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 MIDP routing option under Rule 4758 and make a conforming change to Rule 4703(e). The proposed rule change was published for comment in the **Federal Register** on February 19, 2019.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 5, 2019.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 20, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2019–004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06929 Filed 4–8–19; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85113 (February 12, 2019), 84 FR 4885.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85503; File No. SR–NASDAQ–2019–009]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Revise the Exchange's Initial Listing Standards Related to Liquidity

April 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 revise the Exchange's initial listing standards related to liquidity.

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 several amendments in this rule change to increase Nasdaq's requirements for initial listing and help assure adequate liquidity for listed securities. First, Nasdaq proposes to revise its initial listing criteria to exclude restricted securities from the Exchange's calculations of a company's publicly held shares, market value of publicly held shares and round lot holders (''Initial Liquidity Calculations''). To do so, Nasdaq proposes to add three new definitions to define ''restricted securities'', ''unrestricted publicly held shares'' and ''unrestricted securities'' and proposes to amend the definition of ''round lot holder''. Second, Nasdaq proposes to impose a new requirement that at least 50% of a company's round lot holders must each hold shares with a market value of at least $2,500. Third, Nasdaq proposes to adopt a new listing rule requiring a minimum average daily trading volume for securities trading over-the-counter (''OTC'') at the time of their listing. Nasdaq is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.[3] Each amendment is described in more detail below.

I. Restricted Securities

Nasdaq is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Because the current Initial Liquidity Calculations include restricted securities, a security with a substantial number of restricted securities could satisfy the Exchange's initial listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is illiquid. Nasdaq is concerned because illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, Nasdaq would typically first allow the company to provide and implement a plan to increase its liquidity in the near term.

trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

To address this concern, Nasdaq is proposing to adopt a new definition of ''restricted securities'' at Nasdaq Rule 5005(a)(37), which includes any securities subject to resale restrictions for any reason, including restricted securities (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; [4] (2) acquired through an employee stock benefit plan or as compensation for professional services; [5] (3) acquired in reliance on Regulation S, which cannot be resold within the United States; [6] (4) subject to a lockup agreement or a similar contractual restriction; [7] or (5) considered ''restricted securities'' under Rule 144.[8] Nasdaq is also proposing to adopt a new definition of ''unrestricted securities'' at Nasdaq Rule 5005(a)(46), which includes securities of a company that are not restricted securities. In connection with these amendments, Nasdaq is proposing to renumber the remaining provisions of Rule 5005 to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on Nasdaq are liquid and have sufficient investor interest to support an exchange listing. Nasdaq notes that in developing their index methodologies the FTSE Russell and S&P indices take a similar approach. As disclosed by FTSE Russell, ''All FTSE Russell equity index constituents are free float adjusted in accordance with the index rules, to reflect the actual availability of stock in the market for public investment.'' [9] FTSE Russell excludes shares held within employee share plans, shares subject to a ''lock-in'' clause, and shares subject to contractual restrictions.[10] S&P Dow Jones adjusts its indices to ''reflect only those shares available to investors rather than all of a company's outstanding shares.'' [11]

A. Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum number of publicly held shares in order to list its primary equity securities (including American Depositary Receipts or ''ADRs'') [12] on all tiers of the Exchange. A company is also required to have a minimum number of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq's Global and Capital Market tiers; [13] subscription receipts on Nasdaq's Capital Market tier; or paired share units on Nasdaq's Global Select Market tier. Currently, Nasdaq 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. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d–3 under the Act.'' As discussed above, the current definition of publicly held shares does not exclude securities subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange's initial listing requirements related to publicly held shares and qualifying to list on the Exchange.

