

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

In the Matter of the Petitions of:

The Small Public Company Coalition

&

Cemtrex, Inc.

File No. SR-NASDAQ-2026-004

**STATEMENT OF THE SMALL PUBLIC COMPANY COALITION
OPPOSING COMMISSION STAFF ORDER TAKEN BY DELEGATED AUTHORITY
GRANTING APPROVAL OF A PROPOSED RULE CHANGE BY THE NASDAQ
STOCK MARKET LLC, AS MODIFIED BY AMENDMENT NO. 1, TO ADOPT A NEW
CONTINUED LISTING REQUIREMENT**

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INTRODUCTION

Nasdaq's Market Value of Listed Securities Rule (the "MVLS Rule") imposes automatic delisting of Nasdaq-listed companies that fall below a \$5-million-market-value threshold. But Nasdaq never reasonably explained how that threshold corresponds to the market-manipulation, investor-protection, or compliance risks it claimed justified the rule. The Rule applies and mandates delisting even if the traded company is otherwise fully compliant with Nasdaq's rules, even if its decline is temporary, and even if nothing about the company suggests fraud, manipulation, or disorderly trading. The Rule then compounds that substantive mismatch with a procedure that contradicts the Exchange Act: automatic suspension comes first, while notice, a hearing, and any meaningful opportunity to recover come only afterward. In short, the MVLS Rule is a solution in search of a problem that is deeply flawed as a matter of both substance and procedure.

Nasdaq has effectively conceded that its categorical and automatic delisting regime misses the mark. Amendment No. 1 to the MVLS Rule acknowledges that companies falling below the \$5-million-market-value threshold "may meaningfully recover" and that their continued listing "may be appropriate." *See* 91 Fed. Reg. 38,460, 38,462 (June 25, 2026). Experts and commenters showed that 78% of the companies that would have been caught by the MVLS Rule in previous years were false positives; they later recovered above the \$5-million-market-value threshold, and many of them remain listed on Nasdaq today. Nasdaq never produced competing evidence (or any evidence at all).

Those facts, and the accompanying procedural deficiencies, should have prompted a hard look at Nasdaq's proposed rule. Instead, the Division's Approval Order worked backward from the desired result and filled in its own non-record evidence. The Division built its approval on its own,

new empirical analysis—analysis that Nasdaq itself had never performed and that commenters had no chance to address. Both the Exchange Act and this Commission’s rules place the burden of proof for justifying proposed rules on Nasdaq alone. The Division cannot rescue Nasdaq after it fails to carry its burden. The Division further erred and engaged in arbitrary reasoning when it refused to consider narrower alternatives offered by commenters, and approved the Rule even though the evidence before it contradicted the Rule’s principal factual premise.

The MVLS Rule also violates the Exchange Act’s requirements in several independent ways. The Rule is not reasonably “designed to prevent” manipulation because it targets total market value, even though parties on both sides of the debate identified public float and other issuer characteristics as the real sources of risk. 15 U.S.C. §78f(b)(5). Worse still, the Rule likely creates a new opportunity for manipulation as a company’s market value approaches \$5 million—a problem Nasdaq refused to acknowledge. The Rule also harms existing investors by forcing otherwise compliant companies into the less liquid OTC market. It denies companies fair procedures—required by both the Exchange Act and this Commission’s decisions—by suspending those companies first and giving them a hearing much later, after the damage is already done (while withholding the ordinary cure period and stay). The Rule imposes severe competitive burdens without showing those burdens are necessary, even though the record identifies several narrower alternatives that would achieve the same regulatory objectives with far less burden on listed companies.

No one disputes that Nasdaq has authority to impose continued-listing rules. However, that authority does not excuse it from complying with the Exchange Act. Nasdaq still had to show that this Rule reasonably targets the harms it claims to solve, protects investors, provides fair procedures, and avoids unnecessary burdens on competition. At bottom, the problem is not merely

that Nasdaq chose a harsh rule. The problem is that Nasdaq chose a rule aimed at the wrong problem, imposed its harshest consequence, stripped away ordinary and traditional safeguards, and did not carry its burden to show why any of those outcomes were necessary. The Exchange Act does not permit Nasdaq to impose this rule in its exchange market. Nor does the Exchange Act permit the Division to approve first and supply the missing justification later. The Commission should set aside the Approval Order and disapprove the proposed rule change.

BACKGROUND

A. Nasdaq imposes continuing listing requirements to promote confidence in markets.

The Exchange Act regulates stock exchanges. Stock exchanges—like the New York Stock Exchange and Nasdaq—provide a secondary market for trading stocks, where investors buy stocks directly from other investors rather than from the company’s initial public offering. *See All. for Fair Bd. Recruitment v. SEC*, 125 F.4th 159, 169 (5th Cir. 2024) (en banc). Stock exchanges impose internal rules on their members and require those members to meet certain financial requirements. *See id.* Those rules and financial requirements are designed to instill confidence in the exchange as a reliable market, thus encouraging investors to trade openly and buy more stock.

Nasdaq’s internal rules differentiate between *initial* listing standards (the financial threshold a company must satisfy to be admitted to Nasdaq) and *continued* listing standards (the financial threshold the company must satisfy to remain on Nasdaq). If a Nasdaq-listed company falls out of compliance with one of the continued-listing standards, Nasdaq has historically provided that company notice of the deficiency and a substantial compliance period—often 180 calendar days—during which the company remains listed and may regain compliance with the standard it failed. Consider, for example, Nasdaq’s historical and longstanding Market Value of

Listed Securities Rule.¹ Under it, “[a] failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days,” after which “the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance.” Rule 5810(c)(3)(C). A company can ordinarily demonstrate compliance by maintaining the required level for ten consecutive business days. Nasdaq’s notice-and-cure approach resembles the New York Stock Exchange’s, which likewise provides a six-month cure period, with possible extensions, for comparable deficiencies. *See* NYSE Listed Company Manual §802.01C.

Nasdaq’s existing rules also require a stay of the delisting determination pending review. If a company in danger of delisting timely requests a hearing, Nasdaq stays delisting until the Hearings Panel issues a written decision. Nasdaq historically departed from that default approach only in exceptional circumstances involving deficiencies that have already proved incurable or cannot be cured at all—bankruptcy or liquidation, a closing bid price below \$0.10 for ten consecutive business days, failure following an additional compliance period, or a special purpose acquisition company’s failure to complete a business combination within a fixed deadline.

B. The Proposed MVLS Rule.

In January 2026, Nasdaq filed a proposed rule change for the MVLS Rule, which sought to adopt a new financial threshold for continued listing on its market. This newly proposed rule required companies to maintain a minimum \$5 million market value of listed securities. *See* 91 Fed. Reg. 3935 (Jan. 29, 2026). The proposed rule would allow Nasdaq to immediately delist any

¹ This historical Market Value of Listed Securities Rule should not be mistaken with the new MVLS Rule that is otherwise discussed and challenged here, even though they are referring to by the same name. The old Market Value of Listed Securities Rule—Rule 5550(b)(2)—requires companies to have an MVLS of \$35 million, but allows a 180-day cure period for companies that fall below that. The new MVLS Rule—Rule 5550(a)(6)—requires companies to have an MVLS of \$5 million, and no cure period.

company that falls below the \$5-million-market-value threshold for 30 consecutive business days. Unlike every previous Nasdaq continued-listing standard, the proposed rule threatens companies with immediate removal from the stock exchange, with no notice period and no opportunity to cure. While a suspended company may request a post-removal hearing, that request does not stay its delisting.

Nasdaq tried to justify its new MVLS Rule on three grounds. *First*, it stated that companies that fall below \$5 million in market value “generally” face challenges that “are not temporary” and therefore cannot regain compliance. *See id.* at 3,936. *Second*, it asserted that a company’s low market value “can be a leading indicator of other listing compliance concerns.” *See id.* *Third*, it claimed that it is “more difficult” to maintain “fair and orderly” markets when dealing with low-market-value companies. *See id.*

At no point did Nasdaq quantify the scope of the purported problem, provide examples illustrating its frequency, or offer any data showing how common it is for companies below the threshold to fail permanently and not recover. Nor did Nasdaq attempt to demonstrate that this newly proposed rule would satisfy the Exchange Act’s stringent requirements, simultaneously claiming that it “does not believe there will be any impact on competition from the proposed change” but also that “any impact on competition that does arise will be necessary to better protect investors.” SR-NASDAQ-2026-004, at 8.

The current MVLS proposal is not Nasdaq’s first attempt to impose an MVLS-based rule. In September 2025, Nasdaq had sought authority to immediately delist companies that both fell below a specified market value threshold *and* were non-compliant with one or more additional listing requirements. *See* 90 Fed. Reg. 45,280, 45,281-82 (Sept. 19, 2025). Nasdaq later withdrew that portion of the proposal. *See* Amendment No. 1 to SR-NASDAQ-2025-068, at 4 (Dec. 11,

2025). The current MVLS proposal abandons that tailoring and imposes automatic delisting based on market value alone, without explaining why the earlier, narrower approach was insufficient.

The Commission extended its review period on March 11, 2026, and on April 28, 2026, instituted proceedings under Section 19(b)(2)(B). *See* 91 Fed. Reg. 23,495 (May 1, 2026). The Commission solicited comment on whether the proposal was consistent with Sections 6(b)(5) and 6(b)(7), and asked commenters to address the sufficiency of Nasdaq’s statements in support.

C. The administrative record and Professor Lewis’s unrebutted analysis.

Nasdaq’s MVLS-continued-listing proposal drew opposition from across the small-company ecosystem. More than forty interested parties, including companies, law firms, advisers, and investor groups, filed letters opposing the proposal, as did several hundred individual investors. The Small Public Company Coalition (“SPCC”) submitted comment letters on February 19, 2026 (the “February 19 Letter”), March 19, 2026 (the “March 19 Letter”), May 22, 2026 (the “May 22 Letter”), June 5, 2026 (the “June 5 Letter”), and July 10, 2026 (the “July 10 Letter”). SPCC’s first comment—the February 19 Letter—included the expert report and economic analysis of Professor Craig M. Lewis, who served as this Commission’s Chief Economist and Director of the Division of Economic and Risk Analysis from 2011 to 2014 (attached here as “Ex. A”).

Professor Lewis’s report examined the central premise Nasdaq claimed to justify its MVLS proposal—the idea that companies falling below \$5 million market value generally do not recover—against historical market data. Using data from the Center for Research in Security Prices for every company listed on Nasdaq from 2006 through 2025, Professor Lewis identified 816 companies that would have been delisted under the proposed rule. Of those, 640 companies (78%) recovered at least once above the \$5 million threshold. *See* Ex. A ¶26. As of December 2025, 365 of these companies (45%) remained listed and trading on Nasdaq—with a median market

capitalization of \$6 million, an average of \$61 million, and an aggregate of approximately \$22.3 billion. *Id.* Of the 816 companies that would have been delisted had the proposed MVLS requirement been in place, 69% were U.S.-based companies. *Id.* Moreover, of the 451 companies that were eventually delisted, nearly a quarter were delisted while their market capitalization was above \$5 million—that is, for reasons unrelated to the market-value deficiency the proposed rule targets. *Id.* ¶29 & n.27. Professor Lewis’s report concluded that “temporarily falling below the proposed threshold is not a reliable indicator of permanent failure.” *Id.* ¶35.

Professor Lewis’s economic analysis also explained that had Nasdaq’s new MVLS requirement been in effect years earlier, American investors would have been deprived of billions of dollars of value produced by now-thriving companies. Several examples discussed by Professor Lewis demonstrate this point. LightPath Technologies fell below \$5 million in market value during the 2008 financial crisis, but has since raised capital several times and diversified its operations from a component manufacturer into a supplier of imaging subsystems. *Id.* ¶28(a). As of 2025, LightPath Technologies had a market capitalization of \$137 million and 350 employees. *See id.* Patrick Industries likewise fell below \$5 million market value, but it later funded a series of strategic acquisitions and today has more than 10,000 employees and a market value that exceeds \$2.3 billion. *Id.* ¶28(b). And another company, Collectar Biosciences, fell below the \$5 million market value threshold, but recovered after achieving positive clinical trial results and meeting critical regulatory milestones. *Id.* ¶28(c). Under Nasdaq’s new MVLS requirement, however, these recoveries—and billions of dollars in shareholder value they each created—likely would never have occurred.

Professor Lewis’s expert report also explained how imposing a bright-line automatic delisting threshold can turn into a self-fulfilling death knell for smaller companies. Investors

holding stock in smaller companies that are approaching the \$5-million-market-value limit have an incentive to sell first and sell quickly. If they sell at the first suspicion of a decline in market value, they can still recover the normal market price. But if they wait, they risk the company being delisted from Nasdaq and may be forced to accept a lower price when selling outside the exchange. Collective attempts to exit depress the price, which increases the probability of crossing the threshold, which further intensifies the incentive to sell. Professor Lewis described the result as a “cliff effect” that closely parallels a run on a bank. *Id.* ¶¶20-24. His analysis also showed that readily available adjustments to the Rule’s calibration could significantly reduce its overbreadth: extending the measurement period from 30 to 120 business days would reduce the number of still-listed companies the Rule would have captured from 365 to 177. *Id.* ¶¶30-31.

