

Via Email

September 30, 2020

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Numbers SR-NASDAQ-2020-028, SR-NASDAQ-2020-027 & SR-NASDAQ-2020-026.

Dear Madam Secretary:

I am writing in response to the *Order Instituting Proceedings to Determine Whether To Approve or Disapprove a Proposed Rule Change to Apply Additional Initial Listing Criteria for Companies Primarily Operating in Restrictive Markets (AILC Proposal)*,¹ *Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets (QM Proposal)*,² and *Order Instituting Proceedings to Determine Whether To Approve or Disapprove a Proposed Rule Change to Amend IM-5101-1 To Deny Listing or Continued Listing or To Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company's Auditor or When a Company's Business is Principally Administered in a Jurisdiction That Is a Restrictive Market (IM Proposal)*³ (collectively, the Proposed Rules).

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined

¹ Order Instituting Proceedings to Determine Whether To Approve or Disapprove a Proposed Rule Change to Apply Additional Initial Listing Criteria for Companies Primarily Operating in Restrictive Markets, Exchange Act Release No. 89,799, 85 Fed. Reg. 57,282 (Sept. 15, 2020), <https://www.federalregister.gov/documents/2020/09/15/2020-20259/self-regulatory-organizations-the-nasdaq-stock-market-llc-order-instituting-proceedings-to-determine>.

² Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets, Exchange Act Release No. 89,794, 85 Fed. Reg. 57,260 (Sept. 15, 2020), <https://www.federalregister.gov/documents/2020/09/15/2020-20254/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-amendment-no-1-and>.

³ Order Instituting Proceedings to Determine Whether To Approve or Disapprove a Proposed Rule Change to Amend IM-5101-1 To Deny Listing or Continued Listing or To Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company's Auditor or When a Company's Business is Principally Administered in a Jurisdiction That Is a Restrictive Market, Exchange Act Release No. 89,739, 85 Fed. Reg. 55,708 (Sept. 9, 2020), <https://www.federalregister.gov/documents/2020/09/09/2020-19841/self-regulatory-organizations-the-nasdaq-stock-market-llc-order-instituting-proceedings-to-determine>.

assets under management of approximately \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true “Main Street” investors through their pension funds. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$35 trillion in assets under management.⁴

As the leading voice for effective corporate governance and strong shareholder rights, CII believes that accurate and reliable audited financial statements are critical to investors in making informed decisions, and vital to the overall well-being of our capital markets.⁵ Consistent with our membership approved policies, we have long been troubled by the lack of cooperation of China’s regulators with the U.S. Securities and Exchange Commission (SEC or Commission) and the Public Company Accounting Oversight Board (PCAOB) and their efforts to promote high quality audits of financial reports of Chinese companies that are listed on U.S. exchanges.⁶ In recent years those concerns have grown as the number of Chinese companies listed has increased significantly,⁷ and with many of those companies adopting variable interest entity and

⁴ For more information about the Council of Institutional Investors (“CII”), including its board and members, please visit CII’s website at <http://www.cii.org>.

⁵ CII, Policies on Other Issues, Independence of Accounting and Auditing Standard Setters (updated Mar. 1, 2017), http://www.cii.org/policies_other_issues#indep_acct_audit_standards.

⁶ See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Office of the Secretary, PCAOB 6 (Sept. 6, 2018), https://www.cii.org/files/issues_and_advocacy/correspondence/2018/September%206,%202018%20PCAOB%20Strategic%20Plan.pdf (“We are particularly concerned about PCAOB-registered firms located in China for at least four reasons: (1) since 2010 the PCAOB has actively sought without success inspections of China-based audit firms and the mainland affiliates of the Big Four accountancies - Deloitte, KPMG, PricewaterhouseCoopers and EY; (2) many of the China-based audit firms do significant work on audits of major U.S. companies doing business in China; (3) the recent surge in the number of Chinese companies listed on U.S. stock exchanges; and (4) most of the Chinese companies listed on U.S. stock exchanges in recent years have a variable interest entity structure that is highly complex and might include risks that some investors and auditors may not fully understand or appreciate.”).

