



July 2, 2020

Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: Exchange Act Release No. 34-89028 File Number SR-NASDAQ-2020-026**  
**Exchange Act Release No. 34-89027 File Number SR-NASDAQ-2020-027**  
**Exchange Act Release No. 34-88987 File Number SR-NASDAQ-2020-028**

Dear Secretary Countryman:

I am writing in response to the following The Nasdaq Stock Market LLC (“Nasdaq”) proposals:

- Notice of Filing of Proposed Rule Change to Adopt a New Requirement Related to the Qualification of Management for Companies from Restrictive Markets (the “Management Requirement Proposal”)<sup>1</sup>
- Notice of Filing of Proposed Rule Change to Apply Additional Initial Listing Criteria for Companies Primarily Operating in a Restricted Market (the “Additional Initial Listing Criteria Proposal”)<sup>2</sup>
- Notice of Filing of Proposed Rule Change to Amend IM-5101-1 to Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on the Qualifications of the Company's Auditor (the “Auditor-Related Criteria Proposal”)<sup>3</sup> (together, the “Proposals”)

Liquid Advisors, Inc. (“Liquid Advisors”), a strategic advisory firm, was formed by financial services executives with deep regulatory, business, legal and compliance expertise in U.S. capital markets, stock exchange rules and broker dealer regulation. We have held senior roles at the Securities Exchange Commission (“SEC”), the New York Stock Exchange, Nasdaq and FINRA, as well as a range of public and private regulated companies. We have unique experience around the rules and regulations applicable to U.S. initial public offerings, corporate governance rules, and SEC disclosure obligations.

As former regulators, we helped write and/or interpret a range of the capital raising, listing standards, and corporate governance rules and regulations applicable to companies seeking to

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<sup>1</sup> <https://www.federalregister.gov/documents/2020/06/12/2020-12686/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>

<sup>2</sup> <https://www.federalregister.gov/documents/2020/06/12/2020-12685/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>

<sup>3</sup> <https://www.federalregister.gov/documents/2020/06/08/2020-12271/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>

access the U.S. public markets. In our roles as legal, compliance, and strategy executives of regulated public companies, we built frameworks to ensure compliance with those rules and regulations.

## **The Issue**

In the Management Requirement Proposal, Nasdaq notes that, “[u]nder 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. Nasdaq’s listing requirements include transparent quantitative criteria, which are based on the company’s financial statements and market information. They also impose disclosure obligations (along with applicable federal securities laws) and establish minimum corporate governance requirements, which are designed to protect investors and the public interest. A company’s management is also responsible for ensuring compliance with these listing requirements on an ongoing basis.”

The Management Requirement Proposal also states that, “Nasdaq has observed instances where it appears that management lacked familiarity with the requirements to be a Nasdaq-listed public company in the United States or was otherwise unprepared for the rigors of operating as a public company. The risks arising from these situations are heightened when a company’s 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 in such jurisdiction (a “Restrictive Market”).”

The Auditor-Related Criteria Proposal notes that, “The Chairman and the Chief Accountant of the Commission, along with the Chairman of the PCAOB, have raised concerns that national barriers on access to information can impede effective regulatory oversight of U.S.-listed companies with operations in certain countries, including the PCAOB’s inability to inspect the audit work and practices of auditors in those countries.”<sup>4</sup> The Auditor-related Criteria Proposal also states that, “In particular, the PCAOB is currently prevented from inspecting the audit work and practices of PCAOB-registered auditors in Belgium, France, China and Hong Kong (to the extent their audit clients have operations in mainland China)” and “These national barriers on

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<sup>4</sup> See *SEC Chairman Jay Clayton, SEC Chief Accountant Wes Bricker and PCAOB Chairman William D. Duhnke III, Statement on the Vital Role of Audit Quality and Regulatory Access to Audit and Other Information Internationally— Discussion of Current Information Access Challenges with Respect to U.S.-listed Companies with Significant Operations in China (December 7, 2018)*, available at <https://www.sec.gov/news/public-statement/statement-vital-role-audit-quality-and-regulatory-access-audit-and-other> (“Some of these laws, for example, act to prohibit foreign-domiciled registrants in certain jurisdictions from responding directly to SEC requests for information and documents or doing so, in whole or in part, only after protracted delays in obtaining authorization. Other laws can prevent the SEC from being able to conduct any type of examination, either onsite or by correspondence... Positions taken by some foreign authorities currently prevent or significantly impair the PCAOB’s ability to inspect non-U.S. audit firms in certain countries, even though these firms are registered with the PCAOB.”).



access to information also limit the ability of U.S. regulators to effectively conduct regulatory oversight of U.S.-listed companies with operations in such countries.”

The Auditor-Related Criteria Proposal also describes Nasdaq’s concern that, “restraints on the PCAOB’s ability to inspect auditor work in countries with national barriers on access to information weaken assurances that the disclosures and financial information of companies with operations in such countries are not misleading.”

