

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of
Virpax Pharmaceuticals, Inc.
For Review of Disciplinary Action Taken by
Nasdaq

Admin. Proc. File No. _____

APPLICATION FOR REVIEW

Oral Argument Requested

To: The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

PLEASE TAKE NOTICE that Virpax Pharmaceuticals, Inc. (“Virpax”) hereby applies for review, pursuant to 15 U.S.C.S. § 78s(d), of the decision of The Nasdaq Stock Market LLC (“Nasdaq”) to prematurely delist Virpax on April 2, 2025, in violation of its own Rules and assurances, as set forth below. The Form 25 for the delisting was issued on July 21, 2025.

Relevant Background

On April 2, 2024, The Nasdaq Listing Qualifications Staff (the “Staff”) notified Virpax that it was no longer in compliance with Nasdaq Listing Rule 5550(b)(1) (the “Rule”), which requires all companies listed on the Nasdaq Capital Market to maintain certain minimum equity requirements. On May 17, 2024, Virpax requested an extension until September 30, 2024 to regain compliance with the Rule, and submitted a detailed compliance plan in support of the request. By letter dated July 29, 2024, the Staff granted the extension.

Virpax was unable to regain compliance by September 30, 2024. On October 3, 2024, the Staff notified Virpax of its determination to delist Virpax, but stayed the action pending a December 3, 2024 hearing before the Nasdaq Hearings Panel (the “Panel”). At the hearing, Virpax requested until April 1, 2025 to regain compliance, and presented an updated compliance plan to achieve that end. The Panel granted the extension on January 6, 2025.

On April 1, 2025, Virpax sent an email to Nasdaq, including Jennifer Schlacht, a Nasdaq Hearings Administrator, requesting a two-day extension, or until April 3, 2025, to demonstrate compliance with the Rule, in order to allow Virpax to close on a financing deal which would restore Virpax’s compliance with the Rule. By reply-all email still on April 1, 2025, Ms. Schlacht indicated that she will “send the inquiry to the Panel.” At 9:10 a.m. on April 2, 2025, Ms. Schlacht notified Virpax, via email, that “**Extension until 4/3 has been granted by the Panel.**” *See Exhibit A.*

After being granted the extension until April 3, 2025, and in reliance thereupon, Virpax continued on its course of closing the referenced financing deal by that date. However, by letter dated April 2, 2025, Nasdaq informed Virapax that “the Panel has determined to delist Virapax from Nasdaq.” Golub claimed that the Panel purportedly had “no choice but to delist” Virapax because “April 1, 2025, represented the full extent of the Panel’s discretion to grant continued

listing which [Virapax] was non-compliant with Nasdaq’s continued listing requirements.” In a footnote, Mr. Golub conceded that the Panel had earlier that day granted an extension until April 3, 2025, but he insisted that the extension was granted “in error because the Panel does not have the authority under Nasdaq’s Rules to grant the requested extension.”¹

Grounds for Review

First, Nasdaq delisted Virpax before the extended April 3, 2025 deadline, despite having expressly granted that extension. Second, Nasdaq’s own rules permit such adjustments for “extenuating circumstances,” Nasdaq Rule 5840(e), and Virpax’s April 1, 2025 request met that standard. The Panel’s reversal without notice violated Virpax’s due process rights, as well as 15 U.S.C. § 78s(g), which mandates that self-regulatory organizations like Nasdaq comply with their own rules. Third, Virpax reasonably relied on Nasdaq’s written assurance that it had until April 3, 2025 to demonstrate compliance with the Rule,. Nasdaq’s violated its statutory obligation to provide “a fair procedure” in delisting actions. *See* 15 U.S.C. § 78f(b)(7). Finally, and in light of recent developments in the law, Virpax will appeal whether Nasdaq’s disciplinary proceedings are constitutionally deficient in that the government cannot delegate significant executive authority to private actors.

In light of the foregoing, Virpax requests the Commission’s de novo review and reversal of Nasdaq’s premature and unfair decision to delist Virpax. Virpax further requests oral argument before the Commission because it believes oral argument will be of assistance to the Commission.

¹ Notably, and rightfully, Mr. Golub did not even attempt to argue that the statements of Ms. Schlacht, a Nasdaq Hearings Administrator, were not attributable to the Panel so as to be bind Nasdaq. Indeed, the SEC has rejected such attempts by Nasdaq to distance itself from representations made by its own personnel. *See, e.g., In the Matter of the Application of MINIM, INC.*, 2025 SEC LEXIS 532, *6 (“To the extent Nasdaq is arguing that a Hearing Panel did not issue the Abandonment Determination, but rather that a staff member within the Hearings Department had done so, Nasdaq does not reconcile this assertion with the transmittal email’s express characterization of the determination as that of the Hearing Panel. Nor has Nasdaq provided any authority for how, even if true, an individual staff member could make such an abandonment determination.”).

Dated: August 20, 2025
Cedarhurst, NY

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