

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105603; File No. SR-NASDAQ-2026-009]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Noticing of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Listing Rule IM-5101-4

June 3, 2026.

I. Introduction

On February 20, 2026, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt Nasdaq Rule IM-5101-4, which would provide Nasdaq with the authority to delist a security where the Commission has previously suspended trading and the Exchange determines it appropriate and in the public interest to do so. The proposed rule change was published in the Federal Register on March 6, 2026.³ On April 16, 2026, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to take action on the proposed rule change.⁵ On May 21, 2026, the Exchange filed Amendment No. 1 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 104917 (Mar. 3, 2026), 91 FR 11104 (“Notice”). Comments received on the proposed rule change are available at: <https://www.sec.gov/rules-regulations/public-comments/sr-nasdaq-2026-009>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 105252, 91 FR 21353 (Apr. 21, 2026). The Commission designated June 4, 2026, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change. See id.

proposed rule change, which superseded the original filing in its entirety.⁶ The Commission is publishing this notice and order to solicit comments on Amendment No. 1 from interested persons and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change, as Modified by Amendment No. 1⁷

The Nasdaq Rule 5000 Series contains rules related to the qualification, listing, and delisting of companies on the Exchange. Currently, Nasdaq Rule 5101 provides that, in addition to applying the enumerated criteria set forth in the Nasdaq Rule 5000 Series, the Exchange has broad discretionary authority over the initial and continued listing of securities on 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. Among other things, the Exchange may use this discretion to suspend and delist particular securities based on any event, condition, or circumstance that exists or occurs that makes continued listing on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for continued listing.⁸

The Exchange proposes to adopt Nasdaq Rule IM-5101-4 to provide that where a security exhibits trading activity that is indicative of potential manipulation, and the Commission has implemented a temporary trading suspension of that security pursuant to Section 12(k) of the Act

⁶ In Amendment No. 1, the Exchange: (1) provided additional description of certain aspects of the proposal; (2) made technical and non-substantive changes to the proposal; and (3) addressed comments received on the proposal. The full text of Amendment No. 1 can be found on the Commission's website at: <https://www.sec.gov/comments/SR-NASDAQ-2026-009/srnasdaq2026009-789019-2393806.pdf> ("Amendment No. 1").

⁷ All capitalized terms not otherwise defined in this order shall have the meanings set forth in the Nasdaq Listing Rules.

⁸ See Nasdaq Rule 5101.

(“Section 12(k) suspension”),⁹ the Exchange may exercise its authority under Nasdaq Rule 5101 to delist the security when it determines that doing so is necessary to protect investors. As proposed, the Exchange would be permitted to exercise the discretionary authority even when the security and the listed company otherwise satisfy all applicable Nasdaq listing standards at the time of determination.¹⁰

The Exchange states that it would exercise its discretion to delist a company on a case-by-case basis, and in applying that discretion, it would consider whether the listed securities may be susceptible to manipulation based on factors related to concerns the Exchange and other regulators have identified with companies that previously were the subject of problematic or unusual trading, including considerations related to the company’s advisors (including auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers that are currently or have in the past worked for the company).¹¹ In particular, in making the determination to delist a security, the Exchange will consider all relevant facts and circumstances, including the following:

- where the company is located, including the availability of legal remedies to U.S. shareholders in that jurisdiction, the existence of blocking statutes, data privacy laws and other laws in foreign jurisdictions that may present challenges to regulators seeking to enforce rules against the company, the ability of parties to conduct comprehensive due diligence in that jurisdiction, and the transparency of regulators in the jurisdiction;

⁹ 15 U.S.C. 78l(k). Under Section 12(k) of the Act, if in its opinion the public interest and the protection of investors so require, the Commission is authorized by order to summarily suspend trading in any security (other than an exempted security) for a period not exceeding ten business days. 15 U.S.C. 78l(k)(1)(A).

¹⁰ See proposed Nasdaq Rule IM-5101-4.

¹¹ See Amendment No. 1, supra note 6, at 5.

