January 31, 2022

Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number SR-NASDAQ-2021-045

Dear Secretary:

My name is Barry McCarthy. In 2018, I led the public listing of Spotify on the NYSE via a direct listing in my capacity as CFO. I was also the CFO of Netflix in 2002 when we took that company public in a traditional IPO on NASDAQ.

From these two experiences, I have some strongly held beliefs about the desired evolution of the direct listing process and the proposed NASDAQ amendments which I strongly support. My comments represent my personal opinions. I do not speak for the companies with whom I have been, or am now, associated.

In 2018, Spotify's direct listing was considered innovative. It was, in several important respects which you're likely familiar with if you're reading this comment letter so I'll spare you the whole laundry list. But the two main goals—utilizing the two-sided stock exchange market, unrestricted by artificial limits on supply, to establish a market-based opening price and greater transparency and equilibrium of information among all market participants—were accomplished. Subsequent direct listings have proven this out and in my view this significant innovation has been accomplished without any harm to the investing public.

But there hasn't been much innovation since. That's been an opportunity lost for new issuers and prospective investors.

The next logical evolution of a direct listing is a direct listing with a primary capital raise. But NASDAQ's initial proposal, and the first amendment of that proposal in my opinion, were dead on arrival, with no hope of life support, because of the price range constraints.

If the traditional IPO process has taught us anything, we learned empirically that the best experts on Wall Street can't accurately guess the opening price of an IPO during the registration process (the pricing range) much less the night before the open (the underwritten offering price).

The proposed pricing and price range limitations gutted one of primary reasons for doing a direct listing in the first place—and that is the market decides the pricing. NASDAQ's second amended proposal enables that to happen with a primary issuance. And unless or until that's part of the issuance process, there won't be a primary issuance as part of a direct listing.

Innovation benefits issuers and investors and I applaud Mr. Gensler's recent statements in favor of using innovation in the capital markets to drive efficiency and the lowering of costs of intermediation to issuers and investors.[1] Failing to pass the NASDAQ's proposal would be a clear missed opportunity to drive that goal.

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[1] In a recent speech, SEC Chair Gary Gensler stated: "Efficiency in capital markets is about lowering costs of intermediation for those who use capital — issuers — and those who own capital — investors. This fits directly into

Sincerely,

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our mission, which is to protect investors, facilitate capital formation, and maintain that which sits between investors and issuers: fair, orderly, and efficient markets" and "I believe that innovation can bring greater access, efficiency, and innovation to our capital markets, as well as economic growth." See Gary Gensler, Prepared Remarks: "Dynamic Regulation for a Dynamic Society" Before the Exchequer Club of Washington, D.C. (Jan. 19, 2022), *available at* https://www.sec.gov/news/speech/gensler-dynamic-regulation-20220119?utm_medium=email&utm_source=govdelivery.