see attached letter delivered to the office of the GC of
the NASDAQ. It speaks for itself. the purpose of this Rule change is
to make it nearly impossible to appeal Hearing Panel decisions. It
leaves in place many other ambiguous and contradictory clauses in the
5800 series rules. It contains no provisions for an appeal to the
Listing Council in the event that the Hearings Administrators declare
a Hearing Panel application deemed to have been withdrawn and/or when
there is a dispute between the NASDAQ and the Issuer as to whether or
not the application for a Hearing Panel has been withdrawn.
For the sake of clarification, the comment is my own, and not on
behalf of any specific issuer. The attached letter is a supporting
document to the my personal comments. Thank you.

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August 12, 2024

Submitted via Electronic Mail (Arnold.Golub@nasdaq.com)

Mr. Arnold Golub
Vice President, Deputy General Counsel
Office of the General Counsel
The Nasdaq Stock Market LLC

Re: Minim, Inc. (NCM: MINM)
Nasdaq Listing Qualifications Hearings; Docket NQ 6933C-24
Your email response dated August 9, 2024
Re: Memo from Issuer Dated August 7, 2024
Re: July 22, 2024 Hearing Abandonment Letter

Mr. Golub:

1

This letter constitutes the response of Minim, Inc. ("Minim," or the "Company") to your above referenced email in which you categorically rejected the Company's request that the Office of General Counsel use the discretion granted it by Nasdaq Listing Rule 5840(e)(3) to adjust the time provide by the rules for the filing of written submissions and the scheduling of the hearing, in order to facilitate the Company's presentation of a compliance plan to a Hearings Panel with regard to its non-compliance with the minimum stockholders' equity required by Nasdaq Listing Rule 5550(b)(1) (the "Equity Rule" or the "Rule"), notwithstanding the determination made in the July 22, 2024 Hearing Abandonment Letter from Alejandro Aguayo, and the subsequent suspension of trading pending the final delisting determination.

The Company **did not** abandon its request for a Hearing and the Company should be allowed to either (i) present its case at a Hearing, or alternatively (ii) be allowed to appeal before the Listing Council, the decision to consider the request for a Hearing to have been abandoned, and be granted leave to regain and thereafter sustain compliance with the $2.5 million stockholders' equity requirement. The Company is also prepared to accept an immediate capital infusion to immediately regain compliance with the Equity Rule to be able to continue with finalizing its contracted merger plans, provided that you allow the Company to present at a Hearing as originally requested.

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Background

In January 2024, Ms. Ellen Ignacio, a Listing Analyst at Nasdaq Listing Qualifications had a telephone conversation with Mr. David Feller, a representative of the Company, in which she explained that companies listed on the NCM are required to maintain a minimum of $2,500,000 in stockholders' equity for continued listing, and that since the Company's Form 10-Q for the period ended September 30, 2023, reported stockholders' equity of $135,637, the Company no longer complied with the Equity Rule.

Ms. Ignacio followed up this call with a formal non-compliance letter dated January 11, 2024, stating that, as of such date, the Company did not meet the alternatives of the market value of listed securities or the net income from continuing operations, and the Company no longer complies with the Rule, and has 45 calendar days to submit a plan to regain compliance, which if accepted, the NASDAQ can grant an extension of up to 180 calendar days from the date of the letter to evidence compliance.

On February 23, March 12 and 13, 2024, the Company submitted materials and a plan to regain compliance. During this period, especially during February 2024, Mr. David Natan, CPA, the Chairman of the Company's Audit Committee. continually discussed the status of the Company's submissions with Ms. Ignacio. Based on its review and the materials submitted, the Staff granted the Company's request for an extension until June 23, 2024 to comply with the Rule.

On March 12, 2024, the Company, and its wholly owned subsidiary, MME Sub 1 LLC, a Florida limited liability company ("Merger Sub"), entered into an Agreement and Plan of Merger ("Merger Agreement") with e2Companies LLC, a Florida limited liability company ("e2Companies"). Pursuant to the Merger Agreement, Merger Sub was to merge with and into e2Companies, with e2Companies remaining as the surviving entity (the "Merger"). Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger (the "Effective Time"), holders of the outstanding common units of e2Companies were to receive such number of shares of common stock, par value $0.01 per share, of the Company ("Company Shares") representing 97% of the issued and outstanding Company Shares (on a fully-diluted basis). A valuation report prepared by a qualified valuation specialist, True Financial POV, (https://truefinancialpov.com), **valued e2companies at approximately $500 million**.

