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November 26, 2019

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 1 (SR-NASDAQ-2019-059)

Dear Ms. Countryman:

The Nasdaq Stock Market LLC filed the above-referenced filing on November 26, 2019.

Sincerely,

A handwritten signature in black ink that reads 'Nikolai Utochkin'.

Nikolai Utochkin
Counsel – Listing and Governance

Required fields are shown with yellow backgrounds and asterisks.

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

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

Description

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

A proposal to adopt requirements for the Nasdaq Capital and Global Markets applicable to Direct Listings.

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 * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

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

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

(Title *)

Date

By

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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

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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 adopt requirements for the Nasdaq Capital and Global Markets applicable to Direct Listings. This Amendment No. 1 supersedes the original filing in its entirety.

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 July 16, 2019. No other action is necessary for the filing of the rule change.

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

Nikolai Utochkin
Counsel – Listing and Governance
Nasdaq, Inc.
[REDACTED]

or

Arnold Golub
Deputy General Counsel
Nasdaq, Inc.
[REDACTED]

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2019-059,³ which was published for comment by the Commission on August 28, 2019, in order to: (i) specify that to constitute compelling evidence under the proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3), a tender offer by the company or an unaffiliated third party needs to be for cash and be commenced and completed within the prior six months; (ii) clarify that for affiliate participation to be considered de minimis under the proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3), the transaction must comply with the requirements of Listing Rules IM-5405-1(a)(3)(ii)(C) or IM-5505-1(a)(3)(ii)(C) and the company must certify such compliance to Nasdaq in writing; (iii) update the preamble to proposed Listing Rules IM-5405-1 and IM-5505-1 to clarify that this Interpretative Material describes when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global or Capital Market, where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements; (iv) require that the examples of transactions that could constitute compelling evidence for purposes of Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3) are exhaustive; (v) clarify that references to third parties mean unaffiliated third parties; and (vi) make minor technical changes to improve the structure, clarity and readability of the proposed rules.

³ Securities Exchange Act Release No. 86792 (August 28, 2019), 84 FR 46580 (September 4, 2019) (the "Initial Proposal").

For purposes of these proposed rule changes, all references to the term “affiliate” and derivatives of this term rely on the definition of “affiliate” in SEC Rule 10A-3(e). *See* 17 CFR § 240.10A-3(e). This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq recognizes that some companies, whose stock was not previously registered under the Exchange Act, that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. Nasdaq previously adopted requirements applicable to such Direct Listings listing on the Nasdaq Global Select Market⁴ and now proposes to adopt requirements for the Nasdaq Global and Capital Markets.

The proposed Listing Rules IM-5405-1 and IM-5505-1 describe when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global and Capital Markets, where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the

⁴ Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (SR-NASDAQ-2019-001) (the “2019 Rule Change”). Nasdaq proposes to insert the defined term “Direct Listing” into the existing language of Listing Rule IM-5315-1 as follows: “Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities on Nasdaq (a “Direct Listing”).” Nasdaq also proposes to update the title of Listing Rule IM-5315-1 without further modification to that rule section. Nasdaq intends to submit a subsequent rule filing to adopt a global definition for Direct Listings that will include the substantive provisions from the preamble to Listing Rule IM-5315-1 and proposed Listing Rules IM-5405-1 and IM-5505-1.

resale of shares sold by the company in earlier private placements, set forth the additional listing requirements for Direct Listings on the Nasdaq Global and Capital Markets and describe how the Exchange will calculate compliance with the Nasdaq Global and Capital Markets initial listing standards related to the requirements based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares.⁵

Nasdaq also proposes to modify Nasdaq Rule 4753 to clarify that the securities listed pursuant to Listing Rules IM-5405-1 and IM-5505-1 can use the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”).

Finally, the proposed Listing Rules IM-5405-1 and IM-5505-1 require that such securities must begin trading on Nasdaq following the initial pricing through the IPO Cross. To allow such initial pricing, the company must: (i) in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering; and (ii) list upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

⁵ On March 21, 2019, Nasdaq filed with the Commission a proposed rule change to revise the initial listing standards related to liquidity that, among other changes, added three new definitions to define “restricted securities,” “unrestricted publicly held shares” and “unrestricted securities.” This rule change was approved by the Commission effective July 5, 2019 and operative August 5, 2019. See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019).

Calculation of Price-based Initial Listing Requirements

Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. To provide transparency to the initial listing process, the Exchange proposes to adopt Listing Rules IM-5405-1 and IM-5505-1, which will state how the Exchange calculates the initial listing requirements based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held shares for a Direct Listing on the Nasdaq Global and Capital Markets.⁶

Unless Nasdaq determines to accept evidence of the security's price based on a tender offer for cash by the company or an unaffiliated third party, a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company, as described in more detail below, under Listing Rules IM-5405-1 and IM-5505-1, Nasdaq would generally require that a company listing on the Nasdaq Global and Capital Markets through a Direct Listing provide Nasdaq an independent third-party valuation (a "Valuation"), as defined in Listing Rule IM-5315-1, that meets the requirements of Listing Rules IM-5315-1(e) and (f).

Under Listing Rule IM-5315-1(e), any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration

⁶ Substantive provisions of Listing Rules IM-5405-1 and IM-5505-1 are identical.

statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement.

Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.⁷

Under Listing Rule IM-5315-1(f), Nasdaq requires that a valuation agent will not be considered independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in

⁷ In addition, under Listing Rule 5101 Nasdaq has broad discretionary authority to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.

- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

For a security that has had sustained recent trading in a Private Placement Market⁸ prior to listing, Nasdaq will determine a company's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held shares based on the lesser of: (i) the value calculable based on the Valuation⁹ and (ii) the value calculable based on the most recent trading price in a Private Placement Market.¹⁰

Under Proposed Listing Rules IM-5405-1(a)(5) and IM-5505-1(a)(5), to determine compliance with the price-based requirements and suitability for listing on the Exchange, Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that

⁸ Nasdaq defines "Private Placement Market" in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

⁹ As described in more detail below, under proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3), in lieu of a Valuation, Nasdaq may accept certain other compelling evidence of the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares.

¹⁰ Proposed Listing Rules IM-5405-1(a)(1) and IM-5505-1(a)(1).

several month period evidencing a market value in excess of Nasdaq's market value requirement. Nasdaq believes that the price from such sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

Alternatively, in the absence of any recent sustained trading in a Private Placement Market over a period of several months,¹¹ to determine that such company has met the applicable price-based initial listing requirements, Nasdaq proposes to require, under proposed Listing Rules IM-5405-1(a)(2) and IM-5505-1(a)(2) that a Valuation must evidence a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceed 200% of the otherwise applicable requirement. Thus, to list on the Nasdaq Global Market, the Valuation must evidence a minimum bid price of at least \$8 per share; Market Value of Unrestricted Publicly Held Shares of \$16 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$36 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$40 million and Market Value of Listed Securities of \$150 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$40 million under the Total Assets/Total Revenue Standard.¹²

¹¹ Limited trading in the Private Placement Market may not be sufficient for the Exchange to reach a conclusion that the company meets the applicable price-based requirements.

¹² See Listing Rules 5405(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million and Market Value of Listed Securities of \$75 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard.

To list on the Nasdaq Capital Market, the Valuation must generally evidence a minimum bid price of at least \$8 per share;¹³ Market Value of Unrestricted Publicly Held Shares of \$10 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$30 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$30 million and Market Value of Listed Securities of \$100 million under the Market Value Standard.¹⁴

Nasdaq believes that some companies, that are clearly large enough to be suitable for listing on the Exchange, do not have sustained trading in their securities on a Private Placement Market prior to going public. Nasdaq believes that for these companies a recent Valuation indicating that the company exceeds 200% of the otherwise applicable price-based requirement will give a significant degree of comfort that the company will meet the applicable initial listing price-based requirements upon commencement of trading. Nasdaq believes that it is unlikely that any Valuation would reach a conclusion that is incorrect to the degree necessary for a company using this provision to fail to meet the applicable initial listing requirement upon listing, in particular because any Valuation used for this purpose must be provided by a valuation agent that meets the independence

¹³ A company listing equity securities under Listing Rule IM-5505-1 is not eligible to rely on the reduced bid price requirement of Listing Rule 5505(a)(1)(B) given that such securities do not trade in a continuous market prior to listing while Listing Rule 5505(a)(1)(B) requires that such security “must meet the applicable closing price requirement for at least five consecutive business days prior to approval.”