Neither Nasdaq nor the Division nor any of the MVLS Rule’s supporters disputed any of Professor Lewis’s empirical analyses or conclusions. The Rule’s supporters were the sell-side trade associations—SIFMA, Citadel Securities, the Security Traders Association (“STA”), and Better Markets—together with OTC Markets Group, PTG, and Senator Ricketts. Their letters focused on their concerns with low-priced securities, promotional activity, reverse splits, and thin trading. But while some of these commenters’ concerns about such issues should be taken seriously, none of them submitted evidence showing (or even supporting the idea) that a sub-\$5 million MVLS for 30 business days is a reliable proxy for fraud, manipulation, issuer failure, or an inability to maintain a fair and orderly market. There was—and remains—a significant mismatch between the problems these commenters identified and Nasdaq’s poorly tailored and inadequately explained solution.

Indeed, the supporting commenters made several notable concessions. SIFMA and Citadel both told Nasdaq that total market value—the only metric the MVLS proposal uses—is the *wrong*

metric and urged Nasdaq to use something else. *See* SIFMA Comment, SR-NASDAQ-2026-004, at 2 n.2; Citadel Comment, SR-NASDAQ-2026-004, at 1-2. STA explained that the securities most susceptible to manipulation “are precisely those with low publicly available floats,” and acknowledged that because the profiles regulators have identified as vulnerable to so called “ramp-and-dump” schemes typically sit “in the \$25 million to \$50 million range,” the MVLS proposal’s \$5-million-market-value cap would not even address the most serious ramp-and-dump perpetrators. STA Comment, SR-NASDAQ-2026-004, at 6-7.

D. Amendment No. 1, the Approval Order, and the Commission’s grant of review.

Nasdaq filed Amendment No. 1 to the MVLS proposal on June 18, 2026, after the Commission had instituted proceedings and after SPCC had submitted four comment letters and Professor Lewis’s analysis. *See* 91 Fed. Reg. 38,460 (June 25, 2026). The amendment did not address any of the substantive or procedural objections SPCC and others raised against the MVLS proposal. Instead, it made only one small change. Conceding that some companies falling below \$5 million “may meaningfully recover,” Nasdaq proposed that a hearings panel may, “where it deems appropriate,” grant an exception “for a period not to exceed 180 days” from the delisting point, for the issuer to demonstrate compliance with “all requirements for initial listing.” *Id.* at 38,461-62. The amendment still required automatic delisting and denied a deficient company the ordinary stay of suspension pending review.

Nasdaq supplied no new empirical analysis and no assessment of costs or alternatives that could have addressed the deficiencies of the preexisting MVLS proposal. It also brushed aside concerns that the MVLS proposal would make markets *more* manipulable, saying only that “market manipulation is illegal” and traders “should submit such evidence to the appropriate authorities.” *Id.* at 38,463.

On July 22, 2026, the Division approved the proposed rule, as modified by Amendment 1. *See* 91 Fed. Reg. 46,995 (July 27, 2026). Three features of the Approval Order reflect additional improprieties in the MVLS Rule’s approval. *First*, the Division supplied its own empirical analysis—twenty years of CRSP price and delisting data, examining seven thresholds and three measurement windows—that Nasdaq did not itself provide and that no commenter or other interested party had been given a chance to see, test, or respond to. *See id.* at 46,995-47,002. *Second*, even the Division’s own analysis found that at Nasdaq’s chosen parameters, 51% of the companies that would have been delisted by the Rule (had it been in place in the past) were “false positives”—companies that recovered and had no other compliance issues. Worse still, the connection between dropping below the \$5-million-market-value threshold and eventual delisting “weakened over time” to under 20% for relevant companies in 2025. *Id.* at 47,001-02. *Third*, the Division refused to consider any of the alternatives that commenters had proposed, simply claiming they were “not part of Nasdaq’s proposal” and the Division therefore had no duty to consider them. *Id.* at 47,008.

SPCC petitioned for review of this Approval Order on August 5, 2026. The Commission granted the petition on September 11, 2026. *See* Exchange Act Release No. 34-106338.

ARGUMENT

Congress charged this Commission with ensuring that the rules of national securities exchanges meet certain fundamental requirements set forth in the Exchange Act. 15 U.S.C. §78f(b). The Commission’s own rules make clear that “[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the self-regulatory organization that proposed the rule change.” 17 C.F.R. §201.700(b)(3).

Nasdaq has failed to carry that burden. The MVLS Rule violates the Exchange Act's requirements in multiple ways. The defects run through both the Rule's substantive terms and the process by which it was approved. The Rule is not reasonably connected to the manipulation risk Nasdaq invokes. It affirmatively harms both innocent companies and the investors it purports to protect. It strips issuers of the fair process the Exchange Act requires, imposes competitive burdens Nasdaq never showed were necessary, and ignores less burdensome and better tailored alternatives that would address the stated concerns more directly. And the Division cannot cure those failures by supplying, after the fact, the evidence and analysis that Nasdaq itself was required to (but failed to) provide.

I. Nasdaq has failed to reasonably demonstrate that the MVLS Rule prevents market manipulation or protects investors.

Section 6(b)(5) of the Exchange Act precludes the Commission from approving an exchange's rules unless it "determines" that "[t]he rules of the exchange are designed to prevent fraudulent and manipulative acts and practices ... [and] to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers." 15 U.S.C. §78f(b)(5). Nasdaq may not "regulate ... matters not related to the purposes" of the Act." *All. for Fair Bd. Recruitment*, 125 F.4th at 165 (quoting 15 U.S.C. §78f(b)). So "before SEC approves a proposed exchange regulation, it must find that the regulation is related to the purposes of the ... Act." *Id.*

As applicable here, Section 6(b)(5) imposes two requirements on Nasdaq's proposed rules. They must be "designed to prevent" some specific and identifiable harm, which requires a rational connection between the mechanism Nasdaq selected and the harm it seeks to avoid. 15 U.S.C. §78f(b)(5). A rule that regulates some aspect of trading other than the actual harm identified is arbitrary and does not align with the purposes of the Exchange Act. *See All. for Fair Bd.*

Recruitment, 125 F.4th at 183-84. Additionally, a Nasdaq rule must “protect investors,” which means the Commission cannot approve a rule that will remove compliant companies from the exchange without Nasdaq presenting evidence that investors will be better off for it. *Id.* at 179-180.

The MVLS Rule fails both requirements. Nasdaq has chosen a blunt instrument that misses the target and strikes innocent companies and investors instead. The MVLS Rule has little connection to preventing actual fraud or market manipulation, and it harms both compliant companies and the very investors the Exchange Act seeks to protect.

First, Nasdaq has failed to show that the MVLS Rule is reasonably “designed to prevent” some specific harm. Nasdaq has never demonstrated a pervasive problem with low-market-cap companies fixable only by categorical, automatic exclusion from the market. Nasdaq said it had “observed that the challenges facing companies that fail to maintain a minimum MVLS of at least \$5 million generally are not temporary.” 91 Fed. Reg. at 46,997. It also said that a low market value “can be a leading indicator of other listing compliance concerns.” *Id.* at 46,997 n.33. But Nasdaq never quantified the problem, illustrated its frequency, offered data showing how often companies below the threshold fail permanently, or otherwise explained how the existing listing compliance requirements were insufficient. After commenters extensively highlighted these omissions, Amendment No. 1 provided no empirical support either. It merely repeated the assertions. And the Order simply restates them as though restating them could convert *ipse dixit* into a proper factual determination. *Id.* at 46,997. But a rule adopted “in search of [a] regulatory proble[m] to solve” cannot satisfy the Exchange Act. *N.Y. Stock Exch. LLC v. SEC*, 962 F.3d 541, 556-57 (D.C. Cir. 2020).

Compounding the problem, existing evidence flatly contradicts Nasdaq’s premise. As noted in SPCC’s original comments, Professor Lewis found that 78% of the companies the Rule would have delisted later recovered, that 365 remain listed, and that nearly a quarter of those eventually delisted were delisted while above \$5 million (for reasons unrelated to the deficiency the rule targets). Ex. A ¶¶26, 29 n.27. Nasdaq never disputed any of this. And the Division’s own analysis—while procedurally improper, since it did not come from Nasdaq—undercuts Nasdaq’s case. It found that 51% of the companies the Rule would have captured were “false positives”—companies that fell below a \$5-million-market-value threshold, but later recovered and were not delisted for other reasons. *See* Order 16-17 & Fig. 4. It also found that Nasdaq is already delisting the truly noncompliant and risky companies under *existing* Nasdaq rules, with a median of 259 days between crossing the threshold and delisting. This raises the question, why is a new rule needed at all? Nasdaq and the Division alike are left trying to justify a supposed “leading indicator” that is wrong more often than it is right and becoming less predictive over time.

Second, the MVLS Rule is not reasonably “designed to prevent” market manipulation because it targets and regulates total market value—the wrong variable. Even the Rule’s supporters did not tie manipulation risk to total market value. Those commenters pointed instead to “low publicly available floats.” *See* 91 Fed. Reg. at 46,999; STA Comment at 6. SIFMA and Citadel actually told the Commission that market value is the *wrong* metric because it “includes all listed shares, even those shares that are not freely tradable by the public,” and urged Nasdaq to focus on public float instead. SIFMA Comment, at 2 n.2; Citadel Comment, at 1-2. Even when the Approval Order tried to explain why smaller companies might be easier to manipulate, its own theory turns on float—not total market value—since a market manipulator can more cheaply “accumulate a position from the public float.” 91 Fed. Reg. at 47,003.

But the MVLS Rule does not measure public float. Instead, it measures MVLS—a company’s closing bid price multiplied by all shares of the listed class, including both restricted shares and shares held by insiders. *See* Nasdaq Rule 5005(a)(23). But this method of calculating market value allows a company to have a low MVLS even if it does not have a thin or concentrated public float—while, conversely, a much larger company can have very little stock available for public trading. *See* July 10 Letter at 6. Relying on MVLS creates scenarios that destroy small companies presenting no risk of market manipulation, while permitting manipulation of much larger companies that have a low public float. A \$4 million company with every share in public hands presents little of the risk the supporters describe, yet the MVLS Rule automatically delists it without recourse. By contrast, a \$400 million company with only a \$4 million public float controlled through nominee accounts presents the kind of profile regulators have flagged, yet the MVLS Rule leaves it untouched. A rule keyed solely to one variable cannot be “designed to prevent” a risk that all parties and every portion of the record attribute to a different variable. *All. for Fair Bd. Recruitment*, 125 F.4th at 183-84.

The MVLS Rule also targets the wrong parts of the market. Even for manipulated companies, the Rule does nothing to prevent market manipulation in advance or at the time of the manipulation and kicks in only after the scheme has run its course. FINRA has described the typical ramp-and-dump target as an IPO valued at “less than \$100 million.” FINRA Regulatory Notice 22-25, at 2 (Nov. 17, 2022). And in the comment period below, STA acknowledged that the most vulnerable issuers often fall in the “\$25 million to \$50 million range”—so much so that “the \$5 million threshold may not be high enough on its own.” STA Comment at 6 n.15, 7. The manipulation itself drives market value upward; in a ramp-and-dump scheme, the perpetrators artificially inflate the stock price during the ramp and sell into that elevated price, while the

collapse comes afterward. *See United States v. Constantinescu*, 157 F.4th 392, 394 (5th Cir. 2025). Thus, a \$5-million-market-value trigger is unlikely to apply while the manipulation Nasdaq fears is *actually occurring*.

SIFMA’s own example illustrates the mismatch. SIFMA discusses a low-priced stock that traded around \$3 before a suspected manipulation drove the price as high as \$207—a soaring market value that moves in precisely the opposite direction from the price decline that would trigger delisting under the MVLS Rule. *See* SIFMA Comment at 4. By the time a manipulated stock later falls below the \$5-million-market-value threshold, the perpetrators will be gone and the losses will have been shifted to innocent investors. *See United States v. Curshen*, 567 F. App’x 815, 816 (11th Cir. 2014). The MVLS Rule cannot be viewed as “designed to *prevent*” market manipulation when its true application indiscriminately destroys compliant small companies before any manipulation has occurred and, in actual scenarios of manipulation, kicks in only after a manipulative scheme ends.

Third, the MVLS Rule does not prevent manipulation—it *incentivizes* targeted manipulation. As SPCC explained in its comments, “[a] rigid, time-bound trigger creates the possibility that a coordinated shorting campaign could force a company below the \$5 million threshold long enough to compel automatic delisting.” February 19 Letter at 8. For example, external actors could take short positions in a small company trading at a market value of \$7 million and use concentrated manipulative selling to push its market value below \$5 million. If they can maintain that downward pressure for 30 business days, the resulting suspension and delisting could drive the price lower still, increasing the value of their short positions. Even if such a strategy would not always succeed, a mechanical trigger with a predetermined consequence materially increases the payoff from attempting it.

