



nasdaq seeks expanded authority to deny initial listings based on manipulation risk

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On December 12, 2025, The Nasdaq Stock Market LLC ("Nasdaq") filed a proposed new rule to expand its discretionary authority under Rule 5101 to deny an initial listing where a company's securities may be susceptible to manipulative trading by third-parties, even if the company otherwise satisfies all quantitative and qualitative listing requirements.

In its filing, Nasdaq noted that it has observed that a number of newly listed companies have experienced problematic or unusual trading activity, including extreme volatility, often followed by trading suspensions from the U.S. Securities and Exchange Commission ("SEC") under Section 12(k) of the Securities Exchange Act of 1934, as amended (collectively, the "SEC trading suspensions"). These SEC trading suspensions have frequently cited concerns regarding potential manipulation driven by unknown or unaffiliated third-parties, including through social media-based trading recommendations. Nasdaq also noted that, while IM-5101-1 currently permits Nasdaq to deny a listing where a company itself has engaged in misconduct or where individuals associated with the company have a history of regulatory violations, Nasdaq's existing rules do not adequately address situations where the primary risk arises from third-party conduct rather than company misconduct. To address this gap, Nasdaq is proposing to adopt IM-5101-3, which would expressly authorize Nasdaq to deny an initial listing under Rule 5101 where characteristics of the company, its securities, or its advisors indicate heightened susceptibility to manipulative trading, based on patterns observed in companies previously subject to the SEC trading suspensions.

Under the proposed IM-5101-3 rule, Nasdaq noted that it may consider, among other factors:

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- similarities between companies seeking an initial listing and the advisors to the companies that are subject to the SEC trading suspensions (including auditors, underwriters, law firms, brokers, clearing firms, or other professional service providers);
- the impact of foreign laws on the potential recourse available to U.S. regulators or investors in the event of misconduct;
- the existence of substantial influencers or controllers, including their location and regulatory reach;
- public float, liquidity, and share concentration, including risks arising from limited float or dissemination;
- regulatory history, including referrals, investigations, or similar concerns; and
- management's and board of directors' experience with U.S. public company and regulatory requirements.

If adopted, the proposal would materially expand Nasdaq's gatekeeping authority by allowing it to deny initial listings based on anticipated market integrity risks, rather than solely on issuer-level compliance or misconduct. The proposed rule IM-5101-3 would require companies to make a Regulation FD-compliant public announcement regarding the receipt of Nasdaq's written determination exercising its discretion to deny listing under such rule within four (4) business days of the date of such determination. A company that receives such written determination may, within seven (7) calendar days of the denial of its application, seek a review by Nasdaq's Hearing Panel, as set forth in Rule 5815.

Because this proposed rule would also impact companies currently in the pipeline to list on Nasdaq, companies seeking to list on Nasdaq should discuss with their key advisors whether this new rule can impact the company's proposed listing if adopted.

Please contact MSK's Corporate and Business Transactions Group if you wish to discuss your Nasdaq listing requirements and this proposed rule's potential impact on you and your company.