

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89799; File No. SR-NASDAQ-2020-027)

September 9, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Apply Additional Initial Listing Criteria for Companies Primarily Operating in Restrictive Markets

I. Introduction

On May 29, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to apply additional listing criteria to companies primarily operating in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies. The proposed rule change was published for comment in the Federal Register on June 12, 2020.<sup>3</sup> On July 21, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 89027 (June 8, 2020), 85 FR 35962 (“Notice”). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nasdaq-2020-027/srnasdaq2020027.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 89358 (July 21, 2020), 85 FR 45275 (July 27, 2020). The Commission designated September 10, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

The Commission is publishing this order to solicit comments on the proposed rule change from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposed Rule Change

The Exchange states that in recent years the lack of transparency from certain emerging markets has raised concerns with respect to listed emerging market companies regarding the accuracy of disclosures, accountability, and access to information, particularly when the companies are based in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies ("Restrictive Market").<sup>7</sup> The Exchange further states that such concerns can be compounded when a company lists on the Exchange through an initial public offering ("IPO") or a business combination with a small offering size or a low public float percentage, as the company may not develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading, which may result in a security that is illiquid.<sup>8</sup> The Exchange states that such securities may trade infrequently, in a more volatile manner, and with a wider bid-ask spread, all of which may lead to trading at a price that may not reflect true market value.<sup>9</sup> In addition, the Exchange states that less liquid securities may be more susceptible to price manipulation and that, in particular, the risk of price manipulation due to insider trading is more acute with respect to a company that principally

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<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, supra note 3, at 35962.

<sup>8</sup> See id. at 35962 and 35965.

<sup>9</sup> See id. at 35962 and 35965-66.

administers its business in a Restrictive Market (“Restrictive Market Company”) because regulatory investigations into price manipulation, insider trading, and compliance concerns may be impeded, and, therefore, investor protections and remedies may be limited.<sup>10</sup> As a result, the Exchange states that it believes that Restrictive Market Companies present unique potential risks to U.S. investors.<sup>11</sup>

The Exchange states that it is now proposing rule changes that it believes will help to ensure that Restrictive Market Companies have sufficient investor base and public float to support fair and orderly trading on the Exchange.<sup>12</sup> Specifically, the Exchange proposes to adopt a definition of “Restrictive Market”<sup>13</sup> and to apply additional initial listing requirements to a Restrictive Market Company listing on the Exchange in connection with an IPO or a business combination.<sup>14</sup> The Exchange also proposes to prohibit a Restrictive Market Company from

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<sup>10</sup> See id. at 35962 and 35966.

<sup>11</sup> See id. at 35965.

<sup>12</sup> See id.

<sup>13</sup> See infra note 17 and accompanying text.

<sup>14</sup> The Exchange states that, currently, it may rely upon its discretionary authority under Nasdaq Listing Rule 5101 to deny initial listing or apply additional or more stringent criteria when it is concerned that a small offering size for an IPO may not reflect the company’s initial valuation or may not ensure sufficient liquidity to support trading in the secondary market. Pursuant to Rule 5101, Nasdaq has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq. See Nasdaq Listing Rule 5101.

listing on the Nasdaq Capital Market in connection with a Direct Listing,<sup>15</sup> but to allow a Restrictive Market Company to list on the Nasdaq Global Select Market or Nasdaq Global Market in connection with a Direct Listing, provided that such company meets all applicable initial listing requirements for such market.

A. Definition of Restrictive Market

The Exchange proposes to adopt a new definition of Restrictive Market in Listing Rule 5005(a)(37).<sup>16</sup> As proposed, a Restrictive Market would mean a jurisdiction that Nasdaq determines to have secrecy 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.<sup>17</sup> In determining whether a Company's business is principally administered in a Restrictive Market, Nasdaq may consider the geographic locations of the Company's: (i) principal business segments, operations or assets; (ii) board and shareholders' meetings; (iii) headquarters or principal executive offices; (iv) senior management and employees; and (v) books and records.<sup>18</sup> The Exchange states that it would consider these factors holistically, recognizing that a company's headquarters may not be the office from which it conducts its principal business activities.<sup>19</sup> The Exchange also states that the proposed definition would

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<sup>15</sup> Nasdaq defines "Direct Listing" as the listing of "companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing." See Nasdaq Listing Rule IM-5315-1.