Even STA acknowledged that the Rule’s bright-line trigger creates “a vulnerability to manipulation,” because “[o]ne closing print at or above \$5 million during the measurement window resets the counter back to day zero.” STA Comment at 11. The same mechanical feature that can be manipulated upward to avoid the Rule can be targeted downward to trigger it. And the effects need not stop with the manipulators themselves. Professor Lewis described the “cliff effect,” where legitimate investors who recognize the downward pressure and anticipate an automatic delisting will attempt to quickly exit. This will then further accelerate the declining price and harm the company as well as the innocent investors left behind. *See supra* 7-8; *see also* Ex. A ¶24.

The Division knew of this severe manipulation risk. More than twenty commenters raised this concern. *See* 91 Fed. Reg. at 47,003-05 & nn.84-87. But Nasdaq’s only answer was that “market manipulation is illegal and commenters should submit such evidence of violations to the appropriate authorities.” *Id.* at 47,005. That answer is internally inconsistent. The MVLS Rule “rests on the premise that the illegality of manipulation does not prevent it from occurring,” yet Nasdaq later “invokes that same illegality as a reason to *disregard* the manipulation risk” the Rule itself creates. July 10 Letter at 4 (emphasis added). Nasdaq relies on the risk of upward manipulation (which can happen to a company with a market capitalization of any size, not just a small one) to justify the Rule yet discounts the risk of downward manipulation created by the Rule itself (which would be targeted to companies at or near the \$5 million threshold), without offering any reasoned basis for treating the two differently. That “mismatch between the ... decision and the rationale ... provided” confirms that the Approval Order is unreasonable and does not serve the Exchange Act’s purposes. *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019); *see also Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148-49 (D.C. Cir. 2011) (faulting Commission for

“inconsistently and opportunistically fram[ing]” the costs and benefits of an Exchange Act rule and for “contradict[ing] itself” and “failing to respond to substantial problems raised by commenters”).

The Division’s only answer—that the 30-day requirement “could mitigate” the risk—is speculation offered without data. 91 Fed. Reg. at 47,005. That is not enough. A rule cannot be “designed to prevent” manipulation when its primary function creates a *new* manipulation opportunity—especially when commenters repeatedly identified that risk—and neither Nasdaq nor the Division offers evidence that the supposed safeguard will actually prevent this type of increased manipulation. *See* 91 Fed. Reg. at 46, 997 n.31. The MVLS Rule thus fails twice over: It does not solve the manipulation problem Nasdaq invokes, and it creates a new manipulation problem of its own.

Fourth, the MVLS Rule would likely harm the very investors the Exchange Act requires the Commission to protect. The Division’s Approval Order states that the Rule satisfies the Act’s investor-protection requirement, reasoning that removing low-market-value companies protects prospective investors. *See* 91 Fed. Reg. at 47,003. However, every listed company has existing investors already, and automatic delisting harms them. As Professor Lewis explained, drawing from his experience working for this Commission, “involuntary delisting is consistently associated with declines in share value, wider spreads, reduced analyst coverage, and diminished investor protections.” Ex. A ¶33. Spreads widen, market makers withdraw, and trading volume falls, making it harder for investors to exit their positions at a fair price. *Id.* ¶13. Because delisted securities are no longer NMS stocks, their holders also lose the consolidated-quotation, order-protection, and execution-quality protections that apply to listed securities. *Id.* ¶¶16-18. The Commission’s own economists have also documented that OTC securities are frequent targets of manipulation and

that investors in them fare poorly. *Id.* ¶14 & n.18. Additionally, institutional investors subject to restrictions on holding OTC securities may be forced to sell into the resulting decline. *Id.* ¶19.

The Approval Order responds only that delisted companies “will continue to be able to trade in the OTC market, which provides a viable alternative.” 91 Fed. Reg. at 47,007. But the availability of OTC trading does not meaningfully answer any of these investor harms. Nor can the Approval Order have it both ways. If OTC trading were an adequate substitute for exchange listing, then Nasdaq’s listing of companies would carry no distinctive “imprimatur” that the MVLS Rule seeks so ardently to protect. *Id.* at 47,003 n.63.

The same holds true when considering the Commission’s duty to the public interest. Section 3(f) directs the Commission to consider whether an action “will promote efficiency, competition, and capital formation.” 15 U.S.C. §78c(f). As SPCC explained, the MVLS Rule would impair capital formation for *every* company that could plausibly approach the \$5-million-market-value threshold—not only those that dip below the threshold—because investors will discount the shares of companies facing forced-suspension risk and lenders will price or decline that risk. *See* February 19 Letter at 4-5. The Approval Order “acknowledges” the benefits of exchange listing, then simply declares that they “do not override the need” for continued listing standards. 91 Fed. Reg. at 47,006. But a rule that chills investment and financing before the threshold is ever crossed burdens—rather than promotes—capital formation.

Fifth, the MVLS Rule violates the Exchange Act’s requirements because it unfairly and arbitrarily discriminates among issuers. It treats equally manipulable large- and small-companies differently, and singles out a curable MVLS deficiency for immediate suspension while giving other curable listing deficiencies a compliance period and a stay pending review. The Approval Order skates past this requirement, claiming cursorily that the Rule “is not unfairly discriminatory

because [it] is reasonably tailored to the Exchange’s goal.” 91 Fed. Reg. at 47,003. But nothing in the record supports that conclusion.

A rule cannot be reasonably tailored when it regulates a characteristic that the record proves is not the cause of the invoked harm and, by the Division’s own count, wrongly captures more than half of the companies it identifies. The MVLS Rule discriminates among issuers on a characteristic (market value) that is unrelated to the manipulation risk Nasdaq invokes. And the Rule treats an MVLS deficiency more harshly than every other curable deficiency in Nasdaq’s rulebook, which all receive a compliance period and a stay pending review. *Cf. Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007) (agency must “treat like cases alike”). There is no reasonable explanation from either Nasdaq or the Division about why this deficiency alone warrants immediate suspension.

Nor do the Approval Order’s remaining rationales cure these defects. The order invokes the Commission’s traditional deference to an exchange’s judgment to list “only higher quality companies.” 91 Fed. Reg. at 47,003 & n.63. SPCC does not dispute Nasdaq’s authority to raise its listing standards. But deference to an exchange is afforded only when there is a reasoned judgment supported by the record. *Susquehanna Int’l Grp. v. SEC*, 866 F.3d 442, 446-47 (D.C. Cir. 2017). Deference to Nasdaq’s general authority to set listing standards does not eliminate its burden to show that *this Rule* actually addresses the manipulation risk it invokes.

The Order’s reliance on preserving the “imprimatur” of exchange listing is similarly circular. If preserving that imprimatur was enough by itself, no continued listing standard could ever fail Section 6(b)(5), because every listing standard necessarily defines which companies receive it. Nor would an ordinary cure period mislead the market—Nasdaq already requires an

issuer to disclose receipt of a deficiency notice within four business days. *See* Nasdaq Rule 5810(b).

The Exchange Act therefore requires more than an appeal to Nasdaq's general authority to set listing standards. It requires Nasdaq to justify this Rule, on this record, under the statutory requirements Congress imposed. Neither Nasdaq nor the Division has shown that the MVLS Rule prevents manipulation, protects investors and the public interest, or avoids unfair discrimination among issuers.

II. The MVLS Rule violates the Exchange Act by failing to provide fair procedures.

Section 6(b)(7) of the Exchange Act permits approval of an exchange rule only if the Commission “determine[s]” that it provides “a fair procedure for ... the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.” 15 U.S.C. §78f(b)(7). Delisting falls squarely within that requirement. *See MFS Sec. Corp. v. N.Y. Stock Exch., Inc.*, 277 F.3d 613, 620 (2d Cir. 2002). Section 6(d)(2) of the Act provides that before an exchange can limit access, it “shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for ... prohibition or limitation under consideration.” 15 U.S.C. §78f(d)(2). The Approval Order addresses this statutory requirement with a single sentence—a suspended company “will still be able to seek review of the Staff Delisting Determination by the Hearings Panel.” 91 Fed. Reg. at 47,009. But a hearing after suspension is not the procedure Congress required. And the MVLS Rule does not comport with Section 6(b)(7) in four distinct ways.

First, the MVLS Rule upends the sequence outlined by the Exchange Act by suspending a company *first* and allowing it to be heard only *afterward*. Once a company spends 30 business days below \$5 million in MVLS, suspension follows automatically—without a hearing, without

the chance to present recovery plans, and without any opportunity to cure. *See* 91 Fed. Reg. at 47,009. This is the opposite not only of what the Exchange Act itself outlines but also of Nasdaq’s normal continued-listing compliance review—where a deficient company receives notice of a deficiency, a compliance period, and a hearing that stays suspension until the panel decides the appeal. *See* Nasdaq Rules 5810(c)(3), 5815(a)(1)(B).

Whether delisting occurs before a hearing matters because the harms inflicted on a company from delisting occur immediately. By the time the Panel considers an appeal, the delisted company will have already been pushed into the OTC market. *See* Ex. A ¶¶13-15, 19. Liquidity and analyst coverage may already have declined, institutional investors will likely already have been forced to sell, and any financing and covenant consequences will have been triggered. *See id.* As SPCC explained, eliminating the cure period treats a “temporary market dislocation as fundamental issuer failure.” May 22 Letter at 4-5. A hearing that comes only after all these harms have occurred does not provide the fair process the statute requires, and will be unable to reverse the consequences of a premature or unnecessary delisting.

Second, the Commission precedent cited in the Approval Order confirms that notice and an opportunity to cure should precede removal from an exchange. The order relies heavily on *In the Matter of Tassaway, Inc.*, 45 S.E.C. 706 (1975), where a company was removed from Nasdaq after falling below a capital-and-surplus continued listing requirement. *See* 91 Fed. Reg. at 47,009 & nn.154, 157. But even in *Tassaway*, the exchange “first informed Tassaway that the deletion of its stock from NASDAQ was being considered,” and then “gave Tassaway many months to bring itself into compliance.” 45 S.E.C. 706, at 2 n.11, 3 n.24. Notice first, then time to cure second, then removal last—that is the sequence Section 6(d)(2) describes.

The Approval Order's other examples do not help it either. The cases where Nasdaq denied a stay of delisting involved deficiencies that had already proved incurable or could not be cured: bankruptcy, a bid price below \$0.10, failure after an additional compliance period, or a missed SPAC deadline. *See* 91 Fed. Reg. at 47,009 n.152. An MVLS deficiency is categorically different. It can be cured, as illustrated by every commenter and by Nasdaq's own Amendment No. 1, which expressly acknowledges that many companies can meaningfully recover after dropping below the market-value threshold. *See* 91 Fed. Reg. at 38,462. Neither Nasdaq nor the Division ever explained why a temporary and curable deficiency should receive the same immediate delisting treatment as bankruptcy or a deficiency that has already survived a full compliance period. *See Westar Energy*, 473 F.3d at 1241.

Third, the MVLS Rule's proposed post-suspension hearing is inadequate on its face. That hearing does not even permit the delisted company to contest the factual findings that Nasdaq says justify the Rule. The Hearings Panel "may reverse a delisting decision where the Hearings Panel determines that the Staff Delisting Determination was in error." 91 Fed. Reg. at 47,010. In practice, that confines the appeal and hearing to the ministerial question of whether Nasdaq correctly calculated the company's MVLS and counted the 30 business days.

But Nasdaq sought to justify the MVLS Rule on much broader grounds—the idea that companies below \$5 million in market value are unlikely to recover, are more susceptible to manipulation, and present greater difficulty in maintaining fair and orderly markets. If these are the ultimate concerns that led Nasdaq to delist a company with a low market value, that company should be able to defend itself and preserve its listing by showing that its decline was temporary, reflected sector-wide conditions, resulted from manipulative pressure, or that the company remains compliant with every other listing standard.

Yet under the truncated post-suspension review contemplated here, the company would be unable to present any of those facts because none of those facts could prove Nasdaq's arithmetic wrong. This violates the Exchange Act because Section 6(d)(2) requires an opportunity to be heard on the "specific grounds" for the limitation. No company can meaningfully contest its delisting if it is limited to challenging only the arithmetic of whether it crossed the market-value threshold, while having its hands tied from contesting the very facts and assumptions Nasdaq says make crossing that threshold grounds for removal. (And even then, the arithmetic in question is not clearly defined. Nasdaq sees prices in real time but learns of share-count changes through separate filings and on different schedules, yet never explains which figure controls or whether an issuer can contest it. *See infra* 41-43.)

Fourth, the discretionary exception added by Amendment No. 1 does not cure these procedural defects. Amendment No. 1 permits the Nasdaq panel, "where it deems appropriate," to grant an exception "for a period not to exceed 180 days from the Staff Delisting Determination for the company to demonstrate that it meets *all requirements for initial listing*." 91 Fed. Reg. at 46,997, 47,010 (emphasis added). But that is not a cure period for *the MVLS deficiency*. This means that a company suspended because its market value temporarily fell below \$5 million cannot regain compliance by satisfying the commonsense cure of restoring its market value to above \$5 million. The suspended company must instead satisfy *every* requirement for initial listing—which includes at least \$15 million in unrestricted public float, along with applicable price, distribution, market-maker, and financial requirements. *Id.* at 47,010 n.175. A delisted company may therefore cure the precise deficiency that caused its suspension and remain delisted because it cannot satisfy the unrelated and far more burdensome initial-listing requirement. Indeed, a company could restore and double its MVLS from below \$5 million to over \$10 million—twice the continued-listing

threshold—and still not regain access to the market, because it could not satisfy an initial-listing requirement of at least \$15 million market value of unrestricted publicly held shares.