⁷ See Jing Yang, ‘The Gold Standard:’ Why Chinese Startups Still Flock to the U.S. for IPO’s, Wall St. J., Aug. 13, 2020) (on file with CII) (“The U.S. remains a magnet for initial public offerings of Chinese technology companies, despite rising political, trade and regulatory tensions between the world’s two largest economies.”); Jon Swartz, A Chinese IPO Just Raised More than \$2 billion Amid Tensions Between U.S. China, MarketWatch (Aug. 13, 2020), <https://www.marketwatch.com/story/ke-holdings-shares-are-off-to-a-flying-start-in-ipo-debut-that-raises-212-billion-2020-08-13> (“Investors have dumped billions into Chinese companies in recent years, even as shareholder advocates such as the Council of Institutional Investors warn of risks associated with low-visibility stocks far, far away.”); Michael Rapoport, They’d Find Fraud, Fraud, Fraud, Institutional Inves.(July 22, 2020), <https://www.institutionalinvestor.com/article/b1mlyjys554sgd/They-d-Find-Fraud-Fraud-Fraud> (“Fraud allegations involving Chinese companies that trade in the U.S. have plagued investors for years.”); Press Releases, Senate passes Kennedy and Van Hollen’s bill to kick deceitful Chinese companies off U.S. exchanges (May 20, 2020), <https://www.kennedy.senate.gov/public/2020/5/senate-passes-kennedy-and-van-hollen-s-bill-to-kick-deceitful-chinese-companies-off-u-s-exchanges> (“In the last 10 years, the number of Chinese companies listed on U.S. stock exchanges has increased significantly, as those firms take advantage of the capital available in America.”).

dual-class stock structures,⁸ both of which include risks that are not fully understood by many market participants.⁹

CII has previously submitted written comments to the Commission on July 8,¹⁰ June 25,¹¹ and June 18¹² providing our views on the initial SEC releases relating to the Proposed Rules.¹³ This

⁸ See, e.g., CII, Dual-Class Snapshot: Statistics (as of Sept. 30, 2020) (on file with CII) (In 2019, 9.9% of initial public offerings (IPOs) were foreign private issuers (FPIs) from China (21 out of 212), of these 21 Chinese FPIs, 14 (66.67%) have a dual class structure and 17 (77.2%) have a Variable Interest Entity (VIE) structure, and thus far 10.9% of IPOs in 2020 have been Chinese FPIs (15 out of 138), of these 15 Chinese FPIs, 4 (26.6%) have a dual class structure and 6 (40.0%) have a VIE structure.)

⁹ See Jonathan Barnett, Lessons from Luckin Coffee: The Underappreciated Risks of Variable Interest Entities, CLS Blue Sky Blog (July 28, 2020), <https://clsbluesky.law.columbia.edu/2020/07/28/lessons-from-luckin-coffee-the-underappreciated-risks-of-variable-interest-entities/> (“it is unclear that individual investors in an ‘irrationally exuberant’ stock such as Luckin typically appreciate the issuer’s multi-layered VIE structure, often bundled . . . with a dual-class voting structure that doubly disadvantages public shareholders”); Letter from Marco Rubio, U.S. Senator to The Honorable Steven Mnuchin, Secretary, U.S. Department of the Treasury (July 21, 2020), https://www.rubio.senate.gov/public/_cache/files/30ba40e5-7359-4706-9ccc-4126c2e78478/C09DEAFE10626E89603CCC9B7CEB5A9C.20.07.21-rubio-to-president-s-working-group-on-financial-markets-re-china-investment.pdf (“To skirt China’s foreign ownership restrictions, these [VIE] firms operate in a state of contradiction, telling the Chinese government that they are not owned by foreign investors, while effectively telling foreign investors the opposite.”); CII Research Analyst Brandon Whitehill, Buyer Beware: Chinese Companies and the VIE Structure 2 (Dec. 2017), https://www.cii.org/files/publications/misc/12_07_17%20Chinese%20Companies%20and%20the%20VIE%20Structure.pdf (“VIEs are fraught with complexity and risk for investors, including vulnerability to Chinese government pressures and management conflicts of interest”); see also Letter from Ash Williams, Chair, CII, et al. to John Zecca, Senior Vice President, General Counsel, North America and Chief Regulatory Officer, NASDAQ Stock Market 3-4 (Oct. 24, 2018), https://www.cii.org/files/issues_and_advocacy/correspondence/2018/20181024%20NASDAQ%20Petition%20on%20Multiclass%20Sunsets%20FINAL.pdf (“over time and on average, the valuation of these [dual class stock structure] firms tends to decline, as the “wedge” between ownership and control widens, the agency costs of insider control and lack of shareholder accountability increase, founder’s entrepreneurial skills and insights that initially propelled a company become dated, and opportunities and risks change in ways not foreseeable by investors at IPO.”).

