

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88685; File No. SR-NASDAQ-2020-021)

April 17, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit a Longer Period of Time for Companies to Regain Compliance with the Bid Price and Market Value of Publicly Held Shares Continued Listing Requirements by Tolling the Compliance Periods Through and Including June 30, 2020

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 16, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “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 permit a longer period of time for companies to regain compliance with the bid price and market value of publicly held shares continued listing requirements by tolling the compliance periods through and including June 30, 2020. Nasdaq has filed this proposal under Exchange Act Rule 19b-4(f)(6)<sup>3</sup> and requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 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

Given current market conditions, Nasdaq proposes to provide issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, subscription receipts, and their equivalents temporary relief from the continued listing bid price<sup>5</sup> and market value of publicly held shares<sup>6</sup> requirements (collectively, the "Price-based Requirements"). The proposed relief will allow companies that are out of compliance with the Price-based Requirements additional time to regain compliance.

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<sup>5</sup> Nasdaq's continued listing requirements relating to bid price are set forth in Rules 5450(a)(1), 5460(a)(3), 5550(a)(2), and 5555(a)(1) and the related compliance periods are set forth in Rule 5810(c)(3)(A).

<sup>6</sup> Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 5450(b)(1)(C), 5450(b)(2)(C), 5450(b)(3)(C), 5460(a)(2), 5550(a)(5), and 5555(a)(4), and the related compliance period is set forth in Rule 5810(c)(3)(D).

In December 2019, COVID-19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending. By March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic.<sup>7</sup> To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

One unavoidable consequence of the actions being taken to reduce the spread of COVID-19 is a reduction, or complete interruption, in revenue for many companies. For example, many communities have mandated that all restaurants and entertainment facilities close for a period of time. Similarly, companies in the travel sector have seen significant declines in bookings, even where they are allowed to continue to operate. Thus, these businesses will have little or no revenue to offset normal operating expenses and any increased costs associated with the crisis, which can depress their stock prices until more certainty around the end of these protective measures is available.

These necessary measures also have affected equity markets, which have seen significant declines.<sup>8</sup> In response, governments around the world have acted swiftly and decisively to provide relief to regulated entities and are undertaking efforts to stabilize the economy and assist

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<sup>7</sup> See WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020) available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>8</sup> In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. See also Phil Mackintosh, Putting the Recent Volatility in Perspective, available at <https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective-2020-03-05> (“Analysts showed that we saw the fastest ‘correction’ in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of \$3.6 trillion.”)

affected companies and their employees.<sup>9</sup> The Commission, in particular, has recognized the importance of functioning markets in this environment<sup>10</sup> and has granted issuers and broker-dealers relief and extensions from existing deadlines, in order to allow these entities, as well as the Commission itself, to focus on fighting the deadly virus and preserving functioning capital markets.<sup>11</sup>

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<sup>9</sup> See, e.g., the list of actions undertaken by the Board of Governors of the Federal Reserve System at <https://www.federalreserve.gov/covid-19.htm>. See also Families First Coronavirus Response Act, Public Law No. 116-127 and Coronavirus Aid, Relief, and Economic Security Act, Public Law No. 116-136.

<sup>10</sup> See, e.g., Chairman Jay Clayton, The Deep and Essential Connections Among Markets, Businesses, and Workers and the Importance of Maintaining those Connections in our Fight Against COVID-19 (March 24, 2020) available at <https://www.sec.gov/news/public-statement/statement-clayton-covid-19-2020-03-24> (“The Securities and Exchange Commission and other financial regulators are focused on two overriding and interrelated issues. First, we are facing an unprecedented national challenge — a health and safety crisis that requires all Americans, for the sake of all Americans, to significantly change their daily behavior and, for many, to make difficult personal sacrifices. Second, the recognition that the continuing, orderly operation of our markets is an essential component of our national response to, and recovery from, COVID-19. The interrelationship between these issues cannot be overstated. Our health care, pharmaceutical, manufacturing, transportation, telecommunications and many other private-sector industries are critical to our collective response to COVID-19. The thousands of firms and entrepreneurs in these industries — and the millions of employees and contractors — that are working around the clock to fight COVID-19 depend on continued access to payments and credit.”).