¹⁴ See Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million and Market Value of Listed Securities of \$50 million under the Market Value Standard.

requirements of proposed Listing Rule IM-5315-1(f) and has significant experience and demonstrable competence in the provision of such valuations, as required by Listing Rule IM-5315-1(e).

Nasdaq further believes that in certain unique circumstances a company that is clearly large enough to be suitable for listing on the Exchange may provide other compelling evidence, subject to limitations described below, to demonstrate that it meets all applicable price-based requirements without a Valuation. In such cases, Nasdaq under Proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3) may (but is not required to) accept other compelling evidence of the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares, including, a tender offer for cash by the company or an unaffiliated third party, a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company.¹⁵

In order to be considered compelling evidence of the company's value, Nasdaq proposes to require that such transactions were recent, completed (and, in the case of a tender offer, commenced and completed) within the prior six months, and substantial in size, representing sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement.¹⁶ In addition, to help assure that such transactions

¹⁵ See also, footnote 7 above.

¹⁶ Listing Rule 5405(b) generally requires, for a company listing on the Nasdaq Global Market, Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; Market Value of Unrestricted Publicly Held Shares of \$20 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard. Listing Rule 5505(b) generally requires, for a company listing

adequately support the value of the company, Nasdaq proposes to require that such transactions cannot involve affiliates of the company unless such participation is de minimis. To be considered de minimis, the transaction must comply with the requirement that and the company must certify to Nasdaq in writing that: any affiliate's participation must be less than 5% of the transaction (and all affiliates' participation collectively must be less than 10% of the transaction), such participation must have been suggested or required by unaffiliated investors and the affiliates must not have participated in negotiating the economic terms of the transaction. The examples of transactions that could constitute compelling evidence for purposes of Listing Rules IM-5405-1 and IM-5505-1 are meant to be exhaustive. Finally, Nasdaq will examine any such evidence produced by the company to assure that it is indicative of the company's overall value. If, based on facts and circumstances, Nasdaq determines that such evidence is not reliable, Nasdaq will require a Valuation that meets the requirements of Listing Rules IM-5315-1(e) and (f) and the company must then satisfy the other standards in the rule that require a Valuation.

In order to determine that such company has met the applicable price-based initial listing requirements and to list on Nasdaq based on such evidence without a Valuation, Nasdaq proposes to require such evidence to show that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. Thus, to list on the Nasdaq Global Market, the

on the Nasdaq Capital Market, Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Market Value Standard.

compelling evidence provided by the company must show a minimum bid price of at least \$10 per share; Market Value of Unrestricted Publicly Held Shares of \$20 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$45 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$50 million and Market Value of Listed Securities of \$187.5 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$50 million under the Total Assets/Total Revenue Standard.¹⁷

To list on the Nasdaq Capital Market, such evidence must show a minimum bid price of at least \$10 per share; Market Value of Unrestricted Publicly Held Shares of \$12.5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$37.5 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$37.5 million and Market Value of Listed Securities of \$125 million under the Market Value Standard.¹⁸

Nasdaq believes that sales of the company's equity securities representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares on the Nasdaq

¹⁷ See Listing Rules 5405(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million and Market Value of Listed Securities of \$75 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard.

¹⁸ See Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million and Market Value of Listed Securities of \$50 million under the Market Value Standard.

Capital Market thus demonstrating a payment in excess of \$1 million for a company listing under the Net Income Standard or in excess of \$3 million for a company listing under other standards,¹⁹ is compelling evidence that the sale is substantial enough in size to be indicative of the company's overall value.

Similarly, Nasdaq believes that sales of the company's equity securities representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares on the Nasdaq Global Market thus demonstrating a payment in excess of \$1.6 million for a company listing under the Net Income Standard, or in excess of \$3.6 million for a company listing under the Equity Standard, or in excess of \$4 million for a company listing under other standards,²⁰ is compelling evidence that the sale is substantial enough in size to be indicative of the company's overall value.

Nasdaq believes that recent, substantial in size, arm's-length tender offers for cash by an unaffiliated third party, sales between unaffiliated third parties involving the company's equity securities, or equity security sales by the company, with de minimis insider participation, indicating the company exceeds 250% of the otherwise applicable price-based requirements will give a significant degree of comfort that the company will meet the applicable price-based requirements upon commencement of trading. Nasdaq also believes that recent, substantial in size (representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares) tender offers for cash by the company indicating the company exceeds 250% of the otherwise applicable price-based requirements is compelling evidence of the company's value notwithstanding the

¹⁹ Id.

²⁰ See footnote 17 above.

company's involvement in the pricing of the transaction, because it is, in Nasdaq's view, unlikely that the company would misprice the securities purchased in a tender offer for cash to the degree necessary for a company using this provision to fail to meet the applicable initial listing requirement upon listing, in particular because of the substantial size of the transaction. In addition, Nasdaq believes that the new requirement that such securities must begin trading on Nasdaq following the initial pricing through the IPO Cross will help assure these securities begin trading close to their inherent value.

Foreign Exchange Listings

For a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares, or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the company has met the applicable price-based requirements based on the recent trading in such market. Nasdaq believes that the price of the issuer's securities from such broad and liquid trading is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. While this is consistent with Nasdaq's current practice, Listing Rules IM-5405-1(a)(4) and IM-5505-1(a)(4) will clarify that a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares or listing on the Nasdaq Global or Capital Markets while trading on such exchange is not subject to the new requirements applicable to Direct Listings.

Clarification of the Role of a Financial Advisor in a Direct Listing

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to

the initial pricing and described the role of financial advisors in that process.²¹ At that time, the Exchange added Rule 4120(c)(9)²² to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the IPO Cross. Prior to that rule change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.²³

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules

²¹ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the “2014 Rule Change”). Nasdaq stated that “an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to provide advice on when the security should be released for trading.” The 2014 Rule Change at 21830.

²² In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-081). All references in this filing are to the renumbered rules, as currently in effect.

²³ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”²⁴

Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.²⁵ In each case, the applicable price could be determined based on the issuer’s IPO price.²⁶ In the absence of an IPO price from the underwriter, Nasdaq believes that the only viable options are to rely on a price from recent sustained trading the Private Placement Market²⁷ or one provided by the financial advisor to the company.

Nasdaq has successfully employed, in limited circumstances, the IPO Cross for securities that have not been listed on a national securities exchange or traded in the over-

²⁴ Subsequent to the 2014 Rule Change, Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 22, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

²⁵ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

²⁶ Rules 4753(a)(3)(A)(iv)a. and 4753(b)(2)(D)(i). The price closest to the “Issuer’s Initial Public Offering Price” is the fourth tie-breaker in these rules, applicable when no single price is determined from the three prior tests.

²⁷ As described above, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer’s securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. See also proposed Listing Rules IM-5405-1(a)(5) and IM-5505-1(a)(5).

the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing since 2014²⁸ and following the 2019 Rule Change. Nasdaq continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

In the 2019 Rule Change, Nasdaq elaborated on the role of a financial advisor to the issuer of a security that is listing under IM-5315-1.²⁹ Nasdaq now proposes to amend Rule 4753 to allow for securities listed pursuant to Listing Rules IM-5405-1 and IM-5505-1 to be launched for trading using the IPO Cross, subject to additional requirements in the proposed Listing Rules IM-5405-1 and IM-5505-1.

