

choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>50</sup> and Rule 19b-4(f)(6)<sup>51</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>52</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, the Exchange requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change from Phlx, after which other options exchanges subsequently adopted substantially similar rules.<sup>53</sup> The Commission

believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because the Exchange's proposal raises no new issues. Further, such waiver will permit the Exchange, without further delay, to begin implementing the new standardized give up process, thus aligning its give up process with that of the other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>54</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2020-001 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-CboeEDGX-2020-001. This file number should be included on the subject line if email 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

change to establish rules governing give ups). See also *supra* note 18 (citing the filings in which other options exchanges adopted substantially similar rules).

<sup>54</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. 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-CboeEDGX-2020-001 and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>55</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87982; File No. SR-NASDAQ-2020-001]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; 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**

January 15, 2020.

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> notice is hereby given that on January 2, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission

<sup>55</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>50</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>51</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>52</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>53</sup> See Securities Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (Phlx-2018-72) (order approving a proposed rule

(“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes 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 shares or more to one over the prior two year period.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

Nasdaq proposes to modify the delisting process for securities with a bid price below \$0.10 for ten consecutive trading days 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 (meaning that an investor would hold one share for every 250 shares or more owned at the start of the period).

Currently, Nasdaq rules require that primary equity securities, preferred stocks and secondary classes of common stock maintain a minimum \$1.00 bid price for continued listing.<sup>3</sup> Under Listing Rule 5810(c)(3)(A), a security is considered deficient with this requirement if its bid price closes below

\$1.00 for a period of 30 consecutive business days. A company with a bid price deficiency has 180 calendar days from notification of the deficiency to regain compliance. A company generally can regain compliance with the bid price requirement by maintaining a \$1.00 closing bid price for a minimum of ten consecutive business days during the compliance period.<sup>4</sup> Under Listing Rule 5810(c)(3)(A)(ii), a company that lists a security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, provided that on the last day of the first compliance period the company meets the market value of publicly held shares requirement for continued listing as well as all other applicable standards for initial listing on the Capital Market and notifies Nasdaq of its intent to cure the bid deficiency.

This process is 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. Nasdaq has observed certain situations where, in Nasdaq’s view, a company may be facing more serious issues and a compliance period of up to 360 days<sup>5</sup> therefore may not be appropriate. Specifically, these situations involve: (i) Securities with very low security prices (below \$0.10); and (ii) securities where the company has completed one or more reverse stock splits over the prior two year period that, when considered cumulatively, result in a ratio of 250 shares or more to one (meaning that an investor would receive one share for every 250 shares or more owned at the start of the period), and then fails to satisfy the bid price requirement.

In these situations, Nasdaq has observed that the challenges facing the company generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the bid price issues can be a leading indicator of other listing compliance concerns. As a result, these

companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies frequently need to raise additional capital to fund their business operations and often do so by engaging in extremely dilutive transactions. Accordingly, in order to enhance investor protection, Nasdaq proposes to modify the listing rules so that these companies are subject to shortened compliance periods, which could lead to earlier delisting, and enhanced review procedures.

With respect to securities with very low prices, Nasdaq proposes to modify the Listing Rules to provide that a company in a bid price compliance period (*i.e.*, the company’s security has already traded below \$1.00 for thirty consecutive days) will immediately receive a Staff Delisting Determination if the security trades below \$0.10 for a period of ten consecutive trading days, ending any otherwise applicable compliance period. Such a company could request review of the Delisting Determination by a Hearings Panel, and the Panel could grant the company additional time to complete a reverse stock split or otherwise regain compliance.<sup>6</sup> Nasdaq believes that placing such companies immediately under the scrutiny of a Hearings Panel will serve to better protect investors.

Nasdaq also proposes to change the Listing Rules to require the issuance of a Staff Delisting Determination if a company falls out of compliance with the \$1.00 minimum bid price (*i.e.*, it has had a closing bid price below \$1.00 for 30 consecutive business days) after completing one or more reverse stock splits resulting in a cumulative ratio 250 shares or more to one over the two year period before such non-compliance.<sup>7</sup> In these cases, Nasdaq believes it is inappropriate for a security to remain listed while relying on very large reverse stock splits to maintain compliance with the \$1.00 minimum bid price.

A company that is not eligible for a compliance period under these proposed rule changes would receive a Staff Delisting Determination, which it

<sup>6</sup> Under Listing Rule 5815(c)(1)(A), a Hearings Panel can grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination.

<sup>7</sup> For example, a company could effect a reverse stock split in a ratio of 25 shares to one followed within the two-year period by a second reverse stock split in a ratio of 10 shares to one, resulting in a cumulative ratio of 250 shares to one. Alternatively, a company could effect three reverse stock splits in the two year period, with ratios of 10 shares to one, five shares to one, and five shares to one, respectively, resulting in a cumulative ratio of 250 shares to one.

<sup>3</sup> See Listing Rules 5450(a)(1), 5460(a)(3), 5550(a)(2) and 5555(a)(1).

<sup>4</sup> Under Listing Rule 5810(c)(3)(G), Nasdaq Staff could extend this ten-day period to a maximum of 20 days.

<sup>5</sup> As noted above, under Listing Rule 5810(c)(3)(A) all companies are eligible for an initial compliance period of 180 calendar days from the notification of non-compliance with the bid price requirement and a company that lists its security on the Nasdaq Capital Market, or transfers its listing to that market, may be eligible for a second 180 calendar day period to regain compliance, for a total compliance period of up to 360 calendar days.

could appeal to a Hearings Panel, and the Panel could grant the company an exception to remain listed if it believes the company will be able to achieve and maintain compliance with the bid price requirement. However, Nasdaq also proposes to modify the Listing Rules so that following such a Panel exception the company would be subject to the procedures applicable to a company with recurring deficiencies as described in Rule 5815(d)(4)(B). As a result, if within one year of the date the company regains compliance the company again fails to maintain compliance with the price requirement, the company would not be eligible for a compliance period and instead the Listing Qualifications Department will issue a Staff Delisting Determination, which can be appealed to the Hearings Panel.

