

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102622; File No. SR-NASDAQ-2024-084)

March 12, 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Modify Certain Initial Listing Liquidity Requirements

I. Introduction

On December 12, 2024, The Nasdaq Stock Market LLC (“Nasdaq”) 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 Listing Rules 5405 and 5505 to (1) require that a company listing on the Nasdaq Global Market or Nasdaq Capital Market in connection with an initial public offering (“IPO”) satisfy the applicable minimum Market Value of Unrestricted Publicly Held Shares requirement solely from the proceeds of the offering; and (2) make similar changes affecting companies that uplist to Nasdaq Global Market or Nasdaq Capital Market from the U.S. over-the-counter (“OTC”) market in conjunction with a public offering. The proposed rule change was published for comment in the Federal Register on December 30, 2024.³ On February 5, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original proposed rule change in its entirety.⁴ On February 11, 2025, pursuant to Section 19(b)(2) of the Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101978 (Dec. 19, 2024), 89 FR 106717 (Dec. 30, 2024) (“Notice”). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2024-084/srnasdaq2024084.htm>.

⁴ The full text of Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2024-084/srnasdaq2024084-565255-1620762.pdf> (“Amendment No. 1”). Amendment No. 1 makes minor changes to improve the clarity and readability of the proposal and provides that the proposed changes will become operative 30 days after approval by the Commission.

Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1⁷

Nasdaq Listing Rules require that a company applying for initial listing on the Exchange must have a minimum Market Value of Unrestricted Publicly Held Shares.⁸ For initial listing on the Nasdaq Global Market, a company must have a minimum Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard, \$18 million under the Equity Standard, and \$20 million under either the Market Value or Total Assets/Total Revenue Standards.⁹ For initial listing on the Nasdaq Capital Market, a company must have a minimum Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard, and \$15 million under either the Equity or Market Value of Listed Securities Standards.¹⁰ In addition, to qualify for initial listing on Nasdaq Global Market or Nasdaq Capital Market, a

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 102389 (Feb. 11, 2025), 90 FR 9771 (Feb. 18, 2025) (designating March 30, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁷ All capitalized terms not otherwise defined in this order shall have the meanings set forth in the Nasdaq Listing Rules.

⁸ Unrestricted Publicly Held Shares are shares that are not held by an officer, director, or 10% shareholder of the company and which are not subject to resale restrictions of any kind. See Nasdaq Listing Rule 5005(a)(46). The Exchange states that, like other liquidity requirements, the Market Value of Unrestricted Publicly Held Shares standard is meant to ensure that there is sufficient liquidity to provide price discovery and support an efficient and orderly market for the company's securities. See Notice at 106718.

⁹ See Nasdaq Listing Rules 5405(b)(1)(C), 5405(b)(2)(C), 5405(b)(3)(B), and 5405(b)(4)(B).

¹⁰ See Nasdaq Listing Rules 5505(b)(1)(B), 5505(b)(2)(C), and 5505(b)(3)(C).

company trading on the OTC market prior to listing must currently satisfy either a minimum daily trading volume on the OTC market of 2,000 shares over the past 30 trading days with trading occurring in at least 50% of those days (the “ADV Requirement”) or, alternatively, list in connection with a firm commitment underwritten public offering of at least \$4 million.¹¹

The Exchange states that, in the case of a company listing in conjunction with a public offering, previously issued shares registered for resale (“Resale Shares”), and not held by an officer, director, or 10% shareholder of the company, are counted as Unrestricted Publicly Held Shares in addition to the shares being sold in an offering.¹² The Exchange also states that it has observed that the companies that meet the applicable Market Value of Unrestricted Publicly Held Shares requirement through an IPO by including Resale Shares have experienced higher volatility on the date of listing than those of similarly situated companies that meet the requirement with only the proceeds from the offering.¹³ According to the Exchange, the Resale Shares may not contribute to liquidity to the same degree as the shares sold in the public offering.¹⁴ The Exchange states that, as such, it is appropriate to modify the rules to exclude the Resale Shares from the calculation of Market Value of Unrestricted Publicly Held Shares for the initial listing of companies listing in conjunction with an IPO.¹⁵ The Exchange also states that it is appropriate to treat a company that is uplisting from the OTC market while relying on the alternative to the ADV Requirement (i.e., listing in connection with a firm commitment

¹¹ See Nasdaq Listing Rules 5405(a) and 5505(a). The Exchange states that this alternative recognizes that where a company is listing in connection with a significant firm commitment underwritten public offering the liquidity characteristics of its prior trading will change and reflect the offering, just like in an IPO, and shares in the offering will be the primary source of liquidity and price discovery upon listing. See Notice at 106718.

¹² See Notice at 106718.

¹³ See id.

¹⁴ See id.

¹⁵ See id.

underwritten public offering of a specified size) in a similar manner because the liquidity in such listings is also expected to be supported by the offering.¹⁶

First, the Exchange proposes to modify Nasdaq Listing Rules 5405(b) and 5505(b) to provide that a company listing in connection with an IPO, including through the issuance of American Depository Receipts, must satisfy the applicable Market Value of Unrestricted Publicly Held Shares requirement for each initial listing standard for primary equity securities¹⁷ with the proceeds of that offering.