After a great deal of time and effort expended by both parties, as of May 1, 2024, the draft Form S-4 and Information Statement (in lieu of Proxy) related to the merger agreement as well as

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the HSR application, were both substantially completed and ready for submission. The Company had previously submitted its own HSR application for this transaction. Additionally, the Company was on track to achieve the merger by its expected completion date of no later than June 23, 2024, as allowed by the Nasdaq to achieve compliance with the Rule.

However, on May 3, 2024, the Company dismissed BF Borgers CPA PC ("BF Borgers") as its independent registered public accounting firm and engaged Beckles & Co. ("Beckles") to serve as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2024 and the upcoming interim periods. This change was mandated because on May 3, 2024 the Securities and Exchange Commission (the "Commission") announced publicly that BF Borgers was sanctioned by the Commission, and as a result BF Borgers is not currently permitted to appear or practice before the Commission.

BF Borgers was also the independent registered public accounting firm for e2Companies. Therefore, e2Companies also had to engage a new independent public accountant to re-audit financial statements (previously audited by BF Borgers) required to be included in the draft Form S-4 and Information Statement (in lieu of Proxy). The conduct of BF Borgers and the magnitude of subsequent sanctions by the Commission were and still are unprecedented for any accounting firm in US history and should be considered a "force majeure". Nevertheless, the Commission would not allow the delivery of an Information Statement in connection with the majority consent of the shareholders of both parties to the merger based on the previously filed annual reports of each of the respective parties to the merger. As such, the actions of BF Borgers, and the position of the Commission with respect to information requirements, made it impossible for the Company and e2Companies to complete and file a preliminary Registration Statement and Proxy Statement of Form S-4 in connection with the Merger within the prescribed time period set forth in the Merger Agreement, because of the time it would have taken to re-audit the relevant periods previously audited by BF Borgers.

During this period of early May 2024, Mr. Natan continually sought to contact Ms. Ignacio to obtain information and to have a phone call regarding the BF Borgers suspension and its impact on Minim, especially as with respect to the scheduling around plan to regain compliance with the Rule.

Considering the above noted events, on June 17, 2024, the Company entered into a First Amendment to the Agreement and Plan of Merger ("Amendment") with e2Companies. Pursuant to the Amendment, e2Companies and the Company mutually agreed to terminate the "no-shop" provisions in the Merger Agreement. This has allowed the Company to seek alternate business combination candidates while the BF Borgers audited financial statements could be re-audited for

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a registration statement on Form S-4. Since June 17, 2024, the Company has been actively seeking alternate business combinations, while e2Companies continues to complete its new audit.

On June 25, 2024, Mr. Natan finally was able to have a call with Ms. Igancio, during which she told him that there was "nothing further that she could do, and that Minim should be expecting a notice from the Listing Department".

Thus, following the above noted period of non-compliance with the Equity Rule, on June 26, 2024, Mr. Stanley Higgins sent a letter to Messrs. David Feller (finance) and David Natan (audit committee chairman) at the Company, stating that the Nasdaq Listing Qualifications Staff determined that the Company did not meet the terms of the extension to comply with the Equity Rule, and that, as a result, unless the Company requested an appeal of this determination by July 3rd, trading of the Company's common stock will be suspended at the opening of business on July 8th and a Form 25-NSE would be filed with the Securities and Exchange Commission, which would remove the Company's securities from listing and registration on Nasdaq. Importantly, the letter from Mr. Higgins stated that both the payment of the $20,000 hearing fee and the hearing request had to be received by Nasdaq by July 3rd.

On June 29th, Mr. Matthew McMurdo, Esq., acting in his capacity as a member of the Company's Board of Directors submitted a hearing request. In such hearing request, Mr. McMurdo listed mattmcmurdo@minim.com, a newly created Company email account, as his email address. Following submission, Nasdaq sent an automatically generated email confirming receipt of the hearing request. The Company remitted the $20,000 hearing fee on June 27th but did not submit proof of such payment to the Nasdaq Listing Center until July 2nd.