Nor does the Approval Order explain why satisfying (again) the high initial-listing standard is necessary to ensure lasting compliance. Nasdaq already has a default durability test for regained compliance, which asks companies only to spend ten consecutive business days meeting the compliance standards. *See* Nasdaq Rule 5810(c)(3)(H). Forcing a now-compliant company to satisfy the much higher initial-listing standards does not test durability—it radically changes the standards a select few companies must meet to simply remain on Nasdaq.

The 180-day clock contemplated by the review scheme here creates a separate procedural problem. That clock begins when the Nasdaq staff make a delisting determination, not when the Nasdaq panel grants relief, and the clock continues to run while the company prepares its appeal and waits for a decision. All the while, that company's securities will be traded over the counter. As Sullivan & Worcester explained, a company forced into the OTC market "is less likely to satisfy the higher initial listing standards ... precisely because the metrics that govern initial listing ... deteriorate significantly as a direct consequence of suspension." 91 Fed. Reg. at 47,010 n.174. The Rule thus requires a suspended company to recover under the very conditions that make recovery less likely.

Nor does the exception provide any meaningful opportunity for relief. The Nasdaq panel may act "where it deems appropriate," but Nasdaq identifies no factors the panel must consider when making an appropriateness determination and no standard for separating temporary decline from lasting weakness. *Id.* at 46,997. That leaves Nasdaq's ordinary, objective cure process replaced with an undefined and standardless request for discretionary mercy.

The procedural arguments advanced by the MVLS Rule’s supporters do not alter that conclusion. STA contends that the 30-day measurement period is “itself a meaningful persistence requirement,” STA Comment at 10, while Citadel argues that compliance periods “have previously allowed issuers to avoid timely delisting,” Citadel Comment at 1. But Section 6(b)(7) of the Exchange Act does not ask whether Nasdaq can remove companies quickly. It asks whether the procedure Nasdaq uses to remove companies is fair, and it requires both notice and an opportunity to be heard before access to an exchange market is limited. The MVLS Rule ignores that statutory directive by suspending the issuer first, limiting what can be contested afterward, and substituting a harder, discretionary path back in place of the ordinary cure process. Congress required a fair procedure before access is limited. The MVLS Rule does not provide one.

III. Nasdaq failed to show that the MVLS Rule’s burdens on competition are necessary.

Section 6(b)(8) of the Exchange Act provides that the rules of a national securities exchange may “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.” 15 U.S.C. §78f(b)(8). Nasdaq therefore may not “adopt[] rules that would unnecessarily burden competition.” *All. for Fair Bd. Recruitment*, 125 F.4th at 174. And, once again, Section 3(f) separately requires the Commission, when reviewing an SRO rule, to consider whether its action “will promote efficiency, competition, and capital formation.” 15 U.S.C. §78c(f). The burden of establishing that its proposed rule satisfies these Exchange Act requirements rests with Nasdaq.

Nasdaq has not carried that burden. If allowed to go into effect, the MVLS Rule would impose the most severe consequence possible—automatic delisting—on hundreds of otherwise compliant and law-abiding small public companies. Yet Nasdaq never even tried to explain why that sort of indiscriminate death-knell sanction is necessary to accomplish its stated goals.

Meanwhile, commenters on both sides of the proceeding offered narrower alternatives that would have better addressed Nasdaq's own invoked concerns without automatically delisting every company that falls below the \$5-million-market-value threshold. The Division refused even to consider any of these alternatives. Failure to consider whether there were other reasonable proposals that could satisfy the same goals while imposing less severe burdens violates the Exchange Act's command to determine whether this rule imposes a burden that is not "necessary or appropriate." 15 U.S.C. §78f(b)(8).

A. Neither Nasdaq nor the Division evaluated whether the Rule's burdens were actually necessary.

The Approval Order expressly refused to consider any of the alternative proposals offered by commenters. According to the Division, those proposals were "not part of Nasdaq's proposal and the Commission must approve the proposal if it finds the proposal is consistent with the Act." 91 Fed. Reg. at 47,008. That response misses the relevance of commenters presenting alternative proposals to a poorly tailored exchange rule. The alternative proposals in the record here showed that Nasdaq's own invoked objectives could be advanced through narrower means that imposed fewer burdens on listed companies than the MVLS Rule. So the evidence of the alternative proposals goes directly to the "necessary" finding that Section 6(b)(8) commands the Commission to make.

Indeed, it is hard to understand how the Commission could ever determine whether a particular burden is "necessary" without asking the basic question of whether the same objective can be achieved without that burden. If the same problem can be fixed with a scalpel instead of a sledgehammer, the existence of the scalpel inherently requires asking whether using the sledgehammer is "necessary." The same is true here. The Exchange Act does not hinge approval of Nasdaq's rule on the mere question of whether Nasdaq's proposal might advance some

legitimate objective. The Act requires Nasdaq to prove that it is not imposing any burden that is “not necessary” to advance its objective. 15 U.S.C. §78f(b)(8). And consideration of alternatives should be central to that inquiry.

Basic administrative-law principles lead to the same result. An agency must consider reasonable alternatives that fall “within the ambit of the existing standard,” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983), and cannot ignore a narrower or less burdensome option that has been raised in the record, *see DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30-33 (2020). This principle applies with full force to the Commission’s review of exchange rules. In *Bloomberg L.P. v. SEC*, the D.C. Circuit reversed a Commission order approving an exchange rule because the Commission “brushed [] aside” concerns raised by commenters rather than engage with them. 45 F.4th 462, 476 (2022). This Commission’s failure to consider the ... alternative[s]” to a particular burden imposed by a proposed rule “violate[s] the APA.” *Chamber of Com. v. SEC*, 412 F.3d 133, 144-45 (D.C. Cir. 2005). Here the Division did more than brush the alternatives aside—it declared that it did not have to consider alternatives *at all*. That defiance of statutory command and the Exchange Act requirements is itself grounds for overturning the Approval Order.

Nasdaq’s own filing in support of the Rule likewise offered no meaningful analysis of the commenters’ proposed alternatives. Instead, Nasdaq merely asserted both that the Rule would have no “impact on competition” and also that “any impact on competition that does arise will be necessary to better protect investors.” SR-NASDAQ-2026-004, at 18. That ‘heads-I-win-tails-you-lose’ approach effectively removes the necessity requirement from Section 6(b)(8). If there is no competitive burden, Nasdaq says no further analysis is needed—and if a burden does exist, Nasdaq says it is inherently justified and no further analysis is needed. But Section 6(b)(8) requires Nasdaq

to affirmatively demonstrate why an actual burden is *necessary*, not simply declare in advance that whatever burden arises will be justified.

Regardless, the Division's own added-from-scratch empirical data makes its refusal to consider alternatives even harder to defend. For one thing, in contradiction to the Division's own statement that it would not consider alternatives because they were not part of Nasdaq's proposal, the Division *did* consider empirical data that Nasdaq did not offer as part of its proposal. And that empirical data itself showed that the particular burdens Nasdaq imposed were not necessary.

The Division examined twenty years of data across seven market-value thresholds and three measurement periods. *See* 91 Fed. Reg. at 46,999-47,003. Table 2 in the Approval Order found that at Nasdaq's chosen \$5-million threshold and 30-business-day period, 497 of the 983 companies (51%) that the Rule would have delisted were "false positives"—companies that were never ultimately delisted on other grounds. *See* 91 Fed. Reg. at 47,002 & n.60. Yet that same table shows that changing the measurement period from 30 to 90 days would reduce the number of false positives from 497 to 290. *Id.* at 47,003. In other words, a slight tweak to the delisting trigger in the MVLS Rule would decrease the number of innocent companies unnecessarily removed from the Nasdaq exchange. The Division called this a "fundamental tradeoff inherent in selecting a threshold." 91 Fed. Reg. at 47,002. But identifying a tradeoff is the beginning of the Section 6(b)(8) inquiry, not the end of it. The Division never explained why Nasdaq's decision to set the MVLS window at 30 days—and thus unnecessarily capture and delist hundreds of additional innocent companies—was a necessary burden, nor did it explain why the same objective couldn't be achieved through the less-burdensome alternative reflected in *the Division's own table*.

Nor did Nasdaq or the Division adequately consider the fact that existing Nasdaq rules already address the type of market manipulation Nasdaq invokes. Nothing has been offered to

show that these existing rules are insufficient to take care of market manipulation risks where they arise. A new burden cannot be “necessary” if Nasdaq does not first identify why its existing rules and protections addressing the same matter are no longer sufficient to address the problem. *See Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 177 (D.C. Cir. 2010).

In just the past few years, Nasdaq has adopted many new rules that are directly aimed at the same market manipulation concerns it now invokes to justify the MVLS Rule. Nasdaq raised its initial-listing liquidity requirements to address pump-and-dump concerns, *see* 90 Fed. Reg. 12,607 (Mar. 18, 2025); adopted heightened standards for companies primarily operating in China, *see* 91 Fed. Reg. 29,183 (May 19, 2026); obtained discretionary authority to deny listing to any company it believes is vulnerable to manipulation, *see* 90 Fed. Reg. 60,829-30 (Dec. 29, 2025); and adopted Rule IM-5101-4, which permits delisting where trading activity indicates manipulation and the Commission has imposed a Section 12(k) suspension, *see* 91 Fed. Reg. 34,675 (June 8, 2026).² In the same vein, Congress has enacted the Holding Foreign Companies Accountable Act, which requires trading prohibitions for certain companies that cannot be inspected by the PCAOB. *See* 15 U.S.C. §7214(i).

All these rules give Nasdaq powerful tools to crack down on market manipulation and protect investors. But Nasdaq has never identified what gap in these preexisting rules allows such systematic market manipulation that Nasdaq needs the power to automatically delist *every company* that falls below \$5 million in market value. The Division’s Approval Order says only that these other rules and the MVLS Rule “work in tandem.” 91 Fed. Reg. at 47,006. But saying that two rules can operate together and to the same end does not mean that both rules are “necessary,” particularly when one of those rules imposes sweeping across-the-board burdens rather than

² Citing of these rules is not intended to be either an endorsement of or objection to any of these rules.

targeting actual indicia of fraud or manipulation. The question required by the Exchange Act’s “necessary or appropriate” provision is what additional benefit the MVLS Rule provides and whether that benefit justifies the burdens the Rule imposes. Neither Nasdaq nor the Division supplied an answer.

Making matters worse—and further illustrating the poor tailoring of the MVLS Rule—Nasdaq’s existing market-manipulation rules are directed at actual signs of manipulation risk. Rule IM-5101-4, for example, applies when documented trading activity indicates market manipulation and the Commission has imposed a trading suspension. But the MVLS Rule takes a very different approach. It imposes automatic delisting based solely on a one-size-fits-all market-value calculation, even when the company presents no warning signs of actual manipulation. Section 6(b)(8) required Nasdaq and the Division to explain why that very severe and much broader burden was “necessary” despite the targeted protections already in place. Neither did.

B. The record contained multiple less-burdensome alternatives that Nasdaq and the Division unreasonably declined to evaluate.

This failure to consider the alternatives in the record was not just a procedural mistake by the Division—though that alone would be reversible error. The commenters presented, in detail, many options that would better advance Nasdaq’s stated objectives while imposing lighter burdens on listed companies. Some of these alternatives were drawn directly from Nasdaq’s existing rules. Others were proposed by supporters of the MVLS Rule itself. And still others were reflected in the Division’s own analysis. Neither Amendment No. 1 nor the Approval Order meaningfully evaluated them, but a substantive review of these alternatives demonstrates that the MVLS Rule’s burdens are not, in fact, “necessary.”

Nasdaq’s own longstanding cure framework. To begin, Nasdaq could have proposed and adopted a rule that retained its default cure period. As explained above, Nasdaq ordinarily gives

companies with curable continued-listing deficiencies a period to regain compliance while remaining on the exchange. *See supra* 3-4. These options would meaningfully address Nasdaq’s concern about companies that experience sustained weakness, while still giving companies that experience a temporary decline a meaningful chance to recover.

Once again, the Division’s own data illustrates the point. The Approval Order states that approximately 65% of issuers that cross the threshold remain below it 180 days later. 91 Fed. Reg. at 47,004. Put another way, approximately 35% do not. If these companies were reviewed under a regime that included Nasdaq’s ordinary default cure period, the 65% of companies that remained deficient would still eventually be delisted, while the 35% of companies that recover could avoid the harsh result of an unwarranted delisting. This alone would be a substantial reduction in innocent and compliant companies being unnecessarily delisted. But the Division never explained why removing the first group a few months sooner justifies sacrificing the companies in the second group altogether.

Some supporters of the MVLS Rule argued that cure periods “unnecessarily prolong” risk or permit issuers to “avoid timely delisting.” *Id.* at 47,005 & nn.94-96; *see also* Citadel Comment at 1. But that argument assumes that immediate delisting is the proper baseline—even though, before now, Nasdaq has always ensured advance notice and a robust cure period for curable deficiencies. *See supra* 3-4. Compliance periods give companies time to show that any deficiencies are temporary. If a company regains compliance, it has not “avoided” delisting—it has shown that delisting was never truly necessary. This is a distinction that Nasdaq already acknowledges and relies on extensively in its other continued-listing rules.