<sup>11</sup> See SEC Coronavirus (COVID-19) Response available at <https://www.sec.gov/sec-coronavirus-covid-19-response>, which is being updated regularly with additional actions taken by the Commission. As of April 14, 2020, the Commission response includes (but is not limited to): providing conditional relief for certain publicly traded company filing and proxy delivery obligations (March 4 and 25, 2020); granting relief to reporting deadlines and in-person meeting requirements for investment companies (March 13, 2020); extending the industry compliance period for Consolidated Audit Trail reporting due to the fact that “disruptions as a result of COVID-19 have placed new stresses and competing priorities on the infrastructure and staff required to implement the Consolidated Audit Trail” (March 16, 2020); extending filing deadlines for certain reports required under Regulation A and Regulation Crowdfunding (March 26, 2020); and providing temporary relief for Business Development Companies investing in small and medium-sized businesses (April 8, 2020). See also Chairman Jay Clayton, Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and

Nasdaq is seeing an increase in the number of companies whose securities are becoming non-compliant with the Price-based Requirements amidst the current market uncertainty<sup>12</sup> and believes that relief is appropriate for the same reasons that the Commission has granted relief to its requirements. The decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. Similarly, Nasdaq believes that it is difficult for companies that are already non-compliant with these requirements to take action to regain compliance. For example, large daily market moves<sup>13</sup> make it difficult for a company to predict what ratio may be required for a reverse stock split that will enable the company to achieve and maintain compliance with the bid price requirement. Similarly, it could be harmful to existing shareholders for a company to sell securities at an artificially low price, solely to regain compliance with the market value of publicly held shares requirement. Moreover, the

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Climate-Related Disclosure (Jan. 30, 2020) available at <https://www.sec.gov/news/public-statement/clayton-md-a-2020-01-30> (“Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.”).

<sup>12</sup> For example, as of April 13, 2020, there were 154 securities that were already deficient with the \$1 price requirement. However, an additional 262 securities had closing bid prices below \$1 for less than 30 days, and another 117 securities had closing bid prices between \$1 and \$1.50. On March 1, 2019, there were 119 securities that were deficient with the bid price requirement. Similarly, as of April 13, 2020, there were seven securities that were deficient with the applicable market value of publicly held shares requirement, but another 22 securities below the applicable requirement for less than 30 days. Only two securities were cited for non-compliance with this requirement during the period from January 1 through April 13, 2019.

<sup>13</sup> From March 13 to March 27, the S&P 500 index had four days with gains in excess of 6%, including two days with gains of more than 9% each, and also had five days with losses in excess of 2.9%, including daily losses of 5.2% and 12%. See <https://www.cnbc.com/2020/03/28/crazy-volatility-forces-wall-street-strategists-to-suspend-sp-500-targets.html>.

need to develop and implement actions to address potential or actual non-compliance can draw management and board attention away from the more immediate needs of their employees and customers, as well as the communities where they operate.

Accordingly, Nasdaq proposes to give companies that are out of compliance with the Price-based Requirements additional time to regain compliance by tolling the compliance periods through and including June 30, 2020. Under this proposal, companies would be given additional time to regain compliance because the compliance periods for the Price-based Requirements would be tolled through and including June 30, 2020. However, throughout the tolling period, Nasdaq would continue to monitor these requirements and companies would continue to be notified about new instances of non-compliance with the Price-based Requirements in accordance with existing Nasdaq rules.<sup>14</sup> Companies that are notified about non-compliance are required by Nasdaq rules to make a public announcement disclosing receipt of the notification by filing a Form 8-K, where required by SEC rules, or by issuing a press release.<sup>15</sup> Starting on July 1, 2020, companies would receive the balance of any pending compliance period in effect at the start of the tolling period to come back into compliance with the applicable requirement.<sup>16</sup> Similarly, companies that were in the Hearings process would

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<sup>14</sup> See Rule 5810 (providing that the Nasdaq Listing Qualifications Department will immediately notify a company when it determines that the company does not meet a listing standard set forth in the Rule 5000 Series, and describing the types of notifications).

<sup>15</sup> See Rule 5810(b). Nasdaq also identifies companies in a compliance period or in the Hearings process as not satisfying the continued listing standards at <https://listingcenter.nasdaq.com/NonCompliantCompanyList.aspx>. During the tolling period, Nasdaq will continue to maintain that list of non-complaint companies and will add to the list companies that become non-compliant (including with the Price-based Requirements).