On July 1st, prior to the Company's July 2nd submission on the Nasdaq Listing Center of the wire confirmation for the $20,000 hearing fee ("Fee Payment Confirmation Submission"), Mr. Aravind (Andy) Menon, as Hearings Advisor, sent a Hearing Instructions Letter **solely** via email to the above noted email address of Mr. McMurdo, and without sending additional copies to any of the previous correspondence counterparts, namely Messrs Feller and Natan.

This Hearing Instructions Letter contained a summary of certain critical dates as related to this matter, namely August 1st at 11:00 a.m. (E.T.) as the date of the Hearing; 5:30 p.m. (E.T.) on July 30th as the Deadline for Written Update submissions; and, 12 noon (E.T.) on July 12th as the Date/Time of the Deadline for the Required Written Submission and Participant Information. An attached supplement to your letter indicated that "**Failure by the Company to timely provide the Written Submission will constitute an abandonment by the Company of its appeal.** As a

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result, if the Written Submission is not timely provided, the Company's securities will be suspended from trading and its securities thereafter will be delisted from the Exchange" (emphasis in the original).

Solely due to a single missed email, and the subsequent "sandwiching" of emails described below, Mr. McMurdo did not note receipt of the email with the Hearing Instructions Letter sent by you until after the Hearings Abandonment Letter was sent on July 22nd.

Following Mr. McMurdo's July 2nd Fee Payment Confirmation Submission, Nasdaq sent an automatically generated email confirming receipt of the Fee Payment Confirmation Submission. This automatically generated email effectively "sandwiched" your July 1st vitally important Hearing Instructions email between Nasdaq's June 29th automatically generated email confirmation and Nasdaq's July 2nd automatically generated email confirmation. Thereafter, upon each of Mr. McMurdo's many reviews of the minim.com email address, Nasdaq's automatically generated July 2nd email confirming receipt of the Fee Payment Confirmation Submission appeared to Mr. McMurdo as the last email from Nasdaq.

On July 2, the Company issued a press release and included it on a Form 8-K (https://www.sec.gov/ix?doc=/Archives/edgar/data/1467761/000182912624004567/miniminc_8k.htm) announcing, *inter alia*, that on June 28, 2024, it appealed to the Hearings Panel the Staff Determination from the Listing Qualifications Department of Nasdaq to delist the Company's securities from the NCM because of the Equity Rule deficiency. Which simply begs the question – why would the Company be deemed to have abandoned its right to hearing without telling the Nasdaq, nor the public, when in light of the public announcement to the entire market that the Company intended to pursue an appeal, if the Company actually intended to abandon the appeal it would have a responsibility to file another 8-K with the Commission disclosing such to the public?

On July 22nd, Mr. McMurdo received the above-referenced Hearing Abandonment Letter, the subject of this memo. This was the first time anyone at the Company became aware of the Hearing Instructions Letter sent by you on July 1st via email.

At no time between July 1, 2024 and July 22, 2024 did Mr. Menon, Ms. Ignacio, or anyone else at the Staff or at the Office of the General Counsel contact Mr. McMurdo, Mr. Natan, Mr. Lazar, Mr. Feller, nor anyone else at the Company, nor any of its advisors in order to confirm that the Hearing Instructions Letter sent by Mr. Menon on July 2, 2024

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<u>was duly received by the Company.</u>

On July 23, 2024, Mr. McMurdo notified NASDAQ via email to request an appeal of the July 22, 2024, Nasdaq Hearing Abandoned Letter, as he had then just become aware of this letter, as well as of the Hearing Instructions Letter dated July 1, 2024. In this email he indicated clearly that while the Hearing Instructions appear to have been sent to his new Minim email address on July 1, 2024, it was a new email address for him, and he had trouble accessing it while traveling. He indicated that this was not his primary email address, and that he failed to notice it until receiving word of an OTC quotation from FINRA. He also noted that the Company would be submitting the $15,000 appeal fee first thing tomorrow morning, and that at such point he will provide proof of payment, and the Company will provide a Written Submission as per the instructions in the July 1, 2024 letter. He also requested that the Office of the General Counsel delay any Form 25 filing until such time.

On July 23rd, Mr. McMurdo submitted a formal written request for appeal of the Hearing Abandonment determination, which also included the Company's Written Submission for the Hearing Panel. The Company remitted an additional $15,000 for this appeal to the Listing Council the following day.