The ordinary stay process. At minimum, Nasdaq could preserve the current default process of an ordinary stay of delisting pending a hearing panel decision. A stay would not prevent Nasdaq

from ultimately delisting a company that remained below the market value threshold. But it would keep the company listed (and alive) until the hearing panel at least finishes its review. Because suspension causes immediate harms that are nigh-impossible to reverse, *see supra* 21, permitting a stay of delisting would avoid those irreversible harms without blocking Nasdaq from acting once the appeal is decided. Neither Nasdaq nor the Division explained why this is not an acceptable alternative.

Better tailoring to risk. If manipulation is the true concern, Nasdaq could craft a rule that turns on heightened scrutiny, faster procedures, or even a stricter MVLS trigger aimed at the types of issuers its own record associates with greater manipulation risk. In fact, Nasdaq already takes that approach at initial listing, but the MVLS Rule does the opposite. Rather than tailor its application to specific risk factors, the MVLS Rule applies the same mechanical, one-size-fits-all trigger to every company below \$5 million, regardless of whether that company bears any resemblance to the issuer profile that supposedly creates the concern. The resulting burden will fall heavily on domestic companies and domestic investors—69% of the companies that Professor Lewis’s report found would have been delisted (had the Rule applied in the past) were U.S.-based. And the great majority of the more than 800 U.S.-listed companies below \$50 million in market value are not located in the foreign jurisdictions that other commenters identified as concerning and that generated Nasdaq’s regulatory-access concerns. *See* Ex. A ¶26; *see also* July 10 Letter at 12.

The letter submitted by Senator Ricketts confirms this point. Senator Ricketts warns of ramp-and-dump schemes, many tied to companies operating in China. Ricketts Comment, SR-NASDAQ-2026-004, at 1-2. But the MVLS Rule’s burden falls mostly on *domestic* companies. If the problem is China-based issuers beyond the reach of U.S. regulators, Nasdaq has already shown

it can target that problem directly with other market-manipulation rules. *See* 91 Fed. Reg. at 29,185; *see supra* 29. The Senator’s letter is an argument for that kind of *tailored* rule aimed at foreign-based or foreign-linked companies, not for a rule that automatically delists every American company that dips below \$5 million in market value.

Alternatively, Nasdaq could tailor its rule to public float—the one characteristic that commenters of all stripes identified as the true characteristic that corresponds to market-manipulation risk. SIFMA and Citadel both urged Nasdaq to focus on public float rather than total market value, and STA likewise explained that the securities most vulnerable to manipulation are those with “low publicly available floats.” STA Comment at 6; *see also* SIFMA Comment at 2 n.2; Citadel Comment at 1-2. Public float is as much of an objective metric as market value. So if building a rule around public float measurements, Nasdaq could maintain a bright-line rule while tailoring that rule to the amount of stock actually available for public trading, which all seem to agree is more predictive of manipulation risk.

A more targeted rule would also fit better with the recent approaches taken elsewhere by both Nasdaq and the Commission. As mentioned, earlier this year Nasdaq adopted (and the Commission approved) heightened initial-listing standards for companies primarily operating in China. *See* 91 Fed. Reg. 29,183 (May 19, 2026). Nasdaq justified those rules by arguing that “companies headquartered, incorporated or whose business is principally administered in China are more frequently the subject of trading concerns than those from other regions.” *Id.* at 29,185. And in September 2025, the Commission created a Cross-Border Task Force to investigate potential securities-law violations involving foreign-based companies, including “pump-and-dump” and “ramp-and-dump” schemes, with particular focus on jurisdictions such as China, where

governmental control and other external factors create unique risks for investors. *See* Press Release, SEC Announces Formation of Cross-Border Task Force to Combat Fraud (Sept. 5, 2025).

That overall approach points toward tailoring exchange rules to what is truly necessary, not imposing a categorical and mechanical trigger. Nasdaq could target foreign issuers presenting the regulatory-access concerns it has identified, or companies with unusually thin public floats, or some combination of those objective risk factors. Neither Nasdaq nor the Division has explained why this kind of targeted evaluation is appropriate in all other cases, but is somehow inadequate here—or why the blunt-force approach it ultimately chose is *better* than those alternatives.

Different thresholds and a longer measurement period. Nasdaq could also calibrate the Rule itself, rather than apply the same \$5-million-market-value threshold to each and every company. For example, Nasdaq could retain the \$5-million MVLS threshold for companies that also present other risk characteristics but use a lower MVLS floor—such as \$2 million—for all other issuers that are less likely to pose such risks. A \$2-million threshold would still provide a meaningful backstop—it is twice the capital market’s existing \$1-million requirement for market value of publicly held shares, and an issuer’s total MVLS necessarily includes those publicly held shares.

Alternatively, Nasdaq could give the market-value calculation more time before imposing automatic delisting. 30 business days is short enough to capture companies experiencing temporary declines due to either company-specific factors or broader market conditions. Both Professor Lewis’s analysis and the Division’s own data show that a longer period would materially reduce that problem. Professor Lewis found that measuring a company’s market value over 120 business days rather than 30 business days would reduce the number of presently listed companies captured by the Rule from 365 to 177—in other words, still capturing the companies with sustained

noncompliance, but not the companies that would recover in periods somewhat longer than 30 days. *See* Ex. A ¶¶30-31. And the Division’s own data likewise found that extending the measuring period to 90 business days would reduce captured false positives from 497 to 290. *See* 91 Fed. Reg. at 47,002-03.

This is precisely the kind of alternative Section 6(b)(8) required Nasdaq to address. It preserves the same objective threshold and the same basic rule but gives Nasdaq far more confidence that the company is suffering lasting deterioration rather than an ordinary or temporary decline. Neither Nasdaq nor the Division explained why 30 days was necessary or preferable to a longer period.

A later effective date and meaningful transition period. Finally, even if some version of the new MVLS requirement could be justified, there is no reason for the Rule to take effect immediately. SPCC proposed a transition period of at least twelve months so issuers, investors, and lenders could prepare for the new continued-listing regime. *See* SPCC Comment, SR-NASDAQ-2026-004 (July 10, 2026), at 13.

The lack of any transition period cannot be justified in light of the reliance interests the existing rules had created. Companies, investors, and lenders all made financing and investment decisions under a regime that provided cure periods, discretionary review, and a stay pending appeal. A company’s listing status on the Nasdaq exchange can affect debt covenants, institutional mandates, index eligibility, financing terms, and pending transactions. Yet under the MVLS Rule, an otherwise compliant company—indeed, a company that has complied with every Nasdaq rule for its entire existence—could be delisted, with irreversible consequences, just 30 business days after the Rule takes effect.

Nasdaq never identified any emergency requiring such an abrupt change. Nasdaq’s existing continued-listing standards and market-manipulation rules will all remain in force during a transition period. Nothing in the record suggests that giving companies time to adjust would leave Nasdaq unable to address actual misconduct or actual market manipulation. Nor did Nasdaq ever try to explain why companies that spent years structuring their affairs around the existing rules should suddenly face a materially harsher regime with zero time to prepare.

* * *

In sum, the alternatives presented by commenters here were not hypothetical or unreasonable schemes. Each alternative relied on tools that Nasdaq or the Commission already uses elsewhere—targeted treatment of higher-risk issuers, different quantitative thresholds, longer measurement periods, ordinary stays and cure procedures, and transition periods when regulatory requirements materially change. Each would address Nasdaq’s own stated concerns while imposing fewer unnecessary costs on companies that present little or none of the risk Nasdaq invokes. Nasdaq adopted none of them, and more importantly, neither Nasdaq nor the Division ever tried to explain why the MVLS Rule’s blunt-force one-size-fits-all measures were preferable to a more tailored and less burdensome approach.

That abdication of the duty imposed by the Exchange Act leaves the Commission unable to make the finding that Section 6(b)(8) requires: a reason to conclude that the burdens imposed by the MVLS Rule are actually “necessary” to further the purposes of the Act.

C. The Approval Order failed to weigh the Rule’s competitive burdens against its claimed benefits.

The Division committed another error by acknowledging the severe harms the MVLS Rule imposes on affected companies without ever weighing those burdens against the benefits that supposedly justify them. In the Approval Order, the Division “acknowledges that there are many

benefits to companies and their shareholders related to being listed,” but then concludes that those benefits “do not override the need for an exchange to maintain and enforce continued listing standards.” 91 Fed. Reg. at 47,007. That conclusory statement does not satisfy the cost comparison that the Exchange Act demands.

No one disputes that Nasdaq may maintain continued-listing standards. The question is whether the burdens imposed by *this* continued-listing standard are necessary or appropriate in light of the benefits Nasdaq claims it will produce. Simply invoking the general importance of listing standards answers neither side of that question. The D.C. Circuit’s decision in *Business Roundtable v. SEC* illustrates the problem that this perfunctory approach to cost-benefit analysis creates. There, the court faulted the Commission for “inconsistently and opportunistically fram[ing]” the costs and benefits of an Exchange Act rule and for failing adequately to assess its economic consequences. *Bus. Roundtable*, 647 F.3d at 1148-51. The Fifth Circuit has also rejected Commission action where the agency failed meaningfully to account for economic costs placed before it. *See Chamber of Com. v. SEC*, 88 F.4th 1115, 1117-18 (5th Cir. 2023).

Here, the Division’s Approval Order does acknowledge that being listed on the Nasdaq exchange provides substantial benefits to companies—and that many companies will lose these benefits under the MVLS Rule—but then never tries to measure the corresponding harm from taking those benefits away. The Division never paused to ask what happens to overall market competition if smaller companies lose meaningful choices among listing exchanges. It never grapples with the fact that its own data reveal the MVLS Rule will remove large numbers of innocent companies that are fully compliant with all other rules and listing standards. It never asks whether Nasdaq’s existing rules already address the manipulation risks being invoked. And it never compares the Rule against narrower alternatives that would avoid delisting many of those

companies. Instead, the Division makes the conclusory statement that the benefits of remaining listed do not “override” Nasdaq’s interest in enforcing continued-listing standards.

That reasoning proves far too much, as it would justify any continued-listing rule, no matter how draconian or how antithetical to the purposes of the Exchange Act. Every continued-listing rule could be described as enforcing a listing standard, and every delisting could be defended by saying that exchanges need authority to maintain standards. If that general proposition were enough, Section 6(b)(8)’s separate requirement that competitive burdens be “necessary or appropriate” would be rendered toothless. 15 U.S.C. §78f(b)(8).

Nor can the Division’s Approval Order avoid this problem by pointing back to the non-exchange OTC market as an alternative trading venue. As discussed above, the relevant issue is not whether a delisted security continues to exist in a tradeable form somewhere. *See supra* 17-18. The relevant question, for the purposes of Section 6(b)(8), is whether the substantial (and potentially irreversible) consequences of removing an issuer from a national securities exchange are “necessary” to accomplish Nasdaq’s objective. The availability of OTC trading does not answer why immediate exchange removal is required instead of one of the narrower alternatives placed before the Commission.

In short, neither Nasdaq nor the Division showed why the much broader and harsher rule ultimately adopted was necessary when narrower alternatives were already on the table. Section 6(b)(8) places that burden squarely on Nasdaq, not on the companies that will be delisted or the commenters who oppose this rule. Nasdaq cannot satisfy this statutory burden by claiming that its Rule has no competitive impact and then claiming, out of the other side of its mouth, that every possible competitive impact is automatically justified. Furthermore, the Division cannot satisfy the

burden imposed on the Commission by blinding itself to record evidence discussing better tailored and less burdensome alternatives.

The Exchange Act required a reasoned basis to conclude that the burdens imposed by the MVLS Rule are necessary or appropriate to achieve Nasdaq's stated objectives. The record supplies none. Instead, it shows multiple alternative, narrower ways to address the same invoked concerns, while the Approval Order offers no reasonable explanation for choosing the most burdensome option among them. On this record, the Commission cannot make the finding Section 6(b)(8) requires.

IV. Nasdaq failed to carry its burden, and the Division may not backfill missing analysis or record evidence.

In addition to the requirements of the Exchange Act itself, this Commission's Rule 700(b)(3) places "[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act" squarely on the exchange proposing the rule. 17 C.F.R. §201.700(b)(3)(i). Rule 700(b)(3) makes clear that this requires more than simply claiming that the proposed rule is lawful. "A mere assertion" of consistency "is not sufficient." *Id.* Nasdaq must describe the proposed rule, its "purpose and operation," its "effect," and the legal basis for finding it consistent with the Exchange Act with enough detail to allow this Commission to carry out its own duty under the Act. *Id.* If Nasdaq does not provide that information, the Commission lacks "a sufficient basis to make an affirmative finding." *Id.* §201.700(b)(3)(ii). This Commission has strictly applied that rule and previously disapproved exchange proposals that relied on mere assertions rather than meaningful analysis. *See, e.g.*, Release No. 34-101491 (Oct. 31, 2024); Release No. 34-94006 (Jan. 20, 2022).

