

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2022 - * 075

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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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"/>
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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 checked="" 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 simplify implementation and compliance tracking of Listing Rules 5605 and 5606

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 * Marsha Last Name * Dixon

Title * Senior Associate General Counsel

E-mail * Marsha.Dixon@nasdaq.com

Telephone * (301) 978-8183 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 12/12/2022


(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: 2022.12.12 12:54:39 -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-2022-075 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-2022-075 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

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SR-NASDAQ-2022-075 Exhibit 5.doc

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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 simplify implementation and compliance tracking of Listing Rules 5605 and 5606, as described further below.

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 of the Exchange (the “Board”). 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:

Marsha Dixon
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8183

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

On December 1, 2020, the Exchange filed with the Commission a proposed rule change to adopt listing rules to advance board diversity and enhance transparency of diversity statistics (“Board Diversity Proposal”).³ On August 6, 2021 (“Approval Date”), the Commission approved the proposal, as amended (“Board Diversity Rules”).⁴

At the time of filing of the Board Diversity Proposal, Nasdaq and listed companies could not know when the proposal would be approved. Since directors typically are elected in connection with the annual shareholder meeting, Nasdaq wanted to assure that listed companies had at least one year from the approval of the rules, or until their next annual meeting, to take necessary actions to satisfy the requirements of the Board Diversity Rules. Therefore, Nasdaq tied the initial compliance deadlines in the Board Diversity Proposal to one year after the approval date.⁵ Specifically, on August 8, 2022 (one year after the Approval Date),⁶ Nasdaq-listed companies became subject to the

³ See Securities Exchange Act Release No. 90574 (December 4, 2020), 85 FR 80472 (SR-NASDAQ-2020-081).

⁴ Securities Exchange Act Release No. 92590 (August 6, 2021), 86 FR 44424 (August 12, 2021) (Approval order). Nasdaq filed an amendment to the proposal on February 26, 2021. See Amendment No. 1, available on the Commission’s website at: <https://www.sec.gov/comments/srnasdaq-2020-081/srnasdaq2020081-8425992-229601.pdf>. Pursuant to Rule 5605(f)(1), “Approval Date” means the date that the Commission issued an order granting the approval of this proposed Rule 5605(f).

⁵ See Rule 5605(f)(1); see also Rule 5605(f)(7) and 5606(e).

⁶ The Approval Date became August 8, 2022 because August 6, 2022 was a Saturday.

first compliance condition: disclosing their Board Diversity Matrix (“Matrix”).⁷

Subsequent compliance conditions were similarly scheduled to take effect starting two or more years from the Approval Date.⁸

Nasdaq has found that this formulation of the compliance deadlines is confusing and unnecessarily complicated. Therefore, Nasdaq now proposes to make technical changes to Rule 5605(f)(3) (Alternative Public Disclosure) and Rule 5605(f)(7) (Effective Dates/Transition) to simplify the implementation of the Board Diversity Rules by eliminating references to the Approval Date and the alternative deadline related to the filing of materials for the company’s annual meeting, and instead requiring compliance by December 31st of the applicable year. Nasdaq is also proposing to amend Rule 5605(f)(3) to provide additional flexibility in how a company can notify Nasdaq about the alternative public disclosure permissible under that rule. Additionally, Nasdaq is proposing a technical amendment to Rule 5605(f)(3) to change an erroneous reference to a non-existent Rule 5606(f)(2)(D).

Effective Dates

Pursuant to Rule 5605(f)(7)(A), Nasdaq currently requires each company listed on The Nasdaq Global Select Market, The Nasdaq Global Market and The Nasdaq Capital Market (including a Company with a smaller board under Rule 5606(f)(2)(D)) to have, or explain why it does not have, at least one Diverse⁹ director by the later of: (i) two

⁷ See Rule 5606.

⁸ See Rule 5605(f)(7).

