 5.doc

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 amend Rule 5815 regarding the use of a Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on September 7, 2021. No other action is necessary for the filing of the rule change.

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

Aravind Menon
Senior Associate General Counsel
Nasdaq, Inc.
301-978-8416

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Nasdaq administers a series of rules that govern the initial and continued listing qualifications required of companies listed on the Exchange.³ In the event that a company fails to maintain compliance with the Listing Rules, Nasdaq Listings Qualifications Staff (“Staff”) will issue a notification informing the company of the deficiency. Where allowed by Nasdaq’s rules, Staff’s notification may provide for a cure or compliance period or allow the company to submit a plan of compliance for Staff to review.

However, where a company has previously been deficient with a listing requirement and regained compliance pursuant to an exception (“exception”)⁴ from a continued listing standard granted by an industry Hearings Panel (“Hearings Panel”) pursuant to Rule 5815(c)(1)(A), under certain circumstances, Nasdaq rules do not allow that company a cure or compliance period or the opportunity to submit a plan to regain compliance in the event it incurs another deficiency within one year of regaining compliance with a previous deficiency. Instead, Exchange Rules 5815(d)(4)(A) or (B)

³ See Nasdaq Rules 5300, 5400, and 5500 Series, outlining requirements for companies seeking to conduct an initial listing on Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market, respectively, as well as requirements for continued listing once an initial listing has been completed.

⁴ See Rule 5815(c)(1): When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate: (A) grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted.

apply. Both rules set out a process by which Staff will issue a Delisting Determination⁵ for a company that fails to maintain compliance with one or more listing requirements within one year of having regained compliance with one or more listing requirements pursuant to an exception granted by a Hearings Panel. Once a Delisting Determination letter has been issued to a company pursuant to Rules 5815(d)(4)(A) or 5815(d)(4)(B), the company may then request a hearing before a Hearings Panel to argue in favor of maintaining its Exchange listing. Unless specifically outlined in proposed Rule 5815(d)(4)(C), the process for conducting a review of a Staff Delisting Determination will continue to be governed by Rule 5815.

Rule 5815(d)(4)(A), entitled “Hearings Panel Monitor,” provides a Hearings Panel with discretion to monitor a company for a period of up to one year after the date a company regains compliance with a listing standard if it concludes that there is a likelihood that a company will fail to maintain compliance with one or more listing standards during that period (including requirements with which the company was not previously deficient). During this one-year monitoring period, Staff will monitor the company, to confirm compliance with all listing requirements. While Staff monitors all listed companies for compliance with the Exchange’s listing standards, if Staff identifies a deficiency with any listing requirement for companies that are being monitored under Rule 5815(d)(4)(A), staff may not provide the company with a cure or compliance period, nor the opportunity to submit a plan to regain compliance with the deficiency. Instead, Staff will issue a Delisting Determination for these companies.

⁵ See Rule 5805(h): "Staff Delisting Determination" or "Delisting Determination" is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.

Rule 5815(d)(4)(B) provides that a company that received an exception from a Hearings Panel with respect to the stockholder's equity requirement, periodic filing requirement or a bid price requirement where the company was ineligible for a bid price compliance period under Listing Rule 5810(c)(3)(A)(iii) or (iv), and subsequently regained compliance with the listing requirement that was the subject of the exception, will not be allowed a cure or compliance period or the opportunity to submit a plan of compliance for Staff to review as allowed under Listing Rule 5810(c)(2) if, within one year of regaining compliance, the company subsequently becomes deficient in the same requirement that was the subject of the exception. While limiting the grounds for an immediate Delisting Determination to a recurrence of the initial deficiency in one or more of the three enumerated areas in the rule that gave rise to the previous hearing before the Hearings Panel (i.e. the stockholder's equity requirement, periodic filing requirement or a bid price requirement where the company was ineligible for a bid price compliance period under Listing Rule 5810(c)(3)(A)(iii) or (iv)), Rule 5815(d)(4)(B) also requires Staff to issue a Delisting Determination to the company without providing an opportunity for a cure or compliance period or the opportunity to submit a plan of compliance for Staff to review. While entitled "No Hearings Panel Monitor," the rule amounts to what is in effect a mandatory Hearings Panel Monitor.

