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January 31, 2020

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 2 SR-Nasdaq-2019-049

Dear Ms. Countryman:

The Nasdaq Stock Market LLC filed the above-referenced filing on January 30, 2020.

Sincerely,

A handwritten signature in black ink that reads 'Nikolai Utochkin'.

Nikolai Utochkin
Counsel – Listing and Governance

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|--------------------------|--|--------------------------|--------------------------------------|--------------------------------------|--------------------------|
| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | | | Rule | | |
| Pilot | Extension of Time Period for Commission Action * | Date Expires * | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="text"/> | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * | Section 806(e)(2) * |
| <input type="checkbox"/> | <input type="checkbox"/> |
| | Section 3C(b)(2) * |
| | <input type="checkbox"/> |

| | |
|----------------------------------|----------------------------------|
| Exhibit 2 Sent As Paper Document | Exhibit 3 Sent As Paper Document |
| <input type="checkbox"/> | <input type="checkbox"/> |

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to modify the definition of a Family Member for purposes of Listing Rule 5605(a)(2)

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Nikolai Last Name * Utochkin

Title * Counsel - Listing and Governance

E-mail * nikolai.utochkin@nasdaq.com

Telephone * (301) 978-8029 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 01/31/2020 EVP and Chief Legal Officer

By John Zecca

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify the definition of a “Family Member” for purposes of Listing Rule 5605(a)(2). This Amendment No. 2 amends and supersedes the original filing in its entirety.³

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is set forth below. Proposed new language is underlined.

* * * * *

The Nasdaq Stock Market Rules

* * * * *

5605. Board of Directors and Committees

(a) Definitions

(1) No change.

(2) “Independent Director” means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, “Family Member” means a person’s spouse, parents, children,[and] siblings, [whether by blood, marriage or adoption, or anyone residing in]mothers and fathers-in-law, sons and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On January 30, 2020, Nasdaq filed Amendment No. 1 that was subsequently withdrawn.

daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. The following persons shall not be considered independent:

(A) - (G) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the "Board") on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Nikolai Utochkin
Counsel – Listing and Governance
Nasdaq, Inc.
(301) 978-8029

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

a. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2019-049, which was published for comment by the Commission on June 18, 2019,⁴ in order to: provide additional clarification and justification in support of the proposed rule change; delete and revise

⁴ Securities Exchange Act Release No. 86095 (June 12, 2019), 84 FR 28379 (June 18, 2019) (the "Original Proposal").

certain language in the Original Proposal; and to clarify that the proposed rule change to Listing Rule 5605(a)(2) will not affect the additional independence criteria for audit committee members set forth in Listing Rule 5605(c)(2), which incorporate the independence requirements of SEC Rule 10A-3 promulgated under the Act.⁵ This amendment supersedes and replaces the Original Proposal in its entirety.

Nasdaq is proposing to modify the definition of a “Family Member” for purposes of director independence under Listing Rule 5605(a)(2) to exclude domestic employees who share the director’s home and stepchildren from the list of relationships that always preclude a board from finding that a director is independent.

Listing Rule 5605(a) provides a list of certain relationships that preclude a board from finding that a director is independent (the “Bright-line Independence Test”). These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Nasdaq’s rules preclude a director from being considered independent if the director has a Family Member who (i) accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence (with certain exceptions)⁶; (ii) is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient’s consolidated gross revenues for that

⁵ 17 CFR 240.10A-3.

⁶ Listing Rule 5605(a)(2)(B).

year, or \$200,000, whichever is more (with certain exceptions)⁷; (iii) is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company served on the compensation committee of such other entity⁸; or (iv) is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.⁹ Nasdaq's rules also preclude a director from being considered independent if such director is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer.¹⁰

Currently, for purposes of Nasdaq Rules, Family Member means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.¹¹ This definition includes stepchildren, as they are "children by... marriage."

Proposed Change

Nasdaq proposes to define a Family Member to mean 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 also proposes to interpret the term "children" to exclude stepchildren.

⁷ Listing Rule 5605(a)(2)(D).

⁸ Listing Rule 5605(a)(2)(E).