⁹ Pursuant to Rule 5605(f)(1), “Diverse” means an individual who self-identifies in one or more of the following categories: Female, Underrepresented Minority, or LGBTQ+. “Female” means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.

calendar years after the Approval Date, which is August 7, 2023 or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's annual shareholders meeting during the calendar year of the First Effective Date¹⁰, which can be no later than December 31, 2023. The Exchange is proposing to replace this deadline with December 31, 2023, which is the deadline under the current rule for a company with a December 31st fiscal year-end to hold its annual shareholder meeting during the calendar year of the First Effective Date.

Similarly, pursuant to Rule 5605(f)(7)(B), Nasdaq currently requires all companies listed on The Nasdaq Global Select Market or The Nasdaq Global Market to have, or explain why it does not have, at least two Diverse directors by the later of: (i) four calendar years after the Approval Date ("Second NGS/NGM Effective Date"), which is August 6, 2025 or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's annual shareholders meeting during the calendar year of the Second NGS/NGM Effective Date, which can be no later than December 31, 2025. The Exchange is proposing to replace this deadline with December 31, 2025, which is the deadline under the current rule for a company with a December 31st fiscal year-end to hold its annual shareholder meeting during the calendar year of the Second NGS/NGM Effective Date.

Lastly, Rule 5605(f)(7)(C) currently requires each Company listed on The Nasdaq Capital Market to have, or explain why it does not have, at least two Diverse directors by

¹⁰ The "First Effective Date" is defined as two calendar years after the Approval Date. See Rule 5605(f)(7)(A).

the later of: (i) five calendar years after the Approval Date (“Second NCM Effective Date”), which is August 6, 2026 or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company’s annual shareholders meeting during the calendar year of the Second NCM Effective Date, which is no later than December 31, 2026. The Exchange is proposing to replace this deadline with December 31, 2026, which is the deadline under the current rule for a company with a December 31st fiscal year-end to hold its annual shareholder meeting during the calendar year of the Second NCM Effective Date.

Nasdaq is also proposing to align the proposed December 31st deadlines for Rule 5605(f)(7) with the Rule 5606(f)(3) deadline for companies to explain why they do not meet the diversity objectives of Rule 5606(f)(2). Therefore, Nasdaq is proposing to amend Rule 5606(f)(3) to allow for companies to provide such disclosure on or before December 31st.

Additionally, Rule 5606(e) provides a deadline for a company’s initial Matrix disclosure and requires a company to annually disclose the Matrix thereafter, but the current rule does not provide a specific deadline for subsequent disclosures, other than that such disclosure must be made in the same manner as, and concurrently with, the disclosure required in Rule 5605(f)(3) for those companies that are subject to that provision. Therefore, Nasdaq is proposing to modify Rule 5606(b) to specify the method of disclosure, which is the same as outlined in Rule 5605(f)(3), and the December 31st annual deadline for the required Matrix disclosure.

Nasdaq believes that using December 31st as the applicable deadline for various elements of the diversity objectives of Rule 5605(f) and Matrix disclosure of Rule 5606

aligns these deadlines with the end of the fiscal year for most companies,¹¹ which is also the deadline for those companies to hold their annual meeting under Nasdaq's rules.¹² As such, Nasdaq believes that aligning the deadline for these disclosures with the December 31st deadline for most companies to hold the annual meeting will simplify both compliance and compliance monitoring with these rules.¹³ In that regard, Nasdaq notes that while companies tend to hold their annual meetings at a similar time each year, they are not required to do so, and do not necessarily file their proxies or information statements at the same time each year. Moreover, neither Nasdaq nor investors know ahead of time when a company will file their proxy statements or information statements. Establishing a single deadline for all companies will therefore simplify Nasdaq's ability to review for instances of non-compliance and give investors a final date to expect a company's disclosure.

Notice to Nasdaq

Currently, if a Nasdaq-listed company posts its Matrix disclosure or its explanation for why the company does not satisfy the diverse director objective on its website, then the company must also submit a URL link to the disclosure through the

¹¹ Approximately 80% of Nasdaq-listed companies subject to the rule have a December 31st fiscal year-end.

