

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100767; File No. SR-NASDAQ-2024-045)

August 19, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Application of the Minimum Bid Price Compliance Periods and the Delisting Appeals Process for Bid Price Non-Compliance in Listing Rules 5810 and 5815 Under Certain Circumstances

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 6, 2024, 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 modify the delisting process for securities that fail to regain compliance with the bid price requirement following a second compliance period and for securities that have had a reverse stock split over the prior one-year period.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq is proposing to amend Listing Rules 5810 and 5815 to provide that a company will be suspended from trading on Nasdaq if the company has been non-compliant with the \$1.00 bid price requirement for more than 360 days. In addition, Nasdaq is proposing to modify the listing standards such that Nasdaq will immediately send a Delisting Determination, as defined in Rule 5805(h), without any compliance period, to any company that becomes non-compliant with the \$1.00 minimum bid price requirement if the company effected a reverse stock split within the prior one-year period.

Nasdaq listing standards require a company’s equity securities listed on the Nasdaq Global Select, Global and Capital Markets to maintain a closing bid price that is no less than one dollar per share (the “Bid Price Requirement”).³ Upon a company’s failure to satisfy the applicable Bid Price Requirement, Rule 5810(c)(3)(A) provides for an automatic compliance period of 180 calendar days for the company to achieve compliance with the Bid Price Requirement.⁴ Subject to certain requirements,⁵ including notifying Nasdaq of the company’s

³ Each tier of Nasdaq includes a requirement that specified securities maintain a \$1.00 minimum bid price. See, Rule 5550(a)(2) (Primary Equity Security listed on the Nasdaq Capital Market), Rule 5555(a)(1) (Preferred Stock and Secondary Classes of Common Stock listed on the Nasdaq Capital Market), 5450(a)(1) (Primary Equity Security listed on the Nasdaq Global or Global Select Markets), Rule 5460(a)(3) (Preferred Stock and Secondary Classes of Common Stock listed on the Nasdaq Global or Global Select Markets). The \$1.00 minimum bid price requirement does not apply to Other Securities listed pursuant to the Rule 5700 Series, rights, warrants, convertible debt, and subscription receipts.

⁴ A failure to meet this requirement occurs when a security’s closing bid price is below \$1.00 for a period of 30 consecutive trading days. Compliance is achieved by meeting the applicable standard for a minimum of

intent to cure this deficiency, a company listed on, or that transfers to, the Nasdaq Capital Market may be provided with a second 180-day compliance period. If a company is not eligible for the second compliance period, or the company is eligible but does not resolve the bid price concern during the second compliance period, the company is issued a Delisting Determination under Rule 5810 with respect to that security, which can be appealed to a Nasdaq Listing Qualifications Hearings Panel. The Panel can allow a company up to an additional 180 days from the date of the Delisting Determination for the company to regain compliance.⁶

The bid price rules truncate these compliance periods in two circumstances. First, Listing Rule 5810(c)(3)(A)(iii) provides that if a company's security has a closing bid price of \$0.10 or less for 10 consecutive trading days, Nasdaq must issue a Delisting Determination with respect to that security, notwithstanding any otherwise available compliance period. Second, Listing Rule 5810(c)(3)(A)(iv) provides that if a company's security fails to meet the continued listing requirement for minimum bid price and the company has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one, then the company is not eligible for any compliance periods and Nasdaq must issue a Delisting Determination with respect to that security.

10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H). See Rule 5810(c)(3)(A).

⁵ Listing Rule 5810(c)(3)(A)(ii) states that if a Company listed on the Capital Market is not deemed in compliance before the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day of the first compliance period it meets the applicable market value of publicly held shares requirement for continued listing and all other applicable standards for initial listing on the Capital Market (except the bid price requirement) based on the Company's most recent public filings and market information and notifies Nasdaq of its intent to cure this deficiency. If a Company does not indicate its intent to cure the deficiency, or if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency, the Company will not be eligible for the second grace period. If the Company has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable listing criteria, it shall not be eligible for the additional compliance period under this rule.

⁶ See Rule 5815(c) (Scope of the Hearings Panel's Discretion).

Based on Nasdaq's experience with the rules, Nasdaq is proposing two changes to the bid price requirements for listed companies to better protect investors.

