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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86792; File No. SR-NASDAQ-2019-059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Requirements for the Nasdaq Capital and Global Markets Applicable to Direct Listings

August 28, 2019.

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 August 15, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 adopt requirements for the Nasdaq Capital and Global Markets applicable to Direct Listings.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. Nasdaq previously adopted requirements applicable to such Direct Listings listing on the Nasdaq Global Select Market³ and now proposes to adopt requirements for the Nasdaq Global and Capital Markets.

The proposed Listing Rules IM-5405-1 and IM-5505-1 set forth the additional listing requirements for Direct Listings on the Nasdaq Global and Capital Markets and describe how the Exchange will calculate compliance with the Nasdaq Global and Capital Markets initial listing

³ Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (the “2019 Rule Change”). Nasdaq proposes to insert the defined term “Direct Listing” into the existing language of Listing Rule IM-5315-1 and update the title without further modification to that rule section.

standards related to the requirements based on the price of a security, including the bid price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares.⁴

Nasdaq also proposes to modify Nasdaq Rule 4753 to clarify that the securities listed pursuant to Listing Rules IM-5405-1 and IM-5505-1 can be launched for trading using the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”).

Finally, the proposed Listing Rules IM-5405-1 and IM-5505-1 require that such securities must begin trading on Nasdaq following the initial pricing through the IPO Cross. To allow such initial pricing, the Company must: (i) have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering and (ii) list upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

Calculation of Price-based Initial Listing Requirements

Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. To provide transparency to the initial listing process, the Exchange proposes to adopt Listing Rules IM-5405-1 and IM-5505-1, which will state how the Exchange calculates the initial listing requirements based on the price of a security, including the bid price, Market Value

⁴ On March 21, 2019, Nasdaq filed with the Commission a proposed rule change to revise the initial listing standards related to liquidity that, among other changes, added three new definitions to define “restricted securities,” “unrestricted publicly held shares” and “unrestricted securities.” This rule change was approved by the Commission effective July 5, 2019 and operative August 5, 2019. See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019).

of Listed Securities and Market Value of Unrestricted Publicly Held shares for a Direct Listing on the Nasdaq Global and Capital Markets.⁵

Unless Nasdaq determines to accept evidence of the security's price based on a tender offer by the company or a third party, a third-party transaction involving the company's equity securities, or security sales by the company, as described in more detail below, under Listing Rules IM-5405-1 and IM-5505-1, Nasdaq would generally require that a company listing on the Nasdaq Global and Capital Markets through a Direct Listing provide Nasdaq an independent third-party valuation (a "Valuation") that meets the requirements of Listing Rules IM-5315-1(e) and (f).

Under Listing Rule IM-5315-1(e), any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. Nasdaq will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. Nasdaq may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.⁶

⁵ Substantive provisions of Listing Rules IM-5405-1 and IM-5505-1 are identical.

⁶ In addition, under Listing Rule 5101 Nasdaq has broad discretionary authority to deny initial listing, apply additional or more stringent criteria for the initial or continued listing

Under Listing Rule IM-5315-1(f), Nasdaq requires that a valuation agent will not be considered independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation. For purposes of this provision, “investment banking services” includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

For a security that has had sustained recent trading in a Private Placement Market⁷ prior to listing, Nasdaq will determine a company's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held shares based on the lesser of: (i) the value calculable based on the Valuation⁸ and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

To determine compliance with the price-based requirements and suitability for listing on the Exchange, Nasdaq will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of Nasdaq's market value requirement. Nasdaq believes that the price from such sustained trading in a Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

Alternatively, in the absence of any recent sustained trading in a Private Placement Market over a period of several months,⁹ Nasdaq proposes to require that a Valuation must evidence a price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares that exceed 200% of the otherwise applicable requirement. Thus, to list on the

⁷ Nasdaq defines "Private Placement Market" in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

⁸ As described in more detail below, under proposed Listing Rules IM-5405(a)(3) and IM-5505(a)(3), in lieu of a Valuation, Nasdaq may accept certain other compelling evidence of the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares.