⁹ Listing Rule 5605(a)(2)(F).

¹⁰ Listing Rule 5605(a)(2)(C).

¹¹ Listing Rule 5605(a)(2).

Over time, Nasdaq has concluded, based on feedback from its listed companies and their legal counsel, that inclusion of stepchildren in the definition of a Family Member makes the definition over-inclusive. The Bright-line Independence Test is intended to identify relationships that are likely to interfere with the exercise of independent judgment in carrying out the director's responsibilities. In that regard Nasdaq believes that a director's relationship with their stepchildren may or may not interfere with the director's exercise of independent judgment based on the particular facts and circumstances of the situation. If a stepchild has been a dependent of a director or was a part of the director's household since being a minor, the director's relationship with that stepchild is likely to be similar to that with a biological child. However, if the director marries a person who has an adult child, the director never acted in any capacity as a parent of this stepchild, and the stepchild never shared the director's household, then the director and stepchild are likely to have an attenuated relationship that is unlike the relationship of a parent and a child. Because the determination as to whether such relationship is likely to interfere with the exercise of independent judgment in carrying out the director's responsibilities is based on facts and circumstances, Nasdaq believes a company's board is in the best position to make such a determination. Accordingly, Nasdaq believes that a stepchild relationship should not preclude a director from being considered independent in all circumstances.

In addition, Nasdaq believes that the proposed change would align its definition of a Family Member with the comparable definition of an immediate family member of

the New York Stock Exchange (“NYSE”).¹² Nasdaq has heard from its listed companies and their legal counsel that the current situation, where each market has a different definition, complicates the preparation by listed companies of director and officer questionnaires that the companies need in order to analyze director independence. In particular, this creates an added and unnecessary burden when a company transfers its listing from one national securities exchange to another. In such case, a director may have already filled out an annual questionnaire based on the prior listing exchange’s definition of a family member, but need to answer additional questions because the definition of the exchange the listing is transferred to is phrased differently.

Nasdaq is also proposing to modify the definition of a “Family Member” for purposes of director independence under Listing Rule 5605(a)(2) to exclude domestic employees who share a director’s home. Nasdaq believes that the definition of a Family Member should not include a domestic employee who shares a director’s home because this definition is intended to capture familial, not commercial, relationships.

¹² Prior to 2002, the Nasdaq definition of a Family Member was substantially identical to the NYSE definition of an “immediate family member” in Section 303A.02 of the NYSE Listed Company Manual. See Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999). In October 2002, the NASD, through its subsidiary, The Nasdaq Stock Market, Inc., filed with the Commission a proposed rule change to amend NASD Rules to modify requirements relating to board independence and independent committees. See Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (SR-NASD-2002-141) (“Nasdaq Independent Director Proposal”). At about the same time, NYSE proposed similar changes to its listing standards. See Securities Exchange Act Release No. 47672 (April 11, 2003) 68 FR 19051 (April 17, 2003) (“NYSE Corporate Governance Proposal”). The Commission discussed and approved both the Nasdaq Independent Director Proposal and the NYSE Corporate Governance Proposal in one order (the “2003 Order”). See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003). This proposed rule change amends the definition of a Family Member approved by the Commission in the 2003 Order.

Accordingly, Nasdaq is proposing to modify the definition of a Family Member for purposes of director independence under Listing Rule 5605(a)(2) to mean 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. This definition is identical to NYSE's definition of an immediate family member.¹³

Additionally, Nasdaq notes that the proposed rule change to Listing Rule 5605(a)(2) will not affect the additional independence criteria for audit committee members set forth in Listing Rule 5605(c)(2), which incorporate the independence requirements of SEC Rule 10A-3.¹⁴

Notwithstanding these changes, Nasdaq notes that a company's board must, under Listing Rules 5605(a)(2) and IM-5605, affirmatively determine that no relationship exists that would interfere with the exercise of independent judgment in carrying out the director's responsibilities. Nasdaq expects that listed companies' boards will continue to elicit through director and officer questionnaires the information necessary for the boards to make such determinations, which will need to include questions about stepchild

¹³ Section 303A.02 of 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."