Nevertheless, on July 24, 2024 NASDAQ suspended the trading in the Company's shares.

The Panel did not invite the Company to a Hearing on August 1, 2024. It did not even consider the fact that even in the absence of a timely Written Submission, as suggested by the July 22 Hearing Abandonment letter, the submission by the Company on July 23, 2024 was made <u>one week prior to</u> the Tuesday, July 30, 2024 deadline for Written Update submissions which was 2 days prior to the scheduled Hearing.

In fact, from July 23, 2024, the Company received **<u>no responses</u>** from the NASDAQ until Thursday, August 1, 2024 when it received a terse email message from one Katie Hopkins, which had no indication of her role at the NASDAQ, but which stated that: "*Unfortunately, we are unable to consider an appeal to the Listing Council in this matter. Pursuant to Nasdaq Rule 5820, companies may appeal Panel Decisions to the Listing Council. However, in this matter, there was no Hearing and there is no Panel Decision to appeal. Unfortunately, the information regarding appeal to the Listing Council included in the letter confirming abandonment of the appeal appears to have been included in error. We will issue a refund for the appeal fee.*", thus informing the Company that this matter was not appealable to the Listing Council.

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On Friday August 2, 2024, the undersigned, who also serves as a director at the Company responded to this email from Ms. Hopkins, copying all recipients of the original email which included the staff at the Office of the General Counsel in which he indicated, *inter alia*, that the entire Hearing Abandonment Letter appeared to have been sent in error, and not just the inclusion within the letter of information regarding appeal to the Listing Council, as the Company Minim NEVER abandoned its intention to present its plan at a Hearing, that a clerical error in missing a single email from the NASDAQ should not result in a delisting of an issuer, that common courtesy, if not fundamental principles of law applicable to a self-regulatory agency, would seem to dictate that some type of additional reminder via another contact method (phone; fax; courier; etc.) was warranted before such drastic action is taken without due process and consideration, and that the Company feels that it still should be permitted to present its case at a Hearing in front of the Panel and will do whatever is necessary in order to bring this about.

Following a request from Mr. Lazar to Mr. Menon, on Friday afternoon August 2, 2024, you and Mr. Menon held a Zoom conference with certain Company officers and representatives to further discuss the situation. The Company pointed out to you that in sending out only a single email to the issuer, and without any follow up to confirm receipt, the NASDAQ is not even acting as the Commission or even the OTC Markets would conduct themselves with an Issuer concerning notices of deficiency. Furthermore, it was noted that human error happens and that even the Nasdaq makes mistakes, e.g. in the Hearing Abandonment Letter issued to the Company, Nasdaq stated that the Company could initially appeal the delisting and abandonment of the Hearing. The Company then immediately appealed and even paid the additional fee! Only after the initially scheduled Hearing date did the NASDAQ send a laconic email stating that the inclusion in the Hearing Abandonment Letter of a statement that the Company could appeal to the Listing Council turned out to be a **human error** on Nasdaq's side, and that the letter was incorrect regarding the mention of appeal eligibility.

On the call it was once again made clear the Company never abandoned its Nasdaq listing. **During the period from November 2023 through June 25, 2024, the Company and its representatives had forty-eight documented email correspondences with Ms. Ignacio and numerous conference calls, and yet never once did she mention that upon a request for a hearing, the Company should be on the lookout for an immediate response with a hearing date and certain Company requirements.** Furthermore, these emails and calls led the Company to belief that an open line of communications was standard practice. Never would anyone at the Company think a single email would be the sole contact for the next stage of the process.

The Company noted that it immediately paid the $20,000 fee for the Panel Hearing, and

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when it became aware of the clerical error it immediately submitted its appeal as well as written submissions and paid an additional appeal fee of $15,000. How does that show abandonment? Why would any company voluntarily abandon its request for a hearing after having paid the $20,000 fee only two weeks prior? It would be utterly illogical to do so, and the Company continues to wonder just how common it is for an issuer to pay the Hearing fee and then abandon the Hearing and be delisted - even more so when the issuer then also pays the additional Listing Council appeal fee.

During the call, the Company indicated that the responses delivered to the Company were also not consistent with Nasdaq precedents. You noted that the Company can deliver a memo, as well as provide you with examples of other companies that received discretionary leniency from Nasdaq in permitting them to continue being listed under such circumstances to be able to remedy the deficiency in question.