Nasdaq believes that it would be unfair to modify the rules impacting companies with securities that are already in a compliance period, and therefore proposes to implement these new rules for companies that first receive notification of non-compliance with the bid price requirement after the date of the Commission's approval of these changes. A company that has already received notification of non-compliance would be permitted to regain compliance under the existing rule, in the manner that the notification of non-compliance would have described.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) and 6(b)(7) of the Act,<sup>10</sup> in particular. The proposed rule change furthers the objectives of Section 6(b)(5) in that it is designed 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, by enhancing Nasdaq's listing requirements and limiting the time that a security can remain listed with a price below \$0.10 or following one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year

period. In that regard, Nasdaq has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to regain compliance within the prescribed compliance period. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons during the compliance periods. Finally, these companies often have a need to raise additional capital to fund their business operations at extremely low prices in dilutive transactions. While listed, these securities are exempt from the "Penny Stock Rules,"<sup>11</sup> which provide enhanced investor protections to prevent fraud and safeguard against potential market manipulation. In particular, the Penny Stock Rules generally require that broker-dealers provide a disclosure document to their customers describing the risk of investing in Penny Stocks and approve customer accounts for transactions in Penny Stocks. Nasdaq believes that an exemption from these Penny Stock requirements may not be appropriate for abnormally low priced stocks and stocks that are trading below \$1 after completing one or more reverse stock splits with a cumulative ratio of 250 to one or more over the prior two year period because these securities may have similar characteristics to Penny Stocks. Nasdaq therefore believes it is appropriate to subject these securities to heightened scrutiny given the availability of the exemption to securities listed on Nasdaq.

The proposed rule change furthers the objectives of Section 6(b)(7) of the Act in that it continues to provide a fair procedure for companies subject to these enhanced listing requirements. These companies can seek review of a Staff Delisting Determination from a Hearings Panel, which can afford the company additional time to regain compliance, and can appeal the Hearings Panel decision to the Nasdaq Listing and Hearing Review Council.<sup>12</sup> As a result, Nasdaq believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

Finally, Nasdaq believes that the ten consecutive trading day period that a company must trade below \$0.10 before the proposed rule would require

issuance of a Staff Delisting Determination appropriately balances Nasdaq's obligation and desire to protect investors under Section 6(b)(5) with the need for a fair and equitable procedure under Section 6(b)(7). The ten consecutive trading day period is long enough that a temporary decline below \$0.10 will not trigger the proposed heightened requirements. Moreover, the ten-day period is designed to parallel the timeframe, already a part of Nasdaq's rules, that a company must trade above \$1.00 to demonstrate compliance with the bid price requirement.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While Nasdaq does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>8</sup> Nasdaq notes that under Listing Rule 5810(c)(3)(A)(ii), a company is not eligible for the second compliance period "if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency." As is currently the case, Nasdaq may rely upon this language to deny the second compliance period to a company with a very low stock price or that has engaged in significant prior reverse stock splits, even though the company is not yet subject to the new rule.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5) and (7).

<sup>11</sup> See Exchange Act Rules 3a51-1, 17 CFR 240.3a51-1, and 15g-1 to 15g-100, 17 CFR 240.5g-1 *et seq.*

<sup>12</sup> See Listing Rules 5815 and 5820, respectively.

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-001 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-2020-001. This file number should be included on the subject line if email 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. 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-2020-001, and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-00917 Filed 1-21-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION****Class Waiver of the Nonmanufacturer Rule**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for commercially handheld land mobile radios under NAICS code 334220/PSC 5820.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for handheld land mobile radios under North American Industry Classification System (NAICS) code 334220 and Product Service Code (PSC) 5820. This U.S. industry comprises establishments primarily engaged in manufacturing handheld land mobile radios. According to the request, no small business manufacturers supply this product to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply handheld land mobile radios, regardless of the business size of the manufacturer, on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), historically underutilized business zones (HUBZone), or participants in the SBA's 8(a) Business Development (BD) program.

**DATES:** Comments and source information must be submitted by February 21, 2020.

**ADDRESSES:** You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Carol Hulme, Program Analyst, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

**FOR FURTHER INFORMATION CONTACT:** Carol Hulme, Program Analyst, by telephone at 202-205-6347; or by email at [Carol-Ann.Hulme@sba.gov](mailto:Carol-Ann.Hulme@sba.gov).

**SUPPLEMENTARY INFORMATION:** Sections 8(a)(17) and 46 of the Small Business

Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts (except those valued between \$3,500 and \$250,000) set aside for small business, SDVOSB, WOSB, EDWOSB, HUBZone, or BD program participants provide the product of a small business manufacturer or processor if the recipient of the set-aside is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

The SBA defines "class of products" based on a combination of (1) the six-digit North American Industry Classification System (NAICS) code, (2) the four-digit Product Service Code (PSC), and (3) a description of the class of products.

SBA invites the public to comment on this pending request to waive the NMR for handheld land mobile radios under NAICS code 334220 and PSC 5820. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

**David Loines,**

Director, Office of Government Contracting.

[FR Doc. 2020-00999 Filed 1-21-20; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****Surrender of License of Small Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, Section 309 and the Small

<sup>13</sup> 17 CFR 200.30-3(a)(12).