Suspension After 360 Days of Non-compliance

Nasdaq has observed that some companies do not regain compliance during the second 180-day compliance period notwithstanding the company's notification to Nasdaq of its intent to do so. In these circumstances, Nasdaq issues a Delisting Determination; however, as described above, the company could continue its listing by appealing that decision to a Hearings Panel, which has the discretion to provide up to 180 additional days from the date of the Delisting Determination.⁷ Accordingly, a company that failed to regain compliance with the Bid Price Requirement may request a review of a Delisting Determination and seek an exception to the requirements from the Hearings Panel and could remain listed and trading on Nasdaq pursuant to an exception granted by the Panel. As a result, a company may be continuously deficient with the Bid Price Requirement and continue trading on Nasdaq for more than 360 days (but not more than 540 days).

Nasdaq believes that two consecutive compliance periods for a total of 360 days is a sufficient period of time for a company to regain compliance with the Bid Price Requirement, even if the company is required to obtain stockholder approval to effect a reverse stock split by the jurisdiction where the company is incorporated. Nasdaq provides a company with a second bid price compliance period only if the company reviewed its circumstances and notified Nasdaq that it intends to cure the bid price deficiency by effecting a reverse stock split within the second 180-day compliance period. As such, Nasdaq believes that it is not appropriate for a company in these circumstances to continue trading on Nasdaq during the pendency of the Hearings Panel

⁷ See Rule 5815(c)(1)(A), which provides that the Hearings Panel may, where it deems appropriate grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Delisting Determination with respect to the deficiency for which the exception is granted.

review process. Instead, Nasdaq proposes to amend Rule 5815 to remove the stay provision in these situations so that the company's securities will be suspended from trading on Nasdaq during the pendency of the Hearings Panel's review.⁸

Specifically, Nasdaq proposes to adopt Listing Rule 5815(a)(1)(B)(ii)d. to provide that notwithstanding the general rule that a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written panel decision, a request for a hearing shall not stay the suspension of the securities from trading where the matter relates to a request made by a company that was afforded the second 180-day compliance period described in Rule 5810(c)(3)(A)(ii) and that failed to regain compliance with the minimum bid price requirement during that period. For clarity, Nasdaq proposes to note that pursuant to Rule 5810(c)(3)(A), a company achieves compliance with the minimum bid price requirement by meeting the applicable standard for a minimum of 10 consecutive business days, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H).

A company that is suspended under the proposed rule could appeal the Delisting Determination to a Hearings Panel, but its securities would trade in the over-the-counter (OTC) market while that appeal is pending. Pursuant to Listing Rule 5815(c)(1)(A) the Hearings Panel will continue to have discretion, where it deems appropriate, to provide an exception for up to 180 days from the Delisting Determination date for the company to regain compliance with the Bid Price Requirement. Pursuant to Listing Rule 5815(c)(1)(E) the Hearings Panel will also continue to have the authority to find the company in compliance with all applicable listing standards and reinstate the trading of the company's securities on Nasdaq (e.g., if the company

⁸ Nasdaq notes that if a company was not afforded the second 180-day compliance period, the company would not be affected by this proposal and its security would not be suspended from trading on Nasdaq during an appeal to the Hearings Panel, if any.

effects a reverse stock split and maintains a \$1.00 closing bid price for at least 10 consecutive days while trading in the OTC market).

Excessive Reverse Stock Splits

As described above, upon a company's failure to satisfy the applicable Bid Price Requirement, Rule 5810(c)(3)(A) provides for an automatic compliance period of 180 calendar days for the company to achieve compliance with the Bid Price Requirement. The process of providing an automatic 180-day compliance period is designed to allow adequate time for a company facing temporary business issues, a temporary decrease in the market value of its securities, or temporary market conditions to regain compliance with the Bid Price Requirement. However, Nasdaq has observed that some companies, typically those in financial distress or experiencing a prolonged operational downturn, engage in a pattern of repeated reverse stock splits.

Nasdaq believes that such behavior is often indicative of deep financial or operational distress within such companies rendering them inappropriate for trading on Nasdaq for investor protection reasons. In these situations, Nasdaq has observed that the challenges facing such companies, generally, are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period and will continue oscillating between compliance and non-compliance with the Bid Price Requirement. Moreover, a pattern of recurring bid price non-compliance can be a leading indicator of other listing compliance concerns. As a result, these companies often become subject to delisting for other reasons during the compliance periods.

