



DAVID STRANDBERG
ASSOCIATE VICE PRESIDENT
805 KING FARM BOULEVARD
ROCKVILLE, MD 20850

P: [REDACTED]
F: [REDACTED]
E: [REDACTED]

May 18, 2016

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 1 (SR-NASDAQ-2016-013)

Dear Mr. Fields:

NASDAQ filed the above-referenced filing on May 18, 2016.

Sincerely,

A handwritten signature in black ink that reads "D. David Strandberg" with a stylized flourish at the end.

David Strandberg
Associate Vice President

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ Stock Market
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposal to require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies Board of Directors.

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 * David Last Name * Strandberg
 Title * Associate Vice President
 E-mail * [REDACTED]
 Telephone * [REDACTED] Fax [REDACTED]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)
 Executive Vice President and General Counsel

Date 05/18/2016
 By Edward S. Knight
 (Name *)

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

[REDACTED]

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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 require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies’ Board of Directors.

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 December 10, 2015. No other action is necessary for the filing of the rule change.

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

David Strandberg
Associate Vice President
Nasdaq, Inc.
[REDACTED]

¹ 15 U.S.C. 78s(b)(1).

² 17 C.F.R. 240.19b-4.

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

a. Purpose

Nasdaq Rules require listed companies to make public disclosure in several areas. For example, a listed company is required to publicly disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions as well as when non-independent directors serve on a committee that generally requires only independent directors, such as for a controlled company or under exceptional and limited circumstances.³ A listed company is also required to file required periodic reports with the Commission.⁴ A principal purpose of these disclosure requirements is to protect investors and ensure these investors have necessary information to make informed investment and voting decisions.

However, based on press reports and information from market participants, Nasdaq has identified one area where investors may not have complete or timely information. This is when third parties compensate directors in connection with their candidacy for and/or service on company Boards of Directors. This third-party compensation, which may not be publicly disclosed, arises when a shareholder privately offers to compensate nominee directors in connection with those nominees' candidacy or service as directors. These arrangements vary but may include compensating directors based on achieving benchmarks such as an increase in share price over a fixed term.

Nasdaq believes these undisclosed compensation arrangements potentially raise several concerns, including that they may lead to conflicts of interest among directors and

³ See Rules 5250(b)(1), 5615(c)(2), 5605(c)(2)(B), 5605(d)(2)(B) and 5605(e)(3).

⁴ See Rule 5250(c).

call into question the directors' ability to satisfy their fiduciary duties. These arrangements may also tend to promote a focus on short-term results at the expense of long-term value creation. Nasdaq believes that enhancing transparency around third-party board compensation would help address these concerns and would benefit investors by making available information potentially relevant to investment and voting decisions. Nasdaq further believes that the proposed disclosure would not create meaningful burdens on directors or those making these payments nor on the companies required to make the disclosure.

Accordingly, Nasdaq is proposing to adopt Rule 5250(b)(3) to require listed companies⁵ to publicly disclose on or through the companies' website or proxy statement for any shareholders' meeting at which directors are elected (or, if they do not file proxy statements, in Form 10-K or Form 20-F),⁶ the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the company) that provide for compensation or other payment in connection with that person's candidacy or service as a director.⁷ A company may make this disclosure through its website by hyperlinking to another website, which must be continuously accessible. If that website subsequently becomes inaccessible or that hyperlink

⁵ Pursuant to Listing Rule 5615(a)(3), a foreign private issuer may follow home country practice in lieu of the requirements of the proposed rule.

⁶ This disclosure method is consistent with the method under Listing Rule 5605(d)(2)(B) for disclosure of the appointment of a non-independent compensation committee member under exceptional and limited circumstances.

⁷ The proposal is intended to apply to agreements and arrangements whether or not the right to nominate a director legally belongs to the third party. See IM 5605-7 (Independent Director Oversight of Director Nominations).

inoperable, the company must promptly restore it or make other disclosure in accordance with this proposed rule.

