

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petitions of Centrex, Inc. and the Small Public Company Coalition
for Review of Action Taken Pursuant to Delegated Authority

File No. SR-NASDAQ-2026-004

**STATEMENT OF THE NASDAQ STOCK MARKET LLC IN SUPPORT OF THE
APPROVAL ORDER AND IN OPPOSITION TO THE PETITIONS FOR REVIEW**

Pursuant to the Commission’s Order Granting Petitions for Review and Scheduling Filing of Statements, Securities Exchange Act Release No. 34-106338 (September 11, 2026), The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) respectfully submits this statement in support of the Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt a New Continued Listing Requirement, Securities Exchange Act Release No. 34-105971 (July 22, 2026), 91 Fed. Reg. 46,995 (July 27, 2026) (the “Approval Order”), and in opposition to the petitions for review filed by Centrex, Inc. (“Centrex”) and the Small Public Company Coalition (“SPCC”) (collectively, the “Petitioners”).

INTRODUCTION

The Approval Order should stand. The Division of Trading and Markets (the “Division”), acting on an extensive rulemaking record spanning more than seven months, dozens of comment letters, and the Commission’s own empirical analysis of two decades of market data, correctly found that Nasdaq’s Market Value of Listed Securities (“MVLS”) continued listing requirement is consistent with Sections 6(b)(5), 6(b)(7), and 6(b)(8) of the Securities Exchange Act of 1934 (“Exchange Act”). Neither Centrex nor SPCC identifies a clearly erroneous finding of fact, an erroneous conclusion of law, or an exercise of discretion warranting the full Commission’s intervention. Instead, both petitions ask the Commission to substitute their own policy preferences, and in SPCC’s case an advocacy expert’s contested reading of historical data, for the reasoned judgment that Nasdaq and the Division already reached after extensive public comment and revision.

Nasdaq designed the MVLS requirement, which provides that companies that fail to maintain a minimum MVLS of at least \$5 million for 30 consecutive business days will be immediately subject to suspension and delisting (the “MVLS Requirement”), to address a specific and well-documented problem: securities that the market has assigned very low value are disproportionately vulnerable to volatility and pose sustained challenges to the maintenance of fair and orderly markets. The Commission’s own analysis confirms that concern is well-founded. Sixty-five percent of issuers that failed to maintain the \$5 million MVLS threshold for 30 consecutive business days remained below that threshold 180 days later, with a median valuation under \$3.7 million. 91 Fed. Reg. at 47,000. The MVLS Requirement thus is appropriately calibrated to address these issues, and none of the concerns Petitioners raise warrants setting aside the Division’s well-reasoned Approval Order.

BACKGROUND

Nasdaq filed the proposed rule change on January 13, 2026, to adopt Nasdaq Rules 5450(a)(3) and 5550(a)(6), requiring companies listed on the Nasdaq Global Select Market, Nasdaq Global Market, and Nasdaq Capital Market to maintain an MVLS of at least \$5 million, and to amend Nasdaq Rule 5810(c)(1) so that a company falling below that threshold for 30 consecutive business days becomes immediately subject to a Staff Delisting Determination, without a cure or compliance period. Nasdaq explained that it had observed that companies unable to sustain a minimum MVLS typically face challenges that are not temporary, that persistently low market value can be a leading indicator of other listing deficiencies, and that low-value securities are more susceptible to volatility and more difficult to trade in fair and orderly markets.

The Commission published the proposal for comment, extended its review period, and instituted proceedings under Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change. After reviewing the substantial comment record, Nasdaq filed Amendment No. 1 on June 18, 2026, which replaced the original filing in its entirety, responded to commenters, and added new Nasdaq Rule 5815(c)(1)(I), giving the Hearings Panel discretion to grant a company up to 180 days from the Staff Delisting Determination to demonstrate that it meets all requirements for initial listing, in lieu of the more restrictive approach in the original filing that would have permitted reversal only for factual error.¹

On July 22, 2026, the Division approved the proposal as modified, based on a lengthy and reasoned order that engaged with every substantive comment, including the report of Professor Craig M. Lewis submitted by SPCC (the “Lewis Report”), and supplemented the record with the Commission’s own empirical analysis of Nasdaq and NYSE American delisting and market-value data spanning 2006 through 2025. Cemtrex and SPCC each filed notices of intent to petition for review, automatically staying the Approval Order under Commission Rule of Practice 431(e), and then filed the petitions Nasdaq addresses below.