Nasdaq also proposes to require that all securities listed under Listing Rules IM-5405-1 and IM-5505-1 must begin trading on Nasdaq following the initial pricing through the IPO Cross. To that end, Nasdaq proposes to cross reference Rule 4120(c)(8) in Listing Rules IM-5405-1 and IM-5505-1 to require that the company, in accordance with Rule 4120(c)(9), must have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under

²⁸ Among other instances, Nasdaq utilized the IPO Cross for the initial pricing of the common stock of American Realty Capital Healthcare Trust, Inc. as indicated in the 2014 Rule Change.

²⁹ Specifically, Nasdaq amended Rules 4753(a)(3)(A)(iv) and 4753(b)(2)(D) to state that in the case of the initial pricing of a Direct Listing for a security qualifying for listing under Listing Rule IM-5315-1, the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be: (i) for a security that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, (ii) if there is not such sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9). See 2019 Rule Change.

Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. In addition, Nasdaq proposes to require that each company qualified for listing under Listing Rules IM-5405-1 and IM-5505-1 must list its securities upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

Finally, Nasdaq proposes to define “Direct Listing” in Listing Rule IM-5315-1 and update the title without further modification to that rule section. Nasdaq also proposes to update the reference to “direct listings under IM-5315-1” in Listing Rule IM-5900-7 as a defined term without changing the substance of this rule.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.

Calculation of Price-based Initial Listing Requirements

The proposed rule change to require a Valuation and describe how Nasdaq will calculate compliance with the price-based requirements for listing on the Nasdaq Global and Capital Markets is designed to protect investors and the public interest because any

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

company relying solely on a Valuation will have to demonstrate that the company exceeds 200% of the otherwise applicable price-based requirement, which will give a significant degree of comfort that upon commencement of trading the company will meet the applicable price-based requirements.³² In addition, having in place independence standards for the party providing a Valuation will ensure that the entity providing a Valuation for purposes of listing on Nasdaq will have a significant level of independence from the listing applicant and thereby enhance the reliability of such Valuation.

Finally, in addition to the proposed new requirements, Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. Nasdaq's existing requirements are designed to protect investors and serve to help assure that securities listed on Nasdaq have sufficient investor interest and will trade in a liquid manner. As such, Nasdaq believes these provisions protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

The proposed rule change also protects investors and the public interest by requiring that there be sustained recent trading in the Private Placement Market in order for a Direct Listing to rely on such price to demonstrate compliance with the applicable price-based requirements. Nasdaq believes that the price from such sustained trading in the Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that qualifying a company based on the lower of such trading price or the Valuation helps assure that the company satisfies Nasdaq's requirements. In the absence of recent

³² See footnotes 17 and 18 above.

sustained trading in the Private Placement Market, the requirement to demonstrate that the company exceeds 200% of the otherwise applicable price-based requirement, similarly helps assure that the company satisfies Nasdaq's requirement by imposing a standard that is double the otherwise applicable standard.³³

The proposed rule change to allow a company in certain unique circumstances to list without a Valuation is designed to protect investors and the public interest because it requires such company to produce compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. Moreover, in order to be considered compelling, such evidence of the company's value must be based on a tender offer for cash by the company or an unaffiliated third party or on a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company. In addition, such transactions must be recent, completed (and, in the case of a tender offer, commenced and completed) within the prior six months, and substantial in size, representing sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement which helps assure, in Nasdaq's view, that the company satisfies the applicable price-based requirement upon commencement of trading on Nasdaq. Finally, recent, substantial in size (representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares) tender offers for cash by the company indicating the company exceeds 250% of the otherwise applicable price-based requirements is compelling evidence of the company's value notwithstanding the company's involvement in the pricing of the transaction, because, in Nasdaq's view, it is

³³ See footnotes 17 and 18, above.

unlikely that the company would misprice the securities purchased in a tender offer for cash to the degree necessary for a company using this provision to fail to meet the applicable initial listing requirement upon listing, in particular because of the substantial size of the transaction.

The proposed rule change also protects investors and the public interest by requiring that for a company to demonstrate compliance with the applicable price-based requirements based on a tender offer for cash by the company or an unaffiliated third party, a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company, because such transactions, in addition to being recent and substantial in size, must also have been conducted in a manner that helps assure that such transactions adequately support the value of the company. To that end, Nasdaq proposes to require that such transactions cannot involve affiliates of the company unless such participation is de minimis. To be considered de minimis, the transaction must comply with the requirement that and the company must certify to Nasdaq in writing that: any affiliate's participation must be less than 5% of the transaction (and all affiliates' participation collectively must be less than 10% of the transaction), such participation must have been suggested or required by unaffiliated investors and the affiliates must not have participated in negotiating the economic terms of the transaction.

The proposed requirement that a company that lists on the Nasdaq Global or Capital Markets through a Direct Listing must list at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares is designed to protect investors and the

public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

Finally, the proposal to rely on the price from the existing trading market for a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with the protection of investors because the price from the broad and liquid trading market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. This provision applies only where there is a broad, liquid market for the company's shares in its country of origin and is designed to clarify that a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange that satisfies Listing Rules IM-5405-1(a)(4) or IM-5505-1(a)(4) is not subject to the new requirements applicable to Direct Listings. Enhancing transparency around this requirement will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.³⁴

Clarification of the Role of a Financial Advisor in a Direct Listing

Nasdaq believes that the proposed rule change to modify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order

³⁴ Provisions of Listing Rules IM-5405-1(a)(4) and IM-5505-1(a)(4) are identical to Listing Rule IM-5315-1(c) applicable to Direct Listings on the Nasdaq Global Select Market, which was adopted in the 2019 Rule Change.

Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest. The 2019 Rule Change established that, in using the IPO Cross to initiate the initial trading in the company's securities, the Current Reference Price and price at which the Nasdaq Halt Cross will occur may be based on the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. The proposed rule change simply provides that in addition to the initial pricing of a security listing under Listing Rules IM-5315-1 the same process will occur for securities listing under IM-5405-1 or IM-5505-1.

Where there has been sustained recent trading on a Private Placement Market over several months, Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq. Where there has not been such sustained recent trading, Nasdaq notes that financial advisors have been performing the functions of the underwriter in the IPO Cross on a limited basis since 2014 and following the 2019 Rule Change and have market knowledge of buying and selling interest and an understanding of the company and its security. As such, Nasdaq believes that the rule change will promote fair and orderly markets because these mechanisms of establishing the Current Reference Price and the price at which the Nasdaq Halt Cross will occur will help protect against volatility in the pricing and initial trading of the securities covered by the proposed rule change.

Similarly, the proposed requirement that a company that lists on the Nasdaq Global or Capital Markets through a Direct Listing must begin trading of the company's

securities following the initial pricing through the IPO Cross will promote fair and orderly markets by protecting against volatility in the pricing and initial trading of unseasoned securities covered by the proposed rule change. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing on the Nasdaq Global or Capital Markets.

Finally, Nasdaq believes that the proposed rule change to update the title of Listing Rule IM-5315-1, to insert the defined term “Direct Listing” into the existing language of this rule and to update the reference to “direct listings under IM-5315-1” in Listing Rule IM-5900-7 using a defined term, does not change the substance of these rules and protects investors and the public interest by clarifying the applicability of these rules and making it easier to understand.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change to adopt Listing Rules IM-5405-1 and IM-5505-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing on the Nasdaq Global or Capital Markets that is appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange.

In addition, the proposed change is designed to extend the availability of the IPO Cross to securities listing on Nasdaq under IM-5405-1 or IM-5505-1 and thus impacts the

determination of the initial pricing of securities upon listing Nasdaq and will have no impact on competition.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

4. Amended rule text indicating additions to or deletions from the immediately preceding filing.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-059)

November __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Requirements for the Nasdaq Capital and Global Markets applicable to Direct Listings

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 November 26, 2019, 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 adopt requirements for the Nasdaq Capital and Global Markets applicable to Direct Listings. This Amendment No. 1 supersedes the original filing in its entirety.