The Exchange proposes to amend Rule 5815(d)(4) to clarify the instances under which a Hearings Panel may impose a Panel Monitor and when the implementation of a Panel Monitor is mandatory. In particular, the Exchange proposes to modify, among other changes, the headings to Rules 5815(d)(4)(A) and (B) to "Discretionary" and "Mandatory," respectively, to accurately describe the scope of the Panel's authority to

implement the Panel Monitor.⁶ The Exchange also proposes adding a reference to Rule 5810(c)(3) to clarify that Listings Qualifications Staff will not be permitted to provide a company under a Hearings Panel Monitor with a cure or compliance period after it has received a Delisting Determination. While the original language in both 5815(d)(4)(A) and (B) included language regarding Staff's inability to afford a company under a Hearings Panel Monitor a cure or compliance period, the current rules do not specifically include a reference to Rule 5810(c)(3) itself. The addition of a specific reference to Rule 5810(c)(3) will remove any potential confusion regarding this point.

Rules 5815(d)(4)(A) and (B) each describe the specific procedures for use of a Panel Monitor. Rule 5815(d)(4)(A) states that in the event a company under a Panel Monitor fails to maintain compliance with a listing requirement, the Hearings Department will schedule a new hearing, with the original Hearings Panel or a new panel if the original panel is unavailable. The rule text also notes that the hearing may be oral or written, at the company's election. The text finally notes that the Hearings Panel will consider the company's compliance history when rendering a decision. The Exchange proposes to amend Rule 5815(d)(4)(A) to remove each of these provisions and add them in proposed Rule 5815(d)(4)(C) which will apply to both 5815(d)(4)(A) and (B).

Under the proposed language, in the event a company under a Panel Monitor fails to maintain compliance with any listing standard, Staff will issue a Delisting Determination. The company must then determine if it wishes to seek an appeal from this determination. The proposed rule change will correct the erroneous inclusion of language in the rule requiring the Hearings Department to promptly schedule a hearing

⁶ Staff is not aware of the reason for the original language in Rule 5815(d)(4)(B) stating that that rule would not call for a Panel Monitor.

without first receiving a request for appeal from the company.⁷ The Exchange proposes removing the language regarding whether the hearing will be oral or written and the language noting that the Hearings Panel may consider the company's compliance history when rendering a decision in order to add that language to proposed Rule 5815(d)(4)(C), a new sub-paragraph that will outline procedures applicable to both instances in which a Panel Monitor has been employed. The Exchange also proposes adding a reference to Rule 5810(c)(3) to remove any confusion that may be created by the current Rule 5815(d)(4)(A) and (B) which both reference the Listings Qualifications Department's inability to grant additional time for the Company to regain compliance despite the specified cure or compliance period allowed for under Rule 5810(c)(3).

The Exchange proposes amending Rule 5815(d)(4)(B) to change the heading from "No Hearings Panel Monitor" to "Mandatory Hearings Panel Monitor." Despite the fact that the title is "No Hearings Panel Monitor", the rule itself actually outlines a process that calls for the mandatory use of a Hearings Panel Monitor. The proposed new title will remove any confusion brought about by this language. The proposed rule changes also include adding language to the body of the rule specifically calling for the Hearings Panel to impose a Hearings Panel Monitor for a period of one year from the date the company regained compliance with the stockholders' equity, periodic filing or certain bid price listing standards. The Exchange also proposes adding language that will align the language in both Rules 5815(d)(4)(A) and (B) regarding the inability of Staff to grant the

⁷ Historically the Hearings Department has not immediately scheduled a new hearing for a company under a Panel Monitor that has received a Delisting Determination from Staff. A new hearing would not be scheduled until the company in question had requested an appeal from the Delisting Determination. The proposed rule change will simply codify the existing practice of the Hearings Department.

company a cure or compliance period or submit a plan to regain compliance. Again, the Exchange proposes adding a specific reference to Rule 5810(c)(3) to clarify that Listings Qualifications Staff will not have the ability to provide a Company under a Hearings Panel Monitor subject to a Delisting Determination additional time to regain compliance with respect to any deficiency. While the current rule prohibits such an extension of time, the Exchange thought it prudent to specifically reference Rule 5810(c)(3) to avoid any possible confusion.

