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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-84629; File No. SR-NASDAQ-2018-095]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Nasdaq Rule 5615(b)(4) to Change the Threshold for Qualifying as a Smaller Reporting Company to Qualify for Certain Exemptions from the Compensation Committee Requirements

November 20, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rule 5615(b)(4) to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange’s compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange’s exemptions.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 5615(b)(4) to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange’s compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange’s exemptions.

The SEC recently adopted³ amendments to the definition of “smaller reporting company” set forth in Item 10(f)(1) of Regulation S-K,⁴ Rule 12b-2 under the Act⁵ and Rule 405 under the Securities Act of 1933.⁶ The amendments raise the smaller reporting company cap from less than \$75 million in public float to less than \$250 million and also include as smaller reporting companies issuers with less than \$100 million in annual revenues if they also have either no public float or a public float that is less than \$700 million. The amendments became effective on

³ See Release Nos. 33-10513 and 34-83550 (June 28, 2018); 83 FR 31992 (July 10, 2018) (the “Adopting Release”).

⁴ 17 CFR 229.10(f)(1).

⁵ 17 CFR 240.12b-2.

⁶ 17 CFR 230.405.

September 10, 2018. As a result of the SEC rule changes, an expanded number of registrants, and hence, of listed companies, will qualify for smaller reporting company status than was previously the case.⁷

Smaller reporting companies are entitled to avail themselves of certain exemptions from Nasdaq's compensation committee requirements.⁸ Rule 5615(b)(4) includes a provision describing the period within which a company must comply with all applicable compensation committee requirements after it ceases to be a smaller reporting company.⁹ This provision currently states explicitly that a smaller reporting company must have less than \$75 million in

⁷ See the Adopting Release.

⁸ Specifically, pursuant to Rule 5605(d)(5), a listed company that satisfies the definition of smaller reporting company is not required to comply with: (i) the additional requirements with respect to the independence of compensation committee members set forth in Rule 5605(d)(2)(A); (ii) the requirements with respect to the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3) and the requirement to include such responsibilities and authority in its compensation committee charter as set forth in Rule 5605(d)(1)(D); or (iii) the requirement with respect to the compensation committee's responsibility to review and reassess the adequacy of its compensation committee charter on an annual basis. A listed smaller reporting company must comply with all other applicable Exchange corporate governance requirements, including all other applicable compensation committee requirements, unless it qualifies for another exemption from those requirements.

⁹ Under the SEC rules set forth above with respect to smaller reporting companies, a company tests its status as a smaller reporting company on an annual basis at the end of its most recently completed second fiscal quarter ("Determination Date"). A smaller reporting company ceases to be a smaller reporting company as of the beginning of the fiscal year following the Determination Date ("Start Date"). By six months from the Start Date, a company must comply with Rule 5605(d)(3) and certify to Nasdaq that: (i) it has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)-(D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition. A company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) one member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

public float. In light of the recent changes to the SEC's rules with respect to smaller reporting companies, the Exchange proposes to delete this reference to the \$75 million public float cap and revise the provision to state simply that a smaller reporting company that fails to meet the requirements for smaller reporting company status as of the last business day of its second fiscal quarter (the Determination Date) will cease to be a smaller reporting company as of the beginning of the following fiscal year. The effect of the proposed rule change is to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the effect of the proposed rule change is to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

will qualify for the Exchange's exemptions. A listed smaller reporting company must comply with all other applicable Exchange corporate governance requirements, including all other applicable compensation committee requirements, unless it qualifies for some other exemption from those requirements. The Commission has already determined through its own rulemaking that the revised thresholds for smaller reporting company status proposed in this rule proposal are consistent with the goal of the Act to further the protection of investors and the public interest¹² and the Exchange believes that its own proposal is consistent with Section 6(b)(5) of the Act for the same reasons. The Exchange also believes that the proposed rule change fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities because it conforms Rule 5615(b)(4) to a rule change made by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose any burden on competition as its sole purpose is to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

¹² See supra note 3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, Nasdaq has asked the Commission to waive the 30-day operative delay to make Nasdaq Rule 5615(b)(4) consistent with the Commission's revised definition of smaller reporting company that became effective on September 10, 2018. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.¹⁸

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-095 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-095. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

¹⁹ 15 U.S.C. 78s(b)(2)(B).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-095, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).

[FR Doc. 2018-25731 Filed: 11/23/2018 8:45 am; Publication Date: 11/26/2018]