

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85156; File No. SR-NASDAQ-2019-001)

February 15, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Listing Standards for Direct Listings and Clarify Related Rules

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 February 14, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 amend and clarify certain aspects of the listing process for Direct Listings.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. In particular, a company whose stock is not previously registered under the Exchange Act may wish to list on the Nasdaq Global Select Market without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. The proposed Listing Rule IM-5315-1 sets forth listing requirements for such securities (a “Direct Listing”) and describes how the Exchange will calculate compliance with the Nasdaq Global Select Market initial listing standards related to the requirements based on the price of a security, including the bid price, market capitalization and Market Value of Publicly Held Shares.

Nasdaq also proposes to modify Nasdaq Rule 4753 to more clearly describe the role of a broker-dealer serving as a financial advisor to the issuer of a security listing on the Nasdaq Global Select Market under proposed Rule IM-5315-1.

Calculation of Price-based Initial Listing Requirements

Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. To provide transparency to the initial listing process, the Exchange proposes to

adopt Listing Rule IM-5315-1, which will state how the Exchange calculates the initial listing requirements based on the price of a security, including the bid price, market capitalization and market value of publicly held shares for a Direct Listing on the Nasdaq Global Select Market.³

Nasdaq also proposes to require that a company that lists on the Nasdaq Global Select Market through a Direct Listing do so at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares. This interpretative material would describe when a company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.

Under IM-5315-1, Nasdaq would require that a company listing on the Nasdaq Global Select Market through a Direct Listing provide Nasdaq an independent third-party valuation (a “Valuation”). Any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in

³ This rule filing affects only companies listing on the Nasdaq Global Select Market. Nasdaq intends to subsequently file a proposed rule change under Section 19(b) of the Act to adopt requirements for the Nasdaq Capital and Global Markets applicable to companies which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and wish to list their securities to allow existing shareholders to sell their shares and clarify the use of the IPO Cross for initial pricing of such securities.

the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.⁴

Nasdaq proposes to require that a valuation agent will not be considered independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.

⁴ In addition, under Listing Rule 5101 Nasdaq has broad discretionary authority to 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.

- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

For a security that has had sustained recent trading in a Private Placement Market⁵ prior to listing, Nasdaq will determine a company's price, market capitalization and market value of publicly held shares based on the lesser of: (i) the value calculable based on the Valuation; and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

As set forth in IM-5315-1(d), to determine compliance with the price-based requirements and suitability for listing on the Exchange, Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement. Nasdaq believes that the price from such sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

Alternatively, in the absence of any recent sustained trading in a Private Placement Market over a period of several months,⁶ Nasdaq will determine that the company has met the market value of publicly held shares requirement for listing on the Nasdaq Global Select Market if the company provides a Valuation evidencing a market value of publicly held shares of at least \$250,000,000. Nasdaq believes that some companies that are clearly large enough to be suitable

⁵ Nasdaq proposes to define "Private Placement Market" in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

⁶ Limited trading in the Private Placement Market may not be sufficient for the Exchange to reach a conclusion that the company meets the applicable price-based requirements.

for listing on the Exchange do not have sustained trading in their securities on a Private Placement Market prior to going public and that a recent Valuation indicating at least \$250 million in market value of publicly held shares will give a significant degree of comfort that the company will meet the applicable market value of publicly held shares requirement upon commencement of trading.⁷ Nasdaq believes that it is unlikely that any Valuation would reach a conclusion that is incorrect to the degree necessary for a company using this provision to fail to meet the applicable requirement upon listing, in particular because any Valuation used for this purpose must be provided by a valuation agent that meets the independence requirements of proposed Listing Rule IM-5315-1(f) and has significant experience and demonstrable competence in the provision of such valuations. Nasdaq will also determine the bid price and market capitalization based on such Valuation.⁸

Foreign Exchange Listings

For a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares, or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the company has met the applicable price-based requirements based on the recent trading in such market. Nasdaq believes that the price of the issuer's securities from such broad and liquid trading is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. While this is consistent with Nasdaq's current practice, Listing Rule IM-5315-1(c) will clarify that a company transferring from a

⁷ See Listing Rule 5315(f)(2), which generally requires a market value of publicly held shares of at least \$110 million or \$100 million if the company has stockholders' equity of at least \$110 million.

⁸ Nasdaq will calculate a per share price by dividing the Market Value of Publicly Held Shares evidenced by the Valuation by the number of Publicly Held Shares and the market capitalization by multiplying that per share price by the total number of shares outstanding.

foreign regulated exchange where there is a broad, liquid market for the company's shares or listing on Nasdaq while trading on such exchange is not subject to the new requirements applicable to Direct Listings.