In 2020, Nasdaq amended the rules to require the issuance of a Delisting Determination if a company falls out of compliance with the Bid Price Requirement after completing one or more

reverse stock splits resulting in a cumulative ratio of 250 shares or more to one over the two-year period before such non-compliance (the “2020 Rule”).⁹ As described above, in these cases the company is not afforded an automatic compliance period. Notwithstanding this rule change, Nasdaq continues to observe some companies engaging in a pattern of effecting consecutive reverse stock splits, which are often accompanied by dilutive issuances of securities.

Accordingly, Nasdaq proposes to further enhance investor protections by immediately initiating the delisting process (rather than providing a 180-day compliance period) for any company’s security that becomes non-compliant with the Bid Price Requirement if, in the prior one-year period, the company conducted a reverse stock split (regardless of the ratio). The company could appeal that delisting notification to the Hearings Panel, where it could receive up to 180 days to regain compliance, as described above. Specifically, Nasdaq proposes to amend Listing Rule 5810(c)(3)(A)(iv) to provide that if a company’s security fails to meet the continued listing requirement for minimum bid price and the company has effected a reverse stock split over the prior one-year period then the company shall not be eligible for any compliance period specified in Rule 5810(c)(3)(A) and the Listing Qualifications Department shall issue a Delisting Determination under Rule 5810 with respect to that security.¹⁰

The cumulative impact of the proposed rule change and the 2020 Rule would be as follows:

- A company that effected a reverse stock split of any ratio will be subject to delisting if it falls out of compliance with the Bid Price Requirement within one year of the previous reverse stock split.

⁹ Securities Exchange Act Release No. 87982 (January 15, 2020), 85 FR 3736 (January 22, 2020) (SR-Nasdaq-2020-001).

¹⁰ For the avoidance of doubt, the proposed rule would apply to a company even if the company was in compliance with the Bid Price Requirement at the time of its prior reverse stock split.

- A company that effected one or more reverse stock split with a cumulative ratio of 1-for-250 or higher will be subject to delisting if it falls out of compliance with the Bid Price Requirement within two years of the reverse stock split(s).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, 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 by enhancing Nasdaq’s listing requirements and limiting the time that a security can remain listed while non-compliant with the Bid Price Requirement or becoming non-compliant with the Bid Price Requirement within one year following a reverse stock split. In that regard, Nasdaq has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons during the compliance periods.

While listed, these securities are exempt from the “Penny Stock Rules,”¹³ which provide enhanced investor protections to prevent fraud and safeguard against potential market manipulation. In particular, the Penny Stock Rules generally require that broker-dealers provide a disclosure document to their customers describing the risk of investing in Penny Stocks and approve customer accounts for transactions in Penny Stocks. Nasdaq believes that an exemption

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Exchange Act Rules 3a51-1, 17 CFR 240.3a51-1, and 15g-1 to 15g-100, 17 CFR 240.5g-1 et seq.

from these Penny Stock requirements may not be appropriate for consistently low priced stocks and stocks that are trading below \$1 after completing a reverse stock splits over the prior year because these securities may have similar characteristics to Penny Stocks. Nasdaq therefore believes it is appropriate to subject these securities to heightened scrutiny given the availability of the exemption to securities listed on Nasdaq.

Nasdaq also believes that the proposal to amend Listing Rule 5815(a)(1)(B)(ii) to provide that a hearing request shall not stay the suspension of the securities from trading when the matter relates to a request made by a company that was afforded the second 180-day compliance period described in Rule 5810(c)(3)(A)(ii) and that failed to regain compliance with the minimum bid price requirement during that period is designed to protect investors and the public interest. In particular, this change will prevent continued trading in such company's securities until an independent Hearings Panel reviews the Delisting Determination and determines that continued trading on Nasdaq is appropriate.

Finally, Nasdaq believes the proposed rule change furthers the objectives of Section 6(b)(7) of the Act in that it continues to provide a fair procedure for companies subject to these enhanced listing requirements. These companies can seek review of a Delisting Determination from a Hearings Panel, which can afford the company additional time to regain compliance, and can appeal the Hearings Panel decision to the Nasdaq Listing and Hearing Review Council.¹⁴ As a result, Nasdaq believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

¹⁴ See Listing Rules 5815 and 5820, respectively.

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. While Nasdaq does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number

SR-NASDAQ-2024-045 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-2024-045. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NASDAQ-2024-045 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Vanessa A. Countryman,
Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).