

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102482 / February 25, 2025

Admin. Proc. File No. 3-22276

In the Matter of the Application of MINIM, INC. For Review of Action Taken by the THE NASDAQ STOCK MARKET LLC

ORDER GRANTING STAY AND SETTING BRIEFING SCHEDULE

Minim, Inc. has filed an application for review of the Nasdaq Stock Market LLC's decision to delist its common stock. For the reasons discussed below, we grant Minim's motion to stay the delisting pending our consideration of its appeal.

I. Background

In January 2024, Nasdaq informed Minim that the company was out of compliance with Nasdaq's listing requirements because the value of its stockholders' equity had fallen below the threshold needed to maintain its listing on the exchange. On June 26, 2024, after several months of correspondence between Minim and Nasdaq, and Minim's continued failure to regain compliance, Nasdaq sent Minim a Noncompliance Determination Letter, stating that Nasdaq would suspend trading in, and then delist, Minim's securities unless Minim requested a hearing before the Hearings Panel, which Minim promptly did. Minim's hearing request listed the email address of a member of Minim's Board of Directors as the "primary point of contact for this hearing."

On July 1, 2024, Nasdaq sent Minim an email to this listed address regarding the upcoming hearing with the subject "Nasdaq Hearing Instructions – Minim." The email attached a letter that set forth the date of the hearing (August 1, 2024) and the deadline for Minim to file its "Required Written Submission" in advance of the hearing (July 12, 2024). The letter also stated, in bolded text, that "Failure by the Company to timely provide the Written Submission will constitute an abandonment by the Company of its appeal."

On July 22, 2024, Nasdaq sent Minim an email attaching the "Panel's hearing abandonment letter." The letter stated that the Hearings Department considered Minim's appeal

abandoned because of its failure to submit the Required Written Submission (the “Abandonment Determination”) by the deadline specified in Nasdaq’s July 1 letter. The letter also informed Minim of the process for appealing “this decision” to the Nasdaq Listing and Hearing Review Council (“Listing Council”).

The next day, July 23, 2024, Minim attempted both to appeal the Abandonment Determination and to file, belatedly, its Written Submission. Minim acknowledged that it had received Nasdaq’s July 1, 2024 email and that the recipient marked it as a “read email” in his inbox. Minim asserted, however, that because of an “oversight,” the individual had overlooked the July 12, 2024 deadline to submit the Written Submission. Minim enclosed a 3-page letter describing its plan “to regain and thereafter sustain compliance with the \$2.5 million stockholders’ equity requirement.” It also wired Nasdaq the necessary appeals fee. Nasdaq did not immediately respond to Minim’s communications, and on July 24, 2024, Nasdaq suspended trading in the company’s shares.¹

On August 1, 2024, Nasdaq sent Minim an email, informing it for the first time that it had no right to appeal the abandonment determination. According to Nasdaq, “companies may appeal Panel Decisions to the Listing Council,” but Minim could not do so here because “there was no Hearing” and, therefore, “there is no Panel Decision to appeal.” Nasdaq asserted that that the “information regarding appeal to the Listing Council” in the letter transmitting its Abandonment Determination was “included in error.”

On October 24, 2024, Nasdaq filed a Form 25 with the Commission to delist Minim’s securities. On October 25, 2024, Minim filed an application for review with to the Commission and concurrently sought a stay of the delisting. The Commission subsequently issued an administrative stay of the delisting pending resolution of the motion to stay now before us.²

II. Analysis

Exchange Act Section 19(d)(2) and Rule of Practice 401(d) authorize the Commission to stay challenged self-regulatory organization action.³ In determining whether the moving party has established that a stay is warranted, the Commission considers (i) the likelihood that the moving party will eventually succeed on the merits of the appeal; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay’s impact on the public interest.⁴ “The appropriateness of a stay turns on a weighing of the strengths of these four factors; not all

¹ Because Minim’s motion seeks only to “stay Minim’s delisting,” this order does not address the suspension.

² *Minim, Inc.*, Exchange Release No. 101502, 2024 WL 4650996 (Nov. 1, 2024).

³ 17 C.F.R. § 201.401; *see also* Exchange Act Section 19(d)(2), 15 U.S.C. § 78s(d)(2) (authorizing Commission to stay challenged self-regulatory organization action).

