

E: jwilson@bevilacquaplcc.com

T: 202.869.0888 x.118

C: 703.628.9430

W: bevilacquaplcc.com

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VIA EMAIL (RULE-COMMENTS@SEC.GOV)

Vanessa Countryman,
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

Re: Comments On Nasdaq Stock Market, LLC's Proposed Rule Change To Adopt Additional Initial Listing Criteria for Companies Primarily Operating in China (File Number SR-NASDAQ-2025-069)

Dear Madam Secretary:

On behalf of Bevilacqua PLLC, I write about Nasdaq's proposed rule change to adopt initial listing criteria for companies primarily operating in China (the "Proposed Rule"). *See* 90 Fed. Reg. 45298, Sep. 19, 2025 (describing the Proposed Rule). In short, the Proposed Rule would impose onerous requirements on Chinese companies to be able to list on Nasdaq simply because they are Chinese, and which Nasdaq does not foist on issuers from other foreign countries applying to list their securities on Nasdaq. Moreover, the Proposed Rule, if allowed to go into effect, would be unlawful and make for bad policy. Therefore, we respectfully ask the SEC to disapprove of the Proposed Rule.

- SUMMARY OF THE PROPOSED RULE -

The Nasdaq Rules contain Rule 5210, entitled "Prerequisites for Applying to List on The Nasdaq Stock Market." The Proposed Rule would add to that Rule a subpart (l), entitled "Special Requirements for Companies based in China, Hong Kong and Macau". *See* Nasdaq Form 19b-4, File No. SR-NASDAQ-2025-069, Sep. 4, 2025 (filed), at 37 (the "Nasdaq Filing"), *available at* <https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/filings/SR-NASDAQ-2025-069.pdf>. Subpart (l) would establish additional criteria for initial listing on Nasdaq for any company headquartered or incorporated in China (including Hong Kong or Macau) or whose business is "principally administered" there. *See* Nasdaq Filing at 37. We refer herein to such a company as a "Chinese Company."

The Proposed Rule defines "principally administered" in China to mean: the company's books and records are located there; at least 50% of its assets or employees are located in China; at least 50% of its directors or 50% of its officers are citizens of, or reside in, China; or the company is controlled by, or under common control with, one or more persons or entities that are citizens of, reside in, or whose business is headquartered, incorporated, or principally administered in China. *See id.*

In addition to meeting all of Nasdaq's other applicable initial listing requirements, subpart (l) would require a Chinese Company that is applying to list on Nasdaq in connection with:

- an Initial Public Offering, to conduct the IPO as a firm commitment underwritten offering in the U.S. to public holders, and the IPO must result in at least \$25 million in gross proceeds to the company;

- a Business Combination or de-SPAC Transaction, to have a minimum market value of unrestricted publicly held shares (MVUPHS) following the transaction of at least \$25 million;
- a Transfer of its Listing from the OTC or a National Exchange, to have an MVUPHS of at least \$25 million and have traded on the prior market or exchange for at least a year; or,
- a Direct Listing, to list only on the Nasdaq Global Select Market or Global Market, *i.e.*, the Chinese Company cannot list on the Nasdaq Capital Market.

See id. at 37-38

Nasdaq's purported rationale for the Proposed Rule is two-fold: United States national security and investor protection. *See* Nasdaq Submission at 4-6. As to the latter basis, Nasdaq claims that it has seen issues in recent years with the trading in securities of Chinese companies; Nasdaq believes those issues are due to low liquidity in the companies' securities. *See id.* at 5-6. Nasdaq posits that, "when a Chinese company lists on Nasdaq through an [IPO] or business combination with a small offering size or a low public float percentage, the company may not attract market attention nor develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading. As a result, the securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value and make the security more susceptible to manipulation by bad actors." *Id.* at 6.

- WHY THE SEC SHOULD DISAPPROVE OF THE PROPOSED RULE -

A. The Proposed Rule Would Be Unlawful If The SEC Permits It To Go Into Effect

The Proposed Rule does not pass muster under Section 3(f) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In deciding whether or not to approve the Proposed Rule, Section 3(f) requires the SEC to consider whether, in addition to the protection of investors, the Proposed Rule "is necessary or appropriate in the public interest" and whether it "will promote efficiency, competition, and capital formation." *See* 15 U.S.C. § 78c(f).

