

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83865; File No. SR-NASDAQ-2018-008)

August 16, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rule and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value

On January 30, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“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 modify the listing requirements contained in Nasdaq Rule 5635(d) to (1) change the definition of market value for purposes of shareholder approval under Nasdaq Rule 5635(d); (2) eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value; and (3) make other conforming changes. The proposed rule change was published for comment in the Federal Register on February 20, 2018.³ In response, the Commission received three comments on the proposal.⁴ On April 4, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 82702 (February 13, 2018), 83 FR 7269 (February 20, 2018).

⁴ See Letters to Brent J. Fields, Secretary, Commission, from Michael A. Adelstein, Partner, Kelley Drye & Warren LLP, dated February 28, 2018; Penny Somer-Greif, Chair, and Gregory T. Lawrence, Vice-Chair, Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, dated March 13, 2018; and Greg Rodgers, Latham Watkins, dated March 14, 2018.

rule change to May 21, 2018.⁵ The Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change on May 21, 2018 (“OIP”).⁷ The Commission received a letter from the Exchange in response to the OIP.⁸

Section 19(b)(2) of the Act⁹ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the Federal Register on February 20, 2018.¹⁰ August 19, 2018 is 180 days from that date, and October 18, 2018 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹¹ designates October 18, 2018, as the date by which the

⁵ See Securities Exchange Act Release No. 82994 (April 4, 2018), 83 FR 15441 (April 10, 2018).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 83294 (May 21, 2018), 83 FR 24379 (May 25, 2018).

⁸ See Letter to Brent J. Fields, Secretary, Commission, from Arnold Golub, Vice President, Listing Qualifications, Deputy General Counsel, Nasdaq, dated July 18, 2018.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See supra note 3.

¹¹ 15 U.S.C. 78s(b)(2).

Commission shall either approve or disapprove the proposed rule change (File No. SR-Nasdaq-2018-008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

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Assistant Secretary

¹² 17 CFR 200.30-3(a)(57).