⁴ *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018); *see also Scottsdale Capital Advisors Corp.*, Exchange Act Release No. 83783, 2018 WL 3738189, at *4 (Aug. 6, 2018).

four factors must favor a stay for a stay to be granted.”⁵ “The first two factors are the most critical, but a stay decision rests on the balancing of all four factors.”⁶

As explained below, we find that the first two factors favor a stay, while the other factors are either neutral or also favor a stay. We emphasize that our discussion here is necessarily preliminary, and that we have based it on a review of only the record and arguments currently before us.⁷ Any final resolution must await the Commission’s determination of the merits of Minim’s appeal.⁸

A. Minim has shown a sufficient likelihood of success.

Minim’s principal contention is that Nasdaq should have permitted it to appeal the Abandonment Determination to the Listing Council. Nasdaq’s rules support this argument. Nasdaq Rule 5820(a) provides that a company may appeal “*any* Panel Decision” to the Listing Council by submitting a written request for an appeal within 15 calendar days of the Panel Decision.⁹ Nasdaq rules further define “Decision” to mean “a written decision of an Adjudicatory Body,” and “Adjudicatory Body” to mean “the Hearings Panel, the Listing Council, or the Nasdaq Board.”¹⁰

A plain reading of Nasdaq Rule 5820 thus indicates that a company may appeal *any* written decision by a Hearings Panel. Here, the Abandonment Determination is a written decision,¹¹ and the letter repeatedly refers to itself as “this decision.” The body of the email transmitting that letter further states that it was sent on the Hearings Panel’s behalf, referring to it as “the *Panel’s* hearing abandonment letter.”¹² To the extent Nasdaq is arguing that a Hearing Panel did not issue the Abandonment Determination, but rather that a staff member within the Hearings Department had done so, Nasdaq does not reconcile this assertion with the transmittal email’s express characterization of the determination as that of the Hearing Panel. Nor has Nasdaq provided any authority for how, even if true, an individual staff member could make such an abandonment determination.

⁵ *Id.*

⁶ *Id.*

⁷ *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *3 (Nov. 27, 2017).

⁸ *Bloomberg*, 2018 WL 3640780, at *7.

⁹ Nasdaq Rule 5280(a) (emphasis added).

¹⁰ Nasdaq Rules 5805(a), (i).

¹¹ *See, e.g.,* Decision, *Webster’s Third New International Dictionary* (1993) (“the act or process of deciding” or “a determination arrived at after consideration”); Decision, *Black’s Law Dictionary* (12th ed. 2024) (a “determination after consideration of the facts and the law”).

¹² (Emphasis added.)

In any case, Nasdaq itself appears to have initially understood the abandonment letter as a written decision subject to appeal, as the Abandonment Determination states that it could be appealed to the Listing Council. Nasdaq subsequently decided, however, that an appeal to the Listing Council was available only if a Hearing Panel had conducted a hearing before issuing its decision. Because no such hearing took place, Nasdaq argues, its Abandonment Determination thus did not constitute a decision that Minim could appeal.

We can find nothing in Nasdaq's rules that contains, nor that reasonably and fairly implies, such a requirement that a hearing must be held before the Hearings Panel issues a Panel Decision.¹³ At most, Nasdaq Rule 5815(d)(1) states that, "[a]fter the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision." However, that rule speaks only to what happens *if* a hearing takes place. Nothing in that Nasdaq rule, nor any other, suggests that such a hearing *must* take place before a Hearings Panel can issue a decision that may be appealed to the Listing Council under Rule 5820. And it is routine for adjudicatory bodies to issue appealable decisions without holding a hearing.¹⁴ This is not to say, at this preliminary stage, that Nasdaq is required to credit Minim's arguments about why extenuating circumstances excuse the lateness of its Written Submission, but Nasdaq is required to provide a process consistent with its own rules.¹⁵

Nasdaq argues that the Commission should nevertheless find that Minim ultimately has no chance of success on the merits because, it claims, Minim's application for review is ultimately futile, given that Minim "admittedly violated Nasdaq's substantive listing requirements" and remains out of compliance with the stockholder equity listing requirement. But Nasdaq's claims that it will ultimately prevail on the underlying merits do not obviate Minim's right to a fair procedure in accordance with Nasdaq's rules.¹⁶ Indeed, because Nasdaq

¹³ Section 19(b)(1) of the Exchange Act generally requires an SRO's rules to be filed with and approved by the Commission. Unless an exception applies, an SRO cannot invoke a procedure against a member or associated person that is premised upon an unfiled and unapproved rule. *See generally ABN AMRO Clearing Chicago LLC*, Exchange Act Release No. 83849, 2018 WL 3869452, at *2 (Aug. 15, 2018); *see also id.* at *4 (describing the "reasonably and fairly implied" exception).