¹⁴ Listing Rule 5605(c)(2) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, in addition to the requirements of Listing Rule 5605(a)(2). See also Listing Rule IM-5605-4 (Audit Committee Composition).

relationships. Nasdaq believes that it is appropriate for the board to review a potential relationship between a director and a domestic employee or a stepchild of the director under such facts and circumstances test.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 removing the impediments to a free and open market where a “bright line” independence test prohibits some directors from being deemed independent in circumstances where the relationship with a Family Member is attenuated, non-existent, or commercial in nature. Nasdaq also believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market by aligning Nasdaq’s and NYSE’s corporate governance requirements more closely, by contrast to the current differently phrased definitions of a Family Member on Nasdaq and an immediate family member on NYSE and inclusion of a domestic employee who shares the director’s home in Nasdaq’s definition of a Family Member, where such differences pose an unnecessary burden on listed companies.

Specifically, Nasdaq Listing Rules currently prohibit a director from being deemed independent in certain circumstances by including stepchildren of the director’s

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

spouse in the definition of a Family Member, as described in more detail above. The rule also prohibits a domestic employee who shares the director's home from being deemed independent by including such employee in the definition of a Family Member.

Independent directors over time became a linchpin in the American corporate governance. It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. As the importance of independent directors for listed companies increased, so did the directors' workload and the risk of litigation. In this environment, Nasdaq believes that it is appropriate not to prohibit directors from being considered independent based on certain commercial or attenuated familial relationships, but instead allow the board to review such a relationship and affirmatively determine a relationship exists that would interfere with the exercise of independent judgment in carrying out the director's responsibilities.

Additionally, Nasdaq notes that the proposed rule change to Listing Rule 5605(a)(2) will not affect the additional independence criteria for audit committee members set forth in Listing Rule 5605(c)(2), which incorporate the independence requirements of SEC Rule 10A-3.¹⁷

¹⁷ Listing Rule 5605(c)(2) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, in addition to the requirements of Listing Rule 5605(a)(2). See also Listing Rule IM-5605-4 (Audit Committee Composition).

Following the proposed rule change, Nasdaq's definition of the Family Member will become identical with the NYSE's definition of an "immediate family member," the definition that the Commission has previously approved.¹⁸

4. 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 would eliminate requirements that burden issuers without an offsetting benefit in protecting shareholders. All listed companies would be affected in the same manner by these changes. As such, these changes are neither intended to, nor expected to, impose any burden on competition.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

¹⁸ See footnote 12, above.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Following the proposed rule change, Nasdaq's definition of the Family Member will become identical with the NYSE's definition of an "immediate family member," the definition that the Commission has previously approved.¹⁹

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

¹⁹ See footnote 12, above.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-049)

February __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Definition of a “Family Member” for Purposes of Listing Rule 5605(a)(2)

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 January 31, 2020, 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 definition of a “Family Member” for purposes of Listing Rule 5605(a)(2). This Amendment No. 2 amends and supersedes the original filing in its entirety.³

The text of the proposed rule change is detailed below: proposed new language is underlined and proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On January 30, 2020, Nasdaq filed Amendment No. 1 that was subsequently withdrawn.

* * * * *

The Nasdaq Stock Market Rules

* * * * *

5605. Board of Directors and Committees

(a) Definitions

(1) No change.

(2) “Independent Director” means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, “Family Member” means a person’s spouse, parents, children,¹ [and] siblings, [whether by blood, marriage or adoption, or anyone residing in]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. The following persons shall not be considered independent:

(A) - (G) No change.

* * * * *

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

Nasdaq is filing this amendment to SR-NASDAQ-2019-049, which was published for comment by the Commission on June 18, 2019,⁴ in order to: provide additional clarification and justification in support of the proposed rule change; delete and revise certain language in the Original Proposal; and to clarify that the proposed rule change to Listing Rule 5605(a)(2) will not affect the additional independence criteria for audit committee members set forth in Listing Rule 5605(c)(2), which incorporate the independence requirements of SEC Rule 10A-3 promulgated under the Act.⁵ This amendment supersedes and replaces the Original Proposal in its entirety.