Companies listed at the time this proposed rule becomes effective or initially listed thereafter must disclose all agreements and arrangements in accordance with this proposed rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy statements, no later than when the Company files next Form 10-K or Form 20-F). Thereafter, a listed company must make this disclosure at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement. The proposed rule does not require the initial disclosure of newly entered into agreements or arrangements in addition to the disclosure to be made pursuant to proposed Rule 5250(b)(3)(A) on or through the Company's website or in the proxy statement for the next shareholder meeting at which directors are elected.

If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) of the proposed rule but was not, the Company must promptly make the required disclosure, and annually thereafter, in accordance with this proposed rule. In addition, for agreements and arrangements not required to be disclosed in accordance with subparagraph (A)(ii) of the proposed rule, such as employment with a third party that is otherwise disclosed, but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the company, only the difference

between the new and previous level of compensation or other payment obligation need be disclosed.

The proposed rule is intended to be construed broadly and apply to agreements and arrangements that provide for compensation and other payment obligations, such as health insurance premiums or indemnification, made in connection with a person's candidacy or service as a director. Further, at a minimum, the disclosure should identify the parties to and the material terms of the agreement or arrangement. To allow listed companies affected by the proposed rule a transition period, the rule will be effective on June 30, 2016.

In recognition of circumstances that do not raise the concerns noted above or where such disclosure may be duplicative, the proposed rule would not apply to agreements and arrangements that existed before the nominee's candidacy and have been otherwise publicly disclosed, for example, pursuant to Items 402(a)(2) or 402(k) of Regulation S-K or in a director's biographical summary included in periodic reports filed with the Commission. An example of an agreement or arrangement falling under this exception is a director or a nominee for director being employed by a private equity or venture capital firm, or a fund established by such firm, where employees are expected to and routinely serve on the boards of the fund's portfolio companies and their remuneration is not materially affected by such service. If such a director or a nominee's remuneration is materially increased in connection with such person's candidacy or service as a director of the company, only the difference between the new and the previous level of compensation needs to be disclosed under the proposed rule.

Additionally, the proposed rule would not apply to agreements and arrangements that relate only to reimbursement of expenses incurred in connection with candidacy as a director, whether or not such reimbursement arrangement has been publicly disclosed. Further, Commission Rule 14a-12(c) subjects persons soliciting proxies in opposition to companies' proxy solicitation to certain disclosure requirements of Schedule 14A of the Act. The proposed rule relieves the company from the disclosure requirements of the proposed Rule 5250(b)(3)(A) where an agreement or arrangement for a director or a nominee has been disclosed under Item 5(b) of Schedule 14A of the Act in the current fiscal year. However, such an agreement or arrangement is subject to the continuous disclosure requirements of the proposed Rule 5250(b)(3)(B) on an annual basis. Similarly, a Company that provides disclosure in the current fiscal year pursuant to the requirement in Item 5.02(d)(2) of Form 8-K requiring "a brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director" – would not have to make separate disclosure under the proposed Rule 5250(b)(3)(A). Such disclosure under Commission rules, however, shall not relieve a company of its ongoing obligation under the proposed Rule 5250(b)(3)(B) to make annual disclosure.

In recognition that a company, despite reasonable efforts, may not be able to identify all such agreements and arrangements, the proposed rule provides that a company shall not be deficient with the proposed requirement if it has undertaken reasonable efforts to identify all such agreements and arrangements, including by asking each director or nominee in a manner designed to allow timely disclosure, and upon discovery of a non-disclosed arrangement, promptly makes the required disclosure by

filing a Form 8-K or 6-K, where required by Commission rules, or by issuing a press release.

In cases where a company is considered deficient, the company must provide a plan to regain compliance. Consistent with deficiencies from most other rules that allow a company to submit a plan to regain compliance,⁸ Nasdaq proposes to allow companies deficient under the proposed rule 45 calendar days to submit a plan sufficient to satisfy Nasdaq staff that the company has adopted processes and procedures designed to identify and disclose relevant agreements and arrangements in the future. If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.⁹

⁸ Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

⁹ Separate from this proposed rule change, Nasdaq is surveying interested parties as to whether Nasdaq should propose additional requirements surrounding directors and candidates that receive third party payments, including whether such directors should be prohibited from being considered independent under Nasdaq rules or prohibited from serving on the board altogether. Nasdaq has made no decision about whether to propose additional rules. If Nasdaq does determine to propose additional rules, any proposal would be subject to a separate rule filing. Listing Rule 5605(a)(2) excludes from the definition of Independent Director any “individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.”

