



Arnold Golub
Vice President and Deputy General Counsel
805 King Farm Blvd. Rockville, MD 20850



August 21, 2020

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

Re: SR-NASDAQ-2020-026 Amendment No. 1

Dear Ms. Countryman:

The Nasdaq Stock Market LLC filed the above-referenced filing on August 21, 2020.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arnold Golub'.

Arnold Golub

OMB APPROVAL

OMB Number: 3235-0045
 Estimated average burden
 hours per response..... 38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 31

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

File No.* SR - 2020 - * 026

Amendment No. (req. for Amendments *) 1

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) * ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action * ☐ Date Expires *

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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) * ☐

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

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

Proposed Rule Change to Adopt a New Requirement Related to the Qualification of Management for Certain Companies.

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 * Arnold Last Name * Golub
 Title * Vice President Deputy General Counsel
 E-mail * arnold.golub@nasdaq.com
 Telephone * (301) 978-8075 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 08/21/2020

By John Zecca

(Name *)

EVP and Chief Legal Counsel

john.zecca@nasdaq.com

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 EFFT website.

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt a new requirement related to the qualification of management for certain companies. This Amendment No. 1 replaces and 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 amended rule text indicating additions to or deletions from the immediately preceding filing is attached as Exhibit 4. 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 May 18, 2020. No other action is necessary for the filing of the rule change.

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

Arnold Golub
Deputy General Counsel
Nasdaq, Inc.
(301) 978-8075

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-2020-026, which was published for comment by the Commission on June 8, 2020,³ in order to modify the proposal such that a company to which the proposal applies would only be subject to the proposed requirement until the third anniversary of its listing.

Under federal securities laws, a company's management is responsible for preparing financial statements and for establishing and maintaining disclosure controls and procedures and internal control over financial reporting.⁴ Nasdaq's listing requirements include transparent quantitative criteria, which are based on the company's financial statements and market information. They also impose disclosure obligations (along with applicable federal securities laws) and establish minimum corporate

³ Securities Exchange Act Release No. 34-89028 (June 8, 2020), 85 FR 35967 (June 12, 2020).

⁴ See, e.g., SEC Chairman Jay Clayton, PCAOB Chairman William D. Duhnke III, SEC Chief Accountant Sagar Teotia, SEC Division of Corporation Finance Director William Hinman, SEC Division of Investment Management Director Dalia Blass, *Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited* (April 21, 2020), available at <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting> ("Emerging Market Risks Statement") ("Management is responsible for the preparation of the financial statements, including responsibility for establishing and maintaining disclosure controls and procedures ("DCP") and internal control over financial reporting ("ICFR"), and for maintaining accountability for the company's assets, among other things... Management ... must determine that the financial statements, and other financial information included in the report filed with the SEC, fairly present in all material respects the financial condition, results of operations and cash flows of the company.") See also Section 404(b) of the Sarbanes Oxley Act, 15 U.S.C. 7262(b).

governance requirements, which are designed to protect investors and the public interest. A company's management is also responsible for ensuring compliance with these listing requirements on an ongoing basis.⁵ For these reasons, Nasdaq believes that it is critically important for companies to have management that is familiar with these responsibilities, or an advisor to guide the company in fulfilling these obligations, in order to protect investors and the public interest.

Nasdaq has observed instances where it appears that management lacked familiarity with the requirements to be a Nasdaq-listed public company in the U.S. or was otherwise unprepared for the rigors of operating as a public company. The risks arising from these situations are heightened when a company's business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a "Restrictive Market").⁶

Accordingly, Nasdaq proposes to adopt a new listing standard in Rule 5210(c) to require that listing applicants from Restrictive Market countries have, and certify to

⁵ For example, Nasdaq Rules require prompt notification to Nasdaq after an executive officer of the company, or a person performing an equivalent role, becomes aware of any noncompliance with Nasdaq's corporate governance requirements. Rule 5625. Similarly, SEC rules and the Sarbanes-Oxley Act impose a heightened obligation on the CEO and CFO of a public company, including the requirement to certify the company's periodic financial statements. See, e.g., Section 302 of the Sarbanes Oxley Act, Pub. L. 107-204, 116 Stat. 745 (2002), and Rules 13a-14 and 15d-14 under the Act, 17 CFR 240.13a-14 and 240.15d-14. See also Section 906 of the Sarbanes Oxley Act.