- whether a person or entity exercises substantial influence over the company and, if so, where that person or entity is located, including the availability of legal remedies to U.S. shareholders in that jurisdiction, the existence of blocking statutes, data privacy laws and other laws in foreign jurisdictions that may present challenges to regulators seeking to enforce rules against the person or entity, the ability of parties to conduct comprehensive due diligence in that jurisdiction, and the transparency of regulators in the jurisdiction;
- whether the public float, share distribution and trading patterns in the company's security raise concerns about adequate liquidity and potential concentration, including consideration of other explanations of any observed volatility or significant price moves;
- evidence of third-party social media activity or similar schemes designed to influence price and demand in the security;
- disclosures of material news by the company, and whether such disclosures adequately explain the trading activity observed;
- whether the company has recently issued securities and the terms of any such issuances, including the size of any discounts; whether such shares are subject to resale; and whether the company obtained shareholder approval for the share issuance (without regard to whether an exemption to Nasdaq's shareholder approval for the issuance was available);
- whether there are issues concerning the company's advisors (including auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers), based on factors including, but not limited to, whether the advisor has been reviewed by applicable regulators and, if so, what were the results of those reviews;

- if the company's advisor is a new entity, whether the advisor's principals were involved with other firms with a regulatory history;
- whether any of the company's advisors were involved in other transactions where the securities became subject to a pattern of concerning or volatile trading;
- whether the company's management and Board has experience or familiarity with U.S. public company requirements, including regulatory and reporting requirements under Nasdaq rules and federal securities laws;
- whether there are any FINRA, SEC or other regulatory referrals related to the company or its advisors, or the trading of the company's securities, which can be included in the record of the matter and, if applicable, the results of those referrals;
- whether the company currently has, or recently has had, a going concern audit opinion and, if so, what is the company's plan to continue as a going concern;
- whether there are other factors that raise concerns about the integrity of the company's board, management, significant shareholders, or advisors; and
- any other material information, whether mitigating or concerning, provided by the company or otherwise available in the record of the matter.¹²

Proposed Nasdaq Rule IM-5101-4 specifies that because trading activity that is indicative of potential manipulation may occur when a security lacks sufficient public float, investor base, or trading interest to support the depth and liquidity necessary to maintain a fair and orderly market, the Exchange may use this authority even where the potential manipulation appears to be driven by third parties with no known connection to the company, and even where Nasdaq

¹² See proposed Nasdaq Rule IM-5101-4. The Exchange states that these factors are based in part on the factors in Nasdaq Rule IM-5101-3 (Application of Discretion to Deny Initial Listing). See Amendment No. 1, supra note 6, at 5.

cannot determine whether the company or any associated individual was involved. Further, the Exchange will consider evidence provided by the company that there is sufficient public float, investor base, or trading interest.¹³

Under the proposal, Exchange Staff will issue a Staff Delisting Determination under Nasdaq Rule 5810(c)(1) if the Exchange determines to delist a security pursuant to this authority.¹⁴ A company can seek review of such a Staff Delisting Determination pursuant to Nasdaq Rule 5815.¹⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the rules of an exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The

¹³ See proposed Nasdaq Rule IM-5101-4. The Exchange states that when determining whether to apply this discretion, the Exchange may request additional information from a company and such information can form the basis for a trading halt under Nasdaq Rule 4120(a)(5)(B). See Amendment No. 1, supra note 6, at 8.

¹⁴ “Staff Delisting Determination” means a written determination by the Exchange’s Listing Qualification Department to delist a listed company’s securities for failure to meet a continued listing standard. See Nasdaq Rule 5805(h).

¹⁵ See proposed Nasdaq Rule IM-5101-4.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

Commission also finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(7) of the Act,¹⁸ which requires, among other things, that the rules of an exchange provide fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹⁹ which requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has consistently recognized that the development and enforcement of meaningful listing standards²⁰ by an exchange is of critical importance to financial markets and the investing public.²¹ Among other things, the Commission has stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to bona fide companies that have or will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets.²² Meaningful listing standards also are important given investor expectations regarding

¹⁸ 15 U.S.C. 78f(b)(7).

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ This reference to “listing standards” refers to both initial and continued listing standards.

²¹ See, e.g., Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR-NYSE-2008-17).