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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. The proposal accomplishes these objectives by enhancing transparency around third party compensation and payments made in connection with board service. The Exchange believes such disclosure has several benefits: it would provide information to investors to help them make meaningful investing and voting decisions. It would also address potential concerns that undisclosed third party compensation arrangements may lead to conflicts of interest among directors and call into question their ability to satisfy fiduciary duties.

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, as amended. The proposed rule to require listed companies to disclose third party compensation and payments in connection with board service is intended to provide meaningful information to investors and to address potential concerns with undisclosed compensation schemes without creating unnecessary burdens on directors or those making the payments.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Further, the proposed rule change is intended to promote transparency and protect investors and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule 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-2016-013)

May __, 2016

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on May 18, 2016, 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 require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies' Board of Directors.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, 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 Rules require listed companies to make public disclosure in several areas. For example, a listed company is required to publicly disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions as well as when non-independent directors serve on a committee that generally requires only independent directors, such as for a controlled company or under exceptional and limited circumstances.³ A listed company is also required to file required periodic reports with the Commission.⁴ A principal purpose of these disclosure requirements is to protect investors and ensure these investors have necessary information to make informed investment and voting decisions.

However, based on press reports and information from market participants, Nasdaq has identified one area where investors may not have complete or timely information. This is when third parties compensate directors in connection with their

³ See Rules 5250(b)(1), 5615(c)(2), 5605(c)(2)(B), 5605(d)(2)(B) and 5605(e)(3).

⁴ See Rule 5250(c).

candidacy for and/or service on company Boards of Directors. This third-party compensation, which may not be publicly disclosed, arises when a shareholder privately offers to compensate nominee directors in connection with those nominees' candidacy or service as directors. These arrangements vary but may include compensating directors based on achieving benchmarks such as an increase in share price over a fixed term.

Nasdaq believes these undisclosed compensation arrangements potentially raise several concerns, including that they may lead to conflicts of interest among directors and call into question the directors' ability to satisfy their fiduciary duties. These arrangements may also tend to promote a focus on short-term results at the expense of long-term value creation. Nasdaq believes that enhancing transparency around third-party board compensation would help address these concerns and would benefit investors by making available information potentially relevant to investment and voting decisions. Nasdaq further believes that the proposed disclosure would not create meaningful burdens on directors or those making these payments nor on the companies required to make the disclosure.

Accordingly, Nasdaq is proposing to adopt Rule 5250(b)(3) to require listed companies⁵ to publicly disclose on or through the companies' website or proxy statement for any shareholders' meeting at which directors are elected (or, if they do not file proxy statements, in Form 10-K or Form 20-F),⁶ the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the

⁵ Pursuant to Listing Rule 5615(a)(3), a foreign private issuer may follow home country practice in lieu of the requirements of the proposed rule.

⁶ This disclosure method is consistent with the method under Listing Rule 5605(d)(2)(B) for disclosure of the appointment of a non-independent compensation committee member under exceptional and limited circumstances.

company) that provide for compensation or other payment in connection with that person's candidacy or service as a director.⁷ A company may make this disclosure through its website by hyperlinking to another website, which must be continuously accessible. If that website subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this proposed rule.

Companies listed at the time this proposed rule becomes effective or initially listed thereafter must disclose all agreements and arrangements in accordance with this proposed rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy statements, no later than when the Company files next Form 10-K or Form 20-F). Thereafter, a listed company must make this disclosure at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement. The proposed rule does not require the initial disclosure of newly entered into agreements or arrangements in addition to the disclosure to be made pursuant to proposed Rule 5250(b)(3)(A) on or through the Company's website or in the proxy statement for the next shareholder meeting at which directors are elected.

