SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100461; File No. SR–NASDAQ–2024–029]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Application of Bid Price Compliance Periods

July 3, 2024.

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 June 21, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the application of the bid price compliance periods where a company takes action that causes non-compliance with another listing requirement.

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.

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

Reverse stock splits have the effect of increasing a company's stock price by consolidating the outstanding shares. Companies may effect a reverse stock split to regain compliance with the minimum bid price required by Exchange listing rules (the ''Bid Price Requirement'').[3] The share reduction caused by the reverse stock split results in a proportional reduction in the number of Publicly Held Shares [4] and, depending on how fractional shares are treated, may also reduce the number of holders of the company's securities. As such, implementation of a reverse stock split could trigger non-compliance with other listing rules and start a new deficiency process.[5] Nasdaq believes that this scenario creates confusion for investors around the Company's ability to maintain compliance with the Listing Rules and could negatively impact investor confidence in the market. Accordingly, Nasdaq believes that in such cases the company should not be afforded additional time to regain compliance with that newly created deficiency.

Specifically, Nasdaq is proposing to amend Rule 5810(c)(3)(A) to provide that a company will not be considered to have regained compliance with its Bid Price Requirement if the company takes an action to achieve compliance with that requirement (*e.g.,* a reverse stock split), and that action results in the company's security falling below the numeric threshold for another listing requirement, without regard to any compliance process otherwise available for that listing requirement.

For example, consider a company listed on the Nasdaq Capital Market (''Company A'') that has 1,600,000 Publicly Held Shares. In order to regain compliance with the Bid Price Requirement under Rule 5550(a)(2), Company A effects a reverse stock split at a ratio of 1-for-4. This reverse stock split initially increases Company A's stock price above $1.00. Assuming Company A thereafter maintains a closing bid price above $1.00 for ten (10) consecutive business days, under current Rule 5810(c)(3)(A), Company A will achieve compliance with the Bid Price Requirement at the conclusion of the tenth (10th) consecutive business day.[6] However, in this example, at the same time that the reverse stock split increased Company A's stock price, the 1-for-4 reverse stock split also reduced the number of Publicly Held Shares from 1,600,000 to 400,000, causing Company A to no longer satisfy the minimum number of Publicly Held Shares required to remain listed on the Nasdaq Capital Market.[7] As a result, under these circumstances, the reverse stock split would allow Company A to regain compliance with the Bid Price Requirement of Rule 5550(a)(2) while at the same time causing non-compliance with the minimum Publicly Held Shares requirement of Rule 5550(a)(4). Under Nasdaq's current rules, Nasdaq would notify the company about this new deficiency and the company would be afforded 45 calendar days to submit a plan to regain compliance and could be afforded up to 180 calendar days to regain compliance.[8]

Nasdaq believes that it is not appropriate for a company to receive additional time to cure non-compliance with such newly violated listing standard. Nasdaq is therefore proposing this rule change to prevent companies from benefiting from additional time for the subsequent deficiency that was ultimately caused by the company's non-compliance with the Bid Price Requirement.

Under the proposed amendment, Company A in the example above would continue to be considered non-compliant with the Bid Price Requirement until *both* the new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Each tier of Nasdaq includes a requirement that specified securities maintain a $1.00 minimum bid price. *See, e.g.,* Rule 5550(a)(2) (Primary Equity Security listed on the Nasdaq Capital Market); Rule 5450(a)(1) (Primary Equity Security listed on the Nasdaq Global or Global Select Markets). Upon a company's failure to satisfy the applicable Bid Price Requirement, Rule 5810(3)(A) provides for an automatic compliance period of 180 calendar days for the company to achieve compliance with the Bid Price Requirement. *Cf.* NYSE American Company Guide Section 1003(f)(v), which discusses low selling price issues but does not impose a fixed minimum price requirement nor a timeline for how long a company could remain below $1.00.

[4] Rule 5005(a)(35) defines ''Publicly Held Shares'' as: shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding.

[5] *See, e.g.,* Rules 5550(a)(3) and (4) (requiring 300 public holders and at least 500,000 Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Capital Market) and Rules 5450(a)(2), 5450(b)(1)(B), 5450(b)(2)(B) and 5450(b)(3)(B) (requiring 400 total holders and, depending on other characteristics of the company, either 750,000 or 1.1 million Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Global Market). Upon a company's failure to satisfy the applicable holder or number of Publicly Held Shares requirement, Rule 5810(c)(2)(A) allows the company a 45-calendar day period to provide a plan to regain compliance to Nasdaq Staff and Rule 5810(c)(2)(B) provides that Nasdaq staff may grant an extension of up to 180 calendar days for the company to achieve compliance.

[6] *See* Rule 5810(c)(3)(A) providing that a company achieves compliance during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10-day period as discussed in Rule 5810(c)(3)(H).

[7] The continued listing requirement for publicly held shares on the Nasdaq Capital Market is 500,000 Publicly Held Shares. *See* Rule 5550(a)(4).

[8] *See* Rule 5810(c)(2) and IM–5810–2.

Publicly Held Shares deficiency is cured *and* thereafter the company maintains a $1.00 bid price for a minimum of ten (10) consecutive business days.[9] All of this must be accomplished during the compliance period applicable to the initial Bid Price Requirement deficiency. Thus, the proposed rule would *not* allow Company A to submit a plan to regain compliance with the Publicly Held Shares requirement and would instead require Company A to regain compliance with both rules within the applicable compliance period for the Bid Price Requirement pursuant to Rule 5810(3)(A).

Nasdaq believes the proposed amendment will protect investors and provide additional clarity to companies and market participants by enhancing the quality of a compliance determination following a company's deficiency for failure to comply with the Bid Price Requirement.[10]

2. Statutory Basis

The Exchange believes that its proposed change to Rule 5810(c)(3)(A) is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to protect investors and the public interest. The proposed rule change is designed to enhance Nasdaq's listing standards, thereby strengthening the quality of listed companies and protecting investors. Specifically, the proposal would protect investors by preventing a company from requesting or receiving a compliance determination and communicating to investors that it has regained compliance with the Listing Rules until it also has cured any concerns with numeric listing requirements caused by its actions to cure the initial Bid Price Requirement deficiency.

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 Exchange does not expect that its proposal will have an adverse impact on competition among listed companies because the proposed change will apply equally to all similarly situated companies seeking to regain compliance with the Bid Price Requirement and will confer no relative advantage or disadvantage upon any listed company. Further, the Exchange does not expect that its proposal will have an adverse impact on competition with other listed venues. The market for listing services is extremely competitive and listed companies may freely choose alternative venues for listing. Such other venues will remain free to adopt similar rules, if they view them as advantageous, or to maintain a rulebook with no minimum price requirement to the extent allowed by the Commission.[13] As such, the Exchange does not believe that the proposed rule change will impose an unnecessary or inappropriate burden on competition.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NASDAQ–2024–029 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–2024–029. This file number should be included on the subject line if email 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 website (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–029 and should be submitted on or before July 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

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[9] Nasdaq Staff could exercise its discretion under Rule 5810(c)(3)(H) to extend this 10-day period to up to 20 days.

[10] Nasdaq is considering other changes to the delisting process applicable to companies that are non-compliant with the Bid Price Requirement. Any such changes will be subject to a separate rule filing.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* NYSE American Company Guide Section 1003(f)(v), which discusses low selling price issues but does not impose a fixed minimum price requirement nor a timeline for how long a company could remain below $1.00.

[14] 17 CFR 200.30–3(a)(12).