

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101271; File No. SR-NASDAQ-2024-029)

October 7, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Modify the Application of Bid Price Compliance Periods

I. Introduction

On June 21, 2024, The Nasdaq Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the application of the bid price compliance periods where a listed company takes an action to achieve compliance with the bid price requirement and that action causes non-compliance with another listing requirement. The proposed rule change was published for comment in the Federal Register on July 9, 2024.<sup>3</sup> On August 21, 2024, pursuant to Section 19(b)(2) of the Exchange 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> On October 3, 2024, the

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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. 100461 (July 3, 2024), 89 FR 56457 (“Notice”). Comments received on the Notice are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2024-029/srnasdaq2024029.htm>.

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

<sup>5</sup> See Securities Exchange Act Release No. 100791, 89 FR 68671 (Aug. 27, 2024) (designating October 7, 2024 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

Exchange filed Amendment No. 2<sup>6</sup> to the proposed rule change.<sup>7</sup> This order approves the proposed rule change, as modified by Amendment No. 2.

## II. Description of the Proposed Rule Change, As Modified by Amendment No. 2

The Exchange is proposing to amend Rule 5810(c)(3)(A) to modify the application of the bid price compliance periods where a listed company takes an action to achieve compliance with the \$1.00 minimum bid price continued listing requirement<sup>8</sup> (the “Bid Price Requirement”) and that action causes non-compliance with another listing requirement.<sup>9</sup>

The Exchange states that listed companies may effect a reverse stock split<sup>10</sup> to regain compliance with the Bid Price Requirement. According to the Exchange, the reduction in the number of shares caused by the reverse stock split results in a proportional reduction in the

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<sup>6</sup> Amendment No. 1 to the proposed rule change was submitted on September 27, 2024, and it was subsequently withdrawn on October 3, 2024.

<sup>7</sup> In Amendment No. 2, the Exchange (1) clarified the application of Rule 5810(c)(3)(H) in extending the ten consecutive day compliance period for regaining compliance with the minimum bid price requirement, (2) clarified that the failure to satisfy the requirements during the compliance period(s) applicable to the initial bid price deficiency will result in the issuance of a Staff Delisting Determination Letter, and (3) made other technical and non-substantive changes for readability. Because Amendment No. 2 does not materially alter the substance of the proposed rule change and makes clarifying modifications, Amendment No. 2 is not subject to notice and comment. The full text of Amendment No. 2 can be found on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2024-029/srnasdaq2024029-526675-1511382.pdf>.

<sup>8</sup> The Exchange states that each tier of Nasdaq listed securities includes a requirement that specified securities maintain a \$1.00 minimum bid price. *See* Notice, *supra* note 3, at 56457, n.3 (citing to Rule 5550(a)(2) (Primary Equity Security listed on the Nasdaq Capital Market) and Rule 5450(a)(1) (Primary Equity Security listed on the Nasdaq Global or Global Select Markets).

<sup>9</sup> Rule 5810(c)(3)(A) states: “A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H).” Rules 5810(c)(3)(A)(i) and (ii) also provide an additional 180 day compliance period for companies listed on Capital Markets, or Global Select or Global Market that transfer to Capital Markets, that are not in compliance with the bid price requirement prior to expiration of the first 180 day compliance period if certain requirements are met.

<sup>10</sup> The Exchange states that reverse stock splits have the effect of increasing a company’s stock price by consolidating the outstanding shares. *See* Notice, *supra* note 3, at 56457.

number of Publicly Held Shares<sup>11</sup> and depending on how fractional shares are treated, may also reduce the number of holders of the company's securities.<sup>12</sup> As a result, the Exchange states that a reverse stock split used to regain compliance with the Bid Price Requirement may result in the company's non-compliance with other Exchange listing rules that require a certain number of holders and Publicly Held Shares.<sup>13</sup> Upon a company's failure to satisfy the applicable holder or number of Publicly Held Shares requirement, Rule 5810(c)(2)(A) generally allows the company a 45-calendar day period to provide a plan to regain compliance to Nasdaq staff and Rule 5810(c)(2)(B) generally provides that Nasdaq staff may grant an extension of up to 180 calendar days for the company to achieve compliance.<sup>14</sup>

Currently, a company that regains compliance with the Bid Price Requirement by taking a corporate action (e.g., a reverse stock split) that results in the company's security falling below the numeric threshold for another Exchange listing requirement could be granted additional time of up to 180 calendar days from initial notification by Nasdaq staff to regain compliance with the newly created deficiency.<sup>15</sup> Nasdaq believes that it is not appropriate for a company to receive

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<sup>11</sup> Rule 5005(a)(35) defines "Publicly Held Shares" as: "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 also e.g., Rules 5550(a)(3) and (4) (requiring 300 public holders and at least 500,000 Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Capital Market) and Rules 5450(a)(2), 5450(b)(1)(B), 5450(b)(2)(B) and 5450(b)(3)(B) (requiring 400 total holders and, depending on other characteristics of the company, either 750,000 or 1.1 million Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Global Market).