⁶ See Emerging Market Risks Statement ("As a result, in many emerging markets, including China, there is substantially greater risk that disclosures will be incomplete or misleading and, in the event of investor harm, substantially less access to recourse, in comparison to U.S. domestic companies.")

Nasdaq that they will continue to have until the third anniversary of their listing date, a member of senior management or a director with relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws. Alternatively, in the absence of such an individual, the company could retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the company.

It is expected that the member of senior management, director or advisor would be a resource to the company on matters such as the Nasdaq corporate governance requirements, disclosure of material information, SEC reporting obligations including financial reporting obligations, internal controls over financial reporting, related party transactions, insider trading restrictions, whistleblower protections and investor communications. As such, Nasdaq expects this proposed requirement will heighten compliance by companies from Restrictive Markets and enhance investor protection. The proposed requirement is similar to the requirements of other global markets, which also include qualification requirements for management.⁷

⁷ For example, the Toronto Stock Exchange requires management to have “adequate public company experience which demonstrates that they are able to satisfy all of their reporting and public company obligations.” See Section 311 of the TSX Company Manual. The Hong Kong Stock Exchange requires business experience and management continuity, which can achieve similar objectives to the proposed requirement. See Rule 8.05A of the Hong Kong Stock Exchange Main Board Listing Rules. Nasdaq's main markets in the Nordics require management to be familiar with the way the company has structured its internal reporting lines, the management pertaining to financial reporting, its investor relation management and its procedures for disclosing ad hoc and regular

In determining whether a company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the company's: (a) principal business segments, operations or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.⁸ For example, a company's headquarters could be located in Country A, while the majority of its senior management, employees, assets, operations and books and records are located in Country B, which is a Restrictive Market. In this case, Nasdaq would consider the company's business to be principally administered in Country B, which is a Restrictive Market, and Nasdaq would require the company to meet the criteria set forth in Rule 5210(c).

Once listed, a company subject to proposed Rule 5210(c) will be subject to proposed Rule 5250(g) until the third anniversary of its listing date. This rule will contain the continuing obligations for a Restricted Market Company listed on Nasdaq to have at least one member of senior management or director who has relevant past

information to the stock market. See Section 2.15.2 of the Nordic Main Market Rulebook for Issuers of Shares.

⁸ This threshold would capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets. The factors that Nasdaq would consider when determining whether a business is principally administered in a Restrictive Market is supported by SEC guidance regarding foreign private issuer status, which suggests that a foreign company may consider certain factors including the locations of: the company's principal business segments or operations; its board and shareholders' meetings; its headquarters; and its most influential key executives (potentially a subset of all executives). See Division of Corporation Finance of the SEC, *Accessing the U.S. Capital Markets — A Brief Overview for Foreign Private Issuers* (February 13, 2013), available at <https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#IIA2c>.

employment experience at a U.S.-listed public company or other experience, training or background which results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws or, in the absence of such an individual, to retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the company. By the third anniversary of a company's listing date the company will have filed at least two annual reports and gone through the accompanying reporting processes and procedures. In addition, by that date, company staff will have been subject to federal securities laws and Nasdaq's regulatory and reporting requirements, including those related to the disclosure of material information, for a sufficient period of time to gain experience with the requirements and how to comply. As such, Nasdaq believes that three years will provide a sufficient transition period and that it is unnecessary to continue to impose this additional requirement beyond that time period only on companies from Restrictive Markets.

Nasdaq proposes changes to Rule 5810 to allow a company from a Restrictive Market that is subject to, but does not maintain compliance with, this requirement to provide Nasdaq Staff with a plan to regain compliance. Based on its review of the company's plan, Nasdaq Staff generally would be able to allow the company up to 180 days to regain compliance.⁹ Companies would be required under Rule 5810(b) to disclose that they do not meet this requirement, which would alert investors to the heightened risk during this time.

⁹ See Rule 5810(c)(2)(B). Staff cannot grant additional time if the company is currently under review by an Adjudicatory Body for a Staff Delisting Determination.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that requiring applicants from Restrictive Market countries to satisfy the proposed requirement will help ensure that the company has at least one member of senior management or director or an advisor who serves as a resource for the company to assist in compliance with the company's reporting and public company obligations in the U.S. as the company transitions to being a public company. This will better enable the company to satisfy the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws, which will enhance investor protection and the public interest.