¹⁴ *See, e.g.*, Fed. R. Civ. P. 56 (providing for summary judgment in federal district court); Fed. R. App. P. 34 (describing circumstances under which an appeal may be submitted for decision solely on the briefs); Rule of Practice 451, 17 C.F.R. § 201.451 (governing availability of oral argument before a Commission decision); *see also Lopez-Angel v. Barr*, 952 F.3d 1045, 1047 (9th Cir. 2020) (asserting review jurisdiction over finding, issued without oral hearing, that underlying appeal had been withdrawn); *Madrigal v. Holder*, 572 F.3d 239, 241 (6th Cir. 2009) (same).

¹⁵ *See, e.g.*, Nasdaq Rule 5840(e)(3) (providing for adjustment of time for the filing of written submissions if "extenuating circumstances exist").

¹⁶ In other contexts, courts have held that parties are presumed to have been prejudiced when they lose the ability to appeal. *See generally Garza v. Idaho*, 586 U.S. 232, 237 (2019) (explaining that prejudice is presumed if a defendant loses a right to an appeal).

denied Minim the ability to appeal, neither Nasdaq’s Hearing Panel nor its Listing Council has evaluated the substance of Minim’s and Nasdaq’s underlying arguments. For example, had the Listing Council entertained Minim’s appeal, the Commission would have had the benefit of the Listing Council’s determinations about whether Minim abandoned the matter and, potentially, whether delisting is ultimately appropriate. The Commission is thus ill-positioned to assess the merits of those arguments in the first instance here.

For these reasons, we conclude that Minim has shown a sufficient likelihood of success to favor a stay as to its claim that Nasdaq erred in not permitting it to appeal the Abandonment Determination to the Listing Council.¹⁷

B. The remaining factors are neutral or favor a stay.

Minim has, on this limited record, presented sufficient evidence of irreparable harm and that the other factors are neutral or favor a stay. As to the irreparable harm factor, a movant must identify “an injury that is ‘both certain and great’ and ‘actual and not theoretical’” and show that “the alleged harm will directly result from the action which the movant seeks to [stay].”¹⁸ The Commission has previously stated that “the fact that an applicant may suffer financial detriment” generally does not amount to the “level of irreparable injury warranting issuance of a stay.”¹⁹ Nonetheless, the Commission has also recognized that “the destruction of a business, absent a stay, is more than just ‘mere’ economic injury, and rises to the level of irreparable injury.”²⁰

According to Minim, it is in the process of engaging in a transaction with another company where a precondition is that Minim remain listed on Nasdaq.²¹ Minim argues that, if

¹⁷ We express no view as to any other claims Minim raises in its stay motion; nor do we express any view as to any of the parties’ underlying substantive claims, such as whether Minim has submitted a satisfactory plan to regain compliance with Nasdaq’s listing requirements or should ultimately be delisted.

¹⁸ *Zipper*, 2017 WL 5712555, at *4.

¹⁹ *Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004).

²⁰ *Scattered Corp.*, File No. 3-9212, 1997 SEC LEXIS 2748, at *15 n.15 (Apr. 28, 1997); *accord Atlantis Internet Grp. Corp.*, Exchange Act Release No. 70620, 2013 WL 5519826, at *5 n.14 (Oct. 7, 2013); *see also In re NTE Conn., LLC*, 26 F.4th 980, 990 (D.C. Cir. 2022) (“[F]inancial injury can be irreparable where no adequate compensatory or other corrective relief will be available at a later date[.]”) (cleaned up); *Wash. Metro. Area Transit Comm’n*, 559 F.2d 841, 843 (D.C. Cir. 1977) (stating that the business’s “destruction in its current form” constituted “irreparable injury”).

²¹ Minim filed a Form 8-K on November 18, 2024, and Minim’s CEO filed a Schedule 13D/A on November 15, 2024, which attach securities purchase agreements that are conditioned on, among other things, Minim’s continued listing on Nasdaq. *Minim, Inc.*, Form 8-K, filed Nov. 18, 2024 (available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1467761/>) (continued ...)

this transaction does not take place, it would lose this and other business opportunities that Nasdaq could not remedy after the fact.²² In response, Nasdaq argues that the parties to the transaction could renegotiate the agreement's terms. It is not clear, however, that Minim could either renegotiate the transaction or find a new entity willing and able to consummate the transaction on comparable terms if it was delisted during the Commission's review of its appeal. At this preliminary stage, we therefore find that Minim has demonstrated sufficient irreparable harm to favor a stay.²³

With respect to the remaining factors, at this early stage and on this record, we cannot find that granting a stay of delisting would substantially harm other persons or be contrary to the public interest.²⁴ As Nasdaq points out, there is a significant public interest in "Nasdaq's enforcement of its listing standards." Investors must be able to rely on a company's listing on the exchange as an indication that the company meets certain requirements (or has a satisfactory plan to regain compliance with them).²⁵ Here, Minim does not dispute that it fell out of compliance with Nasdaq's listing standards. The public interest, however, also favors Nasdaq's compliance with its own rules in enforcing its listing standards and in providing a fair procedure for delisting determinations.²⁶ And if Minim had been permitted to appeal the Abandonment Determination to the Listing Council, under Nasdaq's own rules, Nasdaq would not have filed a