¹² See Rule 5620 (requiring most listed companies to hold an annual meeting of shareholders no later than one year after the end of the Company's fiscal year-end). Under Rules 5605(f)(3) and 5606(b), companies can include disclosure about why they do not meet the applicable diversity objectives of Rule 5605(f)(2) and the Matrix in the proxy or information statement for their annual meeting.

¹³ Of course, companies will continue to be able to comply earlier than the proposed December 31st deadline.

Nasdaq Listing Center within one business day after posting on the company's website.¹⁴

To provide additional flexibility to companies, Nasdaq is proposing to also allow companies to submit the URL link via e-mail to "drivingdiversity@nasdaq.com".

Nasdaq notes that providing the additional alternative may simplify compliance for companies and will not affect Nasdaq's ability to review for instances of non-compliance.

Technical Changes

Nasdaq is proposing a technical amendment to Rule 5605(f)(3) to change an erroneous reference to a non-existent Rule 5606(f)(2)(D). The reference was intended to be 5605(f)(2)(D). Nasdaq is also proposing to remove Rule 5606(e) since the rule became effective and operative over a year ago and Nasdaq believes the provision is no longer relevant.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁶ in particular, in that the Exchange is organized and has the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members. The Exchange believe the proposal is also consistent with Section 6(b)(5) of the Act,¹⁷ 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

¹⁴ See Rule 5605(f)(3).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(1).

¹⁷ 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general to protect investors and the public interest.

It is consistent with the Act to amend Rule 5605(f)(7) governing the effective dates of the Diverse director objective. When proposing changes to its rulebook, Nasdaq must ensure that the changes remain consistent with other provisions. Presently, companies that opt to publish the alternative public disclosure rather than satisfy the Diverse director objective must do so in the same manner, and concurrently with Rule 5606 – the Matrix disclosure.¹⁸ The proposed amendments to Rule 5605(f)(7) aligns the annual deadline for companies that opt to explain why they do not satisfy the Diverse director objective with the proposed annual deadline for the Matrix. Companies will continue to have the option of publishing the disclosure sooner than the proposed December 31st deadline.

Similarly, the Exchange's proposal to amend its rule requiring Nasdaq-listed companies to publicly disclose board diversity statistics using the Matrix, or a substantially similar format, at Rule 5606(e), is consistent with the Act. Clarifying the date for subsequent Matrix disclosures ensures that all Nasdaq-listed companies will disclose a Matrix during each calendar year. Additionally, proposing December 31st as the deadline each year simplifies compliance and more closely aligns the deadline with the end of the fiscal year for most companies, which is also their deadline to hold an annual meeting. Moreover, this revised formulation provides all Nasdaq-listed companies with the same compliance deadline, which is the same as the latest calendar

¹⁸ See Rule 5605(f)(3) and Rule 5606(b).

date for compliance under the current rule.¹⁹ As discussed above, Companies will continue to have the option of publishing the disclosure sooner than the proposed December 31st deadline. Nasdaq also believes that having the same annual deadline date for all companies will simplify Nasdaq's ability to track non-compliant companies and give investors a final date to expect a company's disclosure.

Additionally, it is consistent with the Act to amend Rule 5605(f)(3) to give companies an additional alternative for submitting the URL link to their disclosures. The additional option of submitting the URL via e-mail simplifies compliance and gives companies flexibility in meeting their requirements. Moreover, there will be no impact on Nasdaq's ability to review for instances of non-compliance.

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. All companies would continue to be required to make the same disclosure of their board-level statistical information and will have the same deadline for that disclosure. Additionally, all companies would be given the same flexibility of alternatively submitting the URL link to their disclosure via e-mail. Similarly, all companies would be given the same maximum amount of time to publish their Matrix and to satisfy the Diverse director objective.

¹⁹ Currently, all Nasdaq-listed companies are required to file an annual proxy or information statement by the end of the company's fiscal year. The end of the fiscal year for most Nasdaq-listed companies is December 31st. Therefore, Nasdaq is proposing to simplify the deadlines by aligning the Board Diversity Rule deadlines with the most company's fiscal year end.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from the proposals, as these proposals are merely intended to assist companies in maintaining compliance with the Board Diversity Rules by providing additional flexibility, clarifying certain provisions, and maintaining consistency among the provisions.

