

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, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that proposed new Rule 5.3–E(p) is consistent with the protection of investors and the public interest because it furthers the goal of ensuring the accuracy of the financial disclosure of listed issuers. Specifically, the Exchange believes the recovery requirement may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which we expect will further discourage such behavior. The Exchange believes that these increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors. The new proposed Rule 5.3–E(p) is also consistent with the requirements of Section 10D of the Act and Rule 10D–1 thereunder, as it would establish a listing standard that is consistent with the requirements of Rule 10D–1.

The Exchange proposes to adopt continued listing standards for proposed Rule 5.3–E(p) in proposed Rule 5.3–E(p)(F). Pursuant to proposed Rule 5.3–E(p)(F)(i), a listed issuer would be subject to immediate suspension and delisting without eligibility for cure periods if the Exchange has determined that the listed issuer has failed to recover reasonably promptly erroneously-awarded compensation as required by its Recovery Policy. Proposed Rule 5.3–E(p)(F)(ii) would provide compliance periods of up to 12 months for a listed issuer that is delayed in adopting its Recovery Policy. The Exchange believes that the compliance procedures set forth in proposed Rule 5.3–E(p)(F) are appropriately rigorous and are consistent with the public interest and the interests of investors.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Rule 10D–1 under the Act requires all listing exchanges to adopt rules with respect to the recovery

of erroneously awarded compensation that are substantively identically to proposed Rule 5.3–E(p).

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

No written comments were solicited or received with respect to the proposed rule change.

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:

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–NYSEARCA–2023–20 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–NYSEARCA–2023–20. 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–NYSEARCA–2023–20, and should be submitted on or before April 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–05033 Filed 3–10–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, March 15, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at www.sec.gov.

STATUS: This meeting will begin at 10:00 a.m. and will be open to the public via webcast on the Commission's website at www.sec.gov.

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose amendments to rules under Regulation S–P to require brokers and dealers, investment companies, and investment advisers registered with the Commission to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information, including procedures for providing timely notification to certain affected

¹⁴ 17 CFR 200.30–3(a)(12).

individuals. The proposed amendments would also broaden the scope of information covered under these rules and extend application of these rules to cover transfer agents registered with the Commission or another appropriate regulatory authority. The Commission will also consider whether to propose corresponding amendments to recordkeeping rules under the Securities Exchange Act of 1934 (“Exchange Act”), Investment Company Act of 1940, and Investment Advisers Act of 1940. Finally, the Commission will also consider whether to propose amendments to conform annual privacy notice delivery provisions to the terms of an exception provided by a statutory amendment to the Gramm-Leach-Bliley Act.

2. The Commission will consider whether to propose a new rule and form and certain related rule and exemptive order amendments under the Exchange Act to require certain registrants under the Exchange Act to address their cybersecurity risks through policies and procedures, notification and reporting to the Commission, public disclosure, and record retention. The proposed cybersecurity requirements would apply to broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents.

3. The Commission will consider whether to propose amendments to Regulation SCI under the Exchange Act to expand the scope of entities subject to Regulation SCI and to update certain provisions of Regulation SCI.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: March 8, 2023.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2023-05138 Filed 3-9-23; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97060; File No. SR-NASDAQ-2023-005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation

March 7, 2023.

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 February 22, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (the “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 establish listing standards related to recovery of erroneously awarded executive compensation as required by SEC Rule 10D-1.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

The Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) added Section 10D to the Securities Exchange Act of 1934.³ In October 2022, the SEC adopted final Rule 10D-1⁴ instructing national securities exchanges to establish specific listing standards that require each issuer to adopt and comply with a written executive compensation recovery policy.⁵ Under Rule 10D-1, listed companies must recover from current and former executive officers incentive-based compensation received during the three fiscal years preceding the date on which the issuer is required to prepare an accounting restatement to correct a material error. As required by Rule 10D-1 and the Listing Standards Release, Nasdaq proposes to adopt Listing Rule 5608 (the “Rule”), titled, recovery of erroneously awarded compensation.

Proposed Listing Rule 5608(a) would introduce the requirements of the Rule in accordance with the Listing Standards Release. Nasdaq also proposes to adopt Listing Rule 5608(b), which sets forth the substantive requirements of Rule 10D-1(b), and Listing Rule 5608(d), which sets forth the defined terms applicable to the Rule. As provided in Rule 10D-1, Nasdaq proposes to define the term “executive officer” to include the issuer’s president, principal financial officer, principal accounting officer, any vice-president in charge of a principal business unit, division or function and any other person (including executive officers of a parent or subsidiary) who performs similar policy-making functions for the issuer. The term “policy-making function” is not intended to include policy-making functions that are not significant.

The recovery of erroneously awarded compensation is required on a “no fault” basis, without regard to whether any misconduct occurred or an executive officer’s responsibility for the erroneous financial statements. A restatement due to material non-compliance with any financial reporting requirement under the securities laws triggers application of the recovery policy. As explained in the Listing

³ 15 U.S.C. 78j-4.

⁴ 17 CFR 240.10D-1.

⁵ Securities Exchange Act Release No. 96159 (October 26, 2022), 87 FR 73076 (November 28, 2022) (“Listing Standards Release”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.