²² See, e.g., Securities Exchange Act Release Nos. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11); 65708 (Nov. 8, 2011), 76 FR 70799, 70802 (Nov. 15, 2011) (SR-NASDAQ-2011-073); 63607 (Dec. 23, 2010); 75 FR 82420, 82422 (Dec. 30, 2010) (SR-NASDAQ-2010-137); and 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (SR-NYSE-2008-17). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., Securities Exchange Act Release Nos. 82627 (Feb. 2, 2018), 83 FR 5650, 5633, n.53 (Feb. 8, 2018) (SR-NYSE-2017-30); 87648 (Dec. 3, 2019), 84 FR 67308, 67314, n.42 (Dec. 9, 2019) (SR-NASDAQ-2019-059); and 88716 (Apr. 21, 2020), 85 FR 23393, 23395, n.22 (Apr. 27, 2020) (SR-NASDAQ-2020-001).

the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²³

The Exchange states that its listing standards include continuing financial and liquidity requirements that are designed to help ensure that listed companies maintain sufficient public float, investor base, and trading interest, to promote fair and orderly markets, while also allowing companies of all sizes to raise capital.²⁴ According to the Exchange, notwithstanding these requirements, it has recently observed problematic or unusual trading in certain listed companies.²⁵ The Exchange states that such trading has apparently been effectuated through recommendations made to investors by unknown persons via social media to purchase, hold, and/or sell the securities.²⁶ The Commission has also issued Section 12(k) suspensions of trading in securities in companies based on potential manipulation by third-parties through the use of recommendations that appear to be designed to artificially inflate the price and trading volume of the securities and a determination that the public interest and the protection of investors require a suspension of trading in the securities.²⁷ The Exchange states that it believes that the ability of

²³ See, e.g., Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR-NASDAQ-2020-001); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR-NASDAQ-2019-089). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31) (stating that “[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market” and that “[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue ... so that fair and orderly markets can be maintained”).

²⁴ See Amendment No. 1, supra note 6, at 4.

²⁵ See id.

²⁶ See id.

²⁷ See id. See also, e.g., Securities Exchange Act Release Nos. 104112 (Sept. 26, 2025) (Smart Digital Group Limited), 104113 (Sept. 26, 2025) (QMMM Holding Limited), 104163 (Oct. 3, 2025) (Etoiles Capital Group Co., Ltd.), 104164 (Oct. 3, 2025) (Platinum Analytics Cayman Limited), 104165 (Oct. 3, 2025) (Pitanium Limited), 104166 (Oct. 8, 2025) (Empro Group Inc.), 104167 (Oct. 8, 2025) (NusaTrip Incorporated), 104168 (Oct. 16, 2025) (Premium Catering (Holdings) Limited), 104169 (Oct. 22, 2025) (Robot Consulting Co., Ltd.), 104176 (Nov. 11, 2025) (Charming Medical Limited), 104317 (Dec. 4, 2025) (Magnitude International Ltd), 104613 (Jan. 14, 2026) (JM Group Limited), 104763 (Feb. 1, 2026) (TechCreate Group Ltd.).

third parties to manipulate a security's price can indicate that the security does not have sufficient liquidity, and the issuing company does not have sufficient market interest, for listing to be appropriate.²⁸

As discussed above, proposed Nasdaq Rule IM-5101-4 addresses the Exchange's use of its discretionary authority to delist a company based, in part, on the presence of potentially manipulative trading activity. Specifically, where a security exhibits trading activity indicative of potential manipulation and the Commission has implemented a Section 12(k) suspension, the Exchange may exercise its authority under Nasdaq Rule 5101 to allow it to delist the security where it determines such action is necessary to protect investors. In exercising its discretion, the Exchange will consider all relevant facts and circumstances, including a set of identified factors.

One commenter expressed support for the proposal, stating that it will enable Nasdaq to immediately begin the delisting process when a company is the subject of a Section 12(k) suspension and "Nasdaq, in its gatekeeping role as a national securities exchange, determines that the company may be susceptible to manipulation based on Nasdaq's evaluation of the factors in the [p]roposal."²⁹ This commenter stated that, in general, the Commission's recent Section 12(k) suspensions have followed "manipulative schemes operated by unknown persons, who make recommendations to investors via social media designed to artificially inflate the price and volume of the securities of the target company."³⁰ This commenter also stated that it supports Nasdaq's inclusion of the factors it will consider when determining whether to initiate delisting proceedings for securities that have been subject to a Section 12(k) suspension.³¹

²⁸ See Amendment No. 1, supra note 6, at 4-5.