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

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²⁰ of the Act and Rule 19b-4(f)(6) thereunder²¹ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

As discussed above, the proposed changes do not significantly affect the protection of investors or the public interest; instead, they will further the interests of

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

investors and the public by, among other things, clarifying certain provisions, providing greater flexibility for compliance, and aligning the rules in a manner that is consistent and clear for participants to understand. Moreover, the proposed changes will not impose any significant or undue burden on competition to the extent that they serve these purposes. Additionally, none of the proposed deadlines require listed companies to submit the Rule 5605(f) and Rule 5606 disclosures earlier than the current compliance dates.

Furthermore, Rule 19b-4(f)(6)(iii)²² requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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.

²² 17 CFR 240.19b-4(f)(6)(iii).

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-2022-075)

December __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Listing Rules 5605 and 5606

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 12, 2022, 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 simplify implementation and compliance tracking of Listing Rules 5605 and 5606, as described further below.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/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

On December 1, 2020, the Exchange filed with the Commission a proposed rule change to adopt listing rules to advance board diversity and enhance transparency of diversity statistics (“Board Diversity Proposal”).³ On August 6, 2021 (“Approval Date”), the Commission approved the proposal, as amended (“Board Diversity Rules”).⁴

At the time of filing of the Board Diversity Proposal, Nasdaq and listed companies could not know when the proposal would be approved. Since directors typically are elected in connection with the annual shareholder meeting, Nasdaq wanted to assure that listed companies had at least one year from the approval of the rules, or until their next annual meeting, to take necessary actions to satisfy the requirements of

³ See Securities Exchange Act Release No. 90574 (December 4, 2020), 85 FR 80472 (SR-NASDAQ-2020-081).

⁴ Securities Exchange Act Release No. 92590 (August 6, 2021), 86 FR 44424 (August 12, 2021) (Approval order). Nasdaq filed an amendment to the proposal on February 26, 2021. See Amendment No. 1, available on the Commission’s website at: <https://www.sec.gov/comments/srnasdaq-2020-081/srnasdaq2020081-8425992-229601.pdf>. Pursuant to Rule 5605(f)(1), “Approval Date” means the date that the Commission issued an order granting the approval of this proposed Rule 5605(f).

the Board Diversity Rules. Therefore, Nasdaq tied the initial compliance deadlines in the Board Diversity Proposal to one year after the approval date.⁵ Specifically, on August 8, 2022 (one year after the Approval Date),⁶ Nasdaq-listed companies became subject to the first compliance condition: disclosing their Board Diversity Matrix (“Matrix”).⁷ Subsequent compliance conditions were similarly scheduled to take effect starting two or more years from the Approval Date.⁸

Nasdaq has found that this formulation of the compliance deadlines is confusing and unnecessarily complicated. Therefore, Nasdaq now proposes to make technical changes to Rule 5605(f)(3) (Alternative Public Disclosure) and Rule 5605(f)(7) (Effective Dates/Transition) to simplify the implementation of the Board Diversity Rules by eliminating references to the Approval Date and the alternative deadline related to the filing of materials for the company’s annual meeting, and instead requiring compliance by December 31st of the applicable year. Nasdaq is also proposing to amend Rule 5605(f)(3) to provide additional flexibility in how a company can notify Nasdaq about the alternative public disclosure permissible under that rule. Additionally, Nasdaq is proposing a technical amendment to Rule 5605(f)(3) to change an erroneous reference to a non-existent Rule 5606(f)(2)(D).

⁵ See Rule 5605(f)(1); see also Rule 5605(f)(7) and 5606(e).

⁶ The Approval Date became August 8, 2022 because August 6, 2022 was a Saturday.

⁷ See Rule 5606.

⁸ See Rule 5605(f)(7).

