UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of SHINECO, INC. For Review of Action Taken by THE NASDAQ STOCK MARKET LLC.	Administrative Proceeding File No. 3-22553

THE NASDAQ STOCK MARKET LLC'S OPPOSITION TO SHINECO'S MOTION FOR A STAY

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Pursuant to U.S. Securities and Exchange Commission Rule of Practice 401(d)(3) and the Commission's October 30, 2025 Order Directing Briefing, The Nasdaq Stock Market LLC ("Nasdaq") respectfully submits this opposition to Shineco Inc.'s motion for a stay pending its application for review of Nasdaq's nonfinal decision suspending trading in Shineco's securities as of October 7, 2025, and delisting Shineco's securities as of a yet-to-be determined future date.

INTRODUCTION

Shineco has not made the stringent showing required to obtain a stay of the decision of Nasdaq's Listing and Hearing Review Council ("Listing Council"), which upheld a Nasdaq Hearings Panel's determination that Shineco's securities should be delisted from Nasdaq. The Listing Council concluded that delisting was warranted because, for the *fifth* time in three years, Shineco's shares had traded below $1 per share for 30 consecutive business days in violation of Nasdaq's Bid Price Rule and that, in light of two earlier reverse stock splits that had failed to secure long-term compliance with the Bid Price Rule, Shineco was not entitled to a further period to regain compliance.

Following that decision, Nasdaq suspended trading in Shineco's securities effective October 7. Before Nasdaq's board determined whether to call the Listing Council's decision for review and before Nasdaq filed a Form 25 to effectuate the delisting, Shineco filed an application for review and emergency motion for a stay with the Commission. Shineco's request for emergency relief—which comes on the heels of unsuccessful requests for emergency relief to a federal district court and a U.S. Court of Appeals—should be denied because Shineco cannot meet any of the requirements for obtaining the extraordinary remedy of a stay.

Shineco has no likelihood of success on the merits because Shineco's application for review of Nasdaq's delisting determination is premature, Shineco's challenge to Nasdaq's Excessive Split Rule is waived and unnecessary to reach on this record, and Nasdaq's delisting

determination rests squarely within its broad discretion under its Commission-approved rules. Nor can Shineco make a legally sufficient showing of irreparable harm. Shineco's predicament is attributable to its voluntary decision to agree to contractual terms that apparently condition certain transactions on Shineco's continued listing on Nasdaq—terms that Shineco knowingly accepted despite its longstanding difficulty complying with Nasdaq's listing standards. Finally, there is a strong public interest in swiftly delisting companies that fail to comply with exchanges' listing standards to promote stability in the U.S. capital markets and prevent the investing public from being misled into believing that noncompliant issuers such as Shineco meet minimum listing standards approved by the Commission.

In short, there is no basis to afford Shineco an exception to Nasdaq's Commission-approved Bid Price Rule, which every Nasdaq-listed company must follow. Shineco's request for a stay should be denied.

BACKGROUND

I. Nasdaq's Listing Rules And Delisting Procedures

Nasdaq is a national securities exchange registered as a self-regulatory organization under the Securities Exchange Act ("Exchange Act"). *See* 15 U.S.C. §§ 78f, 78s; *see also* SEC Release No. 34-39326, 62 Fed. Reg. 62,385 (Nov. 21, 1997). Nasdaq has promulgated a comprehensive set of rules governing the listing and delisting of companies' securities on Nasdaq's exchange. *See* Nasdaq Rule 5000 *et seq.*[1] The Commission has reviewed and approved those rules under the procedures prescribed in the Exchange Act, *see*, *e.g.*, SEC Release No. 34-53128, 71 Fed. Reg. 3,550 (Jan. 23, 2006), which authorizes Nasdaq and other national securities exchanges to maintain standards for companies that seek to list their securities for public sale on their exchange, *see DL*

[1] Nasdaq's Listing Rules are publicly available on Nasdaq's website. *See* https://listingcenter.nasdaq.com/rulebook/nasdaq/rules.