If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) of the proposed rule but was not, the Company must promptly make the required disclosure, and annually thereafter, in accordance with

⁷ The proposal is intended to apply to agreements and arrangements whether or not the right to nominate a director legally belongs to the third party. See IM 5605-7 (Independent Director Oversight of Director Nominations).

this proposed rule. In addition, for agreements and arrangements not required to be disclosed in accordance with subparagraph (A)(ii) of the proposed rule, such as employment with a third party that is otherwise disclosed, but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the company, only the difference between the new and previous level of compensation or other payment obligation need be disclosed.

The proposed rule is intended to be construed broadly and apply to agreements and arrangements that provide for compensation and other payment obligations, such as health insurance premiums or indemnification, made in connection with a person's candidacy or service as a director. Further, at a minimum, the disclosure should identify the parties to and the material terms of the agreement or arrangement. To allow listed companies affected by the proposed rule a transition period, the rule will be effective on June 30, 2016.

In recognition of circumstances that do not raise the concerns noted above or where such disclosure may be duplicative, the proposed rule would not apply to agreements and arrangements that existed before the nominee's candidacy and have been otherwise publicly disclosed, for example, pursuant to Items 402(a)(2) or 402(k) of Regulation S-K or in a director's biographical summary included in periodic reports filed with the Commission. An example of an agreement or arrangement falling under this exception is a director or a nominee for director being employed by a private equity or venture capital firm, or a fund established by such firm, where employees are expected to and routinely serve on the boards of the fund's portfolio companies and their

remuneration is not materially affected by such service. If such a director or a nominee's remuneration is materially increased in connection with such person's candidacy or service as a director of the company, only the difference between the new and the previous level of compensation needs to be disclosed under the proposed rule.

Additionally, the proposed rule would not apply to agreements and arrangements that relate only to reimbursement of expenses incurred in connection with candidacy as a director, whether or not such reimbursement arrangement has been publicly disclosed. Further, Commission Rule 14a-12(c) subjects persons soliciting proxies in opposition to companies' proxy solicitation to certain disclosure requirements of Schedule 14A of the Act. The proposed rule relieves the company from the disclosure requirements of the proposed Rule 5250(b)(3)(A) where an agreement or arrangement for a director or a nominee has been disclosed under Item 5(b) of Schedule 14A of the Act in the current fiscal year. However, such an agreement or arrangement is subject to the continuous disclosure requirements of the proposed Rule 5250(b)(3)(B) on an annual basis. Similarly, a Company that provides disclosure in the current fiscal year pursuant to the requirement in Item 5.02(d)(2) of Form 8-K requiring "a brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director" – would not have to make separate disclosure under the proposed Rule 5250(b)(3)(A). Such disclosure under Commission rules, however, shall not relieve a company of its ongoing obligation under the proposed Rule 5250(b)(3)(B) to make annual disclosure.

In recognition that a company, despite reasonable efforts, may not be able to identify all such agreements and arrangements, the proposed rule provides that a

company shall not be deficient with the proposed requirement if it has undertaken reasonable efforts to identify all such agreements and arrangements, including by asking each director or nominee in a manner designed to allow timely disclosure, and upon discovery of a non-disclosed arrangement, promptly makes the required disclosure by filing a Form 8-K or 6-K, where required by Commission rules, or by issuing a press release.

In cases where a company is considered deficient, the company must provide a plan to regain compliance. Consistent with deficiencies from most other rules that allow a company to submit a plan to regain compliance,⁸ Nasdaq proposes to allow companies deficient under the proposed rule 45 calendar days to submit a plan sufficient to satisfy Nasdaq staff that the company has adopted processes and procedures designed to identify and disclose relevant agreements and arrangements in the future. If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.⁹

⁸ Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

⁹ Separate from this proposed rule change, Nasdaq is surveying interested parties as to whether Nasdaq should propose additional requirements surrounding directors and candidates that receive third party payments, including whether such directors should be prohibited from being considered independent under Nasdaq rules or prohibited from serving on the board altogether. Nasdaq has made no decision about whether to propose additional rules. If Nasdaq does determine to propose additional rules, any proposal would be subject to a separate rule filing. Listing Rule 5605(a)(2) excludes from the definition of Independent Director any “individual having a relationship which, in the opinion of the Company's board of

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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. The proposal accomplishes these objectives by enhancing transparency around third party compensation and payments made in connection with board service. The Exchange believes such disclosure has several benefits: it would provide information to investors to help them make meaningful investing and voting decisions. It would also address potential concerns that undisclosed third party compensation arrangements may lead to conflicts of interest among directors and call into question their ability to satisfy fiduciary duties.