Effective Dates

Pursuant to Rule 5605(f)(7)(A), Nasdaq currently requires each company listed on The Nasdaq Global Select Market, The Nasdaq Global Market and The Nasdaq Capital Market (including a Company with a smaller board under Rule 5606(f)(2)(D)) to have, or explain why it does not have, at least one Diverse⁹ director by the later of: (i) two calendar years after the Approval Date, which is August 7, 2023 or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's annual shareholders meeting during the calendar year of the First Effective Date¹⁰, which can be no later than December 31, 2023. The Exchange is proposing to replace this deadline with December 31, 2023, which is the deadline under the current rule for a company with a December 31st fiscal year-end to hold its annual shareholder meeting during the calendar year of the First Effective Date.

Similarly, pursuant to Rule 5605(f)(7)(B), Nasdaq currently requires all companies listed on The Nasdaq Global Select Market or The Nasdaq Global Market to have, or explain why it does not have, at least two Diverse directors by the later of: (i) four calendar years after the Approval Date ("Second NGS/NGM Effective Date"), which is August 6, 2025 or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the

⁹ Pursuant to Rule 5605(f)(1), "Diverse" means an individual who self-identifies in one or more of the following categories: Female, Underrepresented Minority, or LGBTQ+. "Female" means an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

¹⁰ The "First Effective Date" is defined as two calendar years after the Approval Date. See Rule 5605(f)(7)(A).

Company's annual shareholders meeting during the calendar year of the Second NGS/NGM Effective Date, which can be no later than December 31, 2025. The Exchange is proposing to replace this deadline with December 31, 2025, which is the deadline under the current rule for a company with a December 31st fiscal year-end to hold its annual shareholder meeting during the calendar year of the Second NGS/NGM Effective Date.

Lastly, Rule 5605(f)(7)(C) currently requires each Company listed on The Nasdaq Capital Market to have, or explain why it does not have, at least two Diverse directors by the later of: (i) five calendar years after the Approval Date ("Second NCM Effective Date"), which is August 6, 2026 or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's annual shareholders meeting during the calendar year of the Second NCM Effective Date, which is no later than December 31, 2026. The Exchange is proposing to replace this deadline with December 31, 2026, which is the deadline under the current rule for a company with a December 31st fiscal year-end to hold its annual shareholder meeting during the calendar year of the Second NCM Effective Date.

Nasdaq is also proposing to align the proposed December 31st deadlines for Rule 5605(f)(7) with the Rule 5606(f)(3) deadline for companies to explain why they do not meet the diversity objectives of Rule 5606(f)(2). Therefore, Nasdaq is proposing to amend Rule 5606(f)(3) to allow for companies to provide such disclosure on or before December 31st.

Additionally, Rule 5606(e) provides a deadline for a company's initial Matrix disclosure and requires a company to annually disclose the Matrix thereafter, but the

current rule does not provide a specific deadline for subsequent disclosures, other than that such disclosure must be made in the same manner as, and concurrently with, the disclosure required in Rule 5605(f)(3) for those companies that are subject to that provision. Therefore, Nasdaq is proposing to modify Rule 5606(b) to specify the method of disclosure, which is the same as outlined in Rule 5605(f)(3), and the December 31st annual deadline for the required Matrix disclosure.

Nasdaq believes that using December 31st as the applicable deadline for various elements of the diversity objectives of Rule 5605(f) and Matrix disclosure of Rule 5606 aligns these deadlines with the end of the fiscal year for most companies,¹¹ which is also the deadline for those companies to hold their annual meeting under Nasdaq's rules.¹² As such, Nasdaq believes that aligning the deadline for these disclosures with the December 31st deadline for most companies to hold the annual meeting will simplify both compliance and compliance monitoring with these rules.¹³ In that regard, Nasdaq notes that while companies tend to hold their annual meetings at a similar time each year, they are not required to do so, and do not necessarily file their proxies or information statements at the same time each year. Moreover, neither Nasdaq nor investors know ahead of time when a company will file their proxy statements or information statements.

¹¹ Approximately 80% of Nasdaq-listed companies subject to the rule have a December 31st fiscal year-end.