¹⁰ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Jay Clayton, Securities and Exchange Commission (July 8, 2020), [https://www.cii.org/files/July%202020%20SEC%20letter%20\(final\)%20KB-AB.pdf](https://www.cii.org/files/July%202020%20SEC%20letter%20(final)%20KB-AB.pdf).

¹¹ Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission (June 25, 2020), <https://www.sec.gov/comments/sr-nasdaq-2020-027/srnasdaq2020027-7347631-218689.pdf> [hereinafter June 25 Letter].

¹² Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission (June 18, 2020), [https://www.cii.org/files/issues_and_advocacy/correspondence/2020/June%2018%202020%20Nasdaq%20letter%20\(final\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2020/June%2018%202020%20Nasdaq%20letter%20(final).pdf).

¹³ Notice of Filing of Proposed Rule Change To Apply Additional Initial Listing Criteria for Companies Primarily Operating in Restrictive Markets, Exchange Act Release No. 89,027, 85 Fed. Reg. 35,962 (proposed June 8, 2020), <https://www.federalregister.gov/documents/2020/06/12/2020-12685/self-regulatory-organizations-the-nasdaq-stockmarket-llc-notice-of-filing-of-proposed-rule-change>; Notice of Filing of Proposed Rule Change To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets, Exchange Act Release No. 89,028, 85 Fed. Reg. 35,967 (proposed June 8, 2020), <https://www.federalregister.gov/documents/2020/06/12/2020-12686/self-regulatoryorganizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>; Notice of Filing of Proposed Rule Change To Amend IM–5101–1 (Use of Discretionary Authority) To Deny Listing or Continued Listing or To Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company’s Auditor or

letter is intended to incorporate those comments and respond to the SEC’s September requests for written comments on the Proposed Rules.¹⁴

IM Proposal

CII continues to believe that the IM Proposal as drafted is flawed, but can be repaired.¹⁵ As explained in our July 8 letter:

In our view, the . . . proposal as drafted is flawed because it provides for far too much discretion for Nasdaq to approve the initial or continued listing of registrants from China or other restricted markets even when the company has a principal auditor that is located in a jurisdiction that prohibits PCAOB’s ability to inspect the auditor. As JP Gan, a Chinese venture investor and founding partner of Shanghai-based INCE Capital recently stated:

“The basic principle of capital markets is trust. The default assumption is everyone is good because the bad apples have been screened out, or it won’t be listed”

We believe the flaw in the . . . proposal can be repaired by revising the proposal to narrow the level of discretion along the lines of the following:

- The proposed IM-5101-1(b)(1) and IM-5101-1(c) would be replaced by new rules that would require that listing applicants and listed companies from a Restrictive Market, including companies listed prior to the effectiveness of the new rules, be prohibited from having an auditor or an accounting firm engaged to assist with their company audit that is located in a jurisdiction that limits the PCAOB’s ability to inspect the auditor (New Auditor Inspection Rules).
- . . . [A] Nasdaq staff determination to deny the initial or continued listing of a company for lack of compliance with the New Auditor Inspection Rules would result in the issuance “of a denial or delisting letter to the company that will inform the company of the factual basis for Nasdaq’s determination and its right for review of the decision pursuant to the Rule 5800 Series.”¹⁶

We note that our views on the IM Proposal are generally consistent with the recommendation of the President’s Working Group on Financial Markets “*to enhance[] listing standards to require,*

When a Company’s Business Is Principally Administered in a Jurisdiction That Is a Restrictive Market, Exchange Act Release No. 88,987, 85 Fed. Reg. 34,774 (proposed June 2, 2020), <https://www.federalregister.gov/documents/2020/06/08/2020-12271/self-regulatoryorganizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>.

¹⁴ 85 Fed. Reg. at 55,711-12, 57,262-63, 57,285-86 (“**Request for Written Comments**”).