⁹ Limited trading in the Private Placement Market may not be sufficient for the Exchange to reach a conclusion that the company meets the applicable price-based requirements.

Nasdaq Global Market, the Valuation must evidence a minimum bid price of at least \$8 per share; Market Value of Unrestricted Publicly Held Shares of \$16 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$36 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$40 million and Market Value of Listed Securities of \$150 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$40 million under the Total Assets/Total Revenue Standard.¹⁰

To list on the Nasdaq Capital Market, the Valuation must generally evidence a minimum bid price of at least \$8 per share; Market Value of Unrestricted Publicly Held Shares of \$10 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$30 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$30 million and Market Value of Listed Securities of \$100 million under the Market Value Standard.¹¹

Nasdaq believes that some companies that are clearly large enough to be suitable for listing on the Exchange do not have sustained trading in their securities on a Private Placement Market prior to going public and that a recent Valuation indicating that the company exceeds

¹⁰ See Listing Rules 5405(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million and Market Value of Listed Securities of \$75 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard.

¹¹ See Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million and Market Value of Listed Securities of \$50 million under the Market Value Standard.

200% of the otherwise applicable price-based requirement will give a significant degree of comfort that the company will meet the applicable price-based requirements upon commencement of trading. Nasdaq believes that it is unlikely that any Valuation would reach a conclusion that is incorrect to the degree necessary for a company using this provision to fail to meet the applicable requirement upon listing, in particular because any Valuation used for this purpose must be provided by a valuation agent that meets the independence requirements of proposed Listing Rule IM-5315-1(f) and has significant experience and demonstrable competence in the provision of such valuations.

Nasdaq further believes that in certain unique circumstances a company that is clearly large enough to be suitable for listing on the Exchange may provide other compelling evidence to demonstrate that it meets all applicable price-based requirements without a Valuation. In such cases, Nasdaq may accept other compelling evidence of the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares, including, a tender offer by the company or a third party, a third-party transaction involving the company's equity securities, or security sales by the Company.

In order to be considered compelling evidence of the company's value, Nasdaq proposes to require that such transactions were recent, occurring within the prior six months, and substantial in size, representing sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement.¹² In addition, Nasdaq expects such transactions

¹² Listing Rule 5405(b) generally requires, for a company listing on the Nasdaq Global Market, Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; Market Value of Unrestricted Publicly Held Shares of \$18 million under the Equity Standard; Market Value of Unrestricted Publicly Held Shares of \$20 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard. Listing Rule 5505(b) generally requires, for a company listing on the Nasdaq Capital Market, Market

to have been conducted at arm's-length requiring that such transactions cannot involve affiliates of the company unless such participation is of a de minimis nature, such as where any affiliate's participation was less than 5% of the transaction (and all affiliates' participation collectively was less than 10% of the transaction), such participation was suggested or required by unaffiliated investors and where the affiliates did not participate in negotiating the economic terms of the transaction. The examples of transactions that could constitute compelling evidence are not meant to be exhaustive; however, Nasdaq will consider other transactions or events as constituting compelling evidence only if such transactions or events are substantially similar to those described by this rule.

In order to list on Nasdaq based on such evidence without a Valuation, Nasdaq proposes to require such evidence to show that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. Thus, to list on the Nasdaq Global Market, the compelling evidence provided by the company must show a minimum bid price of at least \$10 per share; Market Value of Unrestricted Publicly Held Shares of \$20 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$45 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$50 million and Market Value of Listed Securities of \$187.5 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$50 million under the Total Assets/Total Revenue Standard.¹³

Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Market Value Standard.