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 is filing this amendment to SR-NASDAQ-2019-059,³ which was published for comment by the Commission on August 28, 2019, in order to: (i) specify that to constitute compelling evidence under the proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3), a tender offer by the company or an unaffiliated third party needs to be for cash and be commenced and completed within the prior six months; (ii) clarify that for affiliate participation to be considered de minimis under the proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3), the transaction must comply with the requirements of Listing Rules IM-5405-1(a)(3)(ii)(C) or IM-5505-1(a)(3)(ii)(C) and the company must certify such compliance to Nasdaq in writing; (iii) update the preamble to proposed Listing Rules IM-5405-1 and IM-5505-1 to clarify that this Interpretative Material describes when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global or Capital Market, where such company is listing without a related underwritten offering upon effectiveness of a registration

³ Securities Exchange Act Release No. 86792 (August 28, 2019), 84 FR 46580 (September 4, 2019) (the "Initial Proposal").

statement registering only the resale of shares sold by the company in earlier private placements; (iv) require that the examples of transactions that could constitute compelling evidence for purposes of Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3) are exhaustive; (v) clarify that references to third parties mean unaffiliated third parties; and (vi) make minor technical changes to improve the structure, clarity and readability of the proposed rules.

For purposes of these proposed rule changes, all references to the term “affiliate” and derivatives of this term rely on the definition of “affiliate” in SEC Rule 10A-3(e). *See* 17 CFR § 240.10A-3(e). This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq recognizes that some companies, whose stock was not previously registered under the Exchange Act, that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. Nasdaq previously adopted requirements applicable to such Direct Listings listing on the Nasdaq Global Select Market⁴ and now proposes to adopt requirements for the Nasdaq Global and Capital Markets.

⁴ Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (SR-NASDAQ-2019-001) (the “2019 Rule Change”). Nasdaq proposes to insert the defined term “Direct Listing” into the existing language of Listing Rule IM-5315-1 as follows: “Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities on Nasdaq (a “Direct Listing”).” Nasdaq also proposes to update the title of Listing Rule IM-5315-1 without further

The proposed Listing Rules IM-5405-1 and IM-5505-1 describe when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global and Capital Markets, where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements, set forth the additional listing requirements for Direct Listings on the Nasdaq Global and Capital Markets and describe how the Exchange will calculate compliance with the Nasdaq Global and Capital Markets initial listing standards related to the requirements based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares.⁵

Nasdaq also proposes to modify Nasdaq Rule 4753 to clarify that the securities listed pursuant to Listing Rules IM-5405-1 and IM-5505-1 can use the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”).

Finally, the proposed Listing Rules IM-5405-1 and IM-5505-1 require that such securities must begin trading on Nasdaq following the initial pricing through the IPO Cross. To allow such initial pricing, the company must: (i) in accordance with Rule

modification to that rule section. Nasdaq intends to submit a subsequent rule filing to adopt a global definition for Direct Listings that will include the substantive provisions from the preamble to Listing Rule IM-5315-1 and proposed Listing Rules IM-5405-1 and IM-5505-1.

⁵ On March 21, 2019, Nasdaq filed with the Commission a proposed rule change to revise the initial listing standards related to liquidity that, among other changes, added three new definitions to define “restricted securities,” “unrestricted publicly held shares” and “unrestricted securities.” This rule change was approved by the Commission effective July 5, 2019 and operative August 5, 2019. See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019).

4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering; and (ii) list upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

Calculation of Price-based Initial Listing Requirements

Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. To provide transparency to the initial listing process, the Exchange proposes to adopt Listing Rules IM-5405-1 and IM-5505-1, which will state how the Exchange calculates the initial listing requirements based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held shares for a Direct Listing on the Nasdaq Global and Capital Markets.⁶

Unless Nasdaq determines to accept evidence of the security's price based on a tender offer for cash by the company or an unaffiliated third party, a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company, as described in more detail below, under Listing Rules IM-5405-1 and IM-5505-1, Nasdaq would generally require that a company listing on the Nasdaq Global and Capital Markets through a Direct Listing provide Nasdaq an independent third-party valuation (a "Valuation"), as defined in Listing Rule IM-5315-1, that meets the requirements of Listing Rules IM-5315-1(e) and (f).

⁶ Substantive provisions of Listing Rules IM-5405-1 and IM-5505-1 are identical.

Under Listing Rule IM-5315-1(e), any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.⁷

Under Listing Rule IM-5315-1(f), Nasdaq requires that a valuation agent will not be considered independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed,

⁷ In addition, under Listing Rule 5101 Nasdaq has broad discretionary authority to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

including any right to receive any such securities exercisable within 60 days.

- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation. For purposes of this provision, “investment banking services” includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

For a security that has had sustained recent trading in a Private Placement Market⁸ prior to listing, Nasdaq will determine a company’s price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held shares based on the lesser of: (i) the value calculable based on the Valuation⁹ and (ii) the value calculable based on the most recent trading price in a Private Placement Market.¹⁰

⁸ Nasdaq defines “Private Placement Market” in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

⁹ As described in more detail below, under proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3), in lieu of a Valuation, Nasdaq may accept certain other

Under Proposed Listing Rules IM-5405-1(a)(5) and IM-5505-1(a)(5), to determine compliance with the price-based requirements and suitability for listing on the Exchange, Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement. Nasdaq believes that the price from such sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

Alternatively, in the absence of any recent sustained trading in a Private Placement Market over a period of several months,¹¹ to determine that such company has met the applicable price-based initial listing requirements, Nasdaq proposes to require, under proposed Listing Rules IM-5405-1(a)(2) and IM-5505-1(a)(2) that a Valuation must evidence a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceed 200% of the otherwise applicable requirement. Thus, to list on the Nasdaq Global Market, the Valuation must evidence a minimum bid price of at least \$8 per share; Market Value of Unrestricted Publicly Held Shares of \$16 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$36 million under the Equity Standard; or Market Value of

compelling evidence of the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares.

¹⁰ Proposed Listing Rules IM-5405-1(a)(1) and IM-5505-1(a)(1).

¹¹ Limited trading in the Private Placement Market may not be sufficient for the Exchange to reach a conclusion that the company meets the applicable price-based requirements.

Unrestricted Publicly Held Shares of \$40 million and Market Value of Listed Securities of \$150 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$40 million under the Total Assets/Total Revenue Standard.¹²

To list on the Nasdaq Capital Market, the Valuation must generally evidence a minimum bid price of at least \$8 per share;¹³ Market Value of Unrestricted Publicly Held Shares of \$10 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$30 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$30 million and Market Value of Listed Securities of \$100 million under the Market Value Standard.¹⁴

Nasdaq believes that some companies, that are clearly large enough to be suitable for listing on the Exchange, do not have sustained trading in their securities on a Private Placement Market prior to going public. Nasdaq believes that for these companies a

¹² See Listing Rules 5405(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million and Market Value of Listed Securities of \$75 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard.

¹³ A company listing equity securities under Listing Rule IM-5505-1 is not eligible to rely on the reduced bid price requirement of Listing Rule 5505(a)(1)(B) given that such securities do not trade in a continuous market prior to listing while Listing Rule 5505(a)(1)(B) requires that such security “must meet the applicable closing price requirement for at least five consecutive business days prior to approval.”

¹⁴ See Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million and Market Value of Listed Securities of \$50 million under the Market Value Standard.

recent Valuation indicating that the company exceeds 200% of the otherwise applicable price-based requirement will give a significant degree of comfort that the company will meet the applicable initial listing price-based requirements upon commencement of trading. Nasdaq believes that it is unlikely that any Valuation would reach a conclusion that is incorrect to the degree necessary for a company using this provision to fail to meet the applicable initial listing requirement upon listing, in particular because any Valuation used for this purpose must be provided by a valuation agent that meets the independence requirements of proposed Listing Rule IM-5315-1(f) and has significant experience and demonstrable competence in the provision of such valuations, as required by Listing Rule IM-5315-1(e).

