

## Text of the Proposed Rule Change<sup>1</sup>

New language is underlined; deletions are in [brackets].

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### **5225. Listing Requirements for Units**

#### **(a) The Global Select Market and Global Market**

(1) – (2) No change.

#### **(3) Disclosure Requirements for Units**

Each Nasdaq Global Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. A Company shall also disclose when a component of the unit is separately listed on Nasdaq. These disclosures shall be made on the Company's website, or if it does not maintain a website, in its annual report provided to unit holders. A Company shall also immediately [publicize through, at a minimum,] make a public announcement [through the news media,] by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public [notification] announcement shall be made as soon as practicable in relation to the effective date of the change.

(4) No change.

(b) No change.

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### **5250. Obligations for Companies Listed on The Nasdaq Stock Market**

(a) No change.

#### **(b) Obligation to Make Public Disclosure**

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<sup>1</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.cchwallstreet.com>.

**(1) Disclosure of Material Information**

No change.

**(2) [Going Concern Opinion**

A Company other than a limited partnership that receives an audit opinion that expresses doubt about the ability of the Company to continue as a going concern for a reasonable period of time must make a public announcement through the news media disclosing the receipt of such opinion. Prior to the release of the public announcement, the Company must provide the text of the public announcement to the MarketWatch Department. The public announcement shall be provided to the MarketWatch Department and released to the media no-later than seven calendar days following the filing of such audit opinion in a public filing with the Commission.

**(3)] Disclosure of Notification of Deficiency**

As set forth in Rule 5810(b), a Company that receives a notification of deficiency from Nasdaq is required to make a public announcement [through the news media] by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, notice to the MarketWatch Department must be made through the electronic disclosure submission system available at [www.nasdaq.net](http://www.nasdaq.net) at least ten minutes prior to the public announcement.

**(c) Obligation to File Periodic Financial Reports**

(1) No change

**(2) Foreign Private Issuer Interim Reports**

Each Foreign Private Issuer shall [publish, in a press release and] submit on a Form 6-K[,] an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) No change.

(d) – (f) No change.

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## **5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to [controlled companies] Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be [controlled companies] Controlled Companies.

### **(a) Exemptions to the Corporate Governance Requirements**

(1) – (2) No change.

#### **(3) Foreign Private Issuers**

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to distribute annual and interim reports set forth in Rule 5250(d), and the Direct Registration Program requirement set forth in Rules 5210(c) and 5255, provided, however, that such a Company shall: comply with the Notification of Material Noncompliance requirement ( Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series[, including the going concern disclosure requirement in Rule 5250(b)(2), and the listing agreement requirement in Rule 5205(a)].

(B) No change.

(4) – (5) No change.

(b) – (c) No change

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## **5635. Shareholder Approval**

This Rule sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (i) the acquisition of the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees or consultants; (iii) a change of control; and (iv) private placements. General provisions relating to shareholder approval are set forth in Rule 5635(e), and the financial viability exception to the shareholder approval requirement is set forth in Rule 5635(f). Nasdaq-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.

(a) – (e) No change.

**(f) Financial Viability Exception**

An exception applicable to a specified issuance of securities may be made upon prior written application to Nasdaq’s Listing Qualifications Department when:

- (1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and
- (2) reliance by the Company on this exception is expressly approved by the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors. The Listing Qualifications Department shall respond to each application for such an exception in writing.

A Company that receives such an exception must mail to all Shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required. Such notification shall disclose the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received), the fact that the Company is relying on a financial viability exception to the stockholder approval rules, and that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors has expressly approved reliance on the exception. The Company shall also make a public announcement [through the news media] by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the same information as promptly as possible, but no later than ten days before the issuance of the securities.

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**5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

- (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
- (2) notifications of deficiencies for which a Company may submit a plan of compliance for staff review;
- (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and
- (4) Public Reprimand Letters.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) No change.

**(b) Company Disclosure Obligations**

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement [through the news media] disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. Before release of the public announcement, Companies [should] must provide a copy of the announcement to Nasdaq's MarketWatch Department[, the Listing Qualifications Department and the Hearings Department]. As described in Rule 5250(b)(1) and IM-5250-1, notice to the MarketWatch Department must be made through the electronic disclosure submission system available at www.nasdaq.net at least ten minutes prior to the public announcement. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

***IM-5810-1. Disclosure of Written Notice of Staff Determination***

*Rule 5810(b) requires that a Company make a public announcement [through the news media] by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided, however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. If the public announcement is not made by the Company within the time allotted, trading of its securities shall be halted, even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.*

*Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.*

**(c) – (d) No change.**

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#### **5840. Adjudicatory Process: General Information**

(a) – (j) No change.

#### **(k) Disclosure of Public Reprimand Letter**

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement [through the news media] by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. Prior to the release of the public announcement, the Company must provide such disclosure to Nasdaq's MarketWatch Department[, the Listing Qualifications Department, and the Hearings Department]. As described in Rule 5250(b)(1) and IM-5250-1, notice to the MarketWatch Department must be made through the electronic disclosure submission system available at [www.nasdaq.net](http://www.nasdaq.net) at least ten minutes prior to the public announcement. The public announcement should be made as promptly as possible, but not more than four business days following receipt of the Decision.

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