[000182912624007637/miniminc_8k.htm](https://www.sec.gov/Archives/edgar/data/1467761/000182912624007598/miniminc_sc13da.htm)); *Minim, Inc.*, Schedule 13D, filed Oct. 21, 2024 (available at https://www.sec.gov/Archives/edgar/data/1467761/000182912624007598/miniminc_sc13da.htm). We take official notice of these EDGAR filings pursuant to Rule of Practice 323, 17 C.F.R. § 201.323 (permitting the Commission to take official notice of "any matter in the public official records of the Commission").

²² Cf. *Scottsdale Cap. Advisors Corp.*, Exchange Release No. 83783, 2018 WL 3738189, at *3 (Aug. 6, 2018) (finding that the respondent showed a sufficient likelihood of irreparable harm where "there would be no practical way to undo th[e] consequences" of the challenged action if it were allowed to go into effect during the appeal).

²³ Cf. *SIFMA*, Exchange Release No. 83755, 2018 WL 3640780, at *10 (July 31, 2018) (finding that the respondent had shown irreparable harm although the harm "is essentially one of economic injury" based on totality of the circumstances).

²⁴ See *Scottsdale Cap. Advisors Corp.*, 2018 WL 3738189, at *4 & n.22 (determining that an SRO could not rely solely on the action under review to establish harm to third parties or the public interest where the applicant had raised serious legal questions as to the validity of the challenged action).

²⁵ See *Tassaway, Inc.*, Exchange Act Release No. 11291, 1975 WL 161326, at *2 (Mar. 13, 1975) ("prospective future investors . . . [are] entitled to assume that the securities in the system meet the system's standards").

²⁶ See *ABN AMRO Clearing Chicago LLC*, 2018 WL 3869452, at *2 (noting that "Section 19(b)(1) of the Exchange Act generally requires an SRO's rules to be filed with and approved by the Commission" and explaining that an SRO must follow its own properly filed and approved rules).

Form 25 notification of delisting until *after* the conclusion of the Listing Council's review.²⁷ Furthermore, nothing in this stay order precludes Nasdaq from issuing a new deficiency notification or delisting determination while the instant Commission review proceeding is ongoing in the event that Minim fails to comply with a listing requirement. Nor does this order preclude Nasdaq from taking any other appropriate action to enforce its rules more generally.

* * *

On the limited record before us, Minim has shown a sufficient likelihood that it will prevail on its claim that Nasdaq did not follow its own rules when it denied Minim the ability to appeal the hearing abandonment determination to the Listing Council. The other factors also either favor a stay or are neutral. Accordingly, IT IS ORDERED that Minim's motion for a stay of delisting pending the completion of Commission review proceedings is granted.

It is further ORDERED that, pursuant to Rule of Practice 450(a),²⁸ a brief in support of the application for review shall be filed by March 27, 2025. A brief in opposition shall be filed by April 28, 2025, and any reply brief shall be filed by May 12, 2025.²⁹

²⁷ Thus, in staying the effectiveness of the Form 25 delisting, this order puts Minim in the same position it would have occupied had Nasdaq allowed the company to appeal the Abandonment Determination to the Listing Council. *See, e.g.*, Nasdaq Rule 5815(d)(2) (providing that if a company timely appeals a Hearings Panel's decision to delist to the Listing Council, Nasdaq will not immediately submit a Form 25 but will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary); *see also* Nasdaq Rule 5820(a) (providing that an appeal to the Listing Council does not "operate as a stay of the Panel Decision"); *supra* note 1 (noting that neither Minim's motion nor this order addresses the suspension).

²⁸ 17 C.F.R. § 201.450(a).

²⁹ As provided by Rule 450(a), no briefs in addition to those specified in this schedule may be filed without leave of the Commission. Attention is called to Rules of Practice 150-153, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rule of Practice 450(b) and (c), 17 C.F.R. § 201.450(b) and (c), with respect to content and length limitations.

Pursuant to Rule 180(c) of the Rules of Practice, failure to file a brief in support of the application may result in dismissal of this review proceeding.³⁰ The parties' attention is directed to the e-filing requirements in the Commission's Rules of Practice.³¹

By the Commission.

Vanessa A. Countryman
Secretary

³⁰ See 17 C.F.R. § 201.180(c).

³¹ See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).