This rule means that Nasdaq cannot propose a rule first and leave the factual support to be built later—*i.e.*, exchange rules cannot be solutions in search of problems. Yet that is precisely

what happened over the course of the MVLS Rule’s approval. Nasdaq never grappled with the basic effects of the MVLS Rule, never explained how its central market-value calculation would actually work in practice, and never supplied the evidence needed to support several of its key assumptions and predictions. Then, after the public comment process had run its course, the Division attempted to bail out Nasdaq with new, never-before-seen data and empirical analysis that Nasdaq did not present and no interested parties had a chance to review or comment on. Rule 700(b)(3) does not permit that kind of role reversal. The problems here are threefold.

First, Nasdaq never meaningfully described the actual market effects of the MVLS Rule. Nasdaq did not estimate how many companies would be captured and delisted by the \$5-million threshold. It did not address or measure how often otherwise-compliant companies move above and below the \$5-million-market-cap threshold through ordinary market volatility. Nor did it try to quantify or address the real-world harms that automatic and immediate delisting would have on liquidity, spreads, financing, or shareholder value.

None of these omissions can be blamed on a lack of information. Nasdaq has the listing history of the companies traded on its own exchange. Professor Lewis, working from just a commercial dataset, identified 816 companies that would have been captured and delisted by the proposed MVLS Rule and traced what happened to them over later years. *See* Ex. A ¶26. The Division later performed its own analysis covering a different window of time and identified 983 companies that would have been delisted. *See* 91 Fed. Reg. at 47,002 & n.60. Nasdaq—the owner of that data—ran no analysis of its own.

This refusal even to measure the number of companies that would be affected is a shocking omission for a rule that is supposedly aimed at a readily identifiable group of companies. Rule 700(b)(3) specifically required Nasdaq to describe the “effect” of its proposed rules. And when the

primary and intended effect of a proposal is removing companies from the Nasdaq exchange, some effort to determine how many companies will actually be removed is not asking too much. *Cf. State Farm*, 463 U.S. at 43. But Nasdaq’s filing never supplied even that basic information.

This glaring omission left Nasdaq unable to answer any of the necessary follow-up questions raised by its own reasoning. Nasdaq based the MVLS Rule on the assumption that companies falling below the \$5-million-market-value threshold “often” wind up being delisted under other listing rules anyway. If this assumption is true, then the relevant question for purposes of the Exchange Act is: What does the new rule add to the protections already in place? *See supra* 29-30; *Bus. Roundtable*, 647 F.3d at 1151. Nasdaq neither acknowledged the question nor tried to answer. Once again, the Division later tried to backfill Nasdaq’s abdication by estimating how many companies that would have been covered by the MVLS Rule would not otherwise have been delisted. *See supra* 28. But the evidentiary burden is shouldered by *Nasdaq*, not the Division, and Nasdaq cannot carry its burden of demonstrating the necessity of a new proposed rule without ever addressing what work the new rule actually performs.

Second, Nasdaq never explained how fundamental market-value calculations at the core of the MVLS Rule will be measured and implemented in practice. Under the Rule, a company’s MVLS is the sole number that determines whether it remains listed or is automatically delisted after 30 business days. Nasdaq Rule 5005(a)(23) defines MVLS as the consolidated closing bid price multiplied by the shares outstanding of the listed class. Price is easy enough—Nasdaq sees it every trading day. But the number of outstanding shares is a different matter.

Nasdaq does *not* receive or maintain a real-time share count. A company that has an aggregate change of more than 5% of outstanding shares must report that change to Nasdaq within ten days. *See* Nasdaq Rule 5250(e)(1). A separate type of outstanding-shares-change notification

covers some issuances but excludes, among other things, changes caused by registered public offerings or at-the-market sales. *Id.* Rule 5250(e)(2). Other changes in outstanding stock may appear only in periodic reports, which can be quarterly—or semiannual for a foreign private issuer.

All this adds up to the inescapable reality that Nasdaq rarely, if ever, has a perfectly accurate and up-to-date count of outstanding shares. Yet the MVLS Rule does not tell companies which share-count figure Nasdaq will use on a given day when calculating a company's MVLS. The Rule does not explain what will happen if shares have been issued but Nasdaq's records have not yet caught up. It does not explain whether a change in shares during the 30-day period that pushes the company above \$5 million breaks the 30-day sequence, particularly if it is the type of change that will not be reported to Nasdaq until later. And it does not give any avenue for a company to contest the share count Nasdaq chooses to use in its MVLS calculations.

That creates a bizarre and inscrutable regime, leaving companies uncertain about the rules and acting at their peril. As discussed above, the proposed hearing panel review is confined to the sole question of whether staff correctly determined that a company spent 30 days below the threshold. *See supra* 22-23. But the arithmetic behind that calculation remains unexplained.

The problem is made worse by the treatment of pre-funded warrants and similar nominal-exercise convertible instruments. As Sullivan & Worcester explained, excluding those instruments can cause Nasdaq's share count to understate the economic capitalization of small companies that use them. *See Sullivan & Worcester Comment, SR-NASDAQ-2026-004*, at 5-6. A company can therefore have an economic market value comfortably above \$5 million while Nasdaq's chosen count places it below the threshold.

Nasdaq's only response to this glaring problem with the Rule was that the number of shares outstanding "is entirely within the company's control." 91 Fed. Reg. at 47,004. But that does

nothing to answer the problem. Whether the number of shares is within a company's control has nothing to do with the share count that *Nasdaq* intends to use on the particular day it runs the delisting calculation. For a Rule that can automatically suspend a company based on that calculation, this is no minor technicality. Nasdaq failed Rule 700(b)(3) by never fully explaining how the delisting determination will actually operate in practice, thereby depriving market participants of fair notice of the Rule's requirements.

Third, the Division has no authority to salvage Nasdaq's deficient filing by building its own record after the fact. When an exchange has not supplied the predicate evidence and analysis required to carry its burden, the Exchange Act does not tell the Commission or its Staff to fill in the blanks. The deficient proposal must be rejected, and the exchange may decide whether to return with a better-supported rule to try again. *See Susquehanna Int'l Grp.*, 866 F.3d at 446-48. But the Division did the opposite here. After Nasdaq submitted no data, study, or analysis supporting the \$5-million threshold or the 30-business-day period, the Division decided to create its own. The Division pulled twenty years of data, tested seven different market-value thresholds across three measurement periods, and published four figures and two tables that all appear for the first time in the Approval Order. *See* 91 Fed. Reg. at 46,999-47,003. This was not gap-filling around the margins. The Division attempted to provide the *core empirical analysis* Nasdaq had omitted altogether. This created two distinct procedural violations.

For one thing, Rule 700(b)(3) puts the evidentiary burden squarely on Nasdaq—not the Division. *See* 17 C.F.R. §201.700(b)(3). Nasdaq never engaged with the Division's analysis before approval, never adopted it, and never explained why that evidence supported the \$5-million-market-value threshold and 30-day measurement period Nasdaq seeks to impose. The Commission

cannot rescue Nasdaq's deficient proposal with a factual record that Nasdaq itself never developed, considered, or adopted. *See SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943).

Nor can Nasdaq fill the holes in its Rule by simply quoting favorable commenters. Amendment No. 1 references comments from supporters of the MVLS Rule, and the Approval Order relied on Nasdaq's statement that it "agrees with these commenters." 91 Fed. Reg. at 46,999. But a cursory statement agreeing with arguments made by others *after* the proposal of a rule is not the evidence and analysis Rule 700(b)(3) requires *Nasdaq* itself to provide. And, besides, many of those commenters disagreed with Nasdaq and suggested measuring market-manipulation risk by public float—an entirely different rule than the one Nasdaq proposed.

Worse still, no commenter or party affected by the MVLS Rule had the opportunity to review or test the Division's new analysis before the Division relied on it to approve the Rule. The Division's data and analysis appeared for the first time in the Approval Order, after the comment period had closed. Commenters therefore had no chance to examine the dataset, challenge its assumptions, or explain how different methodological decisions would have changed the results. And there were plenty of choices worth examining. The Division's study pooled Nasdaq and NYSE American issuers together, used the last available MVLS for companies delisted before the end of its 180-day observation period, excluded roughly 18% of departures classified as voluntary, and did not separate domestic from foreign companies, or separate issuers with thin public floats from companies with widely distributed shares. *See* Order at 12 n.55, 14 n.56, 15 n.58. Each of these distinctions matters, especially domicile and public float, since those were the specific factors that commenters on both sides of the debate said actually indicate manipulation risk.

The Division's backfilling of analysis that appears nowhere in Nasdaq's own Rule is especially arbitrary given that the Division refused to consider alternatives raised by commenters

because they were “not part of Nasdaq’s proposal.” 91 Fed. Reg. at 47,008. Yet the Division simultaneously decided that it could approve the MVLS Rule by relying on twenty years of data and an entirely new analysis that were equally “not part of Nasdaq’s proposal.”

Rule 700(b)(3) leaves no room for that kind of after-the-fact rescue. Nasdaq had the burden of explaining what its proposal would do, how it would work, and why it complied with the Exchange Act. Nasdaq failed to make that showing. And neither the Division nor this Commission can shoulder that evidentiary burden or build a new *post hoc* record of its own. When Nasdaq’s own filing does not supply the information necessary for an affirmative finding, the Commission lacks “a sufficient basis to make” one. 17 C.F.R. §201.700(b)(3)(ii). The MVLS Rule therefore cannot be approved.

CONCLUSION

Nasdaq has failed to carry its burden of showing that the MVLS Rule satisfied the Exchange Act. The Rule targets the wrong measure of manipulation risk, threatens serious harm to the investors it supposedly protects, threatens to summarily delist countless legitimate companies with no indicia of manipulation risk, strips away the ordinary procedural protections afforded to curable deficiencies, and imposes severe burdens that Nasdaq never demonstrated were necessary. And the Division may not absolve Nasdaq’s deficiencies by supplying its own data or analysis after the end of the comment period.

This Commission should therefore set aside the Approval Order and disapprove SR-NASDAQ-2026-004. If the Commission nevertheless approves some version of the proposal, it should at minimum preserve the ordinary stay of suspension pending Hearings Panel review and require an implementation period of no less than twelve months.

Dated: October 6, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Rules 450(c) and (d) of the Securities and Exchange Commission's Rules of Practice, the Small Public Company Coalition certifies that the foregoing Statement in Opposition complies with the word-count limitation set forth in Rule 450(c). *See* Rules of Practice 450(c)-(d); *see also* Statement of the Nasdaq Stock Market LLC, SR-BatsBZX-2017-34 (Apr. 13, 2018) (applying word limits from Rule 450(c) and (d) to Statement following grant of Petition for Review). This Statement contains 13,988 words, not counting the table of contents, table of authorities, and other portions of the Statement that may be excluded from the word count.

Dated: October 6, 2026

/s/ Jeffrey M. Harris
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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2026, I caused a copy of the foregoing Statement of the Small Public Company Coalition Opposing Commission Staff Order Taken by Delegated Authority to be filed with the Securities and Exchange Commission and sent by electronic mail to the following:

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EXHIBIT A

Nasdaq's Proposed Amended Listing Requirements

Craig M. Lewis, Ph.D.*

February 19, 2026

* I am the Madison S. Wigginton Professor of Finance, Emeritus at Vanderbilt University. From June 2011 to May 2014, I was Chief Economist and Director of the Division of Economic and Risk Analysis at the U.S. Securities and Exchange Commission. Funding for this project was provided by membership of the Small Public Company Coalition, with support of the coalition and its leadership.

I. Introduction

1. On January 26, 2026, the Securities and Exchange Commission (“SEC”) published notice and opened for comment a proposed Nasdaq rule filing that would modify Nasdaq’s requirements for continued listing on Nasdaq (“Proposed Rule”). Among other things, the proposal would raise the market value threshold for continued listing and delist companies much more rapidly when they fail to meet the threshold.

2. Under current rules, one of the conditions for continued listing is that the market value of the company’s publicly held shares must remain above \$1 million (Rule 5550(c)(3)). If the market value falls below and remains below this threshold for 30 consecutive business days, the company is notified and is then given 180 calendar days to come back into compliance, defined as exceeding the \$1 million threshold for 10 consecutive business days (Rule 5810(c)(3)(C)). Under the Proposed Rule, a new \$5 million threshold requirement would be introduced, where companies will be delisted immediately if the market value of listed securities drops below this threshold for 30 consecutive business days.¹

3. If a domestic or foreign company is delisted from Nasdaq, its shares cease trading on a national securities exchange and instead trade in the over-the-counter markets (“OTC markets”).

4. The Proposed Rule touches on issues at the core of the SEC’s mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The Nasdaq proposal references these concerns, stating that the proposal will “enhance investor protections,” apparently based on the view that maintaining “fair and orderly markets” for the smallest issuers has become increasingly difficult. However, Nasdaq’s proposal does not provide any economic analysis or evidence to support its assertion that the Proposed Rule is consistent with the goals of the Exchange Act or the mission of the SEC. For example, Nasdaq fails to consider the impact of forced delisting on the delisted company and its shareholders, including investor protections, access to capital, and maintenance of fair and orderly markets.