<sup>16</sup> The Exchange proposes to renumber current paragraphs (a)(37) through (a)(46) of Listing Rule 5005 in connection with the addition of the definition of Restrictive Market. See Notice, supra note 3, at 35963.

<sup>17</sup> See id. at 35962-63; proposed Listing Rule 5005(a)(37).

<sup>18</sup> See id. Nasdaq Listing Rule 5005(a)(6) defines "Company" as the issuer of a security listed or applying to list on Nasdaq.

<sup>19</sup> See Notice, supra note 3, at 35963. The Exchange provides the following example.

capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets.<sup>20</sup>

B. Minimum Offering Size or Public Float Percentage Requirement for an IPO

The Exchange proposes to adopt new Rule 5210(l)(i) to require a Restrictive Market Company listing its Primary Equity Security<sup>21</sup> on Nasdaq in connection with its IPO to offer a minimum amount of securities in a Firm Commitment Offering<sup>22</sup> in the U.S. to Public Holders<sup>23</sup> that (i) will result in gross proceeds to the Company of at least \$25 million or (ii) will represent at least 25% of the Company's post-offering Market Value of Listed Securities,<sup>24</sup> whichever is lower. A Restrictive Market Company listing on the Exchange in connection with an IPO that is

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Company X's headquarters are located in Country Y, while the majority of its senior management, employees, assets, operations and books and records are located in Country Z, which is a Restrictive Market. Nasdaq would consider Company X's business to be principally administered in Country Z. See id.

<sup>20</sup> See id. at 35963, n.5.

<sup>21</sup> Nasdaq Listing Rule 5005(a)(33) defines "Primary Equity Security" as "a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS)."

<sup>22</sup> Nasdaq Listing Rule 5005(a)(17) defines "Firm Commitment Offering" as "an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities."

<sup>23</sup> Nasdaq Listing Rule 5005(a)(36) defines "Public Holders" as "holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding."

<sup>24</sup> "Market Value" means the consolidated closing bid price multiplied by the measure to be valued. See Nasdaq Listing Rule 5000(a)(23). "Listed Securities" means securities listed on Nasdaq or another national securities exchange. See Nasdaq Listing Rule 5000(a)(22).

subject to the proposed rule would also need comply with all other applicable listing requirements.<sup>25</sup>

The Exchange states that it has observed that Restrictive Market Companies listing on Nasdaq in connection with an IPO with an offering size below \$25 million or public float ratio below 25% have a high rate of compliance concerns.<sup>26</sup> The Exchange further states that it believes the proposed listing requirement would help ensure that Restrictive Market Companies seeking to list on the Exchange have sufficient investor base and public float to support fair and orderly trading on the Exchange.<sup>27</sup>

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<sup>25</sup> The Exchange provides the following examples to illustrate the proposed rule. First, Company X, which principally administers its business in a Restrictive Market, is applying to list on Nasdaq Global Market and has an expected post-offering Market Value of Listed Securities of \$75,000,000. Since 25% of \$75,000,000 is \$18,750,000, which is lower than \$25,000,000, pursuant to the requirements of the proposed rule, Company X would be eligible to list based on a Firm Commitment Offering in the U.S. to Public Holders of at least \$18,750,000. Company X would also need to comply with the other applicable listing requirements of the Nasdaq Global Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$8 million. See Nasdaq Listing Rule 5405(b)(1)(C). See also Rule 5005(a)(45) (definition of “Unrestricted Publicly Held Shares”), Rule 5005(a)(46) (definition of “Unrestricted Securities”), and Rule 5005(a)(37) (definition of “Restricted Securities”). As another example, Company Y, which also principally administers its business in a Restrictive Market, is applying to list on the Nasdaq Global Select Market and its post-offering Market Value of Listed Securities is expected to be \$200,000,000. Since 25% of \$200,000,000 is \$50,000,000, which is higher than \$25,000,000, pursuant to the requirements of the proposed rule, Company Y would be eligible to list based on a Firm Commitment Offering in the U.S. to Public Holders that will result in gross proceeds of at least \$25,000,000. Company Y would also need to comply with the other applicable listing requirements of the Nasdaq Global Select Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$45 million. See Nasdaq Listing Rule 5315(f)(2)(C).