Nasdaq further believes that in certain unique circumstances a company that is clearly large enough to be suitable for listing on the Exchange may provide other compelling evidence, subject to limitations described below, to demonstrate that it meets all applicable price-based requirements without a Valuation. In such cases, Nasdaq under Proposed Listing Rules IM-5405-1(a)(3) and IM-5505-1(a)(3) may (but is not required to) accept other compelling evidence of the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares, including, a tender offer for cash by the company or an unaffiliated third party, a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company.¹⁵

In order to be considered compelling evidence of the company's value, Nasdaq proposes to require that such transactions were recent, completed (and, in the case of a

¹⁵ See also, footnote 7 above.

tender offer, commenced and completed) within the prior six months, and substantial in size, representing sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement.¹⁶ In addition, to help assure that such transactions adequately support the value of the company, Nasdaq -proposes to require that such transactions cannot involve affiliates of the company unless such participation is de minimis. To be considered de minimis, the transaction must comply with the requirement that and the company must certify to Nasdaq in writing that: any affiliate's participation must be less than 5% of the transaction (and all affiliates' participation collectively must be less than 10% of the transaction), such participation must have been suggested or required by unaffiliated investors and the affiliates must not have participated in negotiating the economic terms of the transaction. The examples of transactions that could constitute compelling evidence for purposes of Listing Rules IM-5405-1 and IM-5505-1 are meant to be exhaustive. Finally, Nasdaq will examine any such evidence produced by the company to assure that it is indicative of the company's overall value. If, based on facts and circumstances, Nasdaq determines that such evidence is not reliable, Nasdaq will require a Valuation that meets the requirements of Listing

¹⁶ Listing Rule 5405(b) generally requires, for a company listing on the Nasdaq Global Market, Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; Market Value of Unrestricted Publicly Held Shares of \$20 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard. Listing Rule 5505(b) generally requires, for a company listing on the Nasdaq Capital Market, Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Market Value Standard.

Rules IM-5315-1(e) and (f) and the company must then satisfy the other standards in the rule that require a Valuation.

In order to determine that such company has met the applicable price-based initial listing requirements and to list on Nasdaq based on such evidence without a Valuation, Nasdaq proposes to require such evidence to show that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. Thus, to list on the Nasdaq Global Market, the compelling evidence provided by the company must show a minimum bid price of at least \$10 per share; Market Value of Unrestricted Publicly Held Shares of \$20 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$45 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$50 million and Market Value of Listed Securities of \$187.5 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$50 million under the Total Assets/Total Revenue Standard.¹⁷

To list on the Nasdaq Capital Market, such evidence must show a minimum bid price of at least \$10 per share; Market Value of Unrestricted Publicly Held Shares of \$12.5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$37.5 million under the Equity Standard; or Market Value of Unrestricted

¹⁷ See Listing Rules 5405(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million and Market Value of Listed Securities of \$75 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard.

Publicly Held Shares of \$37.5 million and Market Value of Listed Securities of \$125 million under the Market Value Standard.¹⁸

Nasdaq believes that sales of the company's equity securities representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares on the Nasdaq Capital Market thus demonstrating a payment in excess of \$1 million for a company listing under the Net Income Standard or in excess of \$3 million for a company listing under other standards,¹⁹ is compelling evidence that the sale is substantial enough in size to be indicative of the company's overall value.

Similarly, Nasdaq believes that sales of the company's equity securities representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares on the Nasdaq Global Market thus demonstrating a payment in excess of \$1.6 million for a company listing under the Net Income Standard, or in excess of \$3.6 million for a company listing under the Equity Standard, or in excess of \$4 million for a company listing under other standards,²⁰ is compelling evidence that the sale is substantial enough in size to be indicative of the company's overall value.

Nasdaq believes that recent, substantial in size, arm's-length tender offers for cash by an unaffiliated third party, sales between unaffiliated third parties involving the company's equity securities, or equity security sales by the company, with de minimis

¹⁸ See Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million and Market Value of Listed Securities of \$50 million under the Market Value Standard.

¹⁹ Id.

²⁰ See footnote 17 above.

insider participation, indicating the company exceeds 250% of the otherwise applicable price-based requirements will give a significant degree of comfort that the company will meet the applicable price-based requirements upon commencement of trading. Nasdaq also believes that recent, substantial in size (representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares) tender offers for cash by the company indicating the company exceeds 250% of the otherwise applicable price-based requirements is compelling evidence of the company's value notwithstanding the company's involvement in the pricing of the transaction, because it is, in Nasdaq's view, unlikely that the company would misprice the securities purchased in a tender offer for cash to the degree necessary for a company using this provision to fail to meet the applicable initial listing requirement upon listing, in particular because of the substantial size of the transaction. In addition, Nasdaq believes that the new requirement that such securities must begin trading on Nasdaq following the initial pricing through the IPO Cross will help assure these securities begin trading close to their inherent value.

Foreign Exchange Listings

For a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares, or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the company has met the applicable price-based requirements based on the recent trading in such market. Nasdaq believes that the price of the issuer's securities from such broad and liquid trading is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. While this is consistent with Nasdaq's current practice, Listing Rules IM-5405-1(a)(4) and IM-5505-1(a)(4) will clarify that a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares or listing on the

Nasdaq Global or Capital Markets while trading on such exchange is not subject to the new requirements applicable to Direct Listings.

Clarification of the Role of a Financial Advisor in a Direct Listing

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and described the role of financial advisors in that process.²¹ At that time, the Exchange added Rule 4120(c)(9)²² to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the IPO Cross. Prior to that rule change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.²³

²¹ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the “2014 Rule Change”). Nasdaq stated that “an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to provide advice on when the security should be released for trading.” The 2014 Rule Change at 21830.

²² In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-081). All references in this filing are to the renumbered rules, as currently in effect.

²³ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”²⁴

Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.²⁵ In each case, the applicable price could be determined based on the issuer’s IPO price.²⁶ In the absence of an IPO price from the underwriter, Nasdaq believes that the only viable options are to

²⁴ Subsequent to the 2014 Rule Change, Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 22, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

²⁵ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

²⁶ Rules 4753(a)(3)(A)(iv)a. and 4753(b)(2)(D)(i). The price closest to the “Issuer’s Initial Public Offering Price” is the fourth tie-breaker in these rules, applicable when no single price is determined from the three prior tests.

rely on a price from recent sustained trading the Private Placement Market²⁷ or one provided by the financial advisor to the company.

Nasdaq has successfully employed, in limited circumstances, the IPO Cross for securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing since 2014²⁸ and following the 2019 Rule Change. Nasdaq continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

In the 2019 Rule Change, Nasdaq elaborated on the role of a financial advisor to the issuer of a security that is listing under IM-5315-1.²⁹ Nasdaq now proposes to amend Rule 4753 to allow for securities listed pursuant to Listing Rules IM-5405-1 and IM-

²⁷ As described above, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. See also proposed Listing Rules IM-5405-1(a)(5) and IM-5505-1(a)(5).

²⁸ Among other instances, Nasdaq utilized the IPO Cross for the initial pricing of the common stock of American Realty Capital Healthcare Trust, Inc. as indicated in the 2014 Rule Change.

²⁹ Specifically, Nasdaq amended Rules 4753(a)(3)(A)(iv) and 4753(b)(2)(D) to state that in the case of the initial pricing of a Direct Listing for a security qualifying for listing under Listing Rule IM-5315-1, the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be: (i) for a security that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, (ii) if there is not such sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9). See 2019 Rule Change.