Suffice it to say at this stage, that the lack of "precedent" derives from the fact that the Nasdaq until very recently did not fully enforce Listing Rule 5815(a)(5) which requires submission of a Written Submission, and at no point in time in the recent past did Nasdaq make any announcement that it will begin to strictly enforce such rule. Many practitioners who have been representing Nasdaq issuers for years and even decades can attest to the fact that it was only recently that the Nasdaq has told issuers that the failure to submit a prehearing submission would result in the delisting of our client, and prior to the recent past, Nasdaq did not enforce this rule and allowed issuers to present before the Hearing Panel even without a Written Submission or simply based on a Written Update submitted shortly prior to the Hearing.

In fact, Listing Rule 5815(a)(5) makes no reference whatsoever to the idea of a "timely" delivered Written Submission; and, the "timely" submissions referred to in Rule 5815 is the timely submission of a request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination, Public Reprimand Letter, or written denial of a listing application, set out under Listing Rule 5815(a)(1). Listing Rule 5815(a)(4) establishes that the Hearings Department will inform the issuer of the deadline for the written submission but has no other guidance as to the "timing" or "timeliness" (or lack thereof) of such submissions, nor the ramifications of not abiding by such deadline.

Furthermore, the above noted statement by Ms. Hopkins delivered by email on August 1 (obviously delivered when it became clear to the Nasdaq that it had not properly cancelled the Hearing scheduled for that day for the Company to present its case before a Hearings Panel), is one with which not only the Company of course vehemently disagrees, but it is one which is

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inconsistent with the presently in effect 5800 Series of Listing Rules, as even indicated by the Nasdaq itself in its own recent submission to the Commission of a rule change request specifically in connection with this rule (https://www.sec.gov/files/rules/sro/nasdaq/2024/34-100544.pdf), which was published by the Commission on July 17, 2024 – only 5 days (!) prior to the delivery of the Hearing Abandonment Letter.

In the July 17, 2024 Notice of Filing of Proposed Rule Change to Amend Rule 5820 to Codify the Standards of Review that Govern Appeals before the Nasdaq Listing and Hearing Review Council and Calls for Review by the Nasdaq Listing and Hearing Review Council, which was published by the Commission, the Nasdaq told the Commission and the public that at present there is an "absence of a clear standard of review in Listing Council matters."

The Nasdaq explicitly stated that: "*Nasdaq's Listing Rules currently do not specify a standard of review that applies when the Listing Council reviews Hearings Panel decisions. In fact, the Listing Rules are ambiguous on this issue. On the one hand, Listing Rule 5820 charges the Listing Council with conducting a "review" and hearing an "appeal" of a Hearings Panel decision – language which suggests that the responsibility of the Listing Council is to determine whether the Hearings Panel's decisions were correct. On the other hand, Listing Rule 5820(d) gives the Listing Council broad discretion to "consider . . . failures previously not considered by the Hearings Panel" and Listing Rule 5820(e) states that the Listing Council may request additional evidence and hold additional hearings. This language suggests that the Listing Council's mandate is broader and that it may render decisions based upon facts and circumstances that were not before the Hearings Panels or that arose subsequent to the Hearings Panels' decisions.*"

Ms. Hopkins' email to the Company from August 1 is simply inconsistent with the Nasdaq's own position as set out in the Notice of Filing of Proposed Rule Change to Amend Rule 5820, and under the Rule 5820 currently in effect; i.e. that the "Listing Council has broad discretion to consider" the subject matter of the Company's appeal to the Listing Council.

From your recent rule amendment filings, it is clear that Nasdaq is proposing a Rules change to ensure that companies don't literally "buy" additional time either at the Hearing Panel level or at the Listing Council appeal level by simply paying the fee, but not actually pursuing the process. However, the Commission has yet to receive comments on these new proposed rules (comments which I, and other practitioners I am aware of, certainly intend to submit – especially considering recent behavior by your office!), let alone publish them as effective. The Nasdaq has effectively been jumping the gun by starting to enforce previously mostly unenforced rules, prior

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to making any announcement to issuers about the change in enforcement policy. In addition, the Nasdaq has been applying the principles in the proposed amended rules to current situations even though the new rules have not yet been declared effective and are still within their public comment period.