The proposed rule changes would apply to companies from Restrictive Market countries that apply to list on Nasdaq after the date of effectiveness, but would not apply to companies from other countries or to companies already listed on Nasdaq.

Notwithstanding, the Exchange believes that the proposal does not unfairly discriminate

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

among companies. With respect to the discrimination between companies from Restrictive Markets and other companies, Nasdaq believes that the distinction is fair because Nasdaq and the SEC have identified additional concerns around companies from Restrictive Markets,¹² which the proposed rule change is designed to address. With respect to the discrimination between newly listing companies from Restrictive Markets and companies from Restrictive Markets that listed within the three years before this rule is effective, Nasdaq believes that this is an appropriate distinction because this requirement was not in place when the later group of companies listed. Listed companies are already subject to Nasdaq's requirements and U.S. securities laws and have gained familiarity with the reporting processes and procedures and disclosure requirements by virtue of being subject to them. Moreover, to the extent there are future concerns about such a listed company that arise from an apparent unfamiliarity with the requirements to be a U.S.-listed public company, Nasdaq would exercise its regulatory authority and could consider that lack of familiarity when determining whether to allow the company to remain listed.¹³

¹² See Emerging Market Risks Statement, supra note 4.

¹³ Nasdaq notes that a comment letter submitted on the initial proposal suggested that applying the proposal in perpetuity only for companies listing after the proposal's effective date may unfairly discriminate among companies. See letter from Jeff Mahoney, Council of Institutional Investors dated June 25, 2020. That letter suggested that the proposal should instead apply to all companies from Restrictive Markets, regardless of when they listed. As described herein, Nasdaq instead believes that it is appropriate to impose the proposed requirement only for three years from the date that a company lists and that after being subject to Nasdaq's requirements for that period of time, it would potentially be unfair to treat the company differently than other listed companies in the absence of a specific identified concern.

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. While the proposed rule change will apply only to companies from Restrictive Markets, Nasdaq and the SEC have identified specific concerns with such companies that make the imposition of a heightened requirement on such companies appropriate to enhance investor protection, which is a central purpose of the Act. Any impact on competition, either among listed companies or between exchanges, is incidental to that purpose.

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-2020-026)

August __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to adopt a new requirement related to the qualification of management for certain companies

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 August 21, 2020, 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 a new requirement related to the qualification of management for certain companies. This Amendment No. 1 replaces and supersedes the original filing in its entirety.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2020-026, which was published for comment by the Commission on June 8, 2020,³ in order to modify the proposal such that a company to which the proposal applies would only be subject to the proposed requirement until the third anniversary of its listing.

Under federal securities laws, a company's management is responsible for preparing financial statements and for establishing and maintaining disclosure controls and procedures and internal control over financial reporting.⁴ Nasdaq's listing

³ Securities Exchange Act Release No. 34-89028 (June 8, 2020), 85 FR 35967 (June 12, 2020).

⁴ See, e.g., SEC Chairman Jay Clayton, PCAOB Chairman William D. Duhnke III, SEC Chief Accountant Sagar Teotia, SEC Division of Corporation Finance Director William Hinman, SEC Division of Investment Management Director Dalia Blass, *Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited* (April 21, 2020), available at <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting> ("Emerging Market Risks Statement") ("Management is responsible for the preparation of the financial statements, including responsibility for establishing and maintaining disclosure controls and procedures ("DCP") and internal control over financial reporting ("ICFR"), and for maintaining accountability for the company's assets, among other things...").

requirements include transparent quantitative criteria, which are based on the company's financial statements and market information. They also impose disclosure obligations (along with applicable federal securities laws) and establish minimum corporate governance requirements, which are designed to protect investors and the public interest. A company's management is also responsible for ensuring compliance with these listing requirements on an ongoing basis.⁵ For these reasons, Nasdaq believes that it is critically important for companies to have management that is familiar with these responsibilities, or an advisor to guide the company in fulfilling these obligations, in order to protect investors and the public interest.

Nasdaq has observed instances where it appears that management lacked familiarity with the requirements to be a Nasdaq-listed public company in the U.S. or was otherwise unprepared for the rigors of operating as a public company. The risks arising from these situations are heightened when a company's business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security

Management ... must determine that the financial statements, and other financial information included in the report filed with the SEC, fairly present in all material respects the financial condition, results of operations and cash flows of the company.") See also Section 404(b) of the Sarbanes Oxley Act, 15 U.S.C. 7262(b).