Nasdaq proposes adding a new definition of ''unrestricted publicly held shares'' at Nasdaq Rule 5005(a)(45), which would be defined as publicly held shares excluding the newly defined ''unrestricted securities.'' Nasdaq proposes to revise references to ''publicly held shares'' to ''unrestricted publicly held shares'' in the following rules:

Rule No.	Nasdaq Market tier	Security type	Current required number of publicly held shares
5315(e)(2)	Global Select	Primary Equity Security	At least 1,250,000.
5405(a)(2)	Global	Primary Equity Security	At least 1,100,000.
5415(a)(1)	Global	Preferred Stock or Secondary Class of Common Stock	At least 200,000.
5505(a)(2)	Capital	Primary Equity Security	At least 1,000,000.
5510(a)(3)	Capital	Preferred Stock or Secondary Class of Common Stock	At least 200,000.
5520(g)(3)	Capital	Subscription Receipts	At least 1,100,000.

As a result, only securities that are freely transferrable will be included in the calculation of publicly held shares to determine whether a company satisfies the Exchange's initial listing criteria under these rules. Nasdaq believes that excluding restricted securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

In addition to the above, Nasdaq proposes revising references to ''publicly held shares'' to ''unrestricted publicly held shares'' in Rule 5310(d), which states that ''in computing the number of publicly held shares for

[4] *See, e.g.,* 17 CFR 230.144(a)(3)(i) and (ii), which states that securities issued in transactions that are not a public offering or under Regulation D are considered restricted securities.

[5] *See, e.g.,* 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

[6] *See* 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

[7] Securities issued in such transactions would typically include a ''restrictive'' legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

[8] *See* generally Securities and Exchange Commission Investor Publications, Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: *https://www.sec.gov/reportspubs/investor-publications/investor pubsrule144htm.html.*

[9] *See* FTSE Russell, ''Free-Float'', available at: *https://www.ftse.com/products/indices/free-float.*

[10] *See* FTSE Russell, ''Free Float Restrictions v2.0'', May 2018, available at: *https://www.ftse.com/products/downloads/Free_Float_Restrictions.pdf.*

[11] *See* S&P Dow Jones Indices, ''Float Adjustment Methodology'', April 2018, available at: *https://us.spindices.com/documents/index-policies/methodology-sp-float-adjustment.pdf.*

[12] 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).''

[13] There are no separate listing requirements on the Nasdaq Global Select Market for classes of securities other than primary equity securities. Instead, pursuant to Rule 5320, if the primary equity security is listed on the Nasdaq Global Select Market, generally any other security of that same company that qualifies for listing on the Nasdaq Global Market is also included in the Nasdaq Global Select Market.

Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder [14] of the Company,'' and Rule 5226(b) which requires a paired share unit to satisfy the security-level requirements of Rule 5315 or 5405, including the number of publicly held shares. Nasdaq also proposes to revise Rule 5205(g) to reflect the change to ''unrestricted publicly held shares.'' [15] Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market, as discussed below.

B. Market Value of Publicly Held Shares

Nasdaq is proposing to modify its initial listing requirements related to market value of publicly held shares so that they are based only on unrestricted shares. A company is required to have a minimum market value of publicly held shares in order to list its primary equity securities (including ADRs) on all tiers of the Exchange. A company is also required to have a minimum market value of publicly held shares in order to list its preferred stock or secondary classes of common stock on Nasdaq's Global and Capital Market tiers; subscription receipts on Nasdaq's Capital Market tier; or paired share units on Nasdaq's Global Select Market tier. The calculation of ''market value of publicly held shares'' does not exclude stock subject to resale restrictions. As discussed above, restricted securities may not contribute to liquidity and therefore the current calculation of market value of publicly held shares may result in a security with limited true liquidity satisfying the listing requirements related to the market value of publicly held shares and qualifying to list.