¹⁵ See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Jay Clayton, Securities and Exchange Commission at 5.

¹⁶ *Id.*

as a condition to initial and continued exchange listing in the United States, PCAOB access to audit works papers of the principal audit firm for the audit of the listed company.”¹⁷ And we similarly share many of the Commission’s observations about the IM Proposal, including:

- “[The Nasdaq Stock Market LLC (Nasdaq)] may . . . find a particular auditor’s qualifications sufficient despite the fact that the auditor raises concerns with respect to some of the specified factors”¹⁸
- “Whether an applicant or listed company is denied listing . . . is . . . determined . . . appears to be subject to wide discretion under the proposed rule.”¹⁹
- “These provisions appear to be subject to wide discretion by the [Nasdaq]”²⁰
- “[T]here are questions as to whether the proposal is consistent with Section 6(b)(5) of the [Securities Exchange Act of 1934 (Act)]^[21] . . . and its requirement, among other things, that the rules of the national exchange not be designed to permit unfair discrimination.”²²

For all of the above reasons, CII believes the IM Proposal as currently drafted may not be consistent with the Act and, therefore, the Commission should disapprove the proposed rule change.

¹⁷ President’s Working Group on Financial Markets: Report on Protecting United States Investors from Significant Risk from Chinese Companies 9 (July 24, 2020) (emphasis added), <https://home.treasury.gov/system/files/136/PWG-Report-on-Protecting-United-States-Investors-from-Significant-Risks-from-Chinese-Companies.pdf>. We note that CII and many financial reporting experts are strongly opposed to one aspect of the President’s Working Group on Financial Markets: Report on Protecting United States Investors from Significant Risk from Chinese Companies (PWG Report); the PWG Report recommendation (1)(b) the so-called “co-audit” exception. *See id.* at 3. CII and many financial reporting experts view the co-audit exception as nonsensical and impractical. *See* Paul Gillis, President’s Working Group, China Acc. Blog (Aug. 10, 2020 at 5:52 PM), <https://www.chinaaccountingblog.com/weblog/presidents-working-group.html> (“If China is to agree [to the co-audit exception] . . . why not inspections instead?”); Soyoun Ho, Trump Administration Seeks to Delist U.S.-Listed Chinese Companies for Blocking Audit Inspections, Thomson Reuters Tax & Acct. (Aug. 10, 2020), <https://tax.thomsonreuters.com/news/trump-administration-seeks-to-delist-u-s-listed-chinese-companies-for-blocking-audit-inspections/> (quoting two financial reporting experts opposing the co-audit exception).

¹⁸ 85 Fed. Reg. at 55,711.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 15 U.S.C. § 78f(b)(5) (2010), available at <https://www.law.cornell.edu/uscode/text/15/78f> (“The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, 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 transactions 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange.”).

²² 85 Fed. Reg. at 55,711.

AILC Proposal

As indicated in our June 25 letter, CII generally supported the AILC Proposal as a supplement to, but not as a replacement for, an improved and revised IM Proposal.²³ As we explained in the June 25 letter:

We generally support “[a]s proposed, Rule 5210(l)(i) [that] would require a company that is listing its Primary Equity Security on Nasdaq in connection with its IPO, and that principally administers its business in a Restrictive Market, to offer a minimum amount of securities in a Firm Commitment Offering in the U.S. to Public Holders that: (i) Will result in gross proceeds to the company of at least \$25 million; or (ii) will represent at least 25% of the company’s postoffering Market Value of Listed Securities, whichever is lower”

We agree with Nasdaq that the . . . Proposal addresses “a risk that substantial participation by foreign investors in an offering, combined with insiders retaining significant ownership, does not promote sufficient investor base and trading interest to support trading in the secondary market [and] [t]he risk to U.S. investors is compounded when a company is located in a Restrictive Market due to barriers on access to information and limitations on the ability of U.S. regulators to conduct investigations or bring or enforce actions against the company and non-U.S. persons, which create concerns about the accuracy of disclosures, accountability and access to information.” We also agree that these risks may be mitigated, at least in part, “by the company conducting a Firm Commitment Offering of at least \$25 million or 25% of the company’s postoffering Market Value of Listed Securities, whichever is lower[, because] Firm Commitment Offerings typically involve a book building process that helps to generate an investor base and trading interest that promotes sufficient depth and liquidity to help support fair and orderly trading on the Exchange [and] [s]uch offerings . . . typically involve more due diligence by the broker-dealer than would be done in connection with a best-efforts offering, which helps to ensure that third parties subject to U.S. regulatory oversight are conducting significant due diligence on the company, its registration statement and its financial statements.”²⁴