As the Company indicated in its Memo from August 8, 2024:

- In the absence of a timely Written Submission, the submission by the Company on July 23rd of the Company's Written Submission for the Hearing Panel was made <u>one week prior to the July 30th deadline</u> for Written Update submissions (which deadline is two days prior to the Hearing).

- Mr. McMurdo's submission of the required Written Submission, the day after receipt of the Hearing Abandonment Letter, shows the Company had no intention of abandoning the Hearing process. This submission also shows that the mistake in not reviewing your July 1st email due to the "sandwiching" of emails described on page 2, constitutes "extenuating circumstances" mentioned in Listing Rule 5840(e)(3).

- Both the letter from Mr. Higgins and Listing Rule 5815(a)(5) make no mention of a failure to submit the Written Submission leading to suspension of trading of the Company's securities. Furthermore, Rule 5815(a)(5) does not actually set out a period for the submission of a Written Submission, nor does it contain provisions whereby the lack of a Written Submission may be deemed an abandonment of the Hearing.

- With respect to the scheduling of hearings, Rule 5815(a)(4) only provides that the hearing will take place, to the extent practicable, within 45 days of the submission of the request, and that the Company will be provided at least ten calendar days notice of the hearing.

- The Company, handling the Nasdaq Hearing process without outside advisors, would have no way of knowing that (a) failure to submit the Written Submission would lead to suspension of trading and/or be deemed an abandonment of the Hearing, or (b) a single email from a Hearings Advisor, following approximately 45 email communications (in addition to phone calls) with the Nasdaq Listing Qualifications Staff from November 2023 to June 2024, would be the sole contact

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by the Hearings Advisor for the next stage of the Hearings process following submission of the Hearing Request and payment of the hearing fee.

- Furthermore, in handling the Nasdaq Hearing process without outside advisors, based on a simple reading of the rules and the request submission date of June 29th, the relevant officials at the Company would have expected that the hearing would be no later than August 13th and that for such latest practicable hearing date the notice of hearing would be provided to the Company no later than August 3rd. Therefore, the lack of communications from the Hearings Advisors between June 29th and July 22nd would have raised no "red flags" at the Company and would not have prompted anyone to contact the Nasdaq.

In your above referenced email, you state: "*While the human error that led to the company's failure to provide the required Written Submission (i.e., missing the Panel's email) is unfortunate, this is not an extenuating circumstance such that an adjustment of the time periods is appropriate. Were we to hold it appropriate to extend a company's timetable on these facts, fairness would necessitate granting extensions in almost any situation*".

Leaving aside the fact that the Nasdaq and your own department avails itself on its own "human error", as indicated by Ms. Hopkin's email recission of your department's earlier notice of the Company's ability to appeal to the Listing Council, which she based on "human error", the Company can only assert that we are dealing with a unique set of circumstances that requires judgement on your part, and not merely "any situation". The set of circumstances described in this letter, as far as we can tell, has never happened before therefore, and therefore you should use your judgement based on sound reasoning before making your decision rather than "taking the easy way out" that if you made an exception for the Company, you would have to do it for everyone.

Furthermore, and as noted in the Company's earlier memo, and again above, both the letter from Mr. Higgins and Listing Rule 5815(a)(5) make no mention of a failure to submit the Written Submission leading to suspension of trading of the Company's securities, and Rule 5815(a)(5) doesn't actually set out a period of time for the submission of a Written Submission, nor does it contain provisions whereby the lack of a Written Submission may be deemed an abandonment of the Hearing. Thus the "timetable" you are being asked to extend is an artificial one, unilaterally created by yourselves without any basis in the Listing Rules or other law or regulation, and was delivered to the Company by an unrecorded, non-tracked method of delivery of notice, without any confirmation and in breach of your own notice and delivery obligations

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which are set out in the Listing Rules, as well as common practice by regulatory authorities.