Secondly, with respect to a company uplisting from the OTC market, the Exchange proposes to modify the alternative to the ADV Requirement in Nasdaq Listing Rules 5405(a)(4) and 5505(a)(5). As revised, a company relying on this alternative will be required to satisfy the applicable Market Value of Unrestricted Publicly Held Shares requirement with only the proceeds from the offering. As a result, the Exchange also proposes to modify Nasdaq Listing Rules 5405(a)(4) and 5505(a)(5) to increase the size of the required public offering for this alternative to the ADV Requirement from \$4 million to \$5 million for Nasdaq Capital Market applicants and \$8 million for Nasdaq Global Market applicants to align with the minimum Market Value of Unrestricted Publicly Held Shares requirement for each market.¹⁸ If the company qualifies under a standard other than the income standard, the minimum raise instead will have to satisfy the Market Value of Unrestricted Publicly Held Shares requirement of the applicable standard.¹⁹

¹⁶ See id.

¹⁷ See supra notes 9 and 10.

¹⁸ See id.

¹⁹ Specifically, for a company listing on the Nasdaq Global Market under the Equity Standard or the Market Value or Total Assets/Total Revenue Standards, the required public offering size will be at least \$18 million and \$20 million, respectively. See Nasdaq Listing Rules 5405(b)(2)(C), 5405(b)(3)(B), and

The Exchange states that the proposed changes will become operative 30 days after approval by the Commission.²⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,²² which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful listing standards for an exchange is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets.²³ Meaningful listing standards also are important given investor expectations regarding

5405(b)(4)(B). Similarly, for a company listing on the Nasdaq Capital Market under the Equity Standard or the Market Value of Listed Securities Standard, the required public offering size will be at least \$15 million. See Nasdaq Listing Rules 5505(b)(1)(B) and 5505(b)(2)(C).

²⁰ See Amendment No. 1 at 7.

²¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

²³ Adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of

the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²⁴

The Exchange has proposed to make more rigorous certain of its initial listing standards for the Nasdaq Global Market and Nasdaq Capital Market to help assure that an adequate level of liquidity exists for securities that are listing on the Exchange for the first time. Specifically, the Exchange proposes that a company listing in connection with an IPO, including through the issuance of American Depository Receipts, must satisfy the applicable minimum Market Value of Unrestricted Publicly Held Shares requirement with only the proceeds from the offering. The Exchange also proposes that a company uplisting from the OTC market based on the minimum required size of its firm commitment underwritten public offering, rather than the ADV Requirement, must satisfy this requirement with only the proceeds from that offering.

The Exchange's initial listing standards currently do not exclude Resale Shares from the calculation of Market Value of Unrestricted Publicly Held Shares. According to the Exchange, companies that list on the Exchange for the first time through an IPO and meet the applicable Market Value of Unrestricted Publicly Held Shares requirement by relying on Resale Shares experience higher volatility than companies that meet such requirement based on the proceeds of

the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., Securities Exchange Act Release No. 100816 (Aug. 26, 2024), 89 FR 70674, 70677 n.47 (Aug. 30, 2024) (SR-NASDAQ-2024-019).

²⁴ See, e.g., Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (SR-NASDAQ-2019-009) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Revise the Exchange's Initial Listing Standards Related to Liquidity). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that “[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market” and that “[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue ... so that fair and orderly markets can be maintained”).

the offering and Resale Shares may not contribute to liquidity of companies' securities to the same extent as shares included in the public offering.²⁵ The Exchange also states that companies uplisting from the OTC market while relying on the alternative to the ADV Requirement do so with the expectation that liquidity of the companies' securities will be supported by the offering.²⁶

The proposed amendments to exclude Resale Shares from the calculation of these initial listing requirements pertaining to the Market Value of Unrestricted Publicly Held Shares and, with respect to a company uplisting from the OTC market, the size of a company's firm commitment underwritten public offering should allow the Exchange to better determine whether a security has adequate liquidity and thus is suitable for listing and trading on the Exchange. Accordingly, the amendments to the Exchange's initial listing standards should help to ensure that the Exchange lists only securities with a sufficient market, with adequate depth and liquidity, and with sufficient investor interest to support an exchange listing.²⁷

For these reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

Comments may be submitted by any of the following methods:

²⁵ See supra notes 13-14 and accompanying text.

²⁶ See supra note 16 and accompanying text.

²⁷ The Commission received one comment letter that was generally supportive of the proposal. See Letter from Damon D. Testaverde, Chairman of Network 1 Financial Securities, Inc., dated Jan. 21, 2025 ("Network 1 Letter"). This commenter also recommended additional changes to the Exchange's listing standards and raised other areas of concerns for the Commission's consideration. See id. These additional recommendations are not before the Commission in the proposal being considered herein. In approving this proposal, the Commission is finding the proposal before us consistent with the Exchange Act.

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-084 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-2024-084. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-084, and should be

submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. The changes in Amendment No. 1 provide greater clarity to the proposal. These changes include (1) elaborating on the relevant Market Value of Unrestricted Publicly Held Shares requirements that a company uplisting from the OTC market to the Nasdaq Global Market or Nasdaq Capital Market in connection with a public offering will be subject to; and (2) clarifying, in the example regarding companies that are subject to higher initial listing standards than companies impacted by the proposed change, that the example refers to a Direct Listing in which a company's security has not had sustained recent trading in a Private Placement Market prior to listing.²⁸ This clarification and additional information assists the Commission in evaluating the proposal and determining that the proposal is consistent with the Act. Further, Amendment No. 1 does not modify the operation or meaning of the proposed changes, which were published for comment in the Federal Register.²⁹ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁰ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

²⁸ See Amendment No. 1 at 7, 10.

²⁹ See supra note 3

³⁰ 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³¹ that the proposed rule change (SR-NASDAQ-2024-084), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).