²⁹ Letter from Katie Kolchin, Managing Director, Head of Equity & Options Market Structure and Gerald O'Hara, Vice President & Assistant General Counsel, SIFMA, dated Mar. 27, 2026 ("SIFMA Letter"), at 1.

³⁰ Id. at 2.

³¹ See id. at 2.

Other commenters raised concerns regarding the proposal.³² Several commenters opposed the proposal because it would grant Nasdaq authority to delist a company even without any wrongdoing on the part of the company or its management.³³ Commenters also raised concerns that the proposal provides the Exchange with broad discretionary authority and lacks objective standards to constrain Exchange decision-making.³⁴ Similarly, several commenters stated that the proposal invites arbitrary application.³⁵ One commenter stated that the Exchange has not demonstrated the existence of a systemic problem that would require this delisting power.³⁶ Additionally, commenters stated that delisting a company in these circumstances would harm the company's shareholders.³⁷

In response to commenters, the Exchange states that the Commission's recent Section 12(k) suspensions reflect a demonstrated and recurring pattern of activity.³⁸ The Exchange also

³² See Letters from Aseel, dated Apr. 23, 2026 ("Aseel Letter"); Salem Alruwisan, dated Apr. 8, 2026 ("Alruwisan Letter"); Asma, dated Apr. 7, 2026 ("Asma Letter"); Ahmad, dated Apr. 3, 2026 ("Ahmad Letter"); Marc Indeglia, The Small Public Company Coalition, dated Mar. 27, 2026 ("SPCC Letter"); Alex Cheung, dated Mar. 24, 2026 ("Cheung Letter"); Rob, dated Mar. 24, 2026 ("Rob Letter"). See also Letter from Hamad Aldossary, dated Apr. 21, 2026 ("H. Aldossary Letter") (expressing concerns, as a retail investor, about the current situation surrounding a company that has been subject to a Section 12(k) suspension); Letter from Khaled Aldossary, dated Apr. 21, 2026 ("K. Aldossary Letter") (same); Letter from Abdulrhman kamal alabdali, dated Apr. 2, 2026 (stating that it is "unclear" why new customers do not receive sufficient warnings or safeguards regarding "high-risk or potentially delisted stocks"). The Commission also received a comment letter regarding changes to the index methodology for the Nasdaq 100. See Letter from Habib Fanny, dated Mar. 16, 2026. This comment is not germane to the proposal.

³³ See Aseel Letter; Ahmad Letter; Asma Letter; Alruwisan Letter; Cheung Letter; Rob Letter; SPCC Letter.

³⁴ See Rob Letter; Ahmad Letter; Asma Letter; Cheung Letter; SPCC Letter at 9-11.

³⁵ See Aseel Letter ("[i]f delisting becomes an arbitrary process based on subjective interpretations of 'public interest,' investors will permanently withdraw"); SPCC Letter at 12 (stating that the proposal "establishes a standardless regime under which Nasdaq may decide – based on open-ended factors, catchall provisions, and whatever else it deems relevant"); Cheung Letter (stating that the proposal provides "broad, post-facto power to delist on a seemingly arbitrary basis after investors have already purchased shares"); Rob Letter ("arbitrary power risks abuse and erodes the fairness that U.S. capital markets are supposed to uphold").

³⁶ See SPCC Letter at 2-4.

³⁷ See SPCC Letter at 6; Ahmad Letter; Rob Letter; H. Aldossary Letter; K. Aldossary Letter. One commenter also stated that "the proposal does not target the wrongdoer; it punishes the victim." SPCC Letter at 6.