"Fairness" would not necessitate granting an extension in "any situation". Proper regulatory due process, would necessitate the Nasdaq submitting to the Commission an additional Notice of Filing of Proposed Rule Change to amend Listing Rule 5815(a)(5) making it explicit that the failure to submit a timely Written Submission will be deemed an abandonment of the Hearing and lead to suspension of trading of the issuer's securities, and to set out a period of time for the submission of a Written Submission based on the date of submission of the Hearing Appeal Notice by the issuer. Absent such Notice of Filing of Proposed Rule Change and the adoption of an unambiguous rule with a clear timeline and clear statements of the ramifications for not abiding by the timeline, "fairness" would necessitate granting extensions in situations where it is clear that the failure is due to human error and/or arising out of the lack of clarity in the Listing Rule, not in "any situation".

Based on the foregoing, the Company is of the view that, contrary to what is stated in Ms. Hopkin's email from August 1, 2024, and in your above referenced email from August 9, 2024, the NASDAQ has unfortunately acted arbitrarily and capriciously in making its determinations concerning the continued listing of Minim on the NCM. It has acted inconsistent with prior precedent, insofar as there is little precedent owing, *inter alia*, to the long time non-enforcement of the Written Submission requirement; and, as noted above and in our above referenced memo, has also not acted in accordance with its own Listing Rules, including, *inter alia*, Rule 5840(f) governing the delivery of documents which requires that the NASDAQ in these circumstances utilize all methods of communications; Rules 5814(a)(4) and (5) governing the scheduling of a hearing and the timing for submission of Written Submissions and Written Updates; Rule 5820 as presently in effect which provides the Listing Council broad discretion to review this matter, a review for which the Company has duly applied and paid for; as well as a number of additional Rules, which need not be elaborated on in this letter.

The situation with the Company is certainly one in which it would be expected that the Office of the General Counsel would avail itself of the discretion granted by Rule 5840(e)(3) and determine that notice required to be provided under the rules was not properly given or that other extenuating circumstances exist, and that to the extent that the Hearings Department is of the view that the Company did not comply with the periods of time provided by the rules for the filing of written submissions (a position with which, as previously stated, the Company vehemently disagrees) it nonetheless must adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural

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actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by the rules.

Requests by Company

As such and based on the foregoing, the Company hereby demands that the Office of the General Counsel utilize the discretion granted by Rule 5840(e)(3) and requests the period to submit its Written Submission, Written Updates and to allow the Company to present its case to the Nasdaq Hearings Panel, as soon thereafter as possible.

To the extent that the Office of the General Counsel determines not to utilize the discretion granted by Rule 5840(e)(3) and extend such period of time, the Company hereby demands that it nevertheless be permitted to appeal before the Listing Council the determination of abandonment of the Hearing Request; and, if such appeal is not available and the Listing Council is indeed precluded from granting relief (another position with which the Company vehemently disagrees), the Company be permitted to call the matter for review by the NASDAQ Board of Directors in accordance with Rule 5825. Most importantly, however, the Company asks that NASDAQ permit it to be funded by the Buyer or Mr. Lazar to regain immediately compliance and listing.

The Company also hereby demands that the suspension in the trading of its shares be lifted pending final resolution of the above matters and a final decision to delist having been made following the Company's exhaustion of all administrative relief, including the possibility of an appeal to Commission as provided by the 400 rule series of the Commission's Rules of Practice, and at which time it may then consider its next steps, including also the possibility of seeking judicial relief against the NASDAQ and/or its personnel, be it injunctive, equitable and/or monetary.

For the sake of good order and clarification it goes without saying that nothing contained in or excluded from this letter is to be considered prejudicial to any claims or arguments Minim and/or its officers and/or any of its shareholders might have with respect to the NASDAQ and/or the decisions taken by the staff at the NASDAQ, and all such are explicitly reserved without qualification.

Regarding the above, and again without limitation, I note that your decisions are risking the completion of an already contracted merger agreement between the Company and a target with a fair valuation of over $500 million. The level of damages which your

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decisions will cause (and indeed have already caused) are incalculable, but will certainly rise into the hundreds of millions of dollars. The Company, its stakeholders, the merger target and all other affected persons will certainly seek due and just compensation from the Nasdaq as well as from any individuals who were the proximate causes of these damages.

***

We appreciate your consideration of this matter. Please do not hesitate to contact me should you have any questions or require any additional information.

Sincerely,

Avraham Ben-Tzvi, Adv.

Cc:
John Zecca, Executive Vice President, Global Chief Legal, Risk and Regulatory Officer, Nasdaq via email john.zecca@nasdaq.com
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