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, as amended. The proposed rule to require listed companies to disclose third party compensation and payments in connection with board service is intended to provide meaningful information to investors and to address potential concerns with undisclosed

directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.”

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

compensation schemes without creating unnecessary burdens on directors or those making the payments.

Further, the proposed rule change is intended to promote transparency and protect investors and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

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-2016-013 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-013. 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-2016-013 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.¹²

Robert W. Errett
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.

* * * * *

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) No change.

(b) Obligation to Make Public Disclosure

(1) – (2) No change.

(3) Disclosure of Director and Nominee Compensation

The provisions of this Rule 5250(b)(3) shall be effective on June 30, 2016. Companies listed at that time or initially listed thereafter must disclose all agreements and arrangements in accordance with this rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy statements, no later than when the Company files next Form 10-K or Form 20-F).

(A) A Company shall disclose either on or through the Company's website or in the proxy statement for the next shareholder meeting at which directors are elected (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the material terms of all agreements and arrangements between any director or nominee for director, and any person or entity other than the Company, which provide for compensation or other payment in connection with such person's candidacy or service as a director of the Company. A Company need not disclose pursuant to this rule agreements and arrangements that: (i) relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and are otherwise publicly disclosed in a proxy statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year. Disclosure pursuant to Commission rule shall not relieve a Company of its annual obligation to make disclosure under subparagraph (B).

(B) A Company must make the disclosure required in subparagraph (A) at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.

(C) If a Company discovers an agreement or arrangement that should have been disclosed pursuant to subparagraph (A) but was not, the Company must promptly

make the required disclosure by filing a Form 8-K or 6-K, where required by SEC rules, or by issuing a press release.

(D) A Company shall not be considered deficient with this paragraph for purposes of Rule 5810 if the Company has undertaken reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the disclosure required by subparagraph (C) promptly upon discovery of the agreement or arrangement. In all other cases, the Company must submit a plan sufficient to satisfy Nasdaq staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.

(c) – (f) No change.

IM-5250-1. Disclosure of Material Information - No change.

IM-5250-2. Obligation to Make Public Disclosure

Rule 5250(b)(3) requires listed companies to publicly disclose the material terms of all agreements and arrangements between any director or nominee and any person or entity (other than the Company) that provide for compensation or other payment in connection with that person's candidacy or service as a director. This rule is intended to be construed broadly. Subject to exceptions provided in the rule, the disclosure must be made on or through the Company's website or in the proxy statement for the next shareholder meeting at which directors are elected in order to provide shareholders with information and sufficient time to help them make meaningful voting decisions.

Rule 5250(b)(3) does not require the initial disclosure of newly entered into agreements or arrangements in addition to the disclosure to be made pursuant to Rule 5250(b)(3)(A) on or through the Company's website or in the proxy statement for the next shareholder meeting at which directors are elected. In addition, for agreements and arrangements not required to be disclosed in accordance with Rule 5250(b)(3)(A)(ii) but where the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the Company, only the difference between the new and previous level of compensation or other payment obligation needs be disclosed.

* * * * *

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

IM-5810-1 No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through [(iv)](v) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through [(iii)](iv) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection [(iv)](v) must be provided generally within 60 calendar days. If a Company that is not subject to the All-Inclusive Annual Listing Fee described in IM-5910-1 or IM-5920-1 submits a plan of compliance under subsections (i), (iii), [or](iv), or (v), it must also pay a compliance plan review fee of \$5,000. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance, but does not need to also pay the compliance plan review fee.

(i) – (iii) No change.

(iv) failure to make the disclosure required by Rule 5250(b)(3).

(v) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

IM-5810-2. No change.

(B) – (G) No change.

(3) No change.

(d) No change.

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