Nasdaq proposes revising its initial listing requirements so that they are based on the market value of unrestricted publicly held shares, and therefore exclude restricted securities, in the following rules:

Rule No.	Nasdaq Market tier	Security type	Current required market value
5315(c)(1)–(3)	Global Select	Primary Equity Security of a Closed End Management Investment Company Listed with a Fund Family.	(i) a total market value of the fund family of at least $220 million; (ii) an average market value of all funds in the fund family of at least $50 million; and (iii) a market of each fund in the fund family of at least $35 million.
5315(f)(2)(A)–(D).	Global Select	Primary Equity Securities	(i) at least $110 million; (ii) at least $100 million, if the company has stockholders' equity of at least $110 million; (iii) at least $45 million in the case of an initial public offering or spin-off; or (iv) at least $70 million in the case of a closed end management investment company registered under the Investment Company Act of 1940.
IM–5315–1	Global Select	Direct Listing of Primary Equity Securities	(a) If the Company's security has had sustained recent trading in a Private Placement Market, the lesser of (i) the value calculable based on an independent third-party valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market; or (b) $250,000,000 for a security that has not had sustained recent trading in a Private Placement Market prior to listing.
5405(b)(1)(C)	Global	Primary Equity Securities	At least $8 million (Income Standard).
5405(b)(2)(C)	Global	Primary Equity Securities	At least $18 million (Equity Standard).
5405(b)(3)(B)	Global	Primary Equity Securities	At least $20 million (Market Value Standard).
5405(b)(4)(B)	Global	Primary Equity Securities	At least $20 million (Total Assets/Total Revenue Standard).
5415(a)(2)	Global	Preferred Stock or Secondary Classes of Common Stock.	At least $4 million.
5505(b)(1)(B)	Capital	Primary Equity Securities	At least $15 million (Equity Standard).
5505(b)(2)(C)	Capital	Primary Equity Securities	At least $15 million (Market Value Standard).
5505(b)(3)(C)	Capital	Primary Equity Securities	At least $5 million (Net Income Standard).
5510(a)(4)	Capital	Preferred Stock or Secondary Classes of Common Stock.	At least $3.5 million.
5520(g)(2)	Capital	Subscription Receipts	At least $100 million.

As discussed above, Nasdaq believes that excluding restricted securities from the calculation of market value of publicly held shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, market value of publicly held shares is an indication of the size and investor interest in a company. When restricted securities are included in that calculation, a company could technically meet Nasdaq's requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small

[14] Rule 5005(a)(40) defines ''Shareholder'' as ''a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term ''Shareholder'' includes, for example, a limited partner, the owner of a depository receipt, or unit.''

[15] Rule 5205(g) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

amount of trading activity can have an inordinate effect on market prices and a company's market value of publicly held shares.

In addition to the above, Nasdaq proposes revising references to ''market value of publicly held shares'' to ''market value of unrestricted publicly held shares'' in Rule 5226(b), which requires a paired share unit listing on Nasdaq's Global Select or Global Select Market tiers to satisfy the security-level requirements of Rule 5315 or 5405, including the market value of publicly held shares.[16] Nasdaq also proposes to revise Rule 5205(g) to reflect that the computation for market value of unrestricted publicly held shares shall be as of the date of the application of the company for all market tiers.[17] Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies the initial listing requirements, Nasdaq will consider the market value of unrestricted publicly held shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market, as discussed below.

C. Round Lot Holders

Nasdaq is proposing to revise the listing criteria related to the minimum number of round lot holders for companies seeking to initially list primary equity securities (including ADRs), preferred stock, secondary classes of common stock and warrants on the Exchange so that they are based on holders of unrestricted securities. Currently, Nasdaq defines a ''round lot holder'' as ''a holder of a Normal Unit of Trading'' and notes that ''beneficial holders will be considered in addition to holders of record.'' [18] Nasdaq defines a ''round lot or normal unit of trading'' as ''100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares.'' [19] A company is required to have a minimum number of round lot holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under the existing rule, all the shares held by a holder could be restricted securities that do not contribute to liquidity.

To address this concern, Nasdaq is proposing to revise the definition of ''round lot holder'' to mean a holder of a normal unit of trading of unrestricted securities. This change will impact the following rules:

Rule No.	Nasdaq Market tier	Security type	Current required number of round lot holders
5315(f)(1)(C)	Global Select	Primary Equity Security	At least 450 round lot holders or a minimum number of total holders.
5405(a)(3)	Global	Primary Equity Security	At least 400.
5410(d)	Global	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering.
5415(a)(4)	Global	Preferred Stock or Secondary Class of Common Stock.	At least 100.
5505(a)(3)	Capital	Primary Equity Securities	At least 300.
5510(a)(2)	Capital	Preferred Stock or Secondary Class of Common Stock.	At least 100.
5515(a)(4)	Capital	Warrants	At least 400 unless such warrants are listed in connection with an initial firm commitment underwritten public offering.
5520(g)(4)	Capital	Subscription Receipts	At least 400.