¹³ See Listing Rules 5405(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$8 million under the Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$18 million

To list on the Nasdaq Capital Market, such evidence must show a minimum bid price of at least \$10 per share; Market Value of Unrestricted Publicly Held Shares of \$12.5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$37.5 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$37.5 million and Market Value of Listed Securities of \$125 million under the Market Value Standard.¹⁴

Nasdaq believes that such recent, substantial in size, arm's-length transactions in the Company's securities, with de minimis insider participation, indicating the company exceeds 250% of the otherwise applicable price-based requirements will give a significant degree of comfort that the company will meet the applicable price-based requirements upon commencement of trading. In addition, Nasdaq believes that the new requirement that such securities must begin trading on Nasdaq following the initial pricing through the IPO Cross will help assure these securities begin trading close to their inherent value.

Foreign Exchange Listings

For a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares, or listing on Nasdaq while trading on such exchange, Nasdaq will determine that the company has met the applicable price-based requirements based

under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million and Market Value of Listed Securities of \$75 million under the Market Value Standard; or Market Value of Unrestricted Publicly Held Shares of \$20 million under the Total Assets/Total Revenue Standard.

¹⁴ See Listing Rules 5505(a) and (b), which generally require minimum bid price of at least \$4 per share; Market Value of Unrestricted Publicly Held Shares of \$5 million under the Net Income Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million under the Equity Standard; or Market Value of Unrestricted Publicly Held Shares of \$15 million and Market Value of Listed Securities of \$50 million under the Market Value Standard.

on the recent trading in such market. Nasdaq believes that the price of the issuer's securities from such broad and liquid trading is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. While this is consistent with Nasdaq's current practice, Listing Rules IM-5405-1(a)(4) and IM-5505-1(a)(4) will clarify that a company transferring from a foreign regulated exchange where there is a broad, liquid market for the company's shares or listing on the Nasdaq Global or Capital Markets while trading on such exchange is not subject to the new requirements applicable to Direct Listings.

Clarification of the Role of a Financial Advisor in a Direct Listing

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and described the role of financial advisors in that process.¹⁵ At that time, the Exchange added Rule 4120(c)(9)¹⁶ to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the IPO Cross. Prior to that rule

¹⁵ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the "2014 Rule Change"). Nasdaq stated that "an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to provide advice on when the security should be released for trading." The 2014 Rule Change at 21830.

¹⁶ In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-081). All references in this filing are to the renumbered rules, as currently in effect.

change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.¹⁷

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”¹⁸

Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.¹⁹ In each case, the applicable

¹⁷ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

¹⁸ Subsequent to the 2014 Rule Change, Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 16, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

¹⁹ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

price could be determined based on the issuer’s IPO price.²⁰ In the absence of an IPO price from the underwriter, Nasdaq believes that the only viable options are to rely on a price from recent sustained trading the Private Placement Market²¹ or one provided by the financial advisor to the company.

Nasdaq has successfully employed, in limited circumstances, the IPO Cross for securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing since 2014²² and following the 2019 Rule Change. Nasdaq continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

In the 2019 Rule Change, Nasdaq elaborated on the role of a financial advisor to the issuer of a security that is listing under IM-5315-1.²³ Nasdaq now proposes to amend Rule 4753

²⁰ Rules 4753(a)(3)(A)(iv)a. and 4753(b)(2)(D)(i). The price closest to the “Issuer’s Initial Public Offering Price” is the fourth tie-breaker in these rules, applicable when no single price is determined from the three prior tests.

²¹ As described above, Nasdaq believes that the price from such recent sustained trading in a Private Placement Market for the issuer’s securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq.

²² Among other instances, Nasdaq utilized the IPO Cross for the initial pricing of the common stock of American Realty Capital Healthcare Trust, Inc. as indicated in the 2014 Rule Change.

²³ Specifically, Nasdaq amended Rules 4753(a)(3)(A)(iv) and 4753(b)(2)(D) to state that in the case of the initial pricing of a Direct Listing for a security qualifying for listing under Listing Rule IM-5315-1, the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be: (i) for a security that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, (ii) if there is not such sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with the financial advisor to the issuer identified pursuant to Rule 4120(c)(9). See 2019 Rule Change.

to clarify that securities listed pursuant to Listing Rules IM-5405-1 and IM-5505-1 can be launched for trading using the IPO Cross, subject to additional requirements in the proposed Listing Rules IM-5405-1 and IM-5505-1.