⁵ For example, Nasdaq Rules require prompt notification to Nasdaq after an executive officer of the company, or a person performing an equivalent role, becomes aware of any noncompliance with Nasdaq's corporate governance requirements. Rule 5625. Similarly, SEC rules and the Sarbanes-Oxley Act impose a heightened obligation on the CEO and CFO of a public company, including the requirement to certify the company's periodic financial statements. See, e.g., Section 302 of the Sarbanes Oxley Act, Pub. L. 107-204, 116 Stat. 745 (2002), and Rules 13a-14 and 15d-14 under the Act, 17 CFR 240.13a-14 and 240.15d-14. See also Section 906 of the Sarbanes Oxley Act.

laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a “Restrictive Market”).⁶

Accordingly, Nasdaq proposes to adopt a new listing standard in Rule 5210(c) to require that listing applicants from Restrictive Market countries have, and certify to Nasdaq that they will continue to have until the third anniversary of their listing date, a member of senior management or a director with relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual’s general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws. Alternatively, in the absence of such an individual, the company could retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the company.

It is expected that the member of senior management, director or advisor would be a resource to the company on matters such as the Nasdaq corporate governance requirements, disclosure of material information, SEC reporting obligations including financial reporting obligations, internal controls over financial reporting, related party transactions, insider trading restrictions, whistleblower protections and investor communications. As such, Nasdaq expects this proposed requirement will heighten compliance by companies from Restrictive Markets and enhance investor protection. The

⁶ See Emerging Market Risks Statement (“As a result, in many emerging markets, including China, there is substantially greater risk that disclosures will be incomplete or misleading and, in the event of investor harm, substantially less access to recourse, in comparison to U.S. domestic companies.”)

proposed requirement is similar to the requirements of other global markets, which also include qualification requirements for management.⁷

In determining whether a company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the company's: (a) principal business segments, operations or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.⁸ For example, a company's headquarters could be located in Country A, while the majority of its senior management, employees, assets, operations and books and records are located in Country B, which is a Restrictive Market. In this case, Nasdaq would consider the company's business to be principally administered in

⁷ For example, the Toronto Stock Exchange requires management to have "adequate public company experience which demonstrates that they are able to satisfy all of their reporting and public company obligations." *See* Section 311 of the TSX Company Manual. The Hong Kong Stock Exchange requires business experience and management continuity, which can achieve similar objectives to the proposed requirement. *See* Rule 8.05A of the Hong Kong Stock Exchange Main Board Listing Rules. Nasdaq's main markets in the Nordics require management to be familiar with the way the company has structured its internal reporting lines, the management pertaining to financial reporting, its investor relation management and its procedures for disclosing ad hoc and regular information to the stock market. *See* Section 2.15.2 of the Nordic Main Market Rulebook for Issuers of Shares.

⁸ This threshold would capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets. The factors that Nasdaq would consider when determining whether a business is principally administered in a Restrictive Market is supported by SEC guidance regarding foreign private issuer status, which suggests that a foreign company may consider certain factors including the locations of: the company's principal business segments or operations; its board and shareholders' meetings; its headquarters; and its most influential key executives (potentially a subset of all executives). *See* Division of Corporation Finance of the SEC, *Accessing the U.S. Capital Markets — A Brief Overview for Foreign Private Issuers* (February 13, 2013), available at <https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#IIA2c>.

Country B, which is a Restrictive Market, and Nasdaq would require the company to meet the criteria set forth in Rule 5210(c).

Once listed, a company subject to proposed Rule 5210(c) will be subject to proposed Rule 5250(g) until the third anniversary of its listing date. This rule will contain the continuing obligations for a Restricted Market Company listed on Nasdaq to have at least one member of senior management or director who has relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws or, in the absence of such an individual, to retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the company. By the third anniversary of a company's listing date the company will have filed at least two annual reports and gone through the accompanying reporting processes and procedures. In addition, by that date, company staff will have been subject to federal securities laws and Nasdaq's regulatory and reporting requirements, including those related to the disclosure of material information, for a sufficient period of time to gain experience with the requirements and how to comply. As such, Nasdaq believes that three years will provide a sufficient transition period and that it is unnecessary to continue to impose this additional requirement beyond that time period only on companies from Restrictive Markets.