Cap. Grp., LLC v. Nasdaq Stock Mkt., 409 F.3d 93, 95 (2d Cir. 2005); 15 U.S.C. § 78*l*(d). Those standards must be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." 15 U.S.C. § 78f(b)(5).

Companies that have obtained a listing on Nasdaq "must continue to meet" various listing requirements, including the Bid Price Rule, which requires a minimum bid price of $1. Nasdaq Rule 5550(a)(2). Nasdaq's rules provide that "[a] failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days" and generally provide companies with a 180-day cure period to regain compliance with the Bid Price Rule. Nasdaq Rule 5810(c)(3)(A). The Excessive Split Rule, however, limits the availability of the 180-day cure period, in certain circumstances. That rule—which was proposed by Nasdaq on August 6, 2024, and approved by the Commission on January 17, 2025, SEC Release No. 34-102245, 90 Fed. Reg. 8,081 (Jan. 23, 2025)—provides that "if a Company's security fails to meet the continued listing requirement for minimum bid price and the Company has effected a reverse stock split over the prior one-year period," the Company "shall not be eligible for any compliance period." Nasdaq Rule 5810(c)(3)(A)(iv). The Commission approved the Excessive Split Rule because it found that the rule "is reasonably designed to further investor protection by limiting the ability of listed companies to engage in a pattern of repeated reverse stock splits to remain qualified for listing" and that "the continued listing of low-priced securities raises concerns that these securities may not have sufficient public float, investor base, and trading interest to promote fair and orderly markets and relatedly may have heightened susceptibility to manipulation." 90 Fed. Reg. at 8,085-86.

In addition to setting out specific listing standards, Nasdaq's Commission-approved rules grant it "broad discretionary authority over the initial and continued listing of securities." Nasdaq Rule 5101. Nasdaq may exercise that discretion to "apply additional or more stringent criteria for the initial or continued listing of particular securities, . . . even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq." *Id.* Employing its Commission-approved discretion, Nasdaq declines to list, or delists, companies that pose a threat to the exchange, investors, or the public interest. *See id.*; *see also Fog Cutter Cap. Grp. Inc. v. SEC*, 474 F.3d 822, 825-26 (D.C. Cir. 2007) (concluding in delisting dispute that Commission-approved rules governing Nasdaq listings provided "broad discretion to determine whether the public interest requires delisting securities"); *Belfort v. NASD*, 1994 WL 97021, at *1 (S.D.N.Y. Mar. 24, 1994) (same).

Nasdaq's rules also provide a multi-step review and appeal process for delisting companies that no longer meet Nasdaq's listing requirements. *See* Nasdaq Rule 5801 (summarizing process). Nasdaq staff are responsible for identifying and notifying companies of deficiencies that could warrant delisting, such as a company's failure to meet Nasdaq's minimum bid price requirement. *See* Nasdaq Rules 5550, 5810. If the company disagrees with the staff's determination that delisting is appropriate, it may appeal to a Hearings Panel of outside, independent experts. Nasdaq Rules 5805, 5815. If the company does not prevail before the Hearings Panel, it may further appeal to the Listing Council. *See* Nasdaq Rule 5820. And if the Listing Council upholds the delisting decision, that decision may be called for review by Nasdaq's Board of Directors. *See* Nasdaq Rule 5825.

Nasdaq's decision to delist a company becomes final when, "after a Delisting Determination has been issued, all available review and appeal procedures and periods available

under th[e] Rules have expired." Nasdaq Rule 5830. When that occurs, Nasdaq is required to provide notice to the Commission using Form 25. *See* 17 C.F.R. § 240.19d-1(j)-(k). Under the Commission's rules, "[a]n application on Form 25 to strike a class of securities from listing on a national securities exchange will be effective 10 days after Form 25 is filed with the Commission." *Id.* § 240.12d2-2(d)(1). The "10-day public notice requirement" that follows the filing of Form 25 is designed to "provide an opportunity for the Commission to impose such terms for the protection of investors" as it deems appropriate or to postpone the delisting to facilitate further review by the Commission. SEC Release No. 34-52029, 70 Fed. Reg. 42,456, 42,459 (July 22, 2005); *see also* 17 C.F.R. § 240.12d2-2(d)(3).