STANDARD OF REVIEW

Under Rule of Practice 431, the Commission’s review of an action taken pursuant to delegated authority is not an invitation to reweigh the policy choices the Division has already made. A petition for review may succeed only by showing a clearly erroneous finding of material fact, an erroneous application of law, prejudicial procedural error, or an important question of law, policy, or fact that warrants full Commission consideration. 17 C.F.R. § 201.411(b)(2), incorporated by 17 C.F.R. § 201.431(b)(2). That standard tracks the deference that reviewing courts extend to the Commission’s own rule approvals under the Administrative Procedure Act: the ultimate question is whether the agency “reasonably considered the relevant issues and reasonably explained the decision,” and that review is deferential where, as here, the rule implicates competing policy choices, technical expertise, and predictive market judgments. *FCC*

¹ This filing followed a substantially similar proposal by Nasdaq, which would have provided that companies that fail to maintain a minimum MVLS of at least \$5 million for 10 consecutive business days would be immediately subject to suspension and delisting. That proposal also underwent a comment period, before Nasdaq amended the filing to withdraw that provision. 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 Requirements, Securities Exchange Act Release No. 34-104450 (December 18, 2025), 90 Fed. Reg. 60,184 (December 23, 2025).

v. Prometheus Radio Project, 592 U.S. 414, 423 (2021). To satisfy the arbitrary-and-capricious standard, the agency need only “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Bloomberg L.P. v. SEC*, 45 F.4th 462, 472 (D.C. Cir. 2022) (internal quotation marks omitted). Measured against that standard, the Approval Order is the product of reasoned decisionmaking, and neither petition comes close to identifying the kind of clear error that would justify overturning it.

ARGUMENT

I. THE MVLS REQUIREMENT IS CONSISTENT WITH SECTION 6(b)(5)

Section 6(b)(5) requires that exchange rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, without permitting unfair discrimination among market participants. Both petitions argue that the rule does not rationally target volatility risk and rests on an unsupported factual premise. Neither argument withstands scrutiny.

SPCC’s central contention is that MVLS is the wrong variable—that volatility risk correlates with public float, ownership concentration, or jurisdiction rather than total market value. But SPCC’s own cited commenters undercut that argument. As the Approval Order recognized, the very features that SPCC says matter—thin public float, concentrated ownership, and limited institutional or analyst scrutiny—are the structural features that accompany persistently low MVLS. A company cannot sustain an MVLS below \$5 million while also maintaining the deep public float and broad investor base that guard against volatility; the two are functionally linked. The Division reasonably concluded that when a security’s market capitalization shrinks, the cost of accumulating a controlling position in the public float falls with it, making manipulation cheaper for a would-be bad actor to execute. That is a rational, evidence-supported connection between the trigger Nasdaq selected and the harm the rule targets, and it is precisely the kind of judgment call about which regulators are entitled to draw lines using an administrable proxy rather than a multi-factor case-by-case inquiry that would be, as one supporting commenter explained, “far less effective, slower to administer, and easier to evade.” 91 Fed. Reg. at 46,999 n.51 (quoting James Toes, President & CEO, and Kevin Skarbek, Chairman, Security Traders Association letter at 5, dated May 22, 2026).