Nasdaq is proposing to modify the definition of a "Family Member" for purposes of director independence under Listing Rule 5605(a)(2) to exclude domestic employees who share the director's home and stepchildren from the list of relationships that always preclude a board from finding that a director is independent.

Listing Rule 5605(a) provides a list of certain relationships that preclude a board from finding that a director is independent (the "Bright-line Independence Test"). These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Nasdaq's rules preclude a director from being considered independent if the director has a Family Member who (i) accepted any compensation from the Company in excess of \$120,000 during any period of twelve

⁴ Securities Exchange Act Release No. 86095 (June 12, 2019), 84 FR 28379 (June 18, 2019) (the "Original Proposal").

⁵ 17 CFR 240.10A-3.

consecutive months within the three years preceding the determination of independence (with certain exceptions)⁶; (ii) is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more (with certain exceptions)⁷; (iii) is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company served on the compensation committee of such other entity⁸; or (iv) is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.⁹ Nasdaq's rules also preclude a director from being considered independent if such director is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer.¹⁰

Currently, for purposes of Nasdaq Rules, Family Member means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone

⁶ Listing Rule 5605(a)(2)(B).

⁷ Listing Rule 5605(a)(2)(D).

⁸ Listing Rule 5605(a)(2)(E).

⁹ Listing Rule 5605(a)(2)(F).

¹⁰ Listing Rule 5605(a)(2)(C).

residing in such person's home.¹¹ This definition includes stepchildren, as they are "children by... marriage."

Proposed Change

Nasdaq proposes to define a Family Member to mean 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 also proposes to interpret the term "children" to exclude stepchildren.

Over time, Nasdaq has concluded, based on feedback from its listed companies and their legal counsel, that inclusion of stepchildren in the definition of a Family Member makes the definition over-inclusive. The Bright-line Independence Test is intended to identify relationships that are likely to interfere with the exercise of independent judgment in carrying out the director's responsibilities. In that regard Nasdaq believes that a director's relationship with their stepchildren may or may not interfere with the director's exercise of independent judgment based on the particular facts and circumstances of the situation. If a stepchild has been a dependent of a director or was a part of the director's household since being a minor, the director's relationship with that stepchild is likely to be similar to that with a biological child. However, if the director marries a person who has an adult child, the director never acted in any capacity as a parent of this stepchild, and the stepchild never shared the director's household, then the director and stepchild are likely to have an attenuated relationship that is unlike the relationship of a parent and a child. Because the determination as to whether such relationship is likely to interfere with the exercise of independent judgment in carrying

¹¹ Listing Rule 5605(a)(2).

out the director's responsibilities is based on facts and circumstances, Nasdaq believes a company's board is in the best position to make such a determination. Accordingly, Nasdaq believes that a stepchild relationship should not preclude a director from being considered independent in all circumstances.

In addition, Nasdaq believes that the proposed change would align its definition of a Family Member with the comparable definition of an immediate family member of the New York Stock Exchange ("NYSE").¹² Nasdaq has heard from its listed companies and their legal counsel that the current situation, where each market has a different definition, complicates the preparation by listed companies of director and officer questionnaires that the companies need in order to analyze director independence. In particular, this creates an added and unnecessary burden when a company transfers its listing from one national securities exchange to another. In such case, a director may have already filled out an annual questionnaire based on the prior listing exchange's definition

¹² Prior to 2002, the Nasdaq definition of a Family Member was substantially identical to the NYSE definition of an "immediate family member" in Section 303A.02 of the NYSE Listed Company Manual. See Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999). In October 2002, the NASD, through its subsidiary, The Nasdaq Stock Market, Inc., filed with the Commission a proposed rule change to amend NASD Rules to modify requirements relating to board independence and independent committees. See Securities Exchange Act Release No. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (SR-NASD-2002-141) ("Nasdaq Independent Director Proposal"). At about the same time, NYSE proposed similar changes to its listing standards. See Securities Exchange Act Release No. 47672 (April 11, 2003) 68 FR 19051 (April 17, 2003) ("NYSE Corporate Governance Proposal"). The Commission discussed and approved both the Nasdaq Independent Director Proposal and the NYSE Corporate Governance Proposal in one order (the "2003 Order"). See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003). This proposed rule change amends the definition of a Family Member approved by the Commission in the 2003 Order.

of a family member, but need to answer additional questions because the definition of the exchange the listing is transferred to is phrased differently.

