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Ms. Vanessa A. Countryman
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number SR-NASDAQ-2019-049 (the “Proposal”)

Dear Ms. Countryman:

The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is pleased to respond to the Securities and Exchange Commission (“Commission”) request for additional analysis and input in its Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposal (the “Order”).¹

As noted in the Order, on May 29, 2019, Nasdaq proposed to amend the definition of “Family Member” in Nasdaq Rule 5605(a)(2), which is used to determine whether a director of a listed company qualifies as an Independent Director. Nasdaq’s current rule specifically includes stepchildren; the Proposal is to remove stepchildren. The proposed definition of “Family Member” is “a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home.” As proposed, Nasdaq’s definition of Family Member would be identical to NYSE’s definition of an “immediate family member.” The NYSE Listed Company Manual states that an “‘immediate family member’ includes a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home.”

Nasdaq and NYSE appear to agree that stepchildren should be excluded from the definition of Family Member and Immediate Family Member. However, in the Order, the Commission inferred otherwise: “[it] would appear ... that the term “children” [in the NYSE rule] should be interpreted as including stepchildren, rather than excluding them.”

Nasdaq believes this is incorrect, and that NYSE interprets the term “children” to exclude stepchildren, particularly in situation where the stepchild relationship is attenuated, namely where a person has become a stepchild of a director as an adult. This understanding comes from information provided by practitioners that represent companies listed on both Nasdaq and NYSE

¹ Securities Exchange Act Release No. 86969 (September 13, 2019), 84 FR 49353 (September 19, 2019).

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and from companies previously listed on NYSE. Nasdaq believes that the analysis of the potential differences in the definition of family members is an unnecessary and unintentional burden on listed companies.²

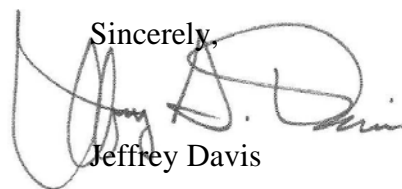
Accordingly, consistent with Section 6(b)(5) of the Act,³ Nasdaq is proposing to adopt a definition that is identical in words and application to a rule already approved by the Commission for another exchange. The Commission has already concluded that this definition satisfies Section 6(b)(5)⁴ and, moreover, Nasdaq adopting the identical definition also achieves the requirements of Section 6(b)(5) by removing an unnecessary impediment to a free and open market, without sacrificing investor protection.

It would be arbitrary and capricious under 5 U.S.C. 706 for the Commission to disapprove Nasdaq's attempt to adopt a definition identical to that approved for NYSE when that definition is being used for the same purpose, absent clear and unambiguous statement by the Commission that stepchildren must be included in the definition of Family Member and Immediate Family Member, and that the proper interpretation of the existing NYSE rule includes stepchildren within the definition of an immediate family member.

Section 11A of the Act⁵ reflects a Congressional finding that it "is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure ... fair competition ... among exchange markets." If the Commission were to disapprove Nasdaq's proposal, the Commission's action would not assure fair competition. In fact, it would specifically promote unfair competition – NYSE would be permitted to maintain a rule and interpret it in a way different than would Nasdaq.

Accordingly, Nasdaq respectfully requests that the Commission approve Nasdaq's proposed rule change, including, if the Commission believes it necessary, providing a statement instructing each Exchange how the term "children" should be interpreted with respect to stepchildren.

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Sincerely,

Jeffrey Davis

² Securities Exchange Act Release No. 86085 (June 12, 2019), 84 FR 28379 (June 18, 2019).

³ 15 U.S.C. 78f(b)(5).

⁴ See Securities Exchange Act Release No. 42233 (December 14, 1999), 64 FR 244 (December 21, 1999).

⁵ 15 U.S.C. 78k-1.