Nasdaq proposes changes to Rule 5810 to allow a company from a Restrictive Market that is subject to, but does not maintain compliance with, this requirement to provide Nasdaq Staff with a plan to regain compliance. Based on its review of the

company's plan, Nasdaq Staff generally would be able to allow the company up to 180 days to regain compliance.⁹ Companies would be required under Rule 5810(b) to disclose that they do not meet this requirement, which would alert investors to the heightened risk during this time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that requiring applicants from Restrictive Market countries to satisfy the proposed requirement will help ensure that the company has at least one member of senior management or director or an advisor who serves as a resource for the company to assist in compliance with the company's reporting and public company obligations in the U.S. as the company transitions to being a public company. This will better enable the company to satisfy the regulatory and reporting requirements applicable

⁹ See Rule 5810(c)(2)(B). Staff cannot grant additional time if the company is currently under review by an Adjudicatory Body for a Staff Delisting Determination.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

to a U.S.-listed public company under Nasdaq rules and federal securities laws, which will enhance investor protection and the public interest.

The proposed rule changes would apply to companies from Restrictive Market countries that apply to list on Nasdaq after the date of effectiveness, but would not apply to companies from other countries or to companies already listed on Nasdaq. Notwithstanding, the Exchange believes that the proposal does not unfairly discriminate among companies. With respect to the discrimination between companies from Restrictive Markets and other companies, Nasdaq believes that the distinction is fair because Nasdaq and the SEC have identified additional concerns around companies from Restrictive Markets,¹² which the proposed rule change is designed to address. With respect to the discrimination between newly listing companies from Restrictive Markets and companies from Restrictive Markets that listed within the three years before this rule is effective, Nasdaq believes that this is an appropriate distinction because this requirement was not in place when the later group of companies listed. Listed companies are already subject to Nasdaq's requirements and U.S. securities laws and have gained familiarity with the reporting processes and procedures and disclosure requirements by virtue of being subject to them. Moreover, to the extent there are future concerns about such a listed company that arise from an apparent unfamiliarity with the requirements to be a U.S.-listed public company, Nasdaq would exercise its regulatory authority and could consider that lack of familiarity when determining whether to allow the company to remain listed.¹³

¹² See Emerging Market Risks Statement, supra note 4.

¹³ Nasdaq notes that a comment letter submitted on the initial proposal suggested that applying the proposal in perpetuity only for companies listing after the

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. While the proposed rule change will apply only to companies from Restrictive Markets, Nasdaq and the SEC have identified specific concerns with such companies that make the imposition of a heightened requirement on such companies appropriate to enhance investor protection, which is a central purpose of the Act. Any impact on competition, either among listed companies or between exchanges, is incidental to that purpose.

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

proposal's effective date may unfairly discriminate among companies. See letter from Jeff Mahoney, Council of Institutional Investors dated June 25, 2020. That letter suggested that the proposal should instead apply to all companies from Restrictive Markets, regardless of when they listed. As described herein, Nasdaq instead believes that it is appropriate to impose the proposed requirement only for three years from the date that a company lists and that after being subject to Nasdaq's requirements for that period of time, it would potentially be unfair to treat the company differently than other listed companies in the absence of a specific identified concern.

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-2020-026 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-2020-026. 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-2020-026 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

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 LLC Rules

* * * * *

5200. General Procedures and Prerequisites for Initial and Continued Listing on The Nasdaq Stock Market

* * * * *

5210. Prerequisites for Applying to List on The Nasdaq Stock Market

All Companies applying to list on The Nasdaq Stock Market must meet the following prerequisites:

(a) – (b) No change.

(c) **Management Qualifications**

Any Company that principally administers its business in a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a “Restrictive Market”) must have, and certify that it will continue to have until the third anniversary of its listing date, at least one member of senior management or a director who has relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual’s general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws or, in the absence of such an individual, that it will retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the Company.

In determining whether a Company’s business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the Company’s: (a) principal business segments, operations or assets; (b) board and shareholders’ meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.

(d) Direct Registration Program

No change.

([d]e) Fees

No change.

([e]f) Good Standing

No change.

([f]g) Nasdaq Certification

No change.

([g]h) Security Depository

No change.

([h]i) Limited Partnerships

No change.

([i]j) Reverse Mergers

No change.

([j]k) Regulation A Offerings

No change.