¹² See Rule 5620 (requiring most listed companies to hold an annual meeting of shareholders no later than one year after the end of the Company's fiscal year-end). Under Rules 5605(f)(3) and 5606(b), companies can include disclosure about why they do not meet the applicable diversity objectives of Rule 5605(f)(2) and the Matrix in the proxy or information statement for their annual meeting.

¹³ Of course, companies will continue to be able to comply earlier than the proposed December 31st deadline.

Establishing a single deadline for all companies will therefore simplify Nasdaq's ability to review for instances of non-compliance and give investors a final date to expect a company's disclosure.

Notice to Nasdaq

Currently, if a Nasdaq-listed company posts its Matrix disclosure or its explanation for why the company does not satisfy the diverse director objective on its website, then the company must also submit a URL link to the disclosure through the Nasdaq Listing Center within one business day after posting on the company's website.¹⁴ To provide additional flexibility to companies, Nasdaq is proposing to also allow companies to submit the URL link via e-mail to "drivingdiversity@nasdaq.com". Nasdaq notes that providing the additional alternative may simplify compliance for companies and will not affect Nasdaq's ability to review for instances of non-compliance.

Technical Changes

Nasdaq is proposing a technical amendment to Rule 5605(f)(3) to change an erroneous reference to a non-existent Rule 5606(f)(2)(D). The reference was intended to be 5605(f)(2)(D). Nasdaq is also proposing to remove Rule 5606(e) since the rule became effective and operative over a year ago and Nasdaq believes the provision is no longer relevant.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁶ in particular,

¹⁴ See Rule 5605(f)(3).

¹⁵ 15 U.S.C. 78f(b).

in that the Exchange is organized and has the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its member. The Exchange believe the proposal is also consistent with Section 6(b)(5) of the Act,¹⁷ 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.

It is consistent with the Act to amend Rule 5605(f)(7) governing the effective dates of the Diverse director objective. When proposing changes to its rulebook, Nasdaq must ensure that the changes remain consistent with other provisions. Presently, companies that opt to publish the alternative public disclosure rather than satisfy the Diverse director objective must do so in the same manner, and concurrently with Rule 5606 – the Matrix disclosure.¹⁸ The proposed amendments to Rule 5605(f)(7) aligns the annual deadline for companies that opt to explain why they do not satisfy the Diverse director objective with the proposed annual deadline for the Matrix. Companies will continue to have the option of publishing the disclosure sooner than the proposed December 31st deadline.

Similarly, the Exchange’s proposal to amend its rule requiring Nasdaq-listed companies to publicly disclose board diversity statistics using the Matrix, or a substantially similar format, at Rule 5606(e), is consistent with the Act. Clarifying the

¹⁶ 15 U.S.C. 78f(b)(1).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See Rule 5605(f)(3) and Rule 5606(b).

date for subsequent Matrix disclosures ensures that all Nasdaq-listed companies will disclose a Matrix during each calendar year. Additionally, proposing December 31st as the deadline each year simplifies compliance and more closely aligns the deadline with the end of the fiscal year for most companies, which is also their deadline to hold an annual meeting. Moreover, this revised formulation provides all Nasdaq-listed companies with the same compliance deadline, which is the same as the latest calendar date for compliance under the current rule.¹⁹ As discussed above, Companies will continue to have the option of publishing the disclosure sooner than the proposed December 31st deadline. Nasdaq also believes that having the same annual deadline date for all companies will simplify Nasdaq's ability to track non-compliant companies and give investors a final date to expect a company's disclosure.

Additionally, it is consistent with the Act to amend Rule 5605(f)(3) to give companies an additional alternative for submitting the URL link to their disclosures. The additional option of submitting the URL via e-mail simplifies compliance and gives companies flexibility in meeting their requirements. Moreover, there will be no impact on Nasdaq's ability to review for instances of non-compliance.