³⁸ See Amendment No. 1, supra note 6, at 9.

states that its existing continued listing standards do not currently address the distinct risk posed by third-party manipulation schemes that exploit structural vulnerabilities in a company's securities because existing quantitative metrics are not designed to capture these schemes arising from third-party conduct.³⁹ According to the Exchange, the proposal is a "prophylactic measure" designed to protect investors from continued exposure to securities that have demonstrated a susceptibility to manipulation.⁴⁰ The Exchange states that where it appears that a company is subject to manipulation by third parties, it is indicative that a security may not have sufficient liquidity, and the issuing company may not have sufficient market interest, for continued listing to be appropriate.⁴¹ The Exchange states that therefore the proposal is appropriate, without regard to specific misconduct by the issuer.⁴² The Exchange also states that proposed Nasdaq Rule IM-5101-4 enumerates specific factors that the Exchange will consider to determine whether delisting is appropriate, all of which are directly relevant to assessing whether a security's structural characteristics and market history make it susceptible to manipulation.⁴³

The Exchange's proposal is reasonably designed to protect investors and the public interest by specifying that the Exchange will exercise its discretion to delist a company's security if the security exhibits trading activity indicative of potential manipulation, the Commission has imposed a Section 12(k) suspension relating to that security, and the Exchange determines that delisting the security is necessary to protect investors. The Commission agrees that the presence of potentially manipulative trading activity may indicate that a security lacks sufficient public

³⁹ See id.

⁴⁰ See id. at 11.

⁴¹ See id.

⁴² See id.

⁴³ See id. at 12.

float, investor base, or trading interest to provide the depth and liquidity to promote fair and orderly markets. In these circumstances, the security may continue to be susceptible to manipulative trading activity. Moreover, the Commission agrees that it is consistent with the Act for the Exchange to exercise its discretionary authority as the listing exchange and delist a security that is exhibiting potentially manipulative trading activity when the Exchange determines that delisting is necessary to protect investors, even if the Exchange cannot determine that the company or any individuals associated with the company were involved.⁴⁴ In setting forth how the Exchange will apply its discretionary authority over continued listing in these circumstances, the proposal is reasonably designed to reduce the risk of manipulative trading, promote just and equitable principles of trade, and help to protect investors and the public interest.

The Exchange's consideration of the factors enumerated in proposed Nasdaq Rule IM-5101-4, among "all relevant facts and circumstances," when making its delisting determination should help the Exchange make a reasoned decision about whether to delist a security that is exhibiting trading activity indicative of potential manipulation. The factors are based, in part, on factors used in Nasdaq Rule IM-5101-3, which provides that the Exchange may use its discretionary authority under Nasdaq Rule 5101 to deny initial listing to a company based on factors that make the company's security susceptible to manipulation.⁴⁵ The factors in proposed

⁴⁴ See In re Tassaway, Securities Exchange Act Release No. 11291, 45 S.E.C. 706, 709. 1975 SEC LEXIS 2057, at 6 (Mar. 13, 1975) ("[P]rimary emphasis must be placed on the interests of prospective future investors . . . [who are] entitled to assume that the securities in [Nasdaq] meet [Nasdaq's] standards.").

⁴⁵ See Nasdaq Rule IM-5101-3. Nasdaq Rule IM-5101-3 contains a non-exclusive list of factors that the Exchange will consider in making its determination of whether to deny initial listing even if the applicant meets all stated listing requirements. Many of these same factors are in proposed Nasdaq Rule IM-5101-4, including the existence of laws in foreign jurisdictions that may present challenges to regulators seeking to enforce rules against the company; whether any of the company's advisors were involved in prior transactions where the securities became subject to a pattern of concerning or volatile trading; whether there are any regulatory referrals related to the company or its advisors; and whether the company currently has, or recently has had, a going concern audit opinion.

Nasdaq Rule IM-5101-4 also include additional considerations specific to continued listing and Section 12(k) suspensions, including, but not limited to, trading patterns, evidence of third-party social media activity, disclosure of material news, and recent securities issuances. Proposed Nasdaq Rule IM-5101-4 also provides that the Exchange will consider any other material information, whether mitigating or concerning, provided by the company or otherwise available in the record of the matter; and will consider evidence provided by the company that there is sufficient public float, investor base, or trading interest to support a fair and orderly market. The Exchange's application of these factors to make a case-by-case determination, rather than automatically delisting a company's security based on the presence of a Section 12(k) suspension or specific trading observations alone, will allow the Exchange to use its judgment to determine whether or not continued listing is appropriate. Further, if the Exchange issues a Staff Delisting Determination in accordance with proposed Nasdaq Rule IM-5101-4, the affected company will be able to seek review pursuant to Nasdaq Rule 5815. The proposed rule therefore is reasonably designed to prevent fraudulent and manipulative acts and practices, protect investors and the public interest, and to help ensure that the Exchange applies its discretion to delist a company's securities in a manner that is not unfairly discriminatory, consistent with Section 6(b)(5) of the Act.

