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February 1, 2021

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

Re: SR-NASDAQ-2020-028¹

Dear Ms. Countryman:

After further consideration, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) has determined to withdraw the Proposal, which would have applied additional or more stringent listing requirements on applicants and listed companies based on considerations related to the company’s auditor and where secrecy laws, blocking statutes, national security laws or similar restrictions may block regulators access to information about the company in an effort to enhance investor protection.

While Nasdaq continues to believe that the Proposal would enhance its listing standards and promote investor protection, in the time since Nasdaq filed the Proposal, Congress,² the

¹ Securities Exchange Act Release No. 88897 (June 2, 2020), 85 FR 35134 (June 8, 2020) (the “Proposal”). The Commission instituted proceedings to determine whether to approve or disapprove the Proposal. Securities Exchange Act Release No. 89799 (September 9, 2020), 85 FR 57282 (September 15, 2020) (the “OIP”). On November 3, 2020, Nasdaq filed an amendment to the proposal in an attempt to address the concerns raised by the SEC in the OIP. See Securities Exchange Act Release No. 90549 (December 2, 2020), 85 FR 79048 (December 8, 2020) (Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1).

² See, e.g., Kennedy, Van Hollen introduce Holding Foreign Companies Accountable Act as NDAA amendment (June 25, 2020), available at <https://www.kennedy.senate.gov/public/press-releases?ID=FA4903D2-CA2A-4DAA-83A0-BFDB7CED19D0>; see also Congress Passes Legislation to De-List Chinese Companies Unless U.S. Has Access to Audit Workpapers (December 2, 2020), available

Executive Branch³ and the Commission⁴ have taken additional steps on the issues underlying Nasdaq's concerns and it appears that the Commission will undertake additional rulemaking "regarding enhanced listing standards for U.S. securities exchanges."⁵ Further, notwithstanding the significant public record supporting Nasdaq's concerns as outlined in the Proposal, in the OIP, the Commission Staff questions whether the Proposal is consistent with Section 6(b)(5) of the Exchange Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination.

As stated in the Proposal, Nasdaq believes that existing rules already allow it to apply additional or more stringent criteria where Nasdaq has concerns about a company's auditor or the company's ability to provide information to regulators. While Nasdaq continues to believe that the proposed rule change would enhance investor protection and transparency, based on the subsequent developments described above Nasdaq has determined to rely upon its existing authority and is withdrawing the Proposal.

In that regard, as permitted by Nasdaq Rule 5101, Nasdaq may on a case-by-case basis based on the unique facts and circumstances presented, impose additional or more stringent criteria on a company based on concerns about the company's auditor, including where the auditor of an applicant or a Nasdaq-listed company: (1) has not been subject to an inspection by the PCAOB (either historically or because it is newly formed and as therefore not yet undergone a PCAOB inspection), (2) is an auditor that the PCAOB cannot inspect, (3) has been inspected by the PCAOB and the results of that inspection indicate that the auditor has failed to respond to any requests by the PCAOB or that the inspection has uncovered significant deficiencies in the auditor's conduct in other audits or in its system of quality controls, or (4) otherwise does not demonstrate sufficient resources, geographic reach or experience as it relates to the company's audit. Nasdaq may also use its discretionary authority to impose additional or more stringent criteria when a company's business is principally administered in a jurisdiction that has secrecy

at <https://sherman.house.gov/media-center/press-releases/congress-passes-legislation-to-de-list-chinese-companies-unless-us-has>.

³ See, e.g., President's Working Group on Financial Markets: Report on Protecting United States Investors from Significant Risks from Chinese Companies (July 24, 2020), available at <https://home.treasury.gov/system/files/136/PWG-Report-on-Protecting-United-States-Investors-from-Significant-Risks-from-Chinese-Companies.pdf>. See also Executive Order 13959, "Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies" (November 12, 2020), 85 Fed. Reg. 73185 (Nov. 17, 2020).

⁴ See, e.g., SEC Chairman Jay Clayton's Statement at the SEC's Emerging Markets Roundtable (July 9, 2020), available at <https://www.sec.gov/news/public-statement/clayton-emerging-markets-roundtable-2020-07-09>.

⁵ See, e.g., SEC Chairman Jay Clayton, Statement after the Enactment of the Holding Foreign Companies Accountable Act (December 18, 2020), available at <https://www.sec.gov/news/public-statement/clayton-hfcaa-2020-12>.

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laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. Nasdaq believes that it furthers the investor protection objectives of the Securities Exchange Act of 1934⁶ when it applies its rules in this manner. Nasdaq also intends to provide transparency to this application of its discretionary authority through the publication of an FAQ on the Nasdaq Listing Center.

Please feel free to contact me at [REDACTED] with any questions on this withdrawal.

Sincerely,



Arnold Golub

cc: David Shillman, Division of Trading and Markets
Ted Venuti, Division of Trading and Markets

⁶ 15 U.S.C. 78s(b)(5).