Nasdaq also proposes to require that all securities listed under Listing Rules IM-5405-1 and IM-5505-1 must begin trading on Nasdaq following the initial pricing through the IPO Cross. To that end, Nasdaq proposes to cross reference Rule 4120(c)(8) in Listing Rules IM-5405-1 and IM-5505-1 to require that the company must have a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed, who is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. In addition, Nasdaq proposes to require that each Company qualified for listing under Listing Rules IM-5405-1 and IM-5505-1 must list its securities upon effectiveness of a Securities Act of 1933 registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.

Finally, Nasdaq proposes to define “Direct Listing” in Listing Rule IM-5315-1 and update the title without further modification to that rule section. Nasdaq also proposes to update the reference to “direct listings under IM-5315-1” in Listing Rule IM-5900-7 as a defined term without changing the substance of this rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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.

Calculation of Price-based Initial Listing Requirements

The proposed rule change to require a Valuation and describe how Nasdaq will calculate compliance with the price-based requirements for listing on the Nasdaq Global and Capital Markets is designed to protect investors and the public interest because any company relying solely on a Valuation will have to demonstrate that the company exceeds 200% of the otherwise applicable price-based requirement, which will give a significant degree of comfort that upon commencement of trading the company will meet the applicable price-based requirements.²⁶ In addition, establishing independence standards for the party providing a Valuation will ensure that the entity providing a Valuation for purposes of listing on Nasdaq will have a significant level of independence from the listing applicant and thereby enhance the reliability of such Valuation.

Finally, in addition to the proposed new requirements, Direct Listings are subject to all initial listing requirements applicable to equity securities and, subject to applicable exemptions, the corporate governance requirements set forth in the Rule 5600 Series. Nasdaq's existing requirements are designed to protect investors and serve to help assure that securities listed on Nasdaq have sufficient investor interest and will trade in a liquid manner. As such, Nasdaq believes these provisions protect investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

²⁶ See footnotes 13 and 14 above.

The proposed rule change also protects investors and the public interest by requiring that there be sustained recent trading in the Private Placement Market in order for a Direct Listing to rely on such price to demonstrate compliance with the applicable price-based requirements. Nasdaq believes that the price from such sustained trading in the Private Placement Market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq and that qualifying a company based on such trading price helps assure that the company satisfies Nasdaq's requirements. In the absence of recent sustained trading in the Private Placement Market, the requirement to demonstrate that the company exceeds 200% of the otherwise applicable price-based requirement, similarly helps assure that the company satisfies Nasdaq's requirement by imposing a standard that is double the otherwise applicable standard.²⁷

The proposed rule change to allow a company in certain unique circumstances to list without a Valuation is designed to protect investors and the public interest because it requires such company to produce compelling evidence that the security's price, Market Value of Listed Securities and Market Value of Unrestricted Publicly Held Shares exceed 250% of the otherwise applicable requirement. Moreover, in order to be considered compelling, such evidence of the company's value must be based on a tender offer by the company or a third party or on a transaction in company's securities, such as a third-party transaction involving the company's equity securities, or security sales by the company. In addition, such transactions must be recent, occurring within the prior six months, and substantial in size, representing sales of at least 20% of the applicable Market Value of Unrestricted Publicly Held Shares requirement which helps

²⁷ See footnotes 13 and 14, above.

assure that the company satisfies the applicable price-based requirement upon commencement of trading on Nasdaq.

The proposed rule change also protects investors and the public interest by requiring that for a company to demonstrate compliance with the applicable price-based requirements based on security sales by the company, such transactions, in addition to being recent and substantial in size, must also have been conducted at arm's-length. To that end, Nasdaq proposes to require that such transactions cannot involve affiliates of the company unless such participation is of a de minimis nature, such as where any affiliate's participation was less than 5% of the transaction (and all affiliates' participation collectively was less than 10% of the transaction), such participation was suggested or required by unaffiliated investors and where the affiliates did not participate in negotiating the economic terms of the transaction.