Several commenters stated that companies have no practical way to monitor or prevent manipulative online behavior by unrelated third parties and bad actors (including competitors) that could be incentivized to abuse the proposed rule to trigger suspension and delisting of a targeted company.⁴⁶ In response, the Exchange states that, under the proposal, delisting is not a guaranteed outcome and the Exchange will apply the enumerated factors in determining whether

⁴⁶ See Cheung Letter; Rob Letter; SPCC Letter at 2, 6.

it is appropriate to delist a security.⁴⁷ The Exchange also states that Section 12(k) suspensions “remain very rare, making it difficult for a competitor or other bad actor to predict when a suspension may be imposed.”⁴⁸ As discussed above, the ability for third parties to manipulate a security’s price may indicate that the security does not have sufficient liquidity to promote fair and orderly markets. The Exchange’s application of its discretionary authority and consideration of the enumerated factors, in addition to the evidence of potentially manipulative trading activity and presence of a Section 12(k) suspension, is reasonably designed to ensure that a security will be delisted when it is consistent with the protection of investors and the public interest.

One commenter stated that a Section 12(k) suspension could “become the trigger for immediate and effectively indefinite removal from a national securities exchange.”⁴⁹ Another commenter stated that the proposal raises “serious” due process concerns because there would be “no clear, objective criteria, no required hearing, and no meaningful appeal process.”⁵⁰ In response, the Exchange states that delisting would not be automatic upon a Section 12(k) suspension, but instead the Section 12(k) suspension would be a prerequisite, after which the Exchange would exercise case-by-case discretion considering all relevant facts and circumstances, including those factors enumerated in proposed Nasdaq Rule IM-5101-4, which include a consideration of mitigating information provided by the company.⁵¹ The Exchange also

⁴⁷ See Amendment No. 1, supra note 6, at 11.

⁴⁸ Id. The Exchange states that the type of underlying bad actor activity raised by these commenters would violate the anti-fraud provisions of the federal securities laws. See id.

⁴⁹ SPCC Letter at 4-5.

⁵⁰ Rob Letter. Another commenter stated that the proposal raises due process concerns by allowing the delisting of companies “based on ‘suspicion’ rather than proven misconduct by the issuing company.” Ahman Letter.

⁵¹ See Amendment No. 1, supra note 6, at 10. The Exchange states that this construct will help to ensure that no company is delisted without an opportunity to demonstrate that its securities can support a fair and orderly market. See id.

states that under Nasdaq Rule 5810, Nasdaq Staff would issue a delisting letter setting forth the factual bases for the Staff Delisting Determination.⁵² The company could seek review of the Staff Delisting Determination before a Hearings Panel pursuant to Nasdaq Rule 5815, which appeal would stay any suspension or delisting action, and the company also could appeal to the Nasdaq Listing and Hearing Review Council (“Listing Council”) pursuant to Nasdaq Rule 5820 and seek relief from the Commission under Section 19(d) of the Act.⁵³

The proposal provides for a fair procedure for the Exchange to make a delisting determination. During the Exchange’s consideration of whether to delist a company, the company will have the opportunity to provide evidence and narrative in support of its continued listing. The company also will receive in writing the factual basis for the Staff Delisting Determination and may appeal the Staff Delisting Determination while remaining listed on the Exchange.⁵⁴ During the appeal process, the company will have another opportunity to provide evidence and narrative in support of their continued listing to an independent Hearings Panel, separate from the Nasdaq Staff who made the delisting determination, as well as to the Listing Council and, ultimately, the Commission.⁵⁵ The proposed rule therefore is consistent with Section 6(b)(7) of the Act in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered.

Several commenters stated that the proposal would make raising capital more difficult for small public companies and increase risks to investors.⁵⁶ While the Commission acknowledges

⁵² See id.

⁵³ See id.