5. This paper discusses potential ways the Proposed Rule is likely to have important implications for the SEC’s core mission. Exchange listing—and the secondary market

¹ Under the current rules, companies are able to appeal the delisting which would temporarily stay the delisting. Under the Proposed Rule, companies would be delisted while the appeal is pending.

liquidity it supports—are central to the SEC’s mission to facilitate capital formation and promote market efficiency. Likewise, the protections and information available to investors in NMS securities are fundamental to the SEC’s goals of investor protection and promotion of fair and orderly markets. This paper raises issues that the Commission should consider when evaluating whether the Proposed Rule aligns with its mission and the purposes of the Exchange Act, as well as its potentially negative effects on small companies and investors via reduced liquidity, poorer market quality, and fewer protections from SEC rules.

II. Benefits of Exchange Listing

6. Exchange listing advances the SEC’s mission in multiple ways, and these benefits are especially important for smaller listed companies. By fostering a more liquid and efficient secondary market, listing provides smaller companies access to a larger set of investors and lowers the cost of capital. Within the NMS framework, exchange-listed stocks trade in a market structure designed to encourage competition between liquidity providers both within and across trading venues, and to allow customer orders to interact directly with each other.² Being designated an NMS stock, which is triggered by exchange listing, allows investors to benefit from a set of SEC rules designed to enhance and organize the flow of information to investors, thereby promoting market efficiency and fair and orderly markets.

A. Secondary Market Liquidity and the Cost of Capital

7. There is a large and influential academic literature addressing the importance of secondary market liquidity on capital formation. Decades of research, both theoretical and empirical has explored how liquidity affects investor decisions, asset prices, and the cost of capital. This literature provides clear and consistent evidence that greater liquidity is associated with a lower cost of capital.

8. The theoretical literature has established multiple channels through which liquidity can affect a firm’s cost of capital and its ability to raise capital. Liquid shares have a lower

² According to Section 11A(a)(1)(C) of the Exchange Act, Congress finds that “[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; (iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; (iv) the practicability of brokers executing investors orders in the best market; and (v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors’ orders to be executed without the participation of a dealer.”

cost of capital because investors are willing to pay a premium for the ability to trade easily. This is of particular importance for investors who have different investment horizons and value the flexibility to exit positions when needed.³ Since investors' income streams are uncertain, illiquidity impedes their ability to access financial markets to smooth consumption.⁴

9. Liquidity also influences how much capital firms are able to raise. When investors face asymmetric information about a firm, the presence of a liquid secondary market increases their willingness to buy shares at fair value.⁵ More broadly, investors are more willing to make long-dated investments when they know their positions can be readily transferred to other investors.⁶

10. The empirical literature provides strong evidence that liquid financial markets support capital formation. Company costs of capital are higher for stocks with larger transaction costs,⁷ consistent with a well-documented liquidity premium.⁸ Prior research also demonstrates that secondary-market liquidity improves primary-market outcomes. Firms with more liquid equity rely more heavily on equity financing and incur lower issuance costs,⁹ which in turn facilitates greater investments in physical assets and R&D.¹⁰

³ See, e.g., Amihud, Yakov and Haim Mendelson, "Asset pricing and the bid-ask spread," *Journal of Financial Economics*, Vol. 17 (1986); Huang, Ming, "Liquidity shocks and equilibrium liquidity premia," *Journal of Economic Theory*, Vol. 109, No. 1 (2003); and Acharya, Viral V., and Lasse Heje Pedersen, "Asset pricing with liquidity risk," *Journal of Financial Economics*, Vol. 77, No. 2 (2005).

⁴ See, e.g., Heaton, John and Deborah J. Lucas, "Evaluating the effects of incomplete markets on risk sharing and asset pricing," *Journal of Political Economy*, Vol. 104, No. 3 (1996).

⁵ See, e.g., Ellul, Andrew, and Marco Pagano, "IPO underpricing and after-market liquidity," *The Review of Financial Studies*, Vol. 19, No. 2 (2006).

⁶ See, e.g., Bencivenga, Valerie R., Bruce D. Smith, and Ross M. Starr, "Liquidity of secondary capital markets: Allocative efficiency and the maturity composition of the capital stock," *Economic Theory*, Vol. 7 (1996).

⁷ Amihud, Yakov and Haim Mendelson, "Liquidity and stock returns," *Financial Analysts Journal*, Vol. 42, No. 3 (1986); Amihud, Yakov, "Illiquidity and stock returns: Cross-section and time-series effects," *Journal of Financial Markets*, Vol. 5 (2002); Hasbrouck, Joel, "Trading costs and returns for U.S. equities: Estimating effective costs from daily data," *Journal of Finance*, Vol. 64, No. 3 (2009); Amihud, Yakov, Allaudeen Hameed, Wenjin Kang, and Huiping Zhang, "The illiquidity premium: International evidence," *Journal of Financial Economics*, Vol. 117, No. 2 (2015); Brennan, Michael, Tarun Chordia, Avanidhar Subrahmanyam, and Qing Tong, "Sell-order liquidity and the cross-section of expected stock returns," *Journal of Financial Economics*, Vol. 105, No. 3 (2012); and Brennan, Michael, Sahn-Wook Huh, and Avanidhar Subrahmanyam, "An analysis of the Amihud illiquidity premium," *The Review of Asset Pricing Studies*, Vol. 3, No. 1 (2013).

⁸ See e.g., Pástor, Ľuboš, and Robert F. Stambaugh, "Liquidity risk and expected stock returns," *Journal of Political Economy*, Vol. 111, No. 3 (2003); and Pástor, Ľuboš, and Robert F. Stambaugh, "Liquidity risk after 20 years," *Critical Finance Review*, Vol. 8, No. 1-2 (2019).

⁹ See e.g., Butler, Alexander W., Gustavo Grullon, and James P. Weston, "Stock market liquidity and the cost of issuing equity," *Journal of Financial and Quantitative Analysis*, Vol. 40, No. 2 (2005); Lipson, Marc L. and Sandra Mortal, "Liquidity and capital structure," *Journal of Financial Markets*, Vol. 12, No. 4 (2009); and Hanselaar, Rogier M., René M. Stulz, and Mathijs A. van Dijk, "Do firms issue more equity when markets become more liquid?" *Journal of Financial Economics*, Vol. 133, No. 1 (2019).

¹⁰ See e.g., Amihud, Yakov and Shai Levi, "The effect of stock liquidity on the firm's investment and production," *The Review of Financial Studies*, Vol. 36, No. 3 (2023).

B. Exchange Listing and Secondary Market Liquidity

11. Listing on public exchanges enhances secondary market liquidity for multiple reasons. It permits every other exchange and Alternative Trading System (ATS) to trade the listed security. Exchanges and ATSs provide order book and matching technologies that facilitate direct interaction of public order flow on opposite sides of the market. This framework enables exchange market makers and other liquidity providers to post displayed orders that are incorporated into exchange quotes, made accessible to all market participants, and instantaneously disseminated to the market through consolidated data feeds. These quotes are consolidated into National Best Bid and Offer (NBBO), which serves as the benchmark for off-exchange executions on ATSs and by off-exchange market makers.
12. Indeed, the academic literature provides evidence that listing on a public exchange enhances liquidity. In fact, research has shown that firms moving from OTC markets to public exchanges become more liquid.¹¹ Studies have shown that firms make listing decisions based on the perceived liquidity benefits it brings.¹² In addition, listed firms tend to have a larger shareholder base, indicating deeper markets, and their shares typically trade with narrower bid-ask spreads.¹³
13. Likewise, academic research demonstrates that being delisted has a negative impact on stock prices, market quality, and the resulting information environment. The literature consistently finds a substantial decline in share value following a delisting, representing a loss of wealth for existing investors.¹⁴ It also documents a sharp drop in liquidity, with bid-

¹¹ See, e.g., Davis, Ryan, Todd Griffith, Brian Roseman, and Serhat Yildiz, "The effects of exchange listing on market quality: Evidence from over-the-counter uplistings," *The Financial Review*, Vol. 56, No. 4 (2021).

¹² See, e.g., Elyasiani, Elyas, Shmuel Hauser, and Beni Lauterbach, "Market response to liquidity improvements: Evidence from exchange listings," *The Financial Review*, Vol. 41 (2000); Baruch, Shmuel, and Gideon Saar, "Asset returns and the listing choice of firms," *The Review of Financial Studies*, Vol. 22, No. 6 (2009); and Yang, Chau-Chen, H. Kent Baker, Li-Chuan Chou, and Bo-Wei Lu, "Does switching from NASDAQ to the NYSE affect investment-cash flow sensitivity?" *Journal of Business Research*, Vol. 62, No. 10 (2009).

¹³ See, e.g., Kadlec, Gregory B., and John J. McConnell, "The effect of market segmentation and illiquidity on asset prices: Evidence from exchange listings," *Journal of Finance*, Vol. 49, No. 2 (1994).

¹⁴ Sanger, Gary C., and James D. Peterson, "An empirical analysis of common stock delistings," *Journal of Financial and Quantitative Analysis*, Vol. 25, No. 2 (1990); Shumway, Tyler, "The delisting bias in CRSP data," *Journal of Finance*, Vol. 52, No. 1 (1997); Shumway, Tyler, and Vincent A. Warther, "The delisting bias in CRSP's Nasdaq data and its implications for the size effect," *Journal of Finance*, Vol. 54, No. 6 (1999); Harris, Jeffrey H., Venkatesh Panchapagesan, and Ingrid Werner, "Off but not gone: A study of Nasdaq delistings," *Fisher College of Business Working Paper* (2008) ("Harris, et al. (2008)"); and Macey, Jonathan, Maureen O'Hara, and David Pompilio, "Down and out in the stock market: The law and economics of the delisting process," *Journal of Law and Economics*, Vol. 51 (2008) ("Macey, et al. (2008)").

ask spreads widening and market makers providing fewer quotes.¹⁵ A deterioration in market quality is also reflected in lower trading volume and a large increase in intraday return volatility. As a result, investors find it much harder to exit their positions quickly and at a fair value. After delisting, firms also operate in a weaker information environment, with fewer analysts providing coverage.¹⁶

14. Research has indicated that delisting may result in greater control by insiders with less discipline from institutional investors, suggesting a negative impact on the quality of corporate governance.¹⁷ Research conducted by SEC staff has raised concerns with the level of investor protection in OTC markets, and has documented that OTC stocks are frequent targets of market manipulation.¹⁸

15. In summary, the literature provides persuasive evidence that investors are harmed when a stock they hold is delisted. In addition to the negative impact of delisting on price, liquidity, and the information environment, a firm that delists will trade only in the OTC market. Because they are not classified as NMS stocks under SEC rules, OTC stocks do not receive the investor protections afforded to NMS stocks.

C. Benefits of the U.S. Regulatory Framework for NMS Stocks

16. Under SEC rules, stocks that are listed on an exchange are considered NMS securities and there are numerous rules designed to improve the information environment and trade execution quality that apply to such securities but not to OTC stocks. Some examples of these rules include:

- a. SEC rules and Industry Plans governing the dissemination of consolidated real-time information about market quotes and trade reports (Rule 601, Rule 603).

¹⁵ See Harris, et al. (2008); Macey, et al. (2008); and Li, Mingsheng, Karen Liu, and Ziaorui Zhu, "The effects of NASDAQ delisting on firm performance," *Research in International Business and Finance*, Vol. 67, Part B (2024) ("Li, et al. (2024)").

¹⁶ See Li, et al. (2024).

¹⁷ See Leuz, Christian, Alexander Triantis, and Tracy Yue Wang, "Why do firms go dark? Causes and economic consequences of voluntary SEC deregistrations," *Journal of Accounting and Economics*, Vol. 45 (2008).

¹⁸ See White, Joshua T., "Outcomes of investing in OTC stocks," *U.S. Securities and Exchange Commission DERA white paper* (2016).

- b. Requirements for trading venues (and brokers) to report detailed execution quality statistics (Rule 605) and for brokers to report summary information about their order routing practices (Rule 606).
- c. Order protection rules, such as the order display rule (Rule 604, requiring customer limit orders to be displayed) and the quote rule (Rule 602, requiring exchanges to disseminate quotes and broker-dealer quotes to be firm).

17. Being an NMS security also triggers reporting requirements for market participants that increase the amount of information available to investors, including institutional ownership, and market quality. This information can provide investors with a more complete view of the stock's trading environment and help them make more informed decisions.

18. Specifically, exchange-traded stocks are considered 13F securities, and this triggers a requirement for institutional investment managers to report holdings and voting power at the end of each calendar quarter. This provides investors, analysts, and regulators with detailed information about which institutions or investment managers hold the stock and are able to vote the company's shares. This information can signal firm quality, including the strength of the company's corporate governance. Because OTC stocks are not classified as 13F securities, delisting removes this source of information from the market.

III. Potential Impacts on Stocks Near the Delisting Threshold

19. The discussion above has been focused on the potential harms to investors of an involuntary delisting. Given these negative effects, reasonable investors might choose to sell the stock rather than continuing to hold it as an OTC stock. Some institutional investors, such as pension plans or mutual funds are committed to specific investment styles and are restricted by policy from investing in OTC stocks.¹⁹ Such investors would need to disinvest in the stock. More generally, any parties that made investment decisions based on the expectation that these were listed securities would be disrupted and negatively affected.