5505-1 to be launched for trading using the IPO Cross, subject to additional requirements in the proposed Listing Rules IM-5405-1 and IM-5505-1.

Nasdaq also proposes to require that all securities listed under Listing Rules IM-5405-1 and IM-5505-1 must begin trading on Nasdaq following the initial pricing through the IPO Cross. To that end, Nasdaq proposes to cross reference Rule 4120(c)(8) in Listing Rules IM-5405-1 and IM-5505-1 to require that the company, in accordance with Rule 4120(c)(9), must have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. In addition, Nasdaq proposes to require that each company qualified for listing under Listing Rules IM-5405-1 and IM-5505-1 must list its securities upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

Finally, Nasdaq proposes to define “Direct Listing” in Listing Rule IM-5315-1 and update the title without further modification to that rule section. Nasdaq also proposes to update the reference to “direct listings under IM-5315-1” in Listing Rule IM-5900-7 as a defined term without changing the substance of this rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.

Calculation of Price-based Initial Listing Requirements

The proposed rule change to require a Valuation and describe how Nasdaq will calculate compliance with the price-based requirements for listing on the Nasdaq Global and Capital Markets is designed to protect investors and the public interest because any company relying solely on a Valuation will have to demonstrate that the company exceeds 200% of the otherwise applicable price-based requirement, which will give a significant degree of comfort that upon commencement of trading the company will meet the applicable price-based requirements.³² In addition, having in place independence standards for the party providing a Valuation will ensure that the entity providing a Valuation for purposes of listing on Nasdaq will have a significant level of independence from the listing applicant and thereby enhance the reliability of such Valuation.

Finally, in addition to the proposed new requirements, Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. Nasdaq's existing requirements are designed to protect investors and serve to help assure that securities listed on Nasdaq have sufficient investor interest and will trade in a liquid manner. As such, Nasdaq believes these provisions protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

³² See footnotes 17 and 18 above.

The proposed rule change also protects investors and the public interest by requiring that there be sustained recent trading in the Private Placement Market in order for a Direct Listing to rely on such price to demonstrate compliance with the applicable price-based requirements. Nasdaq believes that the price from such sustained trading in the Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that qualifying a company based on the lower of such trading price or the Valuation helps assure that the company satisfies Nasdaq's requirements. In the absence of recent sustained trading in the Private Placement Market, the requirement to demonstrate that the company exceeds 200% of the otherwise applicable price-based requirement, similarly helps assure that the company satisfies Nasdaq's requirement by imposing a standard that is double the otherwise applicable standard.³³

The proposed rule change to allow a company in certain unique circumstances to list without a Valuation is designed to protect investors and the public interest because it requires such company to produce compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. Moreover, in order to be considered compelling, such evidence of the company's value must be based on a tender offer for cash by the company or an unaffiliated third party or on a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company. In addition, such transactions must be recent, completed (and, in the case of a tender offer, commenced and completed) within the prior six months, and substantial in

³³ See footnotes 17 and 18, above.

size, representing sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement which helps assure, in Nasdaq's view, that the company satisfies the applicable price-based requirement upon commencement of trading on Nasdaq. Finally, recent, substantial in size (representing at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares) tender offers for cash by the company indicating the company exceeds 250% of the otherwise applicable price-based requirements is compelling evidence of the company's value notwithstanding the company's involvement in the pricing of the transaction, because, in Nasdaq's view, it is unlikely that the company would misprice the securities purchased in a tender offer for cash to the degree necessary for a company using this provision to fail to meet the applicable initial listing requirement upon listing, in particular because of the substantial size of the transaction.

The proposed rule change also protects investors and the public interest by requiring that for a company to demonstrate compliance with the applicable price-based requirements based on a tender offer for cash by the company or an unaffiliated third party, a sale between unaffiliated third parties involving the company's equity securities, or equity security sales by the company, because such transactions, in addition to being recent and substantial in size, must also have been conducted in a manner that helps assure that such transactions adequately support the value of the company. To that end, Nasdaq proposes to require that such transactions cannot involve affiliates of the company unless such participation is de minimis. To be considered de minimis, the transaction must comply with the requirement that and the company must certify to Nasdaq in writing that: any affiliate's participation must be less than 5% of the

transaction (and all affiliates' participation collectively must be less than 10% of the transaction), such participation must have been suggested or required by unaffiliated investors and the affiliates must not have participated in negotiating the economic terms of the transaction.

The proposed requirement that a company that lists on the Nasdaq Global or Capital Markets through a Direct Listing must list at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares is designed to protect investors and the public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

Finally, the proposal to rely on the price from the existing trading market for a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with the protection of investors because the price from the broad and liquid trading market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. This provision applies only where there is a broad, liquid market for the company's shares in its country of origin and is designed to clarify that a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange that satisfies Listing Rules IM-5405-1(a)(4) or IM-5505-1(a)(4) is not subject to the new requirements applicable to Direct Listings. Enhancing transparency around this requirement will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.³⁴

Clarification of the Role of a Financial Advisor in a Direct Listing

Nasdaq believes that the proposed rule change to modify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest. The 2019 Rule Change established that, in using the IPO Cross to initiate the initial trading in the company's securities, the Current Reference Price and price at which the Nasdaq Halt Cross will occur may be based on the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. The proposed rule change simply provides that in addition to the initial pricing of a security listing under Listing Rules IM-5315-1 the same process will occur for securities listing under IM-5405-1 or IM-5505-1.

Where there has been sustained recent trading on a Private Placement Market over several months, Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq. Where there has not been such sustained recent trading, Nasdaq notes that financial advisors have been performing the functions of the underwriter in the IPO Cross on a limited basis since

³⁴ Provisions of Listing Rules IM-5405-1(a)(4) and IM-5505-1(a)(4) are identical to Listing Rule IM-5315-1(c) applicable to Direct Listings on the Nasdaq Global Select Market, which was adopted in the 2019 Rule Change.

2014 and following the 2019 Rule Change and have market knowledge of buying and selling interest and an understanding of the company and its security. As such, Nasdaq believes that the rule change will promote fair and orderly markets because these mechanisms of establishing the Current Reference Price and the price at which the Nasdaq Halt Cross will occur will help protect against volatility in the pricing and initial trading of the securities covered by the proposed rule change.

Similarly, the proposed requirement that a company that lists on the Nasdaq Global or Capital Markets through a Direct Listing must begin trading of the company's securities following the initial pricing through the IPO Cross will promote fair and orderly markets by protecting against volatility in the pricing and initial trading of unseasoned securities covered by the proposed rule change. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing on the Nasdaq Global or Capital Markets.

Finally, Nasdaq believes that the proposed rule change to update the title of Listing Rule IM-5315-1, to insert the defined term "Direct Listing" into the existing language of this rule and to update the reference to "direct listings under IM-5315-1" in Listing Rule IM-5900-7 using a defined term, does not change the substance of these rules and protects investors and the public interest by clarifying the applicability of these rules and making it easier to understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change to adopt Listing Rules IM-5405-1 and IM-5505-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing on the Nasdaq Global or Capital Markets that is appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange.

In addition, the proposed change is designed to extend the availability of the IPO Cross to securities listing on Nasdaq under IM-5405-1 or IM-5505-1 and thus impacts the determination of the initial pricing of securities upon listing Nasdaq and will have no impact 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-059 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-2019-059. 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-2019-059 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.³⁵

Jill M. Peterson
Assistant Secretary

³⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Changes to the Proposed Rule Text

Text is marked to show changes to proposed rule language in the original filing. Additions to original filing are double underlined; deletions from original filing are ~~stricken through~~.

The Nasdaq Stock Market Rules

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4753. Nasdaq Halt Cross**(a) Definitions.**

For the purposes of this rule the term:

(1) – (2) No change.

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

(A) "Current Reference Price" shall mean:

(i) The single price at which the maximum number of shares of Eligible Interest can be paired.

(ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.

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

a. In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

b. In the case of the initial pricing of a security listing under Listing Rules IM-5315-1, IM-5405-1, or IM-5505-1, for a security that has had recent sustained trading in a Private Placement Market (as defined in Rule 5005(a)(34)) prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation

with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9).

c. In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

d. In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

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

(B) – (F) No change.

(4) – (6) No change.

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

(1) No change.

(2)

(A) – (C) No change.

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

(i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

(ii) In the case of the initial pricing of a security listing under Listing Rules IM-5315-1, IM-5405-1, or IM-5505-1, for a security that has had recent sustained trading in a Private Placement Market (as defined in Rule 5005(a)(34)) prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9).

(iii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

(iv) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

(3) – (4) No change.

(c) – (d) No change.

* * * * *

IM-5315-1. Determination of Price-Based Requirements for Direct Listings on the Nasdaq Global Select Market

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities on Nasdaq (a “Direct Listing”). Such companies are permitted to list on the Nasdaq Global Select Market, provided the Company meets all applicable initial listing requirements and lists at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Select Market based on the price of a security, including the bid price, market capitalization and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security’s price as follows:

(a) - (f) No change.

* * * * *

IM-5405-1. Determination of Price-Based Requirements for Direct Listings on the Nasdaq Global Market

Generally, Nasdaq rules allow Direct Listings, as defined in IM-5315-1, provided the Company meets all applicable initial listing requirements for the Nasdaq Global Market and the additional requirements in this IM-5405-1. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

(a) In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Market based on the price of a security, including the bid price, Market

Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security's price as follows:

(1) If the Company's security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, Market Value of Listed Securities, and Market Value of Unrestricted Publicly Held Shares to the Company equal to the lesser of (i) the value calculable based on a Valuation, as defined in Listing Rule IM-5315-1, that meets the requirements of IM-5315-1(e) and (f) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

(2) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq generally requires a Valuation that meets the requirements of Listing Rules IM-5315-1(e) and (f) evidencing a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.

(3) Notwithstanding the Valuation requirements in paragraphs (1) and (2) above, in lieu of a Valuation Nasdaq may (but is not required to) accept other compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. For this purpose:

(i) Nasdaq shall consider only a tender offer for cash by the Company or an unaffiliated third party, a ~~third party transaction~~ sale between unaffiliated third parties involving the Company's equity securities, or equity security sales by the Company ~~is to be compelling evidence, provided such transactions occurred~~

(ii) To constitute compelling evidence, transactions described in paragraph IM-5405-1(a)(3)(i) above must:

(A) Have been completed (and, in the case of a tender offer, have been commenced and completed) within the prior six months; ~~and~~

(B) Have represented sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement; ~~and~~

(C) ~~In addition, such transactions cannot~~ Not have involved affiliates of the Company unless such participation is ~~of a de minimis nature, such as where~~ To be considered de minimis for purposes of this subsection, the transaction must comply and the Company must certify in writing compliance with the following requirements:

(1) ~~a~~Any affiliate's participation ~~was~~ must be less than 5% of the transaction (and all affiliates' participation collectively ~~was~~ must be less than 10% of the transaction);

(2) ~~s~~Such participation was suggested or required by unaffiliated investors; ~~and where~~

(3) ~~†~~The affiliates ~~did~~ must not have participated in negotiating the economic terms of the transaction.

(4) For a Company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the Company has met the applicable price-based requirements based on the most recent trading price in such market. This provision applies only where there is a broad, liquid market for the Company's shares in its country of origin.

(5) Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement.

(b) Securities qualified for listing under this IM-5405-1 must begin trading on Nasdaq following the initial pricing through the mechanism outlined in Rule 4120(c)(8) and Rule 4753. To allow such initial pricing, the Company must: (i) in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering and (ii) list upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

* * * * *

IM-5505-1. Determination of Price-Based Requirements for Direct Listings on the Nasdaq Capital Market

Generally, Nasdaq rules allow Direct Listings, as defined in IM-5315-1, provided the Company ~~and~~ meets all applicable initial listing requirements for the Nasdaq Capital Market and the additional requirements in this IM-5505-1. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Capital Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

(a) In determining whether such Company satisfies the initial listing requirements for the Nasdaq Capital Market based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security's price as follows:

(1) If the Company's security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, Market Value of Listed Securities, and Market Value of Unrestricted Publicly Held Shares ~~or Market Value of Listed Securities~~ to the Company equal to the lesser of (i) the value calculable based on a Valuation, as defined in Listing Rule IM-5315-1, that meets

the requirements of IM-5315-1(e) and (f) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

(2) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq generally requires a Valuation that meets the requirements of Listing Rules IM-5315-1(e) and (f) evidencing a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.

(3) Notwithstanding the Valuation requirements in paragraphs (1) and (2) above, in lieu of a Valuation Nasdaq may (but is not required to) accept other compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. For this purpose:

(i) Nasdaq shall consider only a tender offer for cash by the Company or an unaffiliated third party, a ~~third party transaction~~ sale between unaffiliated third parties involving the Company's equity securities, or equity security sales by the Company ~~is to be compelling evidence,~~ ~~provided such transactions occurred~~

(ii) To constitute compelling evidence, transactions described in paragraph IM-5505-1(a)(3)(i) above must:

(A) Have been completed (and, in the case of a tender offer, have been commenced and completed) within the prior six months; ~~and~~

(B) Have represented ~~sales of~~ at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement; ~~and~~

(C) ~~In addition, such transactions cannot~~ Not have involved affiliates of the Company unless such participation is ~~of a de minimis nature, such as where~~ To be considered de minimis for purposes of this subsection, the transaction must comply ~~and the Company must certify in writing compliance with the following requirements:~~

(1) ~~a~~ Any affiliate's participation ~~was~~ must be less than 5% of the transaction (and all affiliates' participation collectively ~~was~~ must be less than 10% of the transaction); ~~and~~

(2) ~~s~~ Such participation was suggested or required by unaffiliated investors; ~~and where~~

(3) ~~t~~ The affiliates ~~did~~ must not have participated in negotiating the economic terms of the transaction.

(4) For a Company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the Company has met the applicable price-based requirements based on the most recent trading price in such market. This provision applies only where there is a broad, liquid market for the Company's shares in its country of origin.

(5) Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement.

(b) Securities qualified for listing under this IM-5505-1 must begin trading on Nasdaq following the initial pricing through the mechanism outlined in Rule 4120(c)(8) and Rule 4753. To allow such initial pricing, ~~the Company's securities,~~ the Company must: (i) in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering and (ii) list upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

IM-5505-2. Initial Listing for Securities below \$4

(a) No change.

(b) Determination of closing price. For purposes of Rule 5505(a)(1)(B) and this IM- []5505-2, the closing price will be the Nasdaq Official Closing Price, if there is one, or the consolidated closing price distributed under the applicable National Market System Plan if there is no Nasdaq Official Closing Price. Nasdaq will require that a security maintain the necessary closing price for five consecutive business days, but may extend this five day period, based on any fact or circumstance, including the margin of compliance, the trading volume, the Market Maker montage, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security.

* * * * *

IM-5900-7. Services Offered to Certain Newly Listing Companies

INTRODUCTORY NOTE: Nasdaq offers certain newly listing companies complimentary services to help them satisfy their obligations as public companies related to governance and communications, and to provide intelligence about their securities. These services are offered to companies listing on the Global or Global Select Market in connection with their initial public offering in the United States, including American Depository Receipts (other than a company listed under IM-5101-2), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, in connection with a [d]Direct [l]Listing [under] as defined in IM-5315-1 (including the listing of American Depository Receipts), or in conjunction with a business combination that satisfies the conditions in IM-5101-2(b) ("Eligible New Listings"). They are also offered to companies (other than a company listed under IM-5101-2) switching their

listing from the New York Stock Exchange to the Global or Global Select Markets ("Eligible Switches").