The Exchange also proposes removing language currently found in Rules 5815(d)(4)(A) and (B) which outlines the process that will apply to either situation in which a Panel Monitor has been implemented and add this language in Proposed Rule 5815(d)(4)(C).⁸ Specifically, the proposed language will outline how a company may seek an appeal of a Staff Delisting Determination, that the Hearings Department will schedule a hearing with the original Hearings Panel or a new Hearings Panel if the original Hearings Panel is unavailable, that the hearing may be written or oral, and that the Hearings Panel will consider the company's compliance history when rendering its decision. Unless specifically addressed in proposed Rule 5815(d)(4)(C), the procedures

⁸ Rule 5815(c)(4)(B) in its present form includes language regarding a company's ability to request a review by a Hearings Panel and the fact that a company's compliance history will be considered by the Hearings Panel when it renders a decision. Rule 5815(c)(4)(B) does not contain language found in 5815(c)(4)(A) regarding Staff issuing a Delisting Determination and the Hearings Department promptly scheduling a hearing upon a company's failure to maintain compliance with a relevant listing standard during the one-year monitoring period, nor the use of the original or new Hearings Panel nor the ability of the hearing to be in written or oral form, at the company's election. Each of the provisions just outlined will apply to both 5815(c)(4)(A) and (B) through the implementation of proposed Rule 5815(c)(4)(C).

for requesting and preparing for a review by a Hearings Panel will continue to be governed by Rule 5815.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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, by removing any ambiguity as to when a Hearings Panel has the discretion to implement a Hearings Panel Monitor and when the use of a Hearings Panel Monitor is mandatory. The proposed rule will not change the operation of the Hearings Panel Monitor, but will provide clarification as to when a Hearings Panel may impose a Hearings Panel Monitor and when the use of a Hearings Panel Monitor is mandatory under Rule 5815(d)(4)(A) or 5815(d)(4)(B), which are designed to protect investors and the public interest. Under the proposed change to Rule 5815(d)(4)(A), the ability of a Panel to continue to monitor a company's continued compliance for up to one year after the compliance date will remain unchanged during which time the company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. Similarly, under the proposed change to Rule 5815(d)(4)(B), companies

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

that regain compliance with the shareholder equity, periodic filing or certain bid price requirements will continue to be prohibited from submitting a plan of compliance or be afforded a compliance period to cure the deficiency under Listing Rule 5810(c)(2) or (3) within one year of regaining compliance with the listing requirement in question. The rule change will simply clarify that Rule 5815(d)(4)(B) calls for the mandatory use of a Hearings Panel Monitor.

Nasdaq believes that the proposed rule change's clarification of the mandatory nature of the Hearings Panel Monitor when a company has regained compliance with the shareholders' equity, periodic filing or certain bid price rules will promote fair and orderly markets by eliminating confusion. Nasdaq also believes that the alignment of language used in Rules 5815(d)(4)(A) and (B), including creating a new Rule 5815(d)(4)(C), will also eliminate confusion that could arise due to previous differences in the wording between the similar sections and will ensure that all companies that are subject to a Hearings Panel Monitor, whether required by rule or imposed at the discretion of the Hearings Panel, will be treated in the same manner.

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 is not expected to have any impact on competition among listed companies nor on competition between exchanges. The proposed rule change will apply equally to all companies that are subject to Panel Monitors.

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 time.
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-2021-099)

December __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 5815

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 December 10, 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 amend Rule 5815 regarding the use of a Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel.

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 administers a series of rules that govern the initial and continued listing qualifications required of companies listed on the Exchange.³ In the event that a company fails to maintain compliance with the Listing Rules, Nasdaq Listings Qualifications Staff (“Staff”) will issue a notification informing the company of the deficiency. Where allowed by Nasdaq’s rules, Staff’s notification may provide for a cure or compliance period or allow the company to submit a plan of compliance for Staff to review.

However, where a company has previously been deficient with a listing requirement and regained compliance pursuant to an exception (“exception”)⁴ from a

³ See Nasdaq Rules 5300, 5400, and 5500 Series, outlining requirements for companies seeking to conduct an initial listing on Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market, respectively, as well as requirements for continued listing once an initial listing has been completed.