20. Firms whose share prices approach an exchange delisting threshold face a discrete, non-fundamental shock to value that arises from the possibility of leaving a major exchange. Delisting is associated with a deadweight loss driven by a deterioration in liquidity, reduced

¹⁹ For example, see City of Winter Springs, "General Employees' Retirement System Investment Policy Statement", available at <https://www.winterspringsfl.org/media/3181>, at p. 3; San Francisco Employee's Retirement System, "Investment Policy Statement for the San Francisco City and County Employees' Retirement System", available at <https://cdn.mysfers.org/uploads/2020/03/SFERS-IPS-2019-FINAL.pdf>, at p. 13.

analyst and institutional coverage, exclusion from major indices, and a partial loss of access to seasoned equity issuance and other capital-market financing. These frictions raise the firm's cost of capital and reduce the present value of future cash flows. Under the proposed rule change, this loss would be triggered by a bright-line regulatory threshold rather than a smooth change in fundamentals.

21. Firms that trade near the threshold are heterogeneous. Some are fundamentally failing and will ultimately be unable to avoid delisting because their long-run prospects are poor. Others, however, experience temporary setbacks and retain meaningful prospects for recovery. Such recoveries can arise from successful product development, the announcement of positive clinical trial results, the granting of patents, strategic restructuring, or new financing. In the absence of a bright-line delisting rule, many of these firms would remain listed long enough for fundamentals to improve.

22. As a firm approaches the threshold, the probability of delisting rises, and the stock price increasingly reflects the expected deadweight loss associated with a potential delisting event. Because the likelihood of delisting depends directly on the stock price itself, this discount becomes endogenous to price dynamics. The closer the price moves the company toward the threshold, the larger the expected loss that investors must price into the security. This feedback creates incentives resembling run-like behavior, producing a "cliff effect" in which firms value can decline rapidly once a "run" is triggered.

23. Forward-looking investors recognize that delisting would sharply reduce liquidity and trading opportunities. As a result, they face a first-mover advantage: selling before a delisting event allows them to exit at exchange-traded prices, whereas waiting exposes them to the risk of being trapped in a less liquid market. Even when fundamentals remain intact, investors may rationally choose to sell early to avoid bearing the delisting deadweight loss. This incentive structure resembles an economic fire sale in which the optimal strategy depends on expectations about the behavior of other investors.

24. Collective attempts to exit can generate a self-fulfilling dynamic. Selling pressure depresses the stock price, which increases the probability of crossing the delisting threshold and further intensifies incentives to sell. In this way, prices may become temporarily unmoored from fundamentals. For firms that would otherwise recover, the resulting decline in market value can push the share price below the threshold and trigger delistings that would not have occurred absent the bright-line rule. The resulting equilibrium closely parallels

classic run-on-the-bank dynamics where the anticipation of an adverse event induces behavior that brings about the very outcome investors seek to avoid.²⁰

IV. Empirical Analysis

25. In addition to the arguments discussed above, I present an empirical analysis using historical data from the past 20 years to illustrate the potential impact of the Proposed Rule.²¹ Specifically, I examine how many firms would have been delisted under the Proposed Rule, how many of those firms later increased their market capitalization above the threshold after initially falling below, and how many of those firms remain listed and compliant today. The examples below illustrate the potential impact of the Proposed Rule by highlighting firms that temporarily fell below the \$5 million threshold for 30 consecutive days but ultimately recovered and remain viable today. It also illustrates that temporarily falling below the threshold is not an absolute predictor of permanent failure or eventual delisting.

26. My analysis finds that 816 unique companies would have been delisted based on the Proposed Rule over the past 20 years.²² Out of these, 78% of firms (640) recovered at least once above the \$5 million threshold. By the end of December 2025, 45% of the firms (365) are not delisted and of those firms, 212 are still trading at market capitalizations above \$5 million. The median market capitalization of firms still traded is \$6 million with an average market capitalization of \$61 million.²³ In aggregate, there are currently firms worth \$22.3 billion trading on Nasdaq that would have been subject to delisting under the Proposed Rule had this rule been in effect over the past 20 years. I note that most of the firms that would have been affected by the Proposed Rule are U.S.-based firms, accounting for 69% of the 816 that would have been delisted under the Proposed Rule.

27. A review of these firms reveals there are a multitude of reasons why firms were able to recover above the \$5 million threshold. Fully understanding each firm's business, the reasons for its recovery, and whether the Proposed Rule would have impeded that recovery

²⁰ See Diamond, Douglas W., and Philip H. Dybvig. "Bank runs, deposit insurance, and liquidity." *Journal of Political Economy*, Vol. 91, No. 3 (1983): 401–419.

²¹ My analysis is based on data from the Center for Research in Security Prices (CRSP).

²² I conducted an empirical analysis of Nasdaq-listed companies using historical trading data from January 1, 2006, to December 31, 2025. The sample included U.S. and foreign entities issuing common ordinary shares or American Depositary Receipts (ADRs). To ensure pricing integrity, for days with no active trades, closing prices are calculated as the average end-of-day bid and ask quotes. Furthermore, for companies with multiple (public) share classes, market capitalization is aggregated at the company level.

²³ This includes 39 firms with market capitalizations of \$100 million or greater as of 2025 year-end.

would require in-depth research that I have not had the time to do given the limited comment period. However, many recoveries appear to occur after major corporate developments, such as strategic shifts, debt restructuring, or new capital infusions.

28. Within the sample of 212 firms that at one point met the criteria for delisting but are still listed today with market capitalizations above \$5 million, there are a variety of potential explanations for their recoveries. These include—but are not limited to—firms that improved their operating performance, changed their business model, underwent some form of capital restructuring, or scaled through acquisitions (including reverse mergers). In many instances, a combination of these factors may have contributed to the increase. Some firms pivoted to high-growth technology sectors like artificial intelligence and digital asset infrastructure. Others stayed within the same sector but changed their business models or engaged in some form of capital restructuring. Below, I provide a few examples of companies that are currently listed that would have been delisted under the Proposed Rule:

- a. LightPath Technologies (LPTH) went public as a specialized manufacturer of optical components. Following a period when its market capitalization was less than \$5 million during the financial crisis, the company has successfully raised capital several times and diversified its business, expanding its strategy from “a pure component manufacturer to a supplier of imaging subsystems and systems.” As of 2025, it had a market capitalization of \$137 million and 350 employees.²⁴
- b. Patrick Industries (PATK) is a firm that raised capital to fund several strategic acquisitions and pivoted its business from being a supplier in the recreational vehicle space (RVs) to becoming a “leading component solutions provider for the [RV], marine, powersports, manufactured housing (‘MH’) and various industrial markets.” As of 2025, it had a market capitalization of over \$2.3 billion and 10,000 employees.²⁵
- c. In some sectors, particularly biotechnology or pharmaceuticals, recoveries are often driven by success-or-failure events that suddenly create value. Collectar Biosciences Inc (CLRB) is an example. Following a period of depressed market capitalization, CLRB had a sharp recovery after reporting positive

²⁴ See LightPath Technologies Inc., Form 10-K for Fiscal Year Ended June 30, 2025, filed September 26, 2025, at pp. 1, 15.

²⁵ See Patrick Industries Inc., Form 10-K for Fiscal Year Ended December 31, 2024, filed February 20, 2025, at pp. 1, 11.

clinical trial results and meeting critical regulatory milestones. As of 2025, it had a market capitalization over \$10 million and several clinical trials focused on cancer-targeting treatments in its pipeline.²⁶

29. Of the 816 firms that fell below the proposed \$5 million threshold for 30 days, 451 were eventually delisted for various reasons.²⁷ Importantly, even within this set of delisted firms, there were other reasons for delisting besides failure to meet Nasdaq' listing requirements. In particular, in some cases, a company's securities were delisted when they were acquired by other companies, the firm chose to delist voluntarily, or because share classes were converted to other classes of stock. The top 10 reasons, as classified by CRSP, are summarized below:

Delisting Code	Count	Percent	Description
584	122	27%	Delisted by current exchange - does not meet exchange's financial guidelines for continued listing
552	67	15%	Delisted by current exchange - price fell below acceptable level
560	56	12%	Delisted by current exchange - insufficient capital, surplus, and/or equity
570	43	10%	Delisted by current exchange - company request (no reason given)
233	26	6%	Delisted by current exchange - bankruptcy, declared insolvent
574	25	6%	When merged, shareholders receive cash payments
580	24	5%	Delisted by current exchange - delinquent in filing, non-payment of fees
520	18	4%	Issue stopped trading current exchange - trading over-the-counter
331	12	3%	Issue exchanged, primarily for another class of common stock
585	12	3%	Delisted by current exchange - protection of investors and the public interest

Source: CRSP

30. I also performed a sensitivity analysis, shown below, to demonstrate the potential effects of changing the thresholds in the Proposed Rule. Specifically, I varied the market capitalization threshold from \$1 million to \$5 million and the required time intervals by 30 from 30 days to 120 days. Under the baseline \$5 million threshold and a 30-day time interval, I had identified 816 firms that would have been delisted under the Proposed Rule, 640 that recovered at least once above the \$5 million threshold, and 365 firms that remained listed through December 2025. This analysis shows how lowering the market capitalization threshold or extending the required time interval would reduce the number of firms that

²⁶ See Collectar Biosciences, Inc., Form 10-K for Fiscal Year Ended December 31, 2024, filed March 13, 2025, at p. 1. See also, CRSP.

²⁷ For the sample of companies which were delisted (451 firms), 76% have been delisted while their market capitalization was under \$5 million, 24% have been delisted while their market capitalization was over \$5 million.

would be affected by the Proposed Rule, including the number of firms still listed today that would have been delisted under the Proposed Rule.

31. If the delisting threshold was \$1 million rather than \$5 million while maintaining the same standard 30-day window, the impact over the last 20 years would have been substantial. The number of companies that would have been delisted under the Proposed Rule would decrease from 816 to 61, or by more than 90%. And the number of companies still listed today that would have been delisted would decrease from 365 to 17, reducing the number of currently listed firms that would have been delisted by more than 95%. Similarly, if the cutoff were extended from 30 days below the market capitalization threshold to 120 days, the number of companies that would have been delisted under the Proposed Rule would decrease from 816 to 345, or almost 60%. And the number of firms still listed today that would have been delisted would decrease from 365 to 177, or more than 50%.

Market Cap Threshold	Consecutive Days Below Threshold	Firms That Would Have Been Delisted	Firms That Recovered At Least Once	Firms Not Delisted as of December 2025	Firms Not Delisted as of December 2025 with Market Cap Above Threshold
5 million	30	816	640	365	212
4 million	30	623	466	275	163
3 million	30	416	319	190	117
2 million	30	198	149	83	55
1 million	30	61	44	17	12
5 million	60	594	437	276	160
4 million	60	422	299	197	113
3 million	60	255	187	111	63
2 million	60	111	76	36	20
1 million	60	32	23	8	7
5 million	90	439	316	212	113
4 million	90	310	216	154	82
3 million	90	173	121	69	31
2 million	90	66	39	20	10
1 million	90	17	14	5	4
5 million	120	345	245	177	90
4 million	120	234	166	117	58
3 million	120	120	78	46	21
2 million	120	47	26	9	4
1 million	120	13	10	4	4

Source: CRSP

V. Conclusion

32. Nasdaq's proposed amendments to its continued listing standards raise important questions directly tied to the SEC's statutory mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The analysis presented in this paper highlights several ways in which the Proposed Rule may conflict with these objectives.

33. First, a large body of academic research demonstrates that exchange listing supports market quality, improves the information environment, and lowers firms' cost of capital through enhanced liquidity. By contrast, involuntary delisting is consistently associated with declines in share value, wider spreads, reduced analyst coverage, and diminished investor protections. Moving firms from the NMS framework to the OTC market therefore represents a material deterioration in the trading environment faced by investors and issuers alike.

34. Second, the Proposed Rule introduces a bright-line regulatory threshold that can create powerful feedback effects for firms trading near the cutoff. Because the consequences of delisting are substantial and largely unrelated to underlying fundamentals, forward-looking investors may rationally sell in anticipation of a potential delisting event. This dynamic can produce run-like behavior (a "cliff effect"), causing prices to decline more rapidly and increasing the likelihood of delisting even for firms with viable long-term prospects.

35. Third, the empirical analysis suggests that the Proposed Rule would have affected a large number of firms historically, many of which ultimately recovered and remain listed today. These findings indicate that temporarily falling below the proposed threshold is not a reliable indicator of permanent failure. The evidence therefore raises concern that the Proposed Rule could prematurely delist firms that would otherwise regain compliance and continue contributing to U.S. capital markets.

36. Taken together, these considerations suggest that the Proposed Rule may impose meaningful costs on investors, issuers, and the capital-formation process without a corresponding evidentiary basis demonstrating offsetting benefits. The Commission may therefore wish to carefully evaluate whether modifications to the proposal, such as alternative thresholds, longer compliance periods, or additional economic analysis, would be in the best interests of investors.