⁵⁴ See Nasdaq Rules 5810(a) and 5815.

⁵⁵ See Nasdaq Rules 5805(d), 5815, and 5820; 15 U.S.C. 78s(d).

⁵⁶ See Cheung Letter; Rob Letter; SPCC Letter at 4-6. One commenter states that the added risk of delisting under the proposal would “make it materially more difficult for small public companies to attract and retain

that there are many benefits to companies and their shareholders related to being listed on a national securities exchange, these benefits do not override the need for an exchange to maintain and enforce continued listing standards.⁵⁷ As discussed above, in the presence of potentially manipulative trading activity and a Section 12(k) suspension, the Exchange may exercise its discretionary authority to delist a security when necessary to protect investors and the public interest, consistent with Section 6(b)(5) of the Act. Accordingly, the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.

Several commenters provided suggested alternatives to the proposal. One commenter recommended “the establishment of specific criteria, linking delisting decisions to actual violations, and focusing on the parties responsible for the manipulation.”⁵⁸ Another commenter recommended, among other things, “[c]lear and specific criteria for delisting decisions” and a “[r]equirement for tangible evidence of wrongdoing by the company.”⁵⁹ Another commenter recommended mandatory “safe harbor” provisions and a “cure period” to protect public investors from the fallout of delisting actions.⁶⁰ In addition, one commenter that supported the proposal stated that when the Exchange determines to delist a company pursuant to the proposed rule, “it should also provide clarity and transparency to the company’s public shareholders regarding the

both equity and debt financing.” SPCC Letter at 5. This commenter also states that investors would “likewise bear substantial costs” as “delisting shifts trading from a national securities exchange to less transparent and liquid venues,[] increasing volatility and reducing oversight.” *Id.* at 6.

⁵⁷ See *supra* note 23 and accompanying text.

⁵⁸ See Alruwisan Letter.

⁵⁹ See Asma Letter.

⁶⁰ See Ahmad Letter.

expected timeline for delisting the company from Nasdaq.”⁶¹ These suggestions are not part of Nasdaq’s proposal and the Commission must approve the proposal if it finds that the proposal is consistent with the Act and rules thereunder. For the reasons discussed herein, the proposal is consistent with the Act.⁶²

Based on the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2026-009 on the subject line.

⁶¹ SIFMA Letter at 2. In response to this commenter, the Exchange states that it requires a company to disclose receipt of a Staff Delisting Determination within four business days on a Form 8-K or by issuing a press release. See Amendment No. 1, supra note 6, at 11, n.16; Nasdaq Rule 5810(b). In addition, Nasdaq maintains a public library of FAQs that describe the delisting process, including the applicable steps and time frames. See Amendment No. 1, supra note 6, at 11, n.16.

⁶² The Commission’s findings herein are based on a determination that it is consistent with the Act for the Exchange to adopt proposed Nasdaq Rule IM-5101-4 to provide how the Exchange will utilize its authority under Nasdaq Rule 5101 to delist a security where the security exhibits trading activity that is indicative of potential manipulation, the Commission has implemented a Section 12(k) suspension, and the Exchange determines that delisting the security is necessary to protect investors. In this order, the Commission does not take a position regarding the extent of the Exchange’s authority under current Nasdaq rules, including Nasdaq Rule 5101, to delist a security in these circumstances.

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-2026-009. This file number should be included on the subject line if email 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 website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-NASDAQ-2026-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. Amendment No. 1 provides additional clarity to the proposal by (1) providing additional explanation of certain aspects of the proposal; (2) providing responses to comment letters; and (3) making other technical and non-substantive changes for readability. The changes and additional discussion in Amendment No. 1 assist the Commission in evaluating the proposal and determining that it is consistent with the Act. Amendment No. 1 does not alter any substantive provisions of the proposed rule change, or raise any regulatory

issues substantially different, from what is set forth in the Notice, which was subject to public comment. For these reasons, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁶³ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶⁴ that the proposed rule change (SR-NASDAQ-2026-009), as modified by Amendment No. 1, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁵

Sherry R. Haywood,

Assistant Secretary.

⁶³ 15 U.S.C. 78s(b)(2).

⁶⁴ Id.

⁶⁵ 17 CFR 200.30-3(a)(12).