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EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

4753. Nasdaq Halt Cross**(a) Definitions.**

For the purposes of this rule the term:

(1) – (2) No change.

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

(A) "Current Reference Price" shall mean:

(i) The single price at which the maximum number of shares of Eligible Interest can be paired.

(ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.

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

a. In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

b. In the case of the initial pricing of a security listing under Listing Rules IM-5315-1, IM-5405-1, or IM-5505-1, for a security that has had recent sustained trading in a Private Placement Market (as defined in Rule 5005(a)(34)) prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9).

c. In the case of another halt type in which the security has already traded during normal market hours on that trading

day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

d. In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

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

(B) – (F) No change.

(4) – (6) No change.

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

(1) No change.

(2)

(A) – (C) No change.

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

(i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

(ii) In the case of the initial pricing of a security listing under Listing Rules IM-5315-1, IM-5405-1, or IM-5505-1, for a security that has had recent sustained trading in a Private Placement Market (as defined in Rule 5005(a)(34)) prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9).

(iii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

(iv) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

(3) – (4) No change.

(c) – (d) No change.

* * * * *

IM-5315-1. Determination of Price-Based Requirements for Direct Listings on the Nasdaq Global Select Market

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities on Nasdaq (a “Direct Listing”). Such companies are permitted to list on the Nasdaq Global Select Market, provided the Company meets all applicable initial listing requirements and lists at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Select Market based on the price of a security, including the bid price, market capitalization and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security’s price as follows:

(a) - (f) No change.

* * * * *

IM-5405-1. Determination of Price-Based Requirements for Direct Listings on the Nasdaq Global Market

Generally, Nasdaq rules allow Direct Listings, as defined in IM-5315-1, provided the Company meets all applicable initial listing requirements for the Nasdaq Global Market and the additional requirements in this IM-5405-1. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

(a) In determining whether such Company satisfies the initial listing requirements for the Nasdaq Global Market based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security’s price as follows:

(1) If the Company’s security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, Market Value of Listed

Securities, and Market Value of Unrestricted Publicly Held Shares to the Company equal to the lesser of (i) the value calculable based on a Valuation, as defined in Listing Rule IM-5315-1, that meets the requirements of IM-5315-1(e) and (f) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

(2) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq generally requires a Valuation that meets the requirements of Listing Rules IM-5315-1(e) and (f) evidencing a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.

(3) Notwithstanding the Valuation requirements in paragraphs (1) and (2) above, in lieu of a Valuation Nasdaq may (but is not required to) accept other compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. For this purpose:

(i) Nasdaq shall consider only a tender offer for cash by the Company or an unaffiliated third party, a sale between unaffiliated third parties involving the Company's equity securities, or equity security sales by the Company to be compelling evidence.

(ii) To constitute compelling evidence, transactions described in paragraph IM-5405-1(a)(3)(i) above must:

(A) Have been completed (and, in the case of a tender offer, have been commenced and completed) within the prior six months;

(B) Have represented at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement; and

(C) Not have involved affiliates of the Company unless such participation is de minimis. To be considered de minimis for purposes of this subsection, the transaction must comply and the Company must certify in writing compliance with the following requirements:

(1) Any affiliate's participation must be less than 5% of the transaction (and all affiliates' participation collectively must be less than 10% of the transaction);

(2) Such participation must have been suggested or required by unaffiliated investors; and

(3) The affiliates must not have participated in negotiating the economic terms of the transaction.

(4) For a Company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the Company has met the applicable price-based requirements based on the most recent trading price in such market. This provision applies only where there is a broad, liquid market for the Company's shares in its country of origin.

(5) Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement.

(b) Securities qualified for listing under this IM-5405-1 must begin trading on Nasdaq following the initial pricing through the mechanism outlined in Rule 4120(c)(8) and Rule 4753. To allow such initial pricing, the Company must: (i) in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering and (ii) list upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

* * * * *

IM-5505-1. Determination of Price-Based Requirements for Direct Listings on the Nasdaq Capital Market

Generally, Nasdaq rules allow Direct Listings, as defined in IM-5315-1, provided the Company meets all applicable initial listing requirements for the Nasdaq Capital Market and the additional requirements in this IM-5505-1. This Interpretative Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Capital Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

(a) In determining whether such Company satisfies the initial listing requirements for the Nasdaq Capital Market based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares requirements, Nasdaq will determine the security's price as follows:

(1) If the Company's security has had sustained recent trading in a Private Placement Market, Nasdaq will attribute a price, Market Value of Listed Securities, and Market Value of Unrestricted Publicly Held Shares to the Company equal to the lesser of (i) the value calculable based on a Valuation, as defined in Listing Rule IM-5315-1, that meets the requirements of IM-5315-1(e) and (f) and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

(2) For a security that has not had sustained recent trading in a Private Placement Market prior to listing, Nasdaq generally requires a Valuation that meets the requirements of Listing Rules IM-5315-1(e) and (f) evidencing a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceeds 200% of the otherwise applicable requirement.

(3) Notwithstanding the Valuation requirements in paragraphs (1) and (2) above, in lieu of a Valuation Nasdaq may (but is not required to) accept other compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. For this purpose:

(i) Nasdaq shall consider only a tender offer for cash by the Company or an unaffiliated third party, a sale between unaffiliated third parties involving the Company's equity securities, or equity security sales by the Company to be compelling evidence.

(ii) To constitute compelling evidence, transactions described in paragraph IM-5505-1(a)(3)(i) above must:

(A) Have been completed (and, in the case of a tender offer, have been commenced and completed) within the prior six months;

(B) Have represented at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement; and

(C) Not have involved affiliates of the Company unless such participation is de minimis. To be considered de minimis for purposes of this subsection, the transaction must comply and the Company must certify in writing compliance with the following requirements:

(1) Any affiliate's participation must be less than 5% of the transaction (and all affiliates' participation collectively must be less than 10% of the transaction);

(2) Such participation must have been suggested or required by unaffiliated investors; and

(3) The affiliates must not have participated in negotiating the economic terms of the transaction.

(4) For a Company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the Company has met the applicable price-based requirements based on the most recent trading price in such market. This provision applies only where there is a broad, liquid market for the Company's shares in its country of origin.

(5) Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement.

(b) Securities qualified for listing under this IM-5505-1 must begin trading on Nasdaq following the initial pricing through the mechanism outlined in Rule 4120(c)(8) and Rule 4753. To allow such initial pricing, the Company must: (i) in accordance with Rule 4120(c)(9), have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering and (ii) list

upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

IM-5505-2. Initial Listing for Securities below \$4

(a) No change.

(b) Determination of closing price. For purposes of Rule 5505(a)(1)(B) and this IM- []5505-2, the closing price will be the Nasdaq Official Closing Price, if there is one, or the consolidated closing price distributed under the applicable National Market System Plan if there is no Nasdaq Official Closing Price. Nasdaq will require that a security maintain the necessary closing price for five consecutive business days, but may extend this five day period, based on any fact or circumstance, including the margin of compliance, the trading volume, the Market Maker montage, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security.

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IM-5900-7. Services Offered to Certain Newly Listing Companies

INTRODUCTORY NOTE: Nasdaq offers certain newly listing companies complimentary services to help them satisfy their obligations as public companies related to governance and communications, and to provide intelligence about their securities. These services are offered to companies listing on the Global or Global Select Market in connection with their initial public offering in the United States, including American Depository Receipts (other than a company listed under IM-5101-2), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, in connection with a [d]Direct [l]Listing [under]as defined in IM-5315-1 (including the listing of American Depository Receipts), or in conjunction with a business combination that satisfies the conditions in IM-5101-2(b) ("Eligible New Listings"). They are also offered to companies (other than a company listed under IM-5101-2) switching their listing from the New York Stock Exchange to the Global or Global Select Markets ("Eligible Switches").

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