⁴ See Rule 5815(c)(1): When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate: (A) grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted.

continued listing standard granted by an industry Hearings Panel (“Hearings Panel”) pursuant to Rule 5815(c)(1)(A), under certain circumstances, Nasdaq rules do not allow that company a cure or compliance period or the opportunity to submit a plan to regain compliance in the event it incurs another deficiency within one year of regaining compliance with a previous deficiency. Instead, Exchange Rules 5815(d)(4)(A) or (B) apply. Both rules set out a process by which Staff will issue a Delisting Determination⁵ for a company that fails to maintain compliance with one or more listing requirements within one year of having regained compliance with one or more listing requirements pursuant to an exception granted by a Hearings Panel. Once a Delisting Determination letter has been issued to a company pursuant to Rules 5815(d)(4)(A) or 5815(d)(4)(B), the company may then request a hearing before a Hearings Panel to argue in favor of maintaining its Exchange listing. Unless specifically outlined in proposed Rule 5815(d)(4)(C), the process for conducting a review of a Staff Delisting Determination will continue to be governed by Rule 5815.

Rule 5815(d)(4)(A), entitled “Hearings Panel Monitor,” provides a Hearings Panel with discretion to monitor a company for a period of up to one year after the date a company regains compliance with a listing standard if it concludes that there is a likelihood that a company will fail to maintain compliance with one or more listing standards during that period (including requirements with which the company was not previously deficient). During this one-year monitoring period, Staff will monitor the company, to confirm compliance with all listing requirements. While Staff monitors all

⁵ See Rule 5805(h): "Staff Delisting Determination" or "Delisting Determination" is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.

listed companies for compliance with the Exchange's listing standards, if Staff identifies a deficiency with any listing requirement for companies that are being monitored under Rule 5815(d)(4)(A), staff may not provide the company with a cure or compliance period, nor the opportunity to submit a plan to regain compliance with the deficiency. Instead, Staff will issue a Delisting Determination for these companies.

Rule 5815(d)(4)(B) provides that a company that received an exception from a Hearings Panel with respect to the stockholder's equity requirement, periodic filing requirement or a bid price requirement where the company was ineligible for a bid price compliance period under Listing Rule 5810(c)(3)(A)(iii) or (iv), and subsequently regained compliance with the listing requirement that was the subject of the exception, will not be allowed a cure or compliance period or the opportunity to submit a plan of compliance for Staff to review as allowed under Listing Rule 5810(c)(2) if, within one year of regaining compliance, the company subsequently becomes deficient in the same requirement that was the subject of the exception. While limiting the grounds for an immediate Delisting Determination to a recurrence of the initial deficiency in one or more of the three enumerated areas in the rule that gave rise to the previous hearing before the Hearings Panel (i.e. the stockholder's equity requirement, periodic filing requirement or a bid price requirement where the company was ineligible for a bid price compliance period under Listing Rule 5810(c)(3)(A)(iii) or (iv)), Rule 5815(d)(4)(B) also requires Staff to issue a Delisting Determination to the company without providing an opportunity for a cure or compliance period or the opportunity to submit a plan of compliance for Staff to review. While entitled "No Hearings Panel Monitor," the rule amounts to what is in effect a mandatory Hearings Panel Monitor.

The Exchange proposes to amend Rule 5815(d)(4) to clarify the instances under which a Hearings Panel may impose a Panel Monitor and when the implementation of a Panel Monitor is mandatory. In particular, the Exchange proposes to modify, among other changes, the headings to Rules 5815(d)(4)(A) and (B) to “Discretionary” and “Mandatory,” respectively, to accurately describe the scope of the Panel’s authority to implement the Panel Monitor.⁶ The Exchange also proposes adding a reference to Rule 5810(c)(3) to clarify that Listings Qualifications Staff will not be permitted to provide a company under a Hearings Panel Monitor with a cure or compliance period after it has receive a Delisting Determination. While the original language in both 5815(d)(4)(A) and (B) included language regarding Staff’s inability to afford a company under a Hearings Panel Monitor a cure or compliance period, the current rules do not specifically include a reference to Rule 5810(c)(3) itself. The addition of a specific reference to Rule 5810(c)(3) will remove any potential confusion regarding this point.

Rules 5815(d)(4)(A) and (B) each describe the specific procedures for use of a Panel Monitor. Rule 5815(d)(4)(A) states that in the event a company under a Panel Monitor fails to maintain compliance with a listing requirement, the Hearings Department will schedule a new hearing, with the original Hearings Panel or a new panel if the original panel is unavailable. The rule text also notes that the hearing may be oral or written, at the company’s election. The text finally notes that the Hearings Panel will consider the company’s compliance history when rendering a decision. The Exchange proposes to amend Rule 5815(d)(4)(A) to remove each of these provisions and add them in proposed Rule 5815(d)(4)(C) which will apply to both 5815(d)(4)(A) and (B).