Notwithstanding our earlier general support, we share many of the SEC’s observations about the AILC Proposal including that:

[Nasdaq] does not provide any other data or analysis to support the level at which the proposed [Firm Commitment Offering] thresholds are set. The Commission believes there are questions as to whether the proposed thresholds are set at levels which are not designed to permit unfair discrimination amongst Restrictive Market Company issuers.²⁵

²³ See June 25 Letter, *supra* note 11, at 4 (“CII generally supports the Proposed Rules as a supplement to, but not as a replacement of our proposed New Auditor Inspection Rules.”).

²⁴ *Id.* at 4-5 (footnotes omitted).

²⁵ 85 Fed. Reg. at 57,285.

In light of those questions, CII believes the Commission should not approve the AILC Proposal unless Nasdaq provides the data and analysis requested to support the threshold levels for the Firm Commitment Offering.

QM Proposal

As indicated in our June 25 letter, CII generally supported the original version of the QM Proposal as a supplement to, but not as a replacement for, an improved and revised IM Proposal.²⁶ As we explained in the June 25 letter:

We generally support the proposal[] to: (1) “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, 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;”(2) subject a company “to proposed Rule 5250(g) [that] . . . contain[s] 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, 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; and (3) change “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.”

We generally agree with Nasdaq that the . . . Proposals “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.”²⁷

On August 21 the Nasdaq filed Amendment No. 1 which replaced and superseded the proposed rule change as originally filed.²⁸ The QM Proposal’s three main requirements can now be summarized as follows:

- (1) “[Nasdaq] is proposing to adopt a new initial listing standard in Nasdaq Listing Rule 5210(c) to require any Company that principally administers its business in a jurisdiction that Nasdaq determines to have . . . [a Restrictive Market] to 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 that results in the

²⁶ See June 25 Letter, *supra* note 11, at 4 (“CII generally supports the Proposed Rules as a supplement to, but not as a replacement of our proposed New Auditor Inspection Rules.”).

²⁷ *Id.* at 6-7 (footnotes omitted).

²⁸ 85 Fed. Reg. at 57,261.

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."²⁹

- (2) "[Nasdaq] is proposing to adopt new Nasdaq Listing Rule 5250(g) to require any Company that was subject to proposed Rule 5210(c) upon initial listing and that continues to be a Restrictive Market Company 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 that 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."³⁰
- (3) "The proposed rule changes would apply to Restrictive Market Companies that apply to list on Nasdaq after the date of effectiveness of the proposed rules and would not apply to companies already listed on Nasdaq."³¹

In evaluating these three new provisions, we share the Commission's observations that:

[Nasdaq's] proposed requirements: (1) Only apply to Restrictive Market Companies that apply to list on Nasdaq after the date of effectiveness of the proposed rules; (2) only apply until the third anniversary of a Restrictive Market Company's listing date; and (3) do not apply to Restrictive Market Companies already listed on Nasdaq, even if such companies have been listed on Nasdaq for less than three years. Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination.³²

We believe that to best "enhance investor protection,"³³ the QM Proposal should be revised so that the requirements would apply equally to *all* companies from Restrictive Markets that apply to list or are already listed on Nasdaq.³⁴ In the absence of such a change, CII believes the Commission should not approve the QM Proposal.

²⁹ *Id.* (footnote omitted).

³⁰ *Id.* (footnote omitted).

³¹ *Id.*

³² *Id.* at 57,262.

³³ *Id.* at 57,261.

³⁴ See June 25 Letter, *supra* note 11, at 7 ("Moreover, given the perceived benefits of the QM Proposals to investors, we would revise the QM Proposals so that they are applicable to *all* companies from Restrictive Market companies rather than, as proposed, just those companies 'that apply to list on Nasdaq after the date of effectiveness' of the QM Proposals.").

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We appreciate your consideration of our comments. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive style with a large, stylized "J" and "M".

Jeffrey P. Mahoney
General Counsel