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February 1, 2021

Ms. Vanessa A. Countryman
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-NASDAQ-2020-026 (the “Proposal”)¹

Dear Ms. Countryman:

After further consideration, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) has determined to withdraw the Proposal, which would have adopted a new requirement that listing applicants from Restrictive Market countries² have a member of senior management, a director or an advisor 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.

While Nasdaq continues to believe that the Proposal would enhance its listing standards and promote investor protection, in the time since Nasdaq filed the Proposal, Congress,³ the

¹ Securities Exchange Act Release No. 89028 (June 8, 2020), 85 FR 35967 (June 12, 2020). Nasdaq filed Amendment No. 1 to the Proposal on August 21, 2020. See Securities Exchange Act Release No. 89794 (September 9, 2020), 85 FR 57260 (September 15, 2020) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposal, as Modified by Amendment No. 1) (the “OIP”). On November 17, 2020, Nasdaq filed Amendment No. 2 to the Proposal to modify the operative date of the Proposal for certain companies. See https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/filings/SR-NASDAQ-2020-026_Amendment_2.pdf.

² The Proposal would define a Restrictive Market as 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.

³ See, e.g., Kennedy, Van Hollen introduce Holding Foreign Companies Accountable Act as NDAA amendment (June 25, 2020), available at <https://www.kennedy.senate.gov/public/press-releases?ID=FA4903D2-CA2A-4DAA->

Executive Branch⁴ and the Commission⁵ have taken additional steps on the issues underlying Nasdaq's concerns and it appears that the Commission will undertake additional rulemaking "regarding enhanced listing standards for U.S. securities exchanges."⁶ Further, notwithstanding the significant public record raising concerns about companies from Restrictive Markets, in the OIP the Commission Staff questions whether the Proposal is consistent with Section 6(b)(5) of the Exchange Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination.

Based on these subsequent developments, Nasdaq is withdrawing the Proposal and will instead rely upon its authority under existing Nasdaq rules to address the concerns outlined in the Proposal. Specifically, Nasdaq Rule 5101 provides Nasdaq with "broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest." Pursuant to this authority, Nasdaq may "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."

Nasdaq intends to use this existing authority, on a case-by-case basis based on the unique facts and circumstances presented, to impose additional or more stringent requirements on a company, including one from a Restrictive Market, where there are concerns about the company's familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public

[83A0-BFDB7CED19D0](#); see also Congress Passes Legislation to De-List Chinese Companies Unless U.S. Has Access to Audit Workpapers (December 2, 2020), available at <https://sherman.house.gov/media-center/press-releases/congress-passes-legislation-to-de-list-chinese-companies-unless-us-has>.

⁴ See, e.g., President's Working Group on Financial Markets: Report on Protecting United States Investors from Significant Risks from Chinese Companies (July 24, 2020), available at <https://home.treasury.gov/system/files/136/PWG-Report-on-Protecting-United-States-Investors-from-Significant-Risks-from-Chinese-Companies.pdf>. See also Executive Order 13959, "Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies" (November 12, 2020), 85 Fed. Reg. 73185 (Nov. 17, 2020).

⁵ See, e.g., SEC Chairman Jay Clayton's Statement at the SEC's Emerging Markets Roundtable (July 9, 2020), available at <https://www.sec.gov/news/public-statement/clayton-emerging-markets-roundtable-2020-07-09>.

⁶ See, e.g., SEC Chairman Jay Clayton, Statement after the Enactment of the Holding Foreign Companies Accountable Act (December 18, 2020), available at <https://www.sec.gov/news/public-statement/clayton-hfcaa-2020-12>.

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company under Nasdaq rules and federal securities laws. Such additional or more stringent requirements could include denying listing or requiring that the company have a member of senior management, a director or an advisor who has relevant past employment experience at a U.S.-listed public company. Nasdaq believes that it furthers the investor protection objectives of the Securities Exchange Act of 1934⁷ when it applies its rules in this manner. Nasdaq also intends to provide transparency to this application of its discretionary authority through the publication of an FAQ on the Nasdaq Listing Center.

Please feel free to contact me at [REDACTED] with any questions on this withdrawal.

Sincerely,



Arnold Golub

cc: David Shillman, Division of Trading and Markets
Ted Venuti, Division of Trading and Markets

⁷ 15 U.S.C. 78s(b)(5).