

# Nasdaq Proposes Fortifying Listing Rules, Potentially Curbing Listings of Chinese Companies

## Nasdaq Moves to Impose Stricter Requirements for Companies from “Restrictive Markets”

In May 2020, Nasdaq filed three proposals with the Securities and Exchange Commission (SEC) intended to address concerns about companies that have their businesses principally administered in certain jurisdictions defined by Nasdaq as “Restrictive Markets” (including China) looking to go public or become listed on Nasdaq. The proposals relate to auditors, initial listing criteria for foreign companies, and management’s qualifications.

All three proposals apply to companies that have their businesses principally administered in Restrictive Markets, which are defined as jurisdictions that have:

- secrecy laws,
- blocking statutes,
- national security laws, or
- other laws and regulations restricting access to information by regulators of U.S.-listed companies in those jurisdictions.

To determine where a company is “principally administered” from, Nasdaq may consider the geographic location of:

- principal business segments,
- operations, or assets,
- board and shareholders’ meetings,
- headquarters or principal executive offices, senior management and employees, and

- books and records.

Below, we discuss each proposal and their potential effects on Nasdaq applicants and listed companies – including Chinese companies looking to access the U.S. capital markets through an initial public offering (IPO) or business combination listed on Nasdaq.

#### Inspecting Audit Work and Practices in Certain Countries

Nasdaq Rule	Rule Change
----------------	-------------



Nasdaq Rule	Rule Change
----------------	-------------





































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































































5101,  
Audit

5005(a)(  
Concern

37),  
S

5005(a)

that

Nasdaq

may

use its

existing

discretio

nary

authorit

y under

Rule

5101 to

deny

initial or

continue

d listing

or to

apply

addition

al or

more

stringen

t

criteria



Initial Listing Criteria for Foreign Companies

Nasdaq Rule	Rule Change
-------------	-------------





Nasdaq Rule	Rule Change
-------------	-------------





















































































































































































































































































































































































































































5101,  
Minimum

5210(k)(i),  
Offering

5210(k)(ii),  
Size/Public

5210(k)(iii)  
Float –IPOs

Amended

Rule

5210(k)(i)

would

require a

Restrictive

Market

Company

listing its

securities on

Nasdaq in

connection

with its IPO

to offer a

minimum

amount of

securities in

a firm

commitment

underwritten

offering in

the U.S. to

public



Management’s Qualifications

Nasdaq	Rule
Rule	Change

Nasdaq Rule	Rule Change
----------------	----------------



































































































































































































































































































































































































































































































































































































































































5210(c),  
New

5250(g),  
Listing

5810  
Standards

New Rule

5210(c)

would

require

that

applicants

from

Restrictive

Markets:

- hav  
e a  
me  
m  
ber  
of  
sen  
ior  
ma  
na  
ge  
me  
nt  
or  
a

---

## Effect of the Proposals

While the proposed Nasdaq rules do not on their face specifically target China and Chinese companies, media reports note that Chinese companies will be among the greatest affected as Chinese companies have increasingly accessed the U.S. capital markets through the Nasdaq stock exchange in recent years. The proposed Nasdaq rules were issued amidst an environment of increased focus by the SEC and Congress on the lack of transparency on the financial statements of Chinese companies – in particular, following the disclosure of accounting fraud by Luckin Coffee, a Chinese company previously listed on Nasdaq.

## Congressional Action

Congress is taking legislative action aimed at increasing the transparency of the accounting of foreign listed companies. The Senate passed a [bill](#) on May 20, 2020, to require the delisting of companies that have not had a PCAOB inspection of their auditors for three consecutive years and to require disclosure regarding foreign government ownership in the listed company, as well as the membership of any official of the Chinese Communist Party on its Board of Directors. The House of Representatives is expected to take up the issue in the near future. We are monitoring the legislative developments and will continue to provide updates on [Winston's Capital Markets & Securities Law Watch](#).

---

## Authors



Michael J. Blankenship

Partner, Yuanda

Houston

+1 713-651-2678

[mblankenship@winston.com](mailto:mblankenship@winston.com)



Sey-Hyo Lee

Partner, Yuanda

New York

+1 212-294-6655

[shlee@winston.com](mailto:shlee@winston.com)