

9. *Title and purpose of information collection:* Statement Regarding Contributions and Support of Children; OMB 3220-0195.

Section 2(d)(4) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), provides, in part, that a child is deemed dependent if the conditions set forth in Section 202(d)(3), (4) and (9) of the Social Security Act are met. Section 202(d)(4) of the Social Security Act, as amended by Public Law 104-121, requires as a condition of dependency, that a child receives one-half of his or her support from the stepparent. This dependency impacts upon the entitlement of a spouse or survivor of an employee whose entitlement is based

upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. Therefore, depending on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren, step-grandchildren and equitably adopted children. The regulations outlining child support and dependency requirements are prescribed in 20 CFR 222.50-57.

In order to correctly determine if an applicant is entitled to a child's annuity based on actual dependency, the RRB uses Form G-139, Statement Regarding Contributions and Support of Children, to obtain financial information needed to make a comparison between the amount of support received from the railroad employee and the amount received from other sources. Completion is required to obtain a benefit. One response is required of each respondent. The RRB proposes a minor editorial change to Form G-139 to change the date under Section 1 "General Instructions".

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G-139	500	60	500

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469-2591 or Kennisha.Tucker@rrb.gov. Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-1275 or emailed to Brian.Foster@rrb.gov. Written comments should be received within 60 days of this notice.

Brian Foster,
Clearance Officer.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89794; File No. SR-NASDAQ-2020-026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets

September 9, 2020.

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")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a new requirement related to the qualification of management for companies whose business is principally administered 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, 2020.³ On July 20, 2020, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ On August 21, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally

filed.⁶ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange states that it has observed instances where it appears that a company's management lacked familiarity with the requirements to be a Nasdaq-listed public company in the U.S. or was otherwise unprepared for the rigors of operating as a public company.⁸ The Exchange further states

⁶ Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ The Exchange states that, under federal securities laws, a company's management is responsible for preparing financial statements and for establishing and maintaining disclosure controls and procedures and internal control over financial reporting. See Amendment 1, *supra* note 6, at 4-5 (citing Sections 404(b), 302, and 906 of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745 (2002)). In addition, the Exchange states that its listing requirements include quantitative criteria based on the company's financial statements and market information, impose disclosure obligations, and establish minimum corporate governance requirements, and that a listed company's management is responsible for ensuring compliance with these listing requirements on an ongoing basis. See *id.* (citing Nasdaq Listing Rule 5625 (Notification of Noncompliance)).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89028 (June 8, 2020), 85 FR 35967 ("Notice"). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nasdaq-2020-026/srnasdaq2020026.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 89342, 85 FR 44951 (July 24, 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.

that the risks arising from these situations are heightened when a company's business is principally administered in a jurisdiction that restricts access to information by regulators of U.S.-listed companies. As a result, the Exchange is now proposing new requirements that it believes will heighten compliance by such companies and enhance investor protection.⁹

First, the Exchange is proposing to adopt a new initial listing standard in Nasdaq Listing Rule 5210(c) to require any Company¹⁰ that principally administers its business in 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 (a "Restrictive Market") to have, and certify that it will continue to have until the third anniversary of its listing date, at least one member of senior management or a director who has relevant past employment experience at a U.S.-listed public company or other experience, training, or background that results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws.¹¹ In the absence of such an individual, the proposal would require a Company that principally administers its business in a Restrictive Market ("Restrictive Market Company") to retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the Company.¹² In determining whether a Company's business is principally administered in a Restrictive Market, the proposed rule provides that Nasdaq may consider the geographic locations of the Company's: (a) Principal business segments, operations, or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.¹³ The Exchange states that this definition would 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.¹⁴

⁹ See *id.* at 6.

¹⁰ Nasdaq Listing Rule 5005(a)(6) defines "Company" as the issuer of a security listed or applying to list on Nasdaq.

¹¹ The Exchange also proposes to renumber the remaining provisions of Nasdaq Listing Rule 5210.