⁶ Staff is not aware of the reason for the original language in Rule 5815(d)(4)(B) stating that that rule would not call for a Panel Monitor.

Under the proposed language, in the event a company under a Panel Monitor fails to maintain compliance with any listing standard, Staff will issue a Delisting Determination. The company must then determine if it wishes to seek an appeal from this determination. The proposed rule change will correct the erroneous inclusion of language in the rule requiring the Hearings Department to promptly schedule a hearing without first receiving a request for appeal from the company.⁷ The Exchange proposes removing the language regarding whether the hearing will be oral or written and the language noting that the Hearings Panel may consider the company's compliance history when rendering a decision in order to add that language to proposed Rule 5815(d)(4)(C), a new sub-paragraph that will outline procedures applicable to both instances in which a Panel Monitor has been employed. The Exchange also proposes adding a reference to Rule 5810(c)(3) to remove any confusion that may be created by the current Rule 5815(d)(4)(A) and (B) which both reference the Listings Qualifications Department's inability to grant additional time for the Company to regain compliance despite the specified cure or compliance period allowed for under Rule 5810(c)(3).

The Exchange proposes amending Rule 5815(d)(4)(B) to change the heading from "No Hearings Panel Monitor" to "Mandatory Hearings Panel Monitor." Despite the fact that the title is "No Hearings Panel Monitor", the rule itself actually outlines a process that calls for the mandatory use of a Hearings Panel Monitor. The proposed new title will remove any confusion brought about by this language. The proposed rule changes also

⁷ Historically the Hearings Department has not immediately scheduled a new hearing for a company under a Panel Monitor that has received a Delisting Determination from Staff. A new hearing would not be scheduled until the company in question had requested an appeal from the Delisting Determination. The proposed rule change will simply codify the existing practice of the Hearings Department.

include adding language to the body of the rule specifically calling for the Hearings Panel to impose a Hearings Panel Monitor for a period of one year from the date the company regained compliance with the stockholders' equity, periodic filing or certain bid price listing standards. The Exchange also proposes adding language that will align the language in both Rules 5815(d)(4)(A) and (B) regarding the inability of Staff to grant the company a cure or compliance period or submit a plan to regain compliance. Again, the Exchange proposes adding a specific reference to Rule 5810(c)(3) to clarify that Listings Qualifications Staff will not have the ability to provide a Company under a Hearings Panel Monitor subject to a Delisting Determination additional time to regain compliance with respect to any deficiency. While the current rule prohibits such an extension of time, the Exchange thought it prudent to specifically reference Rule 5810(c)(3) to avoid any possible confusion.

The Exchange also proposes removing language currently found in Rules 5815(d)(4)(A) and (B) which outlines the process that will apply to either situation in which a Panel Monitor has been implemented and add this language in Proposed Rule 5815(d)(4)(C).⁸ Specifically, the proposed language will outline how a company may seek an appeal of a Staff Delisting Determination, that the Hearings Department will

⁸ Rule 5815(c)(4)(B) in its present form includes language regarding a company's ability to request a review by a Hearings Panel and the fact that a company's compliance history will be considered by the Hearings Panel when it renders a decision. Rule 5815(c)(4)(B) does not contain language found in 5815(c)(4)(A) regarding Staff issuing a Delisting Determination and the Hearings Department promptly scheduling a hearing upon a company's failure to maintain compliance with a relevant listing standard during the one-year monitoring period, nor the use of the original or new Hearings Panel nor the ability of the hearing to be in written or oral form, at the company's election. Each of the provisions just outlined will apply to both 5815(c)(4)(A) and (B) through the implementation of proposed Rule 5815(c)(4)(C).