Clarification of the Role of a Financial Advisor in a Direct Listing

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Halt Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and described the role of financial advisors in that process.⁹ At that time, the Exchange added new Rule 4120(c)(9)¹⁰ to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the over the counter market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the "IPO Cross"). Prior to that rule change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.¹¹

⁹ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the "2014 Rule Change").

¹⁰ In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-81). All references in this filing are to the renumbered rules, as currently in effect.

¹¹ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”¹²

Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.¹³ In each case, the applicable price could be determined based on the issuer’s IPO price.¹⁴ In the absence of an IPO price from the underwriter, Nasdaq believes that the only viable options are to rely on a price from recent sustained trading the Private Placement Market¹⁵ or one provided by the financial advisor to the company.

¹² Subsequent to the 2014 Rule Change Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 10, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

¹³ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

¹⁴ Rules 4753(a)(3)(A)(iv)a. and 4753(b)(2)(D)(i). The price closest to the “Issuer’s Initial Public Offering Price” is the fourth tie-breaker in these rules, applicable when no single price is determined from the three prior tests.

¹⁵ As described above, Nasdaq believes that the price from such recent sustained trading in

When Nasdaq added Rule 4120(c)(9) in 2014, it cross-referenced Rule 4753 but did not modify it. Nasdaq now proposes to amend Rule 4753, based on the same rationale that supported the 2014 Rule Change, to elaborate in its rules the role of a financial advisor to the issuer of a security that is listing under IM-5315-1.¹⁶ Nasdaq has successfully employed, in limited circumstances, the IPO Cross for securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing since 2014¹⁷ and continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

Specifically, Nasdaq proposes to amend Rules 4753(a)(3)(A)(iv) and 4753(b)(2)(D)¹⁸ to state that in the case of the initial pricing of a Direct Listing (i.e., a security qualifying for listing under Listing Rule IM-5315-1), the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be: (i) for a security that has had recent sustained trading in a Private Placement Market prior to listing,¹⁹ the most recent transaction

a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

¹⁶ Specifically, Nasdaq stated that “an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to provide advice on when the security should be released for trading.” The 2014 Rule Change at 21830.

¹⁷ Among other instances, Nasdaq utilized the IPO Cross for the initial pricing of the common stock of American Realty Capital Healthcare Trust, Inc. as indicated in the 2014 Rule Change.

¹⁸ Nasdaq also proposes to make non-substantive changes to renumber the subparagraphs of these rules to reflect the proposed additional rule text.

¹⁹ The term “recent sustained trading” in proposed Rules 4753(a)(3)(A)(iv)b. and (b)(2)(D)(ii) relies on the requirement in proposed Rule IM-5315-1(d) that there be a sustained history of trading over a period of several months prior to listing in order for Nasdaq to rely on a Private Placement Market price.

price in that market or, (ii) if there is not such sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9). As described above, where there is recent sustained trading in a Private Placement Market, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that it is therefore appropriate to use the price from such trading to determine the Current Reference Price and the price at which the Nasdaq Halt Cross will occur. In cases where there is not recent sustained trading in the Private Placement Market, Nasdaq believes that the financial advisor to the issuer of a Direct Listing security is well suited to advise the company and Nasdaq as to the appropriate price to determine the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur because of the financial advisor's market knowledge of buying and selling interest and understanding of the company and its security.²⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² in particular, in that it is designed 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 transaction in securities, to remove impediments to and perfect the mechanism of a

²⁰ While Nasdaq and NYSE each have different market structures, the proposed calculation of Current Reference Price is similar to how "Reference Price" is calculated under NYSE Rule 15.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

free and open market and a national market system and, in general, to protect investors and the public interest.

Calculation of Price-based Initial Listing Requirements

The proposed rule change to require a Valuation and describe how Nasdaq will calculate compliance with the price-based requirements for listing on the Nasdaq Global Select Market is designed to protect investors and the public interest because any company relying solely on a Valuation will have to evidence at least \$250 million in market value of publicly held shares, which will give a significant degree of comfort that the company will meet the applicable market value of publicly held shares requirement upon commencement of trading.²³ Nasdaq's existing requirements, including the generally applicable \$110 million requirement for market value of publicly held on the Nasdaq Global Select Market, are designed to protect investors and serve to help assure that securities listed on Nasdaq have sufficient investor interest and will trade in a liquid manner. In addition, establishing independence standards for the party providing a Valuation will ensure that the entity providing a Valuation for purposes of listing on Nasdaq will have a significant level of independence from the listing applicant and thereby enhance the reliability of such Valuation. Finally, in addition to the proposed new requirements, Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. As such, Nasdaq believes these provisions protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

²³ See Listing Rule 5315(f)(2), which generally requires a market value of publicly held shares of at least \$110 million or \$100 million if the company has stockholders' equity of at least \$110 million.