¹² See proposed Rule 5210(c).

¹³ See *id.*

¹⁴ See Amendment No. 1, *supra* note 6 at 7, n.8. The Exchange further provides the following

In addition, the Exchange is proposing to adopt new Nasdaq Listing Rule 5250(g) to require any Company that was subject to proposed Rule 5210(c) upon initial listing and that continues to be a Restrictive Market Company to have, until the third anniversary of its listing date,¹⁵ at least one member of senior management or a director who has relevant past employment experience at a U.S.-listed public company or other experience, training, or background that results in the individual's general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws or, in the absence of such an individual, to retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the Company. The Exchange is also proposing changes to Nasdaq Listing Rule 5810 (Notification of Deficiency by the Listing Qualifications Department) to allow a Restrictive Market Company subject to, but not in compliance with, proposed Rule 5250(g) to submit a plan to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(2)(iii).¹⁶

The proposed rule changes would apply to Restrictive Market Companies that apply to list on Nasdaq after the date of effectiveness of the proposed rules and would not apply to companies already listed on Nasdaq.¹⁷ Nasdaq states that it believes this is appropriate because currently-listed companies are already subject to Nasdaq's requirements and U.S. securities laws and have gained familiarity with the

example: A company's headquarters could be located in Country A, while the majority of its senior management, employees, assets, operations, and books and records are located in Country B, which is a Restrictive Market. In this case, Nasdaq would consider the company's business to be principally administered in Country B, which is a Restrictive Market, and Nasdaq would require the company to meet the criteria set forth in proposed Rule 5210(c). See *id.* at 7.

¹⁵ The Exchange states that it believes three years will provide a sufficient transition period for Restrictive Market Companies because by the third anniversary of a company's listing date, the company will have filed at least two annual reports and gone through the accompanying reporting processes and procedures, and the company's staff will have been subject to federal securities laws and Nasdaq's regulatory and reporting requirements for a sufficient period of time to gain experience with the requirements and how to comply. See *id.* at 8.

¹⁶ The Exchange states that a Restrictive Market Company would be required to disclose that it does not meet the requirement set forth in proposed Rule 5250(g) pursuant to Nasdaq Listing Rule 5810(b) and that, based on its review of the company's compliance plan, Nasdaq Staff generally would be able to allow the company up to 180 days to regain compliance under Nasdaq Listing Rule 5810(c)(2)(B). See *id.*

¹⁷ See *id.* at 9.

reporting processes and procedures and disclosure requirements by virtue of being subject to them.¹⁸

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.¹⁹ Another commenter expressed its support for the proposed requirements relating to management qualifications for Restrictive Market Companies, but recommended that the proposal be revised to apply to all Restrictive Market Companies listed on Nasdaq, rather than just those companies that apply to list on Nasdaq after the date of the proposed rule change's effectiveness.²⁰ This commenter stated that Nasdaq provided no basis for this distinction between companies and suggested that such distinction may raise issues about whether the proposal unfairly discriminates among companies.²¹ In response, Nasdaq amended the proposal to apply the proposed requirements to Restrictive Market Companies only until the third anniversary of their listing date.²² Nasdaq stated that it believes it is appropriate to impose the proposed requirement only for three years from the date that a Restrictive Market Company lists and that after being subject to Nasdaq's requirements for that period of time, it would potentially be unfair to treat the company differently than other listed companies in the absence of a specific identified concern.²³

IV. Proceedings To Determine Whether To Approve or Disapprove SR-NASDAQ-2020-026, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section

¹⁸ See *id.* at 10. Nasdaq further states that, to the extent there are future concerns about a currently-listed company that arise from an apparent unfamiliarity with the requirements to be a U.S.-listed public company, Nasdaq would exercise its regulatory authority and could consider that lack of familiarity when determining whether to allow the company to remain listed. See *id.*

¹⁹ See Letter from Annemarie Tierney, Founder and Principal, Liquid Advisors, Inc. (July 2, 2020), at 5.

