



JUNE 2019

Nasdaq Issues Guidance on Application of Additional, More Stringent Criteria to List Securities

Nasdaq has published a response to a frequently asked question addressing particular circumstances under which it will apply additional and more stringent criteria and suspend or delist a company's securities pursuant to its use of its discretionary authority under Nasdaq Rule 5101.

Nasdaq Rule 5101 provides Nasdaq with "broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest."

In its June 20 guidance, Nasdaq stated that while it is impossible to list all the circumstances under which it may exercise its discretion under Rule 5101, Nasdaq may deny initial or continued listing, or apply additional and more stringent criteria, in the following instances:

- Based on the embryonic nature of a company's business, where the company has not commenced operations and will turn over most of the proceeds from its initial public offering (IPO) to third parties to advance the company's business plan.
- Where a company fails to make any meaningful progress on its business plan two years after listing and has not generated any revenue.
- Where the company's management does not appear to have adequate prior public company experience or an understanding of the requirements to be a public company listed on Nasdaq.
- Where a company has engaged an auditor that has not been subject to an inspection by the Public Company Accounting Oversight Board (PCAOB), an auditor the PCAOB cannot inspect, or an auditor that has not demonstrated sufficient resources, geographic reach or experience to adequately perform the company's audit.
- Where a company has planned a small public offering, which will result in insiders holding a large portion of the company's listed securities. Nasdaq has concerns that the offering size may be insufficient to establish the company's initial valuation and that there will not be sufficient liquidity to support a public market for the company.
- Where a company has not demonstrated sufficient nexus to the U.S. capital markets, including having no U.S. shareholders, operations or members of the board of directors or management.

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