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. All companies would continue to be required to make the same disclosure of their

¹⁹ Currently, all Nasdaq-listed companies are required to file an annual proxy or information statement by the end of the company's fiscal year. The end of the fiscal year for most Nasdaq-listed companies is December 31st. Therefore, Nasdaq is proposing to simplify the deadlines by aligning the Board Diversity Rule deadlines with the most company's fiscal year end.

board-level statistical information and will have the same deadline for that disclosure. Additionally, all companies would be given the same flexibility of alternatively submitting the URL link to their disclosure via e-mail. Similarly, all companies would be given the same maximum amount of time to publish their Matrix and to satisfy the Diverse director objective.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from the proposals, as these proposals are merely intended to assist companies in maintaining compliance with the Board Diversity Rules by providing additional flexibility, clarifying certain provisions, and maintaining consistency among the provisions.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2022-075 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-2022-075. 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

proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2022-075 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

* * * * *

Rule 5600. Corporate Governance Requirements

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5605. Board of Directors and Committees

(a) – (e) No change.

(f) Diverse Board Representation

(1) – (2) No change.

(3) Alternative Public Disclosure

If a Company satisfies the requirements of Rule 5605(f)(2) by explaining why it does not meet the applicable diversity objectives of Rule 5605(f)(2), the Company must: (i) specify the requirements of Rule 5605(f)(2) that are applicable; and (ii) explain the reasons why it does not have two Diverse directors (or one Diverse director for Companies subject to Rule 560[6]5(f)(2)(D)). Such disclosure must be provided on or before December 31 either [in advance of the Company's next annual meeting of shareholders]: (a) in any proxy statement or any information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F); or (b) on the Company's website. If the Company provides such disclosure on its website, then the Company must submit such disclosure concurrently with the filing made pursuant to (a) and submit a URL link to the disclosure either through the Nasdaq Listing Center or via an e-mail to drivingdiversity@nasdaq.com, within one business day after such posting.

(4) – (6) No change.

(7) Effective Dates/Transition

(A) Each Company listed on The Nasdaq Global Select Market, The Nasdaq Global Market, and The Nasdaq Capital Market (including a Company with a smaller board under Rule 5606(f)(2)(D)) must have, or explain why it does not have, at least one Diverse director by December 31, 2023 [the later of: (i) two calendar years after the Approval Date (the "First Effective Date"); or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-

F) for the Company's annual shareholders meeting during the calendar year of the First Effective Date].

(B) Each Company listed on The Nasdaq Global Select Market or The Nasdaq Global Market must have, or explain why it does not have, at least two Diverse directors by December 31, 2025[the later of: (i) four calendar years after the Approval Date (the "Second NGS/NGM Effective Date"); or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's annual shareholders meeting during the calendar year of the Second NGS/NGM Effective Date].

(C) Each Company listed on The Nasdaq Capital Market must have, or explain why it does not have, at least two Diverse directors by December 31, 2026[the later of: (i) five calendar years after the Approval Date (the "Second NCM Effective Date") or (ii) the date the Company files its proxy statement or its information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) for the Company's annual shareholders meeting during the calendar year of the Second NCM Effective Date].

(D) - (F) No change.

5606. Board Diversity Disclosure

(a) No change.

(b) The disclosure required by this Rule 5606 must be provided [in the same manner as, and concurrently with, the disclosure required by Rule 5605(f)(3).] on or before December 31 either: (a) in any proxy statement or any information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F); or (b) on the Company's website. If the Company provides such disclosure on its website, then the Company must submit such disclosure concurrently with the filing made pursuant to (a) and submit a URL link to the disclosure either through the Nasdaq Listing Center or via an e-mail to drivingdiversity@nasdaq.com, within one business day after such posting.

(c) – (d) No change.

[(e) This Rule 5606 will be operative one year after the Commission issues an order granting the approval of this proposed Rule 5606 ("Approval Date"). A Company must be in compliance with this Rule 5606 by the later of: (1) one calendar year from the Approval Date ("Effective Date"); or (2) the date the Company files its proxy statement or its information statement for its annual meeting of shareholders (or, if the Company does not file a proxy or information statement, the date it files its Form 10-K or 20-F) during the calendar year of the Effective Date.]

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