As a result of these changes, a holder of only restricted securities would not be considered in the round lot holder count. Nasdaq believes that these amendments will help ensure adequate distribution and investor interest in a listed security, which will result in a more liquid trading market and which will better protect investors. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

In addition to the above, Nasdaq proposes revising references to ''holder'' to ''round lot holders'' in Rule 5226(b), which requires a paired share unit applying to list on the Nasdaq Global Select or Global Market tiers to meet the security-level requirements of Rule 5315 or 5405, which includes the number of round lot holders. Nasdaq also proposes revising Rule 5215(b) to state that in considering whether an ADR satisfies this proposed change that determination of round lot holders be based on holders of unrestricted securities, Nasdaq will consider whether round lot holders of the underlying security hold unrestricted shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market, as discussed below. Nasdaq will also apply the new minimum value requirement for round lot holders to the underlying security, as proposed below, in addition to the minimum number of round lot holders required by the applicable tier that the company is seeking to list on.

D. American Depositary Receipts

Lastly, Nasdaq proposes to revise Rule 5215(b) to specify how these new requirements apply to ADRs. Specifically, as under the current rule for calculating publicly held shares, market value of publicly held shares, and round lot holders, Nasdaq will

[16] Nasdaq is also proposing to capitalize defined terms in Rule 5226(b) that were previously not capitalized for consistency and in order to maintain an organized rule book structure.

[17] Rule 5205(g) currently states that ''The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.''

[18] Currently, this is Nasdaq Rule 5005(a)(39) but will be converted to Nasdaq Rule 5005(a)(40).

[19] Currently, this is Nasdaq Rule 5005(a)(38) but will be converted to Nasdaq Rule 5005(a)(39).

continue to consider the underlying security in calculating the unrestricted publicly held shares and market value of unrestricted publicly held shares and in calculating the new definition of a round lot holder. In determining whether shares of the underlying security are ''restricted'' for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the company's home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of ''restricted securities'' would restrict the underlying security from being freely sold or tradable on its home country market, Nasdaq would also consider such restrictions when calculating ''unrestricted publicly held shares.'' Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the company and ensure adequate liquidity and distribution of the company's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.[20] Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S.

In addition, Nasdaq proposes to revise the reference to Form S–12 in Rule 5215(b) to Form F–6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.[21]

II. Minimum Value Requirement for Holders

Nasdaq is also proposing to revise the listing rules related to round lot holders listed in Part I.C, above, except for those applicable to listing warrants, to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a round lot, a shareholder may be considered a round lot holder by holding exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share.[22] Nasdaq believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. To address this concern, Nasdaq proposes to require that for initial listing at least 50% of a company's required round lot holders must each hold shares with a market value of at least $2,500. Nasdaq does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.[23] Nonetheless, warrants are often issued as part of a unit and the common stock component of the unit would be required to satisfy the minimum value requirement. Further, in all cases, the security underlying a warrant must be listed on Nasdaq or be a covered security, as defined in Section 18(b) of the Securities Act of 1933.[24] Nasdaq has not observed problems with the trading of warrants.

Nasdaq believes that adopting this amendment will help ensure that a majority of the required minimum number of shareholders hold a meaningful value of stock and that a company has sufficient investor interest to support an exchange listing.

III. Average Daily Trading Volume

Nasdaq is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, secondary classes of common stock and paired share units, previously trading OTC. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). Nasdaq believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for the listed securities.