<sup>26</sup> See Notice, supra note 3, at 35963.

<sup>27</sup> See id. at 35963-64.

C. Minimum Market Value of Unrestricted Publicly Held Shares Requirement for a Business Combination

The Exchange proposes to adopt new Rule 5210(l)(ii) to require a Company that is conducting a business combination, as described in Nasdaq Listing Rule 5110(a)<sup>28</sup> or IM-5101-2,<sup>29</sup> with a Restrictive Market Company to have a minimum Market Value of Unrestricted Publicly Held Shares<sup>30</sup> following the business combination equal to the lesser of (i) \$25 million or (ii) 25% of post-business combination entity's Market Value of Listed Securities. A Company subject to the proposed rule would also need comply with all other applicable listing requirements.<sup>31</sup>

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<sup>28</sup> Nasdaq Listing Rule 5110(a) (Business Combinations with non-Nasdaq Entities Resulting in a Change of Control) sets forth requirements applicable to a Company that engages in a business combination with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing.

<sup>29</sup> Nasdaq Listing Rule IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions) sets forth requirements applicable to a Company whose business plan is to complete an IPO and engage in a merger or acquisition with one or more unidentified companies within a specific period of time.

<sup>30</sup> Nasdaq Listing Rule 5005(a)(45) defines "Unrestricted Publicly Held Shares" as Publicly Held Shares that are Unrestricted Securities. "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. See Nasdaq Listing Rule 5005(a)(35). "Unrestricted Securities" means securities that are not subject to resale restrictions for any reason, including, but not limited to, securities: (i) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (ii) acquired through an employee stock benefit plan or as compensation for professional services; (iii) acquired in reliance on Regulation S, which cannot be resold within the United States; (iv) subject to a lockup agreement or a similar contractual restriction; or (v) considered "restricted securities" under Rule 144. See Nasdaq Listing Rules 5005(a)(46) and (37).

<sup>31</sup> The Exchange provides the following examples to illustrate the proposed rule. First, Company A is currently listed on the Nasdaq Capital Market and plans to acquire a company that principally administers its business in a Restrictive Market, in accordance with IM-5101-2. Following the business combination, Company A intends to transfer to the Nasdaq Global Select Market. Company A expects the post-business combination

The Exchange states that it believes that a business combination, as described in Nasdaq Rule 5110(a) or IM-5101-2, involving a Restrictive Market Company presents similar risks to U.S. investors as an IPO of a Restrictive Market Company and that the proposed listing requirement will help to provide an additional assurance that there are sufficient freely tradable shares and investor interest to support fair and orderly trading on the Exchange when the target company is a Restrictive Market Company.<sup>32</sup>

D. Direct Listings of Restrictive Market Companies

The Exchange proposes to adopt new Rule 5210(l)(iii) to provide that a Restrictive Market Company that is listing its Primary Equity Security on Nasdaq in connection with a Direct Listing, as defined in Listing Rule IM-5315-1,<sup>33</sup> would be permitted to list on: (i) the Nasdaq

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entity to have a Market Value of Listed Securities of \$250,000,000. Since 25% of \$250,000,000 is \$62,500,000, which is higher than \$25,000,000, pursuant to the requirements of the proposed rule, to qualify for listing the post-business combination entity must have a minimum Market Value of Unrestricted Publicly Held Shares of at least \$25,000,000. The company would also need to comply with the other applicable listing requirements of the Nasdaq Global Select Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$45,000,000. See Nasdaq Listing Rule 5315(f)(2)(C). As another example, Company B is currently listed on Nasdaq Capital Market and plans to combine with a non-Nasdaq entity that principally administers its business in a Restrictive Market, resulting in a change of control as defined in Rule 5110(a), whereby the non-Nasdaq entity will become the Nasdaq-listed company. Following the change of control, Company B expects the listed company to have a Market Value of Listed Securities of \$50,000,000. Since 25% of \$50,000,000 is \$12,500,000, which is lower than \$25,000,000, pursuant to the requirements of the proposed rule, the listed company must have a minimum Market Value of Unrestricted Publicly Held Shares following the change of control of at least \$12,500,000. The post-business combination company would also need to comply with all other applicable listing requirements of the Nasdaq Capital Market, including a Market Value of Unrestricted Publicly Held Shares of at least \$5 million. See Nasdaq Listing Rule 5505(b)(3)(C).