The proposed rule change also protects investors and the public interest by requiring either that there be sustained recent trading in the Private Placement Market or that the company provide a Valuation demonstrating \$250 million market value of publicly held shares. Nasdaq believes that the price from such sustained trading in the Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that qualifying a company based on the lower of that trading price or the Valuation helps assure that the company satisfies Nasdaq's requirements. Alternatively, in the absence of recent sustained trading in the Private Placement Market, the requirement to demonstrate a market value of publicly held shares of at least \$250 million, similarly helps assure that the company satisfies Nasdaq's requirement by imposing a standard that is more than double the otherwise applicable standard.²⁴

The proposed requirement that a company that lists on the Nasdaq Global Select Market through a Direct Listing must do so at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares is designed to protect investors and the public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

Finally, the proposal to rely on the price from the existing trading market for a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with the protection of investors because the price from the broad and liquid trading market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. This provision applies

²⁴ See footnote 7, above.

only where there is a broad, liquid market for the company's shares in its country of origin and is designed to clarify that a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange that satisfies Listing Rule IM-5315-1(c) is not subject to the new requirements applicable to Direct Listings. Enhancing transparency around this requirement will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

Clarification of the Role of a Financial Advisor in a Direct Listing

The proposed rule change to clarify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest by more fully describing the role of a financial advisor to the issuer of a Direct Listing security that is not the subject of an IPO, but that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq. The proposed rule change establishes that in such a case the Current Reference Price and price at which the Nasdaq Halt Cross will occur will be the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. Where there has been sustained recent trading on a Private Placement Market over several months, Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq. Where there is not such sustained recent trading, Nasdaq notes that financial advisors have been performing

the functions of the underwriter in the IPO Halt Cross on a limited basis since 2014 and have market knowledge of buying and selling interest and an understanding of the company and its security. As such, Nasdaq believes that the rule change will promote fair and orderly markets because these mechanisms of establishing the Current Reference Price and the price at which the Nasdaq Halt Cross will occur will help protect against volatility in the pricing and initial trading of the securities covered by the proposed rule change. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing.

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.

The proposed rule change to adopt IM-5315-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing that is appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange. The market for listing services is extremely competitive and the proposed rule change adopts changes similar to those already approved for another market.²⁵ Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed listing standards impose a burden on competition.

²⁵ See Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (Approving SR-NYSE-2017-30 to amend NYSE Listed Company Manual to provide for the listing of companies that list without a prior Exchange Act registration and that are not listing in connection with an underwritten initial public offering and certain related changes).

In addition, the proposed change is designed to more fully describe the application of the IPO Halt Cross to a Direct Listing and the role of a financial advisor in the determination of the forth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur. The proposed rule change will have no impact on competition as it merely designed to insure that the Current Reference Price and the price at which the Nasdaq Halt Cross will occur is appropriately calculated for listings under IM-5315-1.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷ Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²⁸

A proposed rule change filed under Rule 19b-4(f)(6)²⁹ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁰

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, Nasdaq has asked the Commission to waive the 30-day operative delay to allow Nasdaq to apply the proposed rules to the initial listing and pricing of potential listings on the Nasdaq Global Select Market where the company's stock is not previously registered under the Exchange Act and the company is seeking to list without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. Nasdaq stated that Nasdaq believes that no benefit would be served by delaying the application of the rule.

The Commission notes that Nasdaq's proposed rule changes are substantially similar to the rules of another exchange that were approved previously by the Commission as consistent with the Act after being published in the Federal Register for notice and comment.³¹ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³²

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

³¹ See Securities Exchange Act Release No. 82627, note 25, supra; Securities Exchange Act Release No. 58550 (September 15, 2008), 73 FR 54442 (September 19, 2008) (SR-NYSE-2008-68).

³² For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)³³ of the Act to determine whether the proposed rule change should be approved or 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-2019-001 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-2019-001. 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 website (<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

³³ 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-001, 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.³⁴

Eduardo A. Aleman
Deputy Secretary

³⁴ 17 CFR 200.30-3(a)(12).