The Proposed Rule is certainly not necessary or appropriate to protect national security. Indeed, Nasdaq's invocation of national security seems to be nothing more than lip-service, and in any event, groundless. The Proposed Rule restricts smaller Chinese Companies from listing on Nasdaq, but not larger ones, which, as a matter of commonsense, would pose a greater threat to national security than smaller Chinese Companies. Furthermore, the Proposed Rule permits Chinese Companies to list via an IPO, provided they raise at least \$25 million in the IPO. Logically, if a Chinese Company posed a threat to U.S. national security, one would want the company to raise less capital, not more.

Nor is the Proposed Rule necessary or appropriate to protect investors. Nasdaq already has rules that afford substantially the same protections as the Proposed Rule does – and those other rules do so in a manner that is neutral as to the national origin of the issuer. Nasdaq Rule 5101 gives Nasdaq "broad discretionary authority over the initial and continued listing of securities in Nasdaq ... to protect investors" Nasdaq can use that discretionary authority "to deny initial listing or to apply additional and more stringent criteria when Nasdaq is concerned that a small offering size for an IPO may not reflect the company's initial valuation or ensure sufficient liquidity to support trading in the secondary market." *See* 86 Fed. Reg. 9549 (Feb. 16, 2021), at 9551 n.14. In addition, Nasdaq's "Restrictive Market" Rule, *i.e.*, Nasdaq Rule 5210(k), contains the same additional listing requirements that are in the Proposed Rule, though with some alternative requirements and applicant can meet in order to be able to list. Nasdaq premised the Restrictive Market Rule on the same liquidity concern it uses to justify the Proposed Rule.

The Proposed Rule is unquestionably anti-competitive as it discriminates against certain Chinese issuers imposing additional, more onerous listing criteria on them than are imposed on other foreign issuers.

Nasdaq does not attempt to argue that the Proposed Rule is not anti-competitive, but, rather, Nasdaq takes the (incorrect) position that any burden on competition is appropriate. *See* Nasdaq Filing at 34. No elaboration is necessary to the point that the Proposed Rule, by adding more regulatory burden, would promote inefficiency.

The Proposed Rule would be unlawful for still another reason. Section 6(b)(5) of the Exchange Act requires that the rules of a securities exchange “are not designed to permit unfair discrimination between ... issuers” *See* 15 U.S.C. § 78f(b)(5). The Proposed Rule is, on its face, designed to discriminate between issuers because it expressly singles out – by name – companies from China. Thus, the Proposed Rule discriminates in favor of foreign issuers from countries other than China.

And that discrimination is unfair. It is unfair because Nasdaq’s proposed justifications for such discrimination are groundless, for reasons discussed above. Furthermore, Nasdaq offers no rational, much less convincing, basis to justify writing the Proposed Rule in terms of national origin. For example, if an issuer’s low liquidity raises a risk of manipulative trading, wouldn’t that be a concern that Nasdaq should address, regardless of the national origin of the issuer? In short, the Proposed Rule singles out Chinese companies and imposes onerous burdens on them because they are Chinese, and such conduct is unquestionably unfair.

B. The Proposed Rule Will Make For Bad Policy If The SEC Allows It To Go Into Effect

In addition to being unlawful, the Proposed Rule will make for bad policy if the SEC permits it to go into effect.

- The Proposed Rule is paternalistic, denigrates the intelligence of the American investor to understand and weigh potential risks when investing, and limits his freedom to make his own investment decisions.
- The Proposed Rule will limit investment opportunities available to American investors, including ones that could be lucrative for them.
- The Proposed Rule is antithetical to the goal of reducing regulatory burdens on business.

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Bevilacqua PLLC very much appreciates and has a great deal of respect for Nasdaq and this country’s other securities exchanges and the regulatory role and service they provide to issuers and investors. However, Nasdaq can do better than the Proposed Rule, and the SEC should assure that they do. To the end, we respectfully request that the SEC disapprove of the Proposed Rule.

Sincerely,

BEVILACQUA PLLC

By: 
Joseph D. Wilson, Esq.*

* Admitted to practice only in Virginia, Maryland, Washington, DC, New York, and New Jersey