Nor is Nasdaq’s factual premise unsupported, as both petitions claim. The Division did not simply accept Nasdaq’s assertion; it independently tested it against two decades of market data. That analysis found that companies falling below the MVLS Requirement’s threshold had a high likelihood of subsequent delisting for reasons indicating other quantitative compliance failures, and that 65% of issuers that failed to maintain the required MVLS for 30 consecutive business days remained below \$5 million 180 days later, with a median valuation under \$3.7 million. 91 Fed. Reg. at 47,000. SPCC leans heavily on the Lewis Report’s finding that 78% of a smaller historical sample recovered above the threshold at some point over a 20-year window and that some ultimately remained listed. But a transient rebound above \$5 million at some point during two decades is not equivalent to sustainable compliance. The Commission’s own analysis—conducted using the same methodology across the identical types of thresholds and durations that

Professor Lewis examined—directly addressed and did not contradict Nasdaq’s central premise. The Division expressly acknowledged the Lewis Report’s findings and explained why, notwithstanding some rate of recovery, the substantial persistence of sub-threshold valuations after 180 days justified the rule. Where the Division has weighed conflicting evidence and reached a reasoned judgment, that judgment is not clearly erroneous merely because Petitioners would have weighed it differently.

These are precisely the kind of “competing policy choices, technical expertise, and predictive market judgments” for which reviewing courts, and by the same logic the Commission on delegated-authority review, owe the agency’s reasoned judgment particularly deferential treatment. *Cboe Glob. Mkts., Inc. v. SEC*, 155 F.4th 704, 716 (D.C. Cir. 2025) (internal quotation marks omitted). Nasdaq was not required to await a demonstrated instance of MVLS-driven manipulation before acting, nor was the Approval Order deficient on this ground. The Division “is entitled to conduct a general analysis based on informed conjecture,” grounded in its own experience and the comments received, so long as it explains and applies the relevant economic principles in a reasonable manner. *Nasdaq Stock Mkt. LLC v. SEC*, 38 F.4th 1126, 1142 (D.C. Cir. 2022) (internal quotation marks omitted). The Division did exactly that here, and did more: it tested Nasdaq’s hypothesis against its own empirical dataset before accepting it.

II. THE MVLS REQUIREMENT SATISFIES THE FAIR PROCEDURE REQUIREMENT OF SECTION 6(b)(7)

Section 6(b)(7) requires that exchange rules provide a fair procedure for limiting a company’s access to exchange services. Petitioners argue that immediate suspension without a pre-deprivation hearing, and without an automatic stay pending Hearings Panel review, denies fair procedure. The Approval Order correctly rejected this argument, and its reasoning should be sustained.

The Commission has long recognized that the primary beneficiaries of listing standards are prospective investors, who are entitled to assume that a listed security meets the exchange’s standards, and that the presence of non-complying securities on the exchange can itself have a serious deceptive effect. *In re Tassaway*, Securities Exchange Act Release No. 11291, 45 S.E.C. 706, 709-10, 1975 SEC LEXIS 2057, at *6, *9 (Mar. 13, 1975) (dismissing challenge to listing decision and noting the exchange judgment is “conclusive and could in no event be reexamined” by the Commission). As such, Nasdaq should be permitted to immediately suspend listing where continued trading of a non-compliant security threatens investor confidence in the integrity of the market. A company that fails to maintain the \$5 million MVLS threshold receives exactly what Section 6(b)(7) requires: notice of the deficiency, an opportunity to seek review before the Hearings Panel, and an opportunity to demonstrate compliance with initial listing requirements within 180 days. That the company’s security trades over the counter rather than on Nasdaq while that review proceeds does not deprive the company of a hearing; it reflects a considered judgment, which the Division independently affirmed, that continued Nasdaq trading of a security with heightened volatility risk and impaired market quality is inconsistent with investor protection during the pendency of review.

SPCC's suggestion that the Hearings Panel exception is illusory because it requires compliance with initial listing standards, including a higher public float requirement, ignores why Nasdaq structured the exception that way. As the Approval Order explained, requiring companies to satisfy the Exchange's initial listing requirements, which are generally higher than continued listing requirements, provides assurance that a company granted an exception will not immediately fall back out of compliance with the MVLS Requirement or other continued listing standards shortly after resuming trading. That is a reasoned trade-off between providing a genuine second chance and avoiding a revolving door of repeat deficiencies, not the empty gesture Petitioners describe. Nothing in Section 6(b)(7) requires Nasdaq to guarantee that every company will successfully avail itself of an exception; it requires a fair opportunity to be heard and considered, which the Hearings Panel process supplies.