<sup>16</sup> For example, if a company is 120 days into its first 180-day compliance period for a bid price deficiency when the tolling period starts and the company does not regain compliance before June 30, 2020, the company would have an additional 60 days,

return to that process at the same stage they were in when the tolling period began. If the company had received a temporary exception from the Hearings Panel before the tolling began, the company would receive the balance of the exception period beginning on July 1, 2020. A company in the Hearings process would nonetheless be delisted and not get the benefit of the tolling period if the company has had an oral or written hearing before a Hearings Panel and the Panel has reached a determination to delist, even if the Hearings Panel has not issued the written decision required by Rule 5815(d)(1) and Rule 5840(c) prior to the proposed rule change taking effect. Companies that are newly identified as non-compliant during the tolling period would have 180 days to regain compliance, beginning on July 1, 2020.<sup>17</sup> Nasdaq will continue to monitor securities to determine if they regain compliance with the Price-based Requirements during the tolling period.

Nasdaq believes that this temporary tolling of the compliance periods for the Price-based Requirements will permit companies to focus on running their businesses and the immediate health crisis caused by the COVID-19 pandemic, including its impact on their employees, customers, and communities, rather than satisfying Nasdaq's listing requirements. Moreover, this temporary tolling of the compliance periods would allow investments in these lower-priced securities without fear that the company will be delisted in the very near term.

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starting on July 1, 2020, to regain compliance. The company may be eligible for a second 180-day compliance period if it satisfies the conditions for eligibility at the conclusion of the first compliance period.

<sup>17</sup> See Rules 5810(c)(3)(A) and 5810(c)(3)(D) describing the compliance periods available to a company that fails to meet the continued listing requirements for bid price and market value of publicly held shares, respectively.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed 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. As a result of uncertainty related to the ongoing spread of the COVID-19 virus, the prices of securities listed on U.S. exchanges are experiencing large daily market moves, including rapid and significant declines. The proposed rule change is designed to reduce uncertainty by providing additional time for companies deficient in the Price-based Requirements to regain compliance with these standards during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market. Notwithstanding the tolling of the compliance periods, important investor protections will remain and investors will be able to identify companies that are non-compliant with the requirements on Nasdaq's website. In addition, companies that become newly non-compliant with the Price-based Requirements will have to notify investors by issuing a Form 8-K, where required by SEC rules, or a press release. The proposed relief would apply in a non-discriminatory manner and all companies listed on the Exchange that are or fall below the Price-based Requirements would be eligible to take advantage of it.

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).



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. All companies listed on the Exchange that are or fall below the Price-based requirements while the compliance periods are tolled would benefit from the proposed rule change. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns Nasdaq has observed surrounding the application of the Price-based Requirements to companies listed on Nasdaq. Other exchanges can craft relief based on their own rules and observations.

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

Because the foregoing 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<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>22</sup> normally does not become

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). 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, along with a brief description and text of 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.

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>23</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange stated that the proposed rule change is designed to respond to the unprecedented uncertainty and resulting market declines related to the global spread of the COVID-19 virus. Specifically, the Exchange stated that the proposed rule change is designed to reduce uncertainty for certain companies and their shareholders by providing additional time for companies deficient in the Price-based Requirements to regain compliance with these standards during the current highly unusual market conditions. Nasdaq also stated that investors will still be able to identify companies that are non-compliant with the requirements on Nasdaq's website. In addition, Nasdaq noted that it will continue to notify companies about new instances of non-compliance and any newly non-compliant companies will have to notify investors by issuing a Form 8-K, where required by SEC rules, or a press release.

The Commission notes that while the proposal provides additional time for companies to comply with the Price-based Requirements, new companies that are deficient with these standards during the tolling period will still continue to be notified by Nasdaq of the deficiency as they currently would be under normal circumstances with no tolling period, and would continue to be required to comply with the requirements of Nasdaq Rule 5810(b) to make a public announcement of the notification by filing a Form 8-K, where required by SEC rules, or by issuing a press release. In addition to requiring public announcement of a notification of a deficiency, companies so notified under Nasdaq Rule 5810(b) would also be required to disclose

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<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

the rule upon which the deficiency is based and to describe each specific basis and concern identified by Nasdaq by which the company does not meet the listing standard. In addition, Nasdaq will continue to maintain and update the list of companies that are non-compliant with the Price-based Requirements (as well as other deficiencies), including companies newly identified during the tolling period, so that shareholders and the public will have access to such information as they normally would without the tolling period. The Commission notes that the additional time to comply with the standards is meant to address the current unusual market conditions while continuing to ensure that shareholders and the public have relevant and accurate information concerning a company's deficiency with the Price-based Requirements. The Commission also notes that the proposal is a temporary measure designed to respond to current, unusual market conditions. 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. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>24</sup>

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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>25</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>24</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-021 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-2020-021. 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 Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-2020-021 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.<sup>26</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).