<sup>32</sup> See Notice, supra note 3, at 35964.

<sup>33</sup> See supra note 15.



Global Select Market, provided that the Company meets all applicable listing requirements for the Nasdaq Global Select Market and the additional requirements of Listing Rule IM-5315-1, or (ii) the Nasdaq Global Market, provided that the Company meets all applicable listing requirements for the Nasdaq Global Market and the additional requirements of Listing Rule IM-5405-1. On the other hand, proposed Rule 5210(l)(iii) would provide that a Restrictive Market Company would not be permitted to list on the Nasdaq Capital Market in connection with a Direct Listing, notwithstanding the fact that the Company may meet the applicable initial listing requirements for the Nasdaq Capital Market and the additional requirements in Listing Rule IM-5505-1.

The Exchange's rules currently set forth initial listing requirements for companies listing on the Nasdaq Global Select Market, Nasdaq Global Market, and Nasdaq Capital Market,<sup>34</sup> and additional listing requirements for Companies conducting a Direct Listing on such markets.<sup>35</sup> The Exchange states that it believes it is appropriate to permit Restrictive Market Companies to list through a Direct Listing on the Nasdaq Global Select Market or Nasdaq Global Market because such companies would be subject to the additional listing requirements set forth in IM-5315-1 or IM-5405-1, respectively.<sup>36</sup> On the other hand, the Exchange states that it does not believe that the additional requirements for Direct Listing on the Nasdaq Capital Market, set forth in IM-5501-1, are sufficient to overcome concerns regarding sufficient liquidity and investor interest to support fair and orderly trading on the Exchange with respect to Restrictive Market Companies.<sup>37</sup>

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<sup>34</sup> See Nasdaq Listing Rules 5315, 5405, and 5505.

<sup>35</sup> See Nasdaq Listing Rules IM-5315-1, IM-5405-1, and IM-5501-1.

<sup>36</sup> See Notice, supra note 3, at 35965.

<sup>37</sup> See id. As an example, the Exchange states that the Nasdaq Global Select Market and Nasdaq Global Market require a company to have at least 1,250,000 and 1.1 million Unrestricted Publicly Held Shares, respectively, and a Market Value of Unrestricted Publicly Held Shares of at least \$45 million and \$8 million, respectively. See Nasdaq

### III. Summary of the Comment Letters Received

One commenter stated that it fully supports the proposed rule change inasmuch as it seems reasonably tailored to help ensure full, complete, and transparent financial and other disclosure from Restrictive Market Companies.<sup>38</sup> Another commenter expressed its support for the proposed rule changes to require Restrictive Market Companies to have a minimum offering size or public float percentage for an IPO and minimum market value of publicly held shares for a business combination and agreed that these requirements should help mitigate the risks that Restrictive Market Companies present to U.S. investors.<sup>39</sup> However, this commenter did not support the proposal to allow Restrictive Market Companies to list on Nasdaq Global Select Market or Nasdaq Global Market in connection with a Direct Listing and stated its general opposition to any proposal that would expand the use of direct listings.<sup>40</sup> On the other hand, this commenter agreed with the Exchange that precluding Restrictive Market Companies from listing

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Listing Rules 5315(e)(2), 5315(f)(2)(c), 5405(a)(2), and 5405(b)(1)(c). In contrast, the Nasdaq Capital Market requires a company to have at least 1 million Unrestricted Publicly Held Shares and a Market Value of Unrestricted Publicly Held Shares of at least \$5 million. See Nasdaq Listing Rules 5505(a)(2) and 5505(b)(3)(C). See also Notice, supra note 3, at 35965, n.22.