This approach is consistent with the settled principle that the primary beneficiaries of exchange listing and delisting procedures are the investing public, not the listed company itself, that Nasdaq's judgment requires deference, and that an SRO's rules for removing non-compliant securities from trading serve that public protective function even where they burden the affected issuer's own preference for continued access to the exchange's facilities. Fair procedure under the Exchange Act does not require a stay of that protective action pending appeal; it requires the notice, hearing, and review opportunity that Nasdaq's Rule 5815 process provides in full.

III. NASDAQ ADEQUATELY CONSIDERED THE RULE'S EFFECT ON COMPETITION UNDER SECTION 6(b)(8)

Section 6(b)(8) prohibits rules that impose burdens on competition not necessary or appropriate in furtherance of the Exchange Act's purposes. SPCC argues that Nasdaq never adequately analyzed the rule's competitive burden or considered less burdensome alternatives, including its own ordinary cure period, an ordinary stay pending appeal, a lower threshold, a longer measurement window, or a delayed effective date. This argument mistakes the nature of the Section 6(b)(8) inquiry and the Commission's role in reviewing it.

Nasdaq is not required to adopt the least restrictive alternative a commenter can imagine, nor to justify its chosen approach against every conceivable substitute. Instead, Nasdaq must explain why the burden its rule imposes is necessary or appropriate to the objective it serves, and the Commission must independently evaluate that explanation. Nasdaq did so. It explained that companies with a sustained MVLS below \$5 million present heightened volatility risk and impaired market quality that the ordinary 180-day cure period designed for temporary business or valuation setbacks does not adequately address, because, as one supporting commenter explained, a cure period would "unnecessarily prolong" the very risks the rule targets once a company has already demonstrated 30 consecutive business days of sub-threshold value. *See* 91 Fed. Reg. at 47,005 & n.95. The Division did not simply defer to that explanation; it tested the underlying premise against the Commission's own data and confirmed that companies crossing the threshold display a high likelihood of remaining non-compliant and of subsequent delisting on other grounds.

Non-discretionary, bright-line regulatory action of exactly this kind already governs other objective continued listing failures, including minimum bid price, stockholders' equity, and the

timely filing of periodic reports, where an exchange does not inquire into the cause of the shortfall before triggering the applicable rule. That consistent, objective application of quantitative listing standards promotes the predictability and transparency that benefit issuers and investors alike, and the MVLS Requirement's immediate-delisting mechanism is entirely consistent with that established framework rather than a departure from it.

SPCC's suggested alternatives were considered and reasonably rejected, not ignored. A rule confined to foreign issuers would abandon investors in the many domestic companies whose securities present the same low-value characteristics the Commission's data identifies; nothing in the record ties volatility risk exclusively, or even primarily, to issuer domicile. Contrary to SPCC's assertion, Nasdaq's unrelated, narrower initial listing standards for China-based issuers addressed a different and distinct set of concerns, and are not a substitute mechanism for the market-quality problem at issue here. A lower threshold or longer measurement window would, by the Commission's own sensitivity analysis, simply relocate the tradeoff between false positives and false negatives rather than eliminate it. *See* 91 Fed. Reg. at 47,002-03. Moreover, there is no evidence in the record that any alternative combination of threshold and duration would better serve investor protection while imposing materially less burden. Nasdaq's judgment that the risks identified warranted expeditious implementation, once affirmed by the Division, is precisely the sort of policy judgment concerning the timing and scope of protective measures that Section 6(b)(8) leaves to the exchange's discretion, subject to the Commission's review for reasonableness rather than for optimality.

