

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of

Minim, Inc.

For Review of Disciplinary Action Taken by

The Nasdaq Stock Market LLC.

Admin. Proc. File No. _____

APPLICATION FOR REVIEW

Oral Argument Requested

To: The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

The Nasdaq Stock Market LLC
c/o Amir C. Tayrani
Gibson, Dunn & Crutcher LLP
1700 M Street, N.W.,
Washington, D.C. 20036-4504

PLEASE TAKE NOTICE that Minim, Inc. (“Minim”) hereby applies for review, pursuant to 15 U.S.C.S. § 78s(d) of the October 24, 2024 decision of The Nasdaq Stock Market LLC (“Nasdaq”) to delist Minim and to deny Minim the right to a hearing on such delisting, by incorrectly deeming Minim’s appeal abandoned, and then denying Minim the right to appeal the decision deeming Minim’s right to a hearing as abandoned, as set forth below. ¹

¹ In light of the two-page limitation on this Petition for Review in Rule of Practice 420(c), Minim requests an opportunity to provide further briefing and evidence, as well as oral argument, to aid the Commission in its consideration of these issues.

On June 29, 2024, Minim requested a hearing pursuant to Nasdaq rules to appeal Nasdaq's decision to delist Minim for an alleged failure to meet the minimum equity requirement. After Minim submitted a hearing application form, paid its \$20,000 hearing fee, and filed a Form 8-K disclosing its intent to request a hearing on Nasdaq's decision, Nasdaq sent an email regarding the appeal. The email was sent from an email address that Nasdaq had never used previously with Minim. The one-line, unsigned e-mail stated in its entirety: "please find attached instructions for the Nasdaq hearing on 8/1/2024." The attached document contained several preliminary deadlines, including the date an initial written submission was due. Nasdaq did not send this email to the other Minim representatives with which it had previously communicated on a regular basis over the prior six months concerning Minim's continued listing on Nasdaq. Minim overlooked this e-mail, and did not submit a written submission on the date Nasdaq unilaterally established.

Immediately upon recognizing that it had not submitted an initial written submission on the date established by Nasdaq, and **nine days in advance of the** hearing scheduled for August 1, 2024, **on July 23, 2024** Minim submitted its written submission to Nasdaq. Minim's written submission established how it intended to regain compliance with Nasdaq's minimum equity requirement through a capital infusion by an outside investor. Even though the Nasdaq Rules permit issuers to make additional submissions up to two days before the hearing, Nasdaq refused to consider the written submission, and capriciously determined that Minim's request for a hearing was abandoned.

Nasdaq informed Minim that it could appeal this "deemed abandonment" decision, but then reversed course, and nine days later, informed Minim that it could not appeal Nasdaq's deemed abandonment decision. Minim seeks a review of several Nasdaq actions that have resulted in Nasdaq's filing of a Form 25 on October 24, 2024 announcing Minim's impending delisting.

First, Minim challenges Nasdaq's unilateral decision to ignore Minim's written submission establishing its plan to regain compliance with the minimum equity requirement. Instead, Nasdaq erroneously deemed Minim's request for the hearing abandoned after Minim made the written submission nine-days before the scheduled hearing, and within the deadline for supplemental submissions permitted by the Nasdaq Rules. Nasdaq's action denied Minim due process required by Nasdaq's own rules, affording Minim both a hearing and an opportunity to respond to Nasdaq's assertions. The Nasdaq Rules do not permit Nasdaq to deem an appeal abandoned when the issuer made its written submission prior to the hearing date, and prior to the deadline for supplemental submissions. Moreover, even if such a draconian step were permitted by the Nasdaq Rules, such a penalty is wholly disproportionate to Minim's filing of its written submission late. Such a disproportionate response, which will result in Minim's delisting and cancellation of an announced merger, is contrary to the declared goal of the Securities Exchange Act of 1934 to not burden competition by deprivation of procedural safeguards mandated by Nasdaq's own rules.

Second, Minim challenges Nasdaq's refusal to allow Minim to appeal the abandonment decision. Nasdaq Rule 5820 allows the Listing Council to hear the appeal of issues not considered by the Hearings Panel. Nasdaq's denial of Minim's right to appeal the abandonment decision to the Listing Council has no basis in the rules currently in effect, and was an abuse of discretion.

Minim vigorously disputes the certifications included by Nasdaq in its Form 25 regarding Minim's delisting, which stated, *inter alia*, that the form is being filed "pursuant to Nasdaq Rule 5830 because all available review and appeal procedures and periods available under Nasdaq Rules have expired", when in fact Minim was not allowed ANY review and appeal procedures available under the Nasdaq Rules. Minim requests de novo review of Nasdaq's decisions and reversal of the decisions.

Dated: October 25, 2024
Cedarhurst, NY

Gulko Schwed LLP

By: /s/ Samuel Kadosh
Samuel Kadosh
Asher Gulko
525 Chestnut Street, Suite 207
Cedarhurst, New York 11516
212-500-1312
skadosh@gulkoschwed.com
asher@gulkoschwed.com

Attorneys for Minim

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CERTIFICATE OF SERVICE

Samuel Kadosh, being of full age, hereby certifies:

1. I am an attorney at Gulko Schwed LLP.
2. On October 25, 2024, in accordance with SEC Rule of Practice 100(C) and Commission Release No. 88415, I caused electronic copies of Minim’s Application for Review, Motion For An Emergency Stay Pursuant To SEC Rule Of Practice 401, and Notice of Appearance to be sent via email to the SEC and Nasdaq, and by facsimile on the SEC:

The Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE Room 10915
Washington, D.C. 20549
apfilings@sec.gov
administrativeproceedingsfax@sec.gov
Fax: 703-813-9793

and

The Nasdaq Stock Market LLC
c/o Amir C. Tayrani
Gibson, Dunn & Crutcher LLP
1700 M Street, N.W.,
Washington, D.C. 20036-4504
ATayrani@gibsondunn.com

3. Gibson Dunn has consented to accept service via email on behalf of Nasdaq.
4. I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 25, 2024
Cedarhurst, NY

Gulko Schwed LLP

By: /s/ Samuel Kadosh
Samuel Kadosh
Asher Gulko
525 Chestnut Street, Suite 207
Cedarhurst, New York 11516
212-634-7927
skadosh@gulkoschwed.com
asher@gulkoschwed.com

Attorneys for Minim