<sup>12</sup> See Notice, supra note 3, at 56457.

<sup>13</sup> See id.

<sup>14</sup> See id. at 56457, n.5.

<sup>15</sup> Nasdaq provided the following example of how its current rules work for a Nasdaq Capital Market listed company seeking to regain compliance with a bid price deficiency. Company A with 1,600,000 Publicly Held Shares attempts to regain compliance with the Bid Price Requirement by effecting a reverse stock split at a ratio of 1-for-4, which would initially increase the Company A's stock price above \$1.00. See id. at 56457. Assuming Company A thereafter maintains a closing bid price above \$1.00 for ten consecutive business days, under current Rule 5810(c)(3)(A), Company A will achieve compliance with the Bid Price Requirement at the conclusion of the tenth consecutive business day. See id. However, in this example, at the same time that the reverse stock split increased Company A's stock price, the 1-for-4 reverse stock split

additional time to cure non-compliance with such newly violated listing standard.<sup>16</sup> Accordingly, Nasdaq states that it is proposing this rule change to prevent companies from benefiting from additional time for the subsequent deficiency that was ultimately caused by the company's non-compliance with the Bid Price Requirement.<sup>17</sup>

Under the proposed rule, such company will not be considered to have regained compliance with the Bid Price Requirement if the company takes an action to achieve compliance and that action results in the company's security falling below the numeric threshold for another Exchange listing requirement without regard to any compliance periods otherwise available for that other listing requirement.<sup>18</sup> In such event, the company will continue to be considered non-compliant until both: (i) the other deficiency is cured and (ii) thereafter the company meets the bid price standard for a minimum of ten consecutive business days, unless Nasdaq staff exercises its discretion to extend this ten day period as discussed in Rule 5810(c)(3)(H). If the company does not demonstrate compliance with (i) and (ii) during the

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also reduced the number of Publicly Held Shares from 1,600,000 to 400,000, causing Company A to no longer satisfy the minimum number of Publicly Held Shares required to remain listed on the Nasdaq Capital Market. See id. As a result, under these circumstances, the reverse stock split would allow Company A to regain compliance with the Bid Price Requirement of Rule 5550(a)(2) while at the same time causing non-compliance with the minimum Publicly Held Shares requirement of Rule 5550(a)(4). See id.

<sup>16</sup> See id.

<sup>17</sup> See id.

<sup>18</sup> See proposed Rule 5810(c)(3)(A).

compliance period(s) applicable to the initial bid price deficiency, Nasdaq will issue a Staff Delisting Determination Letter.<sup>19</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act,<sup>21</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful listing standards<sup>22</sup> for an exchange is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float,

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<sup>19</sup> See proposed Rule 5810(c)(3)(A). The Exchange states that Company A described in footnote 15 above “would continue to be considered non-compliant with the Bid Price Requirement until both the new Publicly Held Shares deficiency is cured and thereafter the company maintains a \$1.00 bid price for a minimum of ten (10) consecutive business days.” See Notice, supra note 3, at 56457-58. The Exchange states that all of this must be accomplished during the compliance period applicable to the initial Bid Price Requirement deficiency. See id. at 56458. Accordingly, the proposed rule would not allow Company A to submit a plan to regain compliance with the Publicly Held Shares requirement and would instead require Company A to regain compliance with both rules within the applicable compliance period for the Bid Price Requirement pursuant to Rule 5810(c)(3)(A), unless extended pursuant to Rule 5810(c)(3)(H). See id.

<sup>20</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> The Commission notes that this reference to “listing standards” is referring to both initial and continued listing standards.

investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.<sup>23</sup>

As discussed above, currently, a company that regains compliance with the Bid Price Requirement by taking a corporate action (e.g., a reverse stock split) that results in the company's security falling below the numeric threshold for another Exchange listing requirement could be granted additional time (up to 180 calendar days) to regain compliance with the newly created deficiency.<sup>24</sup> The Exchange believes that this scenario, as described in the examples provided in the Notice,<sup>25</sup> creates confusion for investors about a company's ability to maintain compliance with its listing rules thereby negatively impacting investor confidence in the market.<sup>26</sup> The Exchange believes that its proposal to address these concerns will protect investors and provide additional clarity to Exchange listed companies and market participants by preventing a company from receiving a compliance determination (for its initial bid price

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<sup>23</sup> See, e.g., Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR-NASDAQ-2020-001) (Order Approving a Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price at or Below \$0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 Shares or More to One Over the Prior Two-Year Period); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR-NASDAQ-2019-089) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5815 To Preclude Stay During Hearing Panel Review of Staff Delisting Determinations in Certain Circumstances). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that “[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market” and that “[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue ... so that fair and orderly markets can be maintained.”).

<sup>24</sup> See supra note 15 and accompanying text.

<sup>25</sup> See supra notes 15 and 19.