Petitioners' related suggestion that the rule fails to account for temporary market downturns also does not withstand scrutiny. The 30-consecutive-business-day measurement period spans more than six weeks of sustained trading activity, meaning only companies whose valuations remain depressed well beyond a transient dip become subject to a Staff Delisting Determination in the first place. Nasdaq's practice of proactively monitoring and engaging with companies whose market value approaches the threshold, moreover, provides meaningful advance notice of potential noncompliance long before any formal determination issues, further undercutting the suggestion that the rule operates as an unheralded trap for temporarily distressed but otherwise sound companies.

Finally, SPCC faults the Division for supplementing the record with its own empirical analysis rather than relying solely on Nasdaq's filing. But an independent Commission analysis that tests and corroborates an exchange's stated rationale strengthens, rather than undermines, the reliability of the resulting approval. The Commission is not confined to the four corners of an exchange's rule filing; it may and should bring its own expertise and data to bear in fulfilling its statutory obligation to make an affirmative finding of consistency with the Exchange Act. *See Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 447 (D.C. Cir. 2017) (holding that "the SEC should have critically reviewed OCC's analysis or performed its own" rather than relying solely on the self-serving views of the regulated entity). That the Division's analysis was made public in the Approval Order, where all interested parties can identify and challenge it, if warranted, on these very petitions, forecloses any procedural unfairness. Petitioners had, and used, that very opportunity. Further, that analysis showed that the competitive burden the MVLS Requirement imposes is limited to companies whose own sustained sub-threshold valuation signals materially heightened volatility risk and impaired market quality, rendering the burden necessary and

appropriate within the meaning of Section 6(b)(8). SPCC's preference for a different balance does not establish otherwise.

IV. NEITHER PETITION IDENTIFIES AN IMPORTANT QUESTION WARRANTING FURTHER REVIEW

SPCC separately argues that the Approval Order presents important and novel questions of law or policy warranting full Commission review independent of any claimed error. 17 C.F.R. § 201.411(b)(2). But the mere fact that a rule is the first of its kind does not make it legally significant in the sense Rule of Practice 411(b)(2) contemplates. Nasdaq and other exchanges have long used bright-line, price- and value-based quantitative thresholds as continued listing standards. In addition, the Commission has previously approved the elimination of cure periods and stays for other categories of persistent, high-risk deficiencies, including excessive reverse stock splits and sustained sub-\$0.10 bid prices. The MVLS Requirement is consistent with that established regulatory approach and does not announce a new category of exchange authority or depart from settled principles governing when heightened protective measures are warranted.

Nor does the pendency of similar proposals at other exchanges transform this rule into a matter of exceptional importance requiring Commission-level, rather than delegated, review. Each exchange's rule filing must independently satisfy Section 19(b)(2)(C) on its own record, and the Commission will have the opportunity to evaluate any parallel filings, including those from NYSE American, on their own terms and timetables. The prospect of similar rules elsewhere is a reason for the Commission to scrutinize each filing carefully, which the Division did here through an extensive proceeding, comment period, and independent data analysis. Petitioners have not identified any reason to displace the delegated process Commission regulations establish for rule filings that, as here, the Division has found consistent with the Exchange Act after a thorough and well-documented review.

CONCLUSION

For the foregoing reasons, Nasdaq respectfully requests that the Commission lift the automatic stay under Rule of Practice 431(e) and sustain the Approval Order.

Dated: October 6, 2026

Respectfully submitted,

THE NASDAQ STOCK MARKET LLC

/s/ John Zecca

Chief Regulatory Officer

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2026, I caused a copy of this Statement in Support of the Approval Order and in Opposition to the Petitions for Review to be filed with the Secretary of the Securities and Exchange Commission by electronic mail to Secretarys-Office@sec.gov, as directed by the Commission's website, and to be served on Saagar Govil (sgovil@centrex.com), CEO of Centrex, Inc. and on Jeffrey M. Harris and Tyler R. Green, (jeff@consovoymccarthy.com and tyler@consovoymccarthy.com), Counsel for the Small Public Company Coalition by electronic mail.

/s/ John Zecca