Nasdaq is proposing to implement this new requirement by making identical amendments to Rule 5315(e) to add a new Rule 5315(e)(4); Rule 5405(a) to add a new Rule 5404(a)(4); Rule 5415(a) to add a new Rule 5415(a)(6); Rule 5505(a) to add a new Rule 5505(a)(5); and Rule 5510(a) to add a new Rule 5510(a)(6). In connection with the foregoing amendments, Nasdaq is proposing to revise the cross-references in Rules 5415(a) and 5510(a) to add new Rules 5415(a)(6) and 5510(a)(6), respectively, and renumber the remaining provisions of Rule 5505(a) to maintain an organized rule structure. In addition, Nasdaq is proposing to revise Rule 5226(b) to clarify that the average daily trading volume requirement would apply to companies seeking to list paired share units on the Exchange.

As noted above, the average daily trading volume requirement will also apply to ADRs. Currently, Nasdaq considers the underlying security of an ADR when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, total assets and total revenue. Nasdaq is proposing [sic] amend Rule 5215(b) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement too. Nasdaq believes that this will help demonstrate adequate investor interest in the company and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.[25]

Nasdaq is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment

[20] For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the company's home country market.

[21] Securities Exchange Act Release No. 34–19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

[22] On the Nasdaq Capital Market, certain companies are also eligible to list at $2 or $3 and the minimum value held by such a holder would be only $200 or $300, respectively. See Listing Rule 5505(a)(1)(B).

[23] Warrants issued as part of a unit must satisfy the initial listing requirements for warrants applying to list on the applicable market tier in accordance with Rule 5225.

[24] 15 U.S.C. 77r(b).

[25] ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security.

underwritten public offering of at least $4 million. Nasdaq believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. For these reasons, in part, Nasdaq's rules already provide similar exemptions in other situations involving a firm commitment underwritten offering.[26] Nasdaq believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Nasdaq also notes that the same volume requirement is being proposed for each of Nasdaq's Global Select, Global and Capital Market tiers, and that it is therefore appropriate to base the exemption on the same minimum $4 million offering in each case, notwithstanding the different listing criteria generally applicable to companies seeking to list on each tier. Finally, Nasdaq believes that the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, Nasdaq notes that the minimum $4 million offering would be sufficient to satisfy Nasdaq's one million share public float requirement at the minimum $4 price for listing on Capital Market. This exemption will be included in new Rules 5315(e)(4), 5404(a)(4), 5415(a)(6), 5505(a)(5), and 5510(a)(6).

Nasdaq proposes that this change be effective 30 days after approval by the SEC. Nasdaq notes that it had originally solicited comment on a similar proposal in October 2018,[27] which provided companies with notice that Nasdaq was considering adopting the proposed changes to the Exchange's Initial Liquidity Calculations. The proposed 30-day delay from approval until operation of the proposed rule will allow companies a short opportunity to complete an offering or transaction before the new rules become effective if they have substantially completed the Nasdaq review process or are near completion of an offering or transaction, and have relied on the existing rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] in particular, 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, as set forth below. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has previously opined on the importance of meaningful listing standards for the protection of investors and the public interest.[30] In particular, the Commission stated:

> Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient 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.[31]

As described below, Nasdaq believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable Nasdaq to help ensure that issuers seeking to list on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

I. Restricted Securities

The proposed amendments will adopt new definitions of ''restricted securities'' and ''unrestricted securities'' in order to exclude securities that are subject to resale restrictions from the Exchange's Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange's quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Commission has previously noted the importance of adequate liquidity in a security and the consequences for investors when a security is thinly traded. In *In the Matter of the Application of Rocky Mountain Power Company,* the Commission observed:

> We note that the requirement concerning the number of shareholders is not only an important listing criterion but is also a standard used in conjunction with other standards to ensure that a stock has the investor following and liquid market necessary for trading. In response to the Panel's questions, the Company's president acknowledged that the market for Rocky Mountain's shares would be initially ''very, very small,'' and that fewer than 20,000 of the Company's over 700,000 shares outstanding were freely tradeable. While Rocky Mountain, as a technical matter, complied with the shareholder requirement, it failed to demonstrate an adequate market for its shares, which is at the heart of this and other [Nasdaq] inclusion requirements.[32]

Nasdaq believes that adopting the new definitions of restricted securities and unrestricted securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because securities subject to resale restrictions are not freely transferrable and therefore excluding restricted securities from the Exchange's Initial Liquidity Calculations will help ensure that Nasdaq lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange's listing criteria, which will better protect investors.