* * * * *

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) – (f) No change.

(g) Management Qualifications

Until the third anniversary of its listing date, any~~Any~~ Company that was subject to Rule 5210(c) upon initially listing, and that continues to principally administer its business in a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a “Restrictive Market”), must have at least one member of senior management or a

director who has relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws or, in the absence of such an individual, must retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the Company.

In determining whether a Company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the Company's: (a) principal business segments, operations or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.

* * * * *

5810. Notification of Deficiency by the Listing Qualifications Department

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

(1) – (4) No change.

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

(a) No change.

(b) No change.

IM-5810-1. Disclosure of Written Notice of Staff Determination

No change.

(c) Types of Deficiencies and Notifications

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

(1) No change.

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

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (vi) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iv) and (vi) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance.

(i) – (ii) No change.

(iii) deficiencies from the standards of Rules 5250(g) {Management Qualifications}, 5620(a) {Meetings of Shareholders}, 5620(c) {Quorum}, 5630 {Review of Related Party Transactions}, 5635 {Shareholder Approval}, 5250(c)(3) {Auditor Registration}, 5255(a) {Direct Registration Program}, 5610 {Code of Conduct}, 5615(a)(4)(D) {Partner Meetings of Limited Partnerships}, 5615(a)(4)(E) {Quorum of Limited Partnerships}, 5615(a)(4)(G) {Related Party Transactions of Limited Partnerships}, or 5640 {Voting Rights}; or

(iv) – (vi) No change.

IM-5810-2. Staff Review of Deficiencies

No change.

(B) – (G) No change.

(3) – (4) No change.

(d) No change.

* * * * *

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

* * * * *

5200. General Procedures and Prerequisites for Initial and Continued Listing on The Nasdaq Stock Market

* * * * *

5210. Prerequisites for Applying to List on The Nasdaq Stock Market

All Companies applying to list on The Nasdaq Stock Market must meet the following prerequisites:

(a) – (b) No change.

(c) **Management Qualifications**

Any Company that principally administers its business in a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a “Restrictive Market”) must have, and certify that it will continue to have until the third anniversary of its listing date, at least one member of senior management or a director who has relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual’s general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws or, in the absence of such an individual, that it will retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the Company.

In determining whether a Company’s business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the Company’s: (a) principal business segments, operations or assets; (b) board and shareholders’ meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.

(d) **Direct Registration Program**

No change.

([d]e) Fees

No change.

([e]f) Good Standing

No change.

([f]g) Nasdaq Certification

No change.

([g]h) Security Depository

No change.

([h]i) Limited Partnerships

No change.

([i]j) Reverse Mergers

No change.

([j]k) Regulation A Offerings

No change.

* * * * *

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) – (f) No change.

(g) Management Qualifications

Until the third anniversary of its listing date, any Company that was subject to Rule 5210(c) upon initially listing, and that continues to principally administer its business in a jurisdiction that Nasdaq determines to have secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a “Restrictive Market”), must have at least one member of senior management or a director who has relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual’s general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal

securities laws or, in the absence of such an individual, must retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the Company.

In determining whether a Company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the Company's: (a) principal business segments, operations or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.

* * * * *

5810. Notification of Deficiency by the Listing Qualifications Department

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

(1) – (4) No change.

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

(a) No change.

(b) No change.

IM-5810-1. Disclosure of Written Notice of Staff Determination

No change.

(c) Types of Deficiencies and Notifications

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

(1) No change.

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

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (vi) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iv) and (vi) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance.

(i) – (ii) No change.

(iii) deficiencies from the standards of Rules 5250(g) {Management Qualifications}, 5620(a) {Meetings of Shareholders}, 5620(c) {Quorum}, 5630 {Review of Related Party Transactions}, 5635 {Shareholder Approval}, 5250(c)(3) {Auditor Registration}, 5255(a) {Direct Registration Program}, 5610 {Code of Conduct}, 5615(a)(4)(D) {Partner Meetings of Limited Partnerships}, 5615(a)(4)(E) {Quorum of Limited Partnerships}, 5615(a)(4)(G) {Related Party Transactions of Limited Partnerships}, or 5640 {Voting Rights}; or

(iv) – (vi) No change.

IM-5810-2. Staff Review of Deficiencies

No change.

(B) – (G) No change.

(3) – (4) No change.

(d) No change.

* * * * *