<sup>38</sup> See Letter from Annemarie Tierney, Founder and Principal, Liquid Advisors, Inc. (July 2, 2020), at 5.

<sup>39</sup> See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (June 25, 2020) (“CII Letter”), at 4-5.

<sup>40</sup> See id. at 5-6. This commenter cited its letter to the Commission submitted in connection with File Number SR-NYSE-2019-67, which stated that “the SEC should take real and substantial steps, on an urgent basis, to explore establishing a system of traceable shares before approving a direct listing regime.” See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (January 16, 2020), at 2-3, available at <https://www.sec.gov/comments/sr-nyse-2019-67/srnyse201967-6660338-203855.pdf>.

through a Direct Listing on the Nasdaq Capital Market will help to promote fair and orderly trading on the secondary market.<sup>41</sup>

IV. Proceedings to Determine Whether to Approve or Disapprove SR-NASDAQ-2020-027 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>42</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>43</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a

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<sup>41</sup> See CII Letter, supra note 39, at 6.

<sup>42</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>43</sup> Id.

national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>44</sup>

As discussed above, the Exchange proposes to apply new initial listing requirements to Restrictive Market Companies in connection with an IPO to require such companies to offer a minimum amount of securities in a Firm Commitment Offering in the U.S. to Public Holders that (i) will result in gross proceeds to the company of at least \$25 million or (ii) will represent at least 25% of the company's post-offering Market Value of Listed Securities, whichever is lower.<sup>45</sup> In addition, the Exchange proposes to apply new listing requirements to companies conducting a business combination with a Restrictive Market Company to require such companies to have a minimum Market Value of Unrestricted Publicly Held Shares following the business combination equal to the lesser of (i) \$25 million or (ii) 25% of post-business combination entity's Market Value of Listed Securities.<sup>46</sup> In support of the proposed requirements, the Exchange states that it has observed that Restrictive Market Companies listing on Nasdaq in connection with an IPO with an offering size below \$25 million or public float ratio below 25% have a high rate of compliance concerns and that business combinations involving Restrictive Market Companies present similar risks to U.S. investors.<sup>47</sup> However, the Exchange does not provide any other data or analysis to support the level at which the proposed thresholds are set. The Commission believes there are questions as to whether the proposed

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<sup>44</sup> 15 U.S.C. 78f(b)(5).

<sup>45</sup> See supra Section II.B.

<sup>46</sup> See supra Section II.C.

<sup>47</sup> See supra notes 26 and 32 and accompanying text.

thresholds are set at levels which are not designed to permit unfair discrimination amongst Restrictive Market Company issuers.

In addition, the Exchange's proposal sets forth five factors that the Exchange "may" consider when determining whether a Company's business is principally administered in a Restrictive Market and the Exchange states that it will consider these factors "holistically."<sup>48</sup> The proposal does not provide how, or if, the Exchange would apply these five factors when making a determination of whether a Company's business is principally administered in a Restrictive Market but, instead, provides the Exchange with broad discretion in determining so. The Commission believes there are questions as to whether such broad discretion when making a determination of whether a Company's business is principally administered in a Restrictive Market is not designed to permit unfair discrimination. Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>49</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>50</sup> and any failure of an SRO to provide this information may result in the Commission

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<sup>48</sup> See supra notes 18-19 and accompanying text.

<sup>49</sup> 17 CFR 201.700(b)(3).

<sup>50</sup> See id.

not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>51</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)<sup>52</sup> of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>53</sup> any request for an opportunity to make an oral presentation.<sup>54</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's

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<sup>51</sup> See id.

<sup>52</sup> 15 U.S.C. 78f(b)(5).

<sup>53</sup> 17 CFR 240.19b-4.

<sup>54</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>55</sup> in addition to any other comments they may wish to submit about the proposed rule change.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-027 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-2020-027. 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 website (<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.

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<sup>55</sup> See Notice, supra note 3.

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-027 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>56</sup> 17 CFR 200.30-3(a)(57).