²⁰ See Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (June 25, 2020), at 6-7.

²¹ See *id.* at 7.

²² See Amendment No. 1, *supra* note 6.

²³ See *id.* at 10, n.13.

19(b)(2)(B) of the Act²⁴ to determine whether the proposed rule change, as modified by Amendment No. 1, 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,²⁵ 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 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.²⁶

The Exchange's proposed requirements: (1) Only apply to Restrictive Market Companies that apply to list on Nasdaq after the date of effectiveness of the proposed rules; (2) only apply until the third anniversary of a Restrictive Market Company's listing date; and (3) do not apply to Restrictive Market Companies already listed on Nasdaq, even if such companies have been listed on Nasdaq for less than three years. 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."²⁷ 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,²⁸ and any failure of an SRO to provide this information may result in the Commission 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.²⁹

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal, as modified by Amendment No. 1, 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, as modified by Amendment No. 1, is consistent with Section 6(b)(5)³⁰ 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,³¹ any request for an opportunity to make an oral presentation.³²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved

or disapproved by October 6, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 20, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,³³ 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-026 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-2020-026. 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-2020-026 and should be submitted by October 6, 2020.

³³ See supra note 6.

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ *Id.*

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 17 CFR 201.700(b)(3).

²⁸ See *id.*

²⁹ See *id.*

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 17 CFR 240.19b-4.

³² Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 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).

Rebuttal comments should be submitted by October 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89798; File No. SR–NYSE–2020–72]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

September 9, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on August 31, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend its Price List to extend through September 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through August 2020. The Exchange proposes to implement the fee changes effective September 1, 2020. The proposed rule change is available on the Exchange’s website at www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend its Price List to extend through September 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through August 2020.

The proposed changes respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus (“COVID–19”).

The Exchange proposes to implement the fee changes effective September 1, 2020.

Background

Beginning on March 16, 2020, in order to slow the spread of COVID–19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.⁴ Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.⁵

On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would resume on a limited basis to a subset of

⁴ See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

⁵ See Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR–NYSE–2020–27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR–NYSE–2020–29). See footnote 11 of the Price List.

Floor brokers, subject to health and safety measures designed to prevent the spread of COVID–19.⁶ On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of DMMs, also subject to health and safety measures designed to prevent the spread of COVID–19.⁷ Following this partial reopening of the Trading Floor, the Exchange extended the equipment fee waiver for the months of June, July and August.⁸ The Trading Floor continues to operate with reduced headcount and additional health and safety precautions.⁹

Proposed Rule Change

The proposed rule change responds to the unprecedented events surrounding the spread of COVID–19 by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for September 2020.

As noted, for the months of April, May, June, July and August, the Exchange waived the Annual Telephone Line Charge of \$400 per phone number and the \$129 fee for a single line phone, jack, and data jack. The Exchange also waived related service charges, as follows: \$161.25 to install single jack (voice or data); \$107.50 to relocate a jack; \$53.75 to remove a jack; \$107.50 to install voice or data line; \$53.75 to disconnect data line; \$53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at \$106 per hour in 15 minute increments.¹⁰ These fees were waived for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization’s combined adding, taking, and auction volumes during March 1 to March 20, 2020, or, beginning in August 2020, if not a member organization during March 1 to March 20, 2020, based on the

⁶ See Trader Update, dated May 14, 2020, available here: <https://www.nyse.com/traderupdate/history#110000251588>.

⁷ See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>.

⁸ See Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR–NYSE–2020–49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR–NYSE–2020–59); SR–NYSE–2020–71.

⁹ See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>. DMMs continue to support a subset of NYSE-listed securities remotely.

¹⁰ The Service Charges also include an internet Equipment Monthly Hosting Fee that the Exchange did not waive for April, May, June, July and August 2020 and that the Exchange does not propose to waive for September 2020.

³⁴ 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.