The proposed requirement that a company that lists on the Nasdaq Global or Capital Markets through a Direct Listing must list at the time of effectiveness of a registration statement filed under the Securities Act of 1933 solely for the purpose of allowing existing shareholders to sell their shares is designed to protect investors and the public interest, because it will ensure such companies satisfy the rigorous disclosure requirements under the Securities Act of 1933 and are subject to review by Commission staff.

Finally, the proposal to rely on the price from the existing trading market for a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange is consistent with the protection of investors because the price from the broad and liquid trading market for the issuer's securities is predictive of the price in the market for the common stock that will develop upon listing of the securities on Nasdaq. This provision applies only where there is a broad, liquid market for the company's shares in its country of origin and is

designed to clarify that a company transferring from a foreign regulated exchange or listing on Nasdaq while trading on such exchange that satisfies Listing Rules IM-5405-1(a)(4) or IM-5505-1(a)(4) is not subject to the new requirements applicable to Direct Listings. Enhancing transparency around this requirement will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.²⁸

Clarification of the Role of a Financial Advisor in a Direct Listing

Nasdaq believes that the proposed rule change to modify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest. The 2019 Rule Change established that, in using the IPO Cross to initiate the initial trading in the company's securities, the Current Reference Price and price at which the Nasdaq Halt Cross will occur may be based on the most recent transaction price in a Private Placement Market where the security has had recent sustained trading in such a market over several months; otherwise the price will be determined by the Exchange in consultation with a financial advisor to the issuer. The proposed rule change simply provides that in addition to the initial pricing of a security listing under Listing Rules IM-5315-1 the same process will occur for securities listing under IM-5405-1 or IM-5505-1.

²⁸ Provisions of Listing Rules IM-5405-1(a)(4) and IM-5505-1(a)(4) are identical to Listing Rule IM-5315-1(c) applicable to Direct Listings on the Nasdaq Global Select Market, which was adopted in the 2019 Rule Change.

Where there has been sustained recent trading on a Private Placement Market over several months, Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq. Where there has not been such sustained recent trading, Nasdaq notes that financial advisors have been performing the functions of the underwriter in the IPO Cross on a limited basis since 2014 and following the 2019 Rule Change and have market knowledge of buying and selling interest and an understanding of the company and its security. As such, Nasdaq believes that the rule change will promote fair and orderly markets because these mechanisms of establishing the Current Reference Price and the price at which the Nasdaq Halt Cross will occur will help protect against volatility in the pricing and initial trading of the securities covered by the proposed rule change.

Similarly, the proposed requirement that a company that lists on the Nasdaq Global or Capital Markets through a Direct Listing must begin trading of the company's securities following the initial pricing through the IPO Cross will promote fair and orderly markets by protecting against volatility in the pricing and initial trading of unseasoned securities covered by the proposed rule change. Accordingly, Nasdaq believes these changes, as required by Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listing in connection with a Direct Listing on the Nasdaq Global or Capital Markets.

Finally, Nasdaq believes that the proposed rule change to update the title of Listing Rule IM-5315-1, to insert the defined term "Direct Listing" into the existing language of this rule and to update the reference to "direct listings under IM-5315-1" in Listing Rule IM-5900-7 using a defined term, does not change the substance of these rules and protects investors and the public interest by clarifying the applicability of these rules and making it easier to understand.

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

The Exchange 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 to adopt Listing Rules IM-5405-1 and IM-5505-1 is designed to provide transparency to the mechanism of listing securities in connection with a Direct Listing on the Nasdaq Global or Capital Markets that is appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange.

In addition, the proposed change is designed to extend the availability of the IPO Cross to securities listing on Nasdaq under IM-5405-1 or IM-5505-1 and thus will have no impact on competition.

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.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2019-059 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-2019-059. 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 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-059, 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.²⁹

Jill M. Peterson,

Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).

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