The Additional Initial Listing Criteria Proposal notes that, “These concerns can be compounded when the company lists on Nasdaq through an initial public offering (“IPO”) or business combination with a small offering size or a low public float percentage because such companies may not attract market attention and develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading. As a result, the 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. In addition, foreign issuers are more likely to issue a portion of an offering to investors in their home country, which raises concerns that such investors will not contribute to the liquidity of the security in the U.S. secondary market.” In addition, “the lack of transparency from certain emerging markets raises concerns about the accuracy of disclosures, accountability, and access to information” in the context of companies seeking to access the U.S. capital markets from a Restricted Market.

### **The Proposals**

In the Management Requirement Proposal, Nasdaq proposes to adopt a new listing standard to require that listing applicants from Restricted Markets have, and certify to Nasdaq that they will continue to have, a member of senior management or a director with relevant past employment experience at a U.S.-listed public company or other experience, training or background which 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. Alternatively, in the absence of such an individual, the company could retain on an ongoing basis an advisor or advisors, acceptable to Nasdaq, that will provide such guidance to the company.

In the Additional Initial Listing Criteria Proposal, Nasdaq proposes to adopt new listing criteria requiring that companies from a Restrictive Market seeking to conduct an initial public offering must offer a minimum amount of securities in the United States to public holders in a firm commitment offering. The proposed minimum is at least \$25 million or 25% of the company’s post-offering market value of listed securities, whichever is lower. The Additional Initial Listing Criteria Proposal also proposes additional criteria for companies from Restricted Markets listing in connection with business combinations and in the context of direct listings.

In the Auditor-Related Criteria Proposal, Nasdaq proposes to include factors that Nasdaq may consider in applying additional and more stringent criteria to an applicant or listed company based on the qualifications of the company's auditor. Such factors include:

- (1) whether the auditor has been subject to a PCAOB inspection, such as where the auditor is newly formed and has therefore not yet undergone a PCAOB inspection, or where the auditor, or an accounting firm engaged to assist with the audit, is located in a jurisdiction that limits the PCAOB's ability to inspect the auditor;
- (2) if the company's auditor has been inspected by the PCAOB, whether the results of that inspection indicate that the auditor has failed to respond to any requests by the PCAOB or the inspection has uncovered significant deficiencies in the auditors' conduct in other audits or in its system of quality controls;
- (3) whether the auditor can demonstrate that it has adequate personnel in the offices participating in the audit with expertise in applying U.S. GAAP, GAAS or IFRS, as applicable, in the company's industry;
- (4) whether the auditor's training program for personnel participating in the company's audit is adequate;
- (5) for non-U.S. auditors, whether the auditor is part of a global network or other affiliation of individual auditors where the auditors draw on globally common technologies, tools, methodologies, training and quality assurance monitoring; and
- (6) whether the auditor can demonstrate to Nasdaq sufficient resources, geographic reach or experience as it relates to the company's audit.

## Analysis

In my roles as Special Counsel in the Office of International Corporate Finance in the SEC's Division of Corporation Finance, Senior Associate in the London office of Skadden Arps Slate Meagher & Flom, LLP, and Assistant General Counsel at NYSE Euronext supporting the International Listing Team and serving on the NYSE's Listing Compliance Committee, my goal was to ensure that international companies seeking access to U.S. capital understood and adhered to the rules and regulations that make the U.S. public markets the most transparent and investor friendly in the world.

To the extent that a foreign jurisdiction seeks to limit the SEC and/or PCAOB's important oversight function with respect to a U.S. listed company, I believe that Nasdaq's proposals provide appropriate and necessary counter protections for U.S. investors. I also note that the Auditor-Related Criteria Proposal indicates that Belgium and France, two of the countries currently deemed to be Restricted Markets, are soon expected to enter into bilateral cooperative arrangements that will permit the PCAOB to commence inspections in Belgium and resume inspections in France, which will result in such countries no longer being deemed Restricted Markets.

While only a small percentage of international U.S. listed companies have been found to have committed accounting or other disclosure-based fraud in recent decades, such fraud often results

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in significant investor losses. Recent examples of companies from Restricted Markets with problematic accounting disclosures include Luckin Coffee and TAL Education Group.<sup>5</sup> And while the SEC and PCAOB can't prevent financial or public disclosure fraud completely, their critically important regulatory oversight function acts as a significant deterrent to protect U.S. investors and uphold the integrity of the U.S. public markets.

In conclusion, we fully support the Proposals inasmuch as they seem reasonably tailored to help ensure full, complete, and transparent financial and other disclosure from 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 in such jurisdiction.

We appreciate your consideration of our comments. Please let me know if you have any questions. I can be reached by email at [annemarie@liquidadvisors.com](mailto:annemarie@liquidadvisors.com) and by phone at (917) 473-8331.

Sincerely,

/s/ Annemarie Tierney

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<sup>5</sup> <https://www.cnbc.com/2020/04/15/chinese-companies-hope-for-new-york-ipos-despite-fraud-coronavirus.html>