<sup>26</sup> See Notice, supra note 3, at 56457.

deficiency) and communicating to investors that it has regained compliance until it has cured both the new deficiency caused by its corporate action and thereafter its bid price deficiency during the compliance period applicable to the initial Bid Price Requirement deficiency.<sup>27</sup>

The Exchange's proposal is reasonably designed to enhance its continued listing standards, particularly those involving issuers with securities that trade near or below the Bid Price Requirement that may be motivated to utilize reverse stock splits to inappropriately delay delisting, thereby protecting investors and the public interest. In particular, the proposal reasonably addresses a gap in the Exchange's current continued listing standards that potentially allows an issuer to delay delisting, through corporate action taken to cure a Bid Price Requirement deficiency that then results in a deficiency in another numeric continued listing requirement, and thereby remain listed on the Exchange for an extended period of time despite not maintaining the Exchange standards required for continued listing.<sup>28</sup>

Importantly, the Exchange's proposal also prevents a company from requesting or receiving a compliance determination for its initial Bid Price Requirement deficiency and communicating to investors that it has regained compliance with the Exchange's listing requirements until it has also cured any non-compliance with other numeric listing requirements caused by its actions to cure the initial Bid Price Requirement deficiency.<sup>29</sup> If the company does not meet both these requirements, in that order, during the compliance period applicable to the initial bid price deficiency, the Exchange will issue a Staff Delisting Determination Letter.

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<sup>27</sup> See id. at 56458.

<sup>28</sup> See supra note 19.

<sup>29</sup> Under the proposal, if the reverse split causes a new deficiency, the company will not be deemed compliant with the Bid Price Requirement even if it has a bid price above \$1.00 for ten consecutive days after the reverse split until the new deficiency is first cured, and thereafter the bid price requirement is met for ten consecutive business days or such additional time period pursuant to Rule 5810(c)(3)(H).

Furthermore, while the Commission recognizes that the Exchange delisting process is in part designed to allow companies experiencing temporary financial and/or business issues to regain compliance with continued listing standards,<sup>30</sup> the proposal reasonably balances the intent of the delisting process with the need to prevent companies from taking advantage of the delisting process through multiple extensions to remain listed while failing to comply with the Exchange’s continued listing standards, contrary to the goal of protecting investors and the public interest.

Finally, the Commission notes that the comment letters received on the proposal were generally supportive.<sup>31</sup>

For the reasons discussed above, the Commission finds that this proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act.

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<sup>30</sup> The Exchange has stated, for example, that the bid price compliance periods are “designed to allow adequate time for a company facing temporary business issues, a temporary decrease in the market value of its securities, or temporary market conditions to come back into compliance with a bid price deficiency.” See Securities Exchange Act Release No. 87982 (Jan. 15, 2020), 85 FR 3736, 3737 (Jan. 22, 2020) (SR-NASDAQ-2020-001) (Notice of Filing of Proposed Rule Change to Modify the Delisting Process for Securities with a Bid Price Below \$0.10 and for Securities that Have Had One or More Reverse Stock Splits with a Cumulative Ratio of 250 or More to One over the Prior Two Year Period).

<sup>31</sup> See Letter from Joseph Corcoran, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated July 30, 2024; Thomas H. Merritt, Deputy General Counsel, Virtu Financial, Inc., dated Aug. 5, 2025; Letter from Daniel Zinn, General Counsel, and Flavia Vehbiu, Deputy General Counsel, OTC Markets Group Inc., dated Sept. 17, 2024. See also Joint Letter from Christopher A. Iacovella, President and Chief Executive Officer, American Securities Association, Stephen Hall, Legal Director, Better Markets, Tyler Gellasch, President and CEO, Healthy Markets Association, John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, Joseph Saluzzi, Partner, Themis Trading LLC, dated Aug. 23, 2024, at 2, n.4 (stating that recent Exchange proposals, including SR-NASDAQ-2024-029, to amend listing rules to address concerns regarding “listed penny stocks” “represent steps in the right direction”). The comment letters received also express support for additional proposals to enhance exchange listing standards to further address investor protection concerns, particularly those involving Nasdaq listed companies with low-priced securities. Nasdaq states that it is considering other changes to the delisting process applicable to companies that are non-compliant with the Bid Price Requirement and such changes will be subject to a separate rule filing. See Notice, *supra* note 3, at 56458, n.10. See, e.g., Securities Exchange Act Release No. 100767 (Aug. 19, 2024), 89 FR 68228 (Aug. 23, 2024) (SR-NASDAQ-2024-045) (Notice of Filing of Proposed Rule Change to Modify the Application of the Minimum Bid Price Compliance Periods and the Delisting Appeals Process for Bid Price Non-Compliance in Listing Rules 5810 and 5815 Under Certain Circumstances). In approving this proposal, the Commission is finding the proposal before us is consistent with the Exchange Act.



IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>32</sup> that the proposed rule change (SR-NASDAQ-2024-029), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>32</sup> Id.

<sup>33</sup> 17 CFR 200.30-3(a)(12).