Nasdaq is also proposing to modify the definition of a “Family Member” for purposes of director independence under Listing Rule 5605(a)(2) to exclude domestic employees who share a director’s home. Nasdaq believes that the definition of a Family Member should not include a domestic employee who shares a director’s home because this definition is intended to capture familial, not commercial, relationships.

Accordingly, Nasdaq is proposing to modify the definition of a Family Member for purposes of director independence under Listing Rule 5605(a)(2) to mean 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. This definition is identical to NYSE’s definition of an immediate family member.¹³

Additionally, Nasdaq notes that the proposed rule change to Listing Rule 5605(a)(2) will not affect the additional independence criteria for audit committee members set forth in Listing Rule 5605(c)(2), which incorporate the independence requirements of SEC Rule 10A-3.¹⁴

¹³ Section 303A.02 of 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.”

¹⁴ Listing Rule 5605(c)(2) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, in addition to the requirements of Listing Rule 5605(a)(2). See also Listing Rule IM-5605-4 (Audit Committee Composition).

Notwithstanding these changes, Nasdaq notes that a company's board must, under Listing Rules 5605(a)(2) and IM-5605, affirmatively determine that no relationship exists that would interfere with the exercise of independent judgment in carrying out the director's responsibilities. Nasdaq expects that listed companies' boards will continue to elicit through director and officer questionnaires the information necessary for the boards to make such determinations, which will need to include questions about stepchild relationships. Nasdaq believes that it is appropriate for the board to review a potential relationship between a director and a domestic employee or a stepchild of the director under such facts and circumstances test.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 removing the impediments to a free and open market where a "bright line" independence test prohibits some directors from being deemed independent in circumstances where the relationship with a Family Member is attenuated, non-existent, or commercial in nature. Nasdaq also believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market by aligning Nasdaq's and NYSE's corporate governance requirements more closely, by contrast to the current differently

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

phrased definitions of a Family Member on Nasdaq and an immediate family member on NYSE and inclusion of a domestic employee who shares the director's home in Nasdaq's definition of a Family Member, where such differences pose an unnecessary burden on listed companies.

Specifically, Nasdaq Listing Rules currently prohibit a director from being deemed independent in certain circumstances by including stepchildren of the director's spouse in the definition of a Family Member, as described in more detail above. The rule also prohibits a domestic employee who shares the director's home from being deemed independent by including such employee in the definition of a Family Member.

Independent directors over time became a linchpin in the American corporate governance. It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. As the importance of independent directors for listed companies increased, so did the directors' workload and the risk of litigation. In this environment, Nasdaq believes that it is appropriate not to prohibit directors from being considered independent based on certain commercial or attenuated familial relationships, but instead allow the board to review such a relationship and affirmatively determine a relationship exists that would interfere with the exercise of independent judgment in carrying out the director's responsibilities.

Additionally, Nasdaq notes that the proposed rule change to Listing Rule 5605(a)(2) will not affect the additional independence criteria for audit committee

members set forth in Listing Rule 5605(c)(2), which incorporate the independence requirements of SEC Rule 10A-3.¹⁷

Following the proposed rule change, Nasdaq's definition of the Family Member will become identical with the NYSE's definition of an "immediate family member," the definition that the Commission has previously approved.¹⁸

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 would eliminate requirements that burden issuers without an offsetting benefit in protecting shareholders. All listed companies would be affected in the same manner by these changes. As such, these changes are neither intended to, nor expected to, impose any burden 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

¹⁷ Listing Rule 5605(c)(2) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, in addition to the requirements of Listing Rule 5605(a)(2). See also Listing Rule IM-5605-4 (Audit Committee Composition).

¹⁸ See footnote 12, above.

(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-2019-049 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-2019-049. 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 Web site (<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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2019-049 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).