[26] For example, Rules 5410(d) and 5515(a)(4) provide an exemption from the minimum round lot holder requirement for warrants listed in connection with an initial firm commitment underwritten public offering. Rule 5110(c)(3) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least $40 million.

[27] *See https://listingcenter.nasdaq.com/assets/Liquidity_Measures_Comment_Solicitation.pdf.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR–Nasdaq–2011–073 adopting additional listing requirements for companies applying to list after consummation of a ''reverse merger'' with a shell company).

[31] *Id.* at 70802.

[32] *See* Rocky Mountain Power Co., Securities Exchange Act Release No. 40648, 1998 SEC LEXIS 2422; 53 SEC. 979 (November 9, 1998).

A. Publicly Held Shares

The proposed amendments will adopt a new definition of ''unrestricted publicly held shares'' which excludes restricted securities and revise Nasdaq's initial listing standards to conform the minimum number of publicly held shares to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of ''market value'' to exclude restricted securities from the calculation of ''market value of unrestricted publicly held shares'' and revise Nasdaq's initial listing standards to conform the minimum market value to the new definition. Nasdaq believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

C. Round Lot Holders

The proposed amendments will exclude restricted securities from the calculation of the number of round lot holders required to meet the Exchange's initial listing criteria by revising the definition of ''round lot holder'' to exclude restricted securities. Nasdaq believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security.

D. American Depositary Receipts

The proposed amendments will modify Nasdaq's rules to state that when considering the security underlying an ADR, Nasdaq will only consider restrictions that prohibit the resale or trading of the underlying security on the company's home country market. However, any restrictions, including those provided as examples in the new definition of ''restricted securities,'' which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by Nasdaq when calculating ''unrestricted publicly held shares.'' Nasdaq believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the company and ensure adequate liquidity and distribution of the company's underlying security on its home country market, which is held by the depositary bank and represented by the ADR. For this reason, existing Rule 5215(b) currently looks to the underlying security when calculating publicly held shares, market value of publicly held shares, round lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining unrestricted publicly held shares, market value of unrestricted publicly held shares, and round lot holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of restricted securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of restricted securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, Nasdaq believes that this provision will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under Nasdaq's rules, where Nasdaq looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the company's underlying security, which is represented by the ADR.

II. Minimum Value Requirement for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company's round lot holders hold securities with a market value of at least $2,500. Nasdaq believes that the proposed $2,500 minimum value is reasonable because the Exchange has noticed problems with companies listing where a large number of round lot holders hold exactly 100 shares, which would be worth only $400 in the case of a stock that is trading at the minimum bid price of $4 per share, or as little as $200 in the case of a stock listing under the alternative price criteria. Nasdaq notes that the proposed $2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and Nasdaq believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, Nasdaq believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

Nasdaq does not propose to impose this requirement on the initial listings of warrants because warrants do not have a minimum price requirement and may have little value at the time of issuance. The value of warrants is derived from the value of the underlying security, which must be listed on Nasdaq or be a covered security and Nasdaq has not observed problems with the trading of warrants. As such, Nasdaq believes that it is not unfairly discriminatory to treat warrants differently under this proposal and that excluding warrants avoids imposing an unnecessary impediment to the mechanism of a free and open market.

III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.,* at least 16 days). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC that apply to list on the Exchange. Nasdaq believes this proposed change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least $4 million. Nasdaq believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption because underwriters facilitate appropriate price discovery and will generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. Further, Nasdaq believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum $4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, Nasdaq would consider trading in the security underlying an ADR in determining whether a foreign company seeking to list ADRs satisfies the requirement. Nasdaq believes that this distinction is not unfairly discriminatory because the trading volume in the underlying security represents interest in the company's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

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. All domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes, across all market tiers. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary equity securities, but those differences reflect the unique characteristics of ADRs and does [sic] not impose an unnecessary burden on competition.