schedule a hearing with the original Hearings Panel or a new Hearings Panel if the original Hearings Panel is unavailable, that the hearing may be written or oral, and that the Hearings Panel will consider the company's compliance history when rendering its decision. Unless specifically addressed in proposed Rule 5815(d)(4)(C), the procedures for requesting and preparing for a review by a Hearings Panel will continue to be governed by Rule 5815.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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, by removing any ambiguity as to when a Hearings Panel has the discretion to implement a Hearings Panel Monitor and when the use of a Hearings Panel Monitor is mandatory. The proposed rule will not change the operation of the Hearings Panel Monitor, but will provide clarification as to when a Hearings Panel may impose a Hearings Panel Monitor and when the use of a Hearings Panel Monitor is mandatory under Rule 5815(d)(4)(A) or 5815(d)(4)(B), which are designed to protect investors and the public interest. Under the proposed change to Rule 5815(d)(4)(A), the ability of a Panel to continue to monitor a company's continued compliance for up to one year after the compliance date will remain unchanged during which time the company will not be permitted to provide the Listing

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. Similarly, under the proposed change to Rule 5815(d)(4)(B), companies that regain compliance with the shareholder equity, periodic filing or certain bid price requirements will continue to be prohibited from submitting a plan of compliance or be afforded a compliance period to cure the deficiency under Listing Rule 5810(c)(2) or (3) within one year of regaining compliance with the listing requirement in question. The rule change will simply clarify that Rule 5815(d)(4)(B) calls for the mandatory use of a Hearings Panel Monitor.

Nasdaq believes that the proposed rule change's clarification of the mandatory nature of the Hearings Panel Monitor when a company has regained compliance with the shareholders' equity, periodic filing or certain bid price rules will promote fair and orderly markets by eliminating confusion. Nasdaq also believes that the alignment of language used in Rules 5815(d)(4)(A) and (B), including creating a new Rule 5815(d)(4)(C), will also eliminate confusion that could arise due to previous differences in the wording between the similar sections and will ensure that all companies that are subject to a Hearings Panel Monitor, whether required by rule or imposed at the discretion of the Hearings Panel, will be treated in the same manner.

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 is not expected to have any impact on competition among

listed companies nor on competition between exchanges. The proposed rule change will apply equally to all companies that are subject to Panel Monitors.

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-2021-099 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-2021-099. 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-2021-099 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 LLC Rules

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The Qualification, Listing and Delisting of Companies

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5815. Review of Staff Determinations by Hearings Panel

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

(a) – (c) No change.

(d) Hearings Panel Procedures

(1) – (3) No change.

(4) Procedures Applicable for Recurring Deficiencies**(A) Discretionary Hearings Panel Monitor**

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under a Hearings Panel M[m]onitor, under this subsection (A), fails any listing standard during the one-year monitoring period, [the Staff will issue a Staff Delisting Determination and the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding] then, notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of

compliance with respect to any deficiency that arises during the one-year monitoring period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency, nor will the company be afforded an applicable cure or compliance period pursuant to Rule 5810(c)(3). Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination.[The Hearings Panel will consider the Company's compliance history when rendering its Decision.]

(B) Mandatory [No] Hearings Panel Monitor

In the case of a Company that has regained compliance with the listing standards where the company was granted an exception by the Hearing Panel for failure [If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company] to maintain certain levels of stockholders' equity, to timely file periodic reports, or with the bid price requirement where the company was ineligible for a compliance period under Rule 5810(c)(3)(A)(iii) or (iv), after having been granted an exception to these continued listing standards by the Hearings Panel, the Hearings Panel will impose a Hearings Panel Monitor for a period of one year from the date the company regains compliance. [and] If, within that one-year monitoring period[of the date the Company regained compliance with such listing standard,] the Listing Qualifications Department finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding Rule 5810(c)(2), [the Listing Qualifications Department will not allow]the Company will not be permitted to provide the Listings Qualifications Department [it] with a plan of compliance [or] with respect to that deficiency and the Listings Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to that deficiency, nor will the company be afforded an applicable cure or compliance period pursuant to Rule 5810(c)(3). Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination[, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision].

(C) Panel Monitor Procedures

If a Company receives a Staff Delisting Determination during a one-year Hearings Panel Monitor under paragraph (d)(4)(A) or (B) of this Rule, the Company may request review by a Hearings Panel. Unless indicated otherwise in this subparagraph (C), the hearing will be conducted in accordance with the procedures outlined in Rule 5815. Upon such a request, the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. The Hearings Panel will consider the Company's compliance history when rendering its Decision. If the

Company does not request review of the Staff Delisting Determination then the Company's securities will be suspended as described in the Staff Delisting Determination.

(5) No change.

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