To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

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

On October 5, 2018, Nasdaq launched a formal comment solicitation on proposals to exclude restricted securities from the Exchange's Initial Liquidity Calculations and adopt a new initial listing criteria related to prior trading volume for securities that are currently trading OTC (''2018 Solicitation''), a copy of which is attached hereto as *Exhibit 2.*[33] No comments were received in response to the comment solicitation.

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 Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

[33] The Commission notes that Exhibit 2 is attached to the Exchange's Form 19b–4 relating to the proposed rule change and not to this notice.

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.* Please include File Number SR–NASDAQ–2019–009 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–2019–009. 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 such 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–2019–009, and should be submitted on or before April 30, 2019.

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

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06935 Filed 4–8–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85500; File No. SR–BX–2018–025]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Withdrawal of Proposed Rule Change, As Modified By Amendment No. 1, To Make Permanent the Retail Price Improvement Program Pilot, Which Is Set To Expire on June 30, 2019

April 3, 2019.

On July 9, 2018, Nasdaq BX, Inc. (''BX'' 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 make permanent the pilot program for the Exchange's Retail Price Improvement program, which is set to expire on June 30, 2019. The proposed rule change was published for comment in the **Federal Register** on July 26, 2018.[3] On August 31, 2018, 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, to October 24, 2018.[4] On October 11, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.

On October 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 in the **Federal Register**.[6] On December 26, 2018, the Commission designated a longer period for the Commission to issue an order approving or disapproving the proposed rule change, to March 23, 2019.[7] The Commission received no comments on the proposal. On March 20, 2019, the Exchange withdrew the proposed rule change (SR–BX–2018–025).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06924 Filed 4–8–19; 8:45 am]

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[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83681 (July 20, 2018), 83 FR 35516 (July 26, 2018).

[4] *See* Securities Exchange Act Release No. 84013 (August 31, 2018), 83 FR 45479 (September 7, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 84472 (October 23, 2018), 83 FR 54401 (October 29, 2018).

[7] *See* Securities Exchange Act Release No. 84974 (December 26, 2018), 84 FR 0870 (January 31, 2019).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85497; File No. SR–NYSEAMER–2019–08]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 928NY To Reduce the Minimum Allowable Parameter for the Percentage-Based Risk Limitation Mechanism

April 3, 2019.

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 March 22, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 Rule 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism. 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 Rule 928NY (Risk Limitation Mechanism) to reduce the minimum allowable parameter for the percentage-based Risk Limitation Mechanism.

Risk Limitation Mechanisms

Rule 928NY sets forth the risk-limitation system, which is designed to help Market Makers, as well as ATP Holders, better manage risk related to quoting and submitting orders, respectively, during periods of increased and significant trading activity.[4] The Exchange requires Market Makers to utilize a risk limitation mechanism for quotes, which automatically removes a Market Maker's quotes in all series of an options class when certain parameter settings are breached.[5] The Exchange permits, but does not require, ATP Holders to utilize its risk limitation mechanism for orders, which automatically cancels such orders when certain parameter settings are breached.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Market Makers are included in the definition of ATP Holders and therefore, unless the Exchange is discussing the quoting activity of Market Makers, the Exchange does not distinguish Market Markers from ATP Holders when discussing the risk limitation mechanisms. *See* Rule 900.2NY(5) (defining ATP Holder as ''a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP,'' and requires that ''[a]n ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934''). *See also* Rule 900.2NY(38) (providing that a Market Maker is ''an ATP Holder that acts as a Market Maker pursuant to Rule 920NY'').

[5] *See* Rule 928NY, Commentary .04(a) (providing that Market Makers are required to utilize one of the three risk settings for their quotes); and Commentary .01 (regarding the cancellation of quotes once the risk settings have been breached).

[6] *See* Rule 928NY, Commentary .04(b) (providing that ATP Holders may avail themselves of one of