Once a delisting determination becomes final, the delisted company can ask the Commission to review the exchange's decision and to grant a stay of the delisting during the 10-day period between the filing of Form 25 and the effective date of the delisting. *See* 15 U.S.C. § 78s(d); 17 C.F.R. § 201.401; *see*, *e.g.*, *In re Minim, Inc.*, Release No. 34-101502 (Nov. 1, 2024) (granting administrative stay of delisting determination during 10-day period preceding delisting), *available at* https://www.sec.gov/files/litigation/opinions/2024/34-101502.pdf. If the Commission upholds the delisting decision, the delisted company can petition for review in a federal court of appeals. 15 U.S.C. § 78y(a)(1).

Following delisting, companies can "reapply for listing on Nasdaq" and make their case to the listing staff. Listing Council Decision (Mot. Ex. 10) at 11. Or, in lieu of listing on Nasdaq's exchange, companies are free to decide to list with a competitor exchange (such as the New York Stock Exchange), publicly trade over-the-counter without listing, or go private.

II. Shineco's Listing And Suspension

Shineco listed its securities on Nasdaq's exchange in 2016. Mot. at 12. As with all other companies listed on Nasdaq's exchange, Shineco's listing agreement required it to follow

Nasdaq's rules and procedures. Listing Council Decision at 4. Over a three-year period beginning in September 2022, Nasdaq listing staff notified Shineco five separate times that it had become noncompliant with Nasdaq's Bid Price Rule, Rule 5550, because the price of its listed securities had closed at less than $1 per share over the previous 30 consecutive business days—providing notice on September 29, 2022, March 20, 2023, April 26, 2024, September 3, 2024, and, most recently, June 16, 2025. *See* Listing Council Decision at 1-2. Twice, Shineco was able to regain compliance with the Bid Price Rule by conducting a reverse stock split during the 180-day cure period provided by Nasdaq—which inflated the stock price by reducing the number of shares. *Id.* Those reverse stock splits occurred on February 15, 2024, and November 12, 2024. *Id.* But in Nasdaq's notice of June 16, 2025, listing staff informed Shineco that under Nasdaq's Excessive Split Rule, Nasdaq Rule 5810(c)(3)(A)(iv), it was ineligible for an additional cure period in which to demonstrate compliance because it had conducted a reverse stock split during the prior year. Listing Council Decision at 2. Listing staff therefore notified Shineco that its securities would be delisted from Nasdaq's exchange. *Id.*

Shineco requested that a Nasdaq Hearings Panel review the staff delisting notice. Shineco had the opportunity to present the Hearings Panel with "a detailed and comprehensive Prehearing Submission" and a "detailed PowerPoint," and also presented at the "Hearings Panel proceeding on July 24, 2025." Compl. (Mot. Ex. 4) ¶¶ 30-40. On July 25, the Hearings Panel issued a written decision upholding the listing staff's delisting notice. Hearing Panel Decision (Mot. Ex. 3) at 2. "The Hearings Panel observed that the Company had pursued a failed business strategy, which had caused the Company to experience five bid price deficiencies since September 2022." Listing Council Decision at 2. The Panel concluded that despite Shineco's "effort[s] to transform its business through the acquisition of new companies," Shineco "had offered little to inspire

confidence that this strategy would succeed." *Id.* The Panel had "no doubt" that Shineco could complete another reverse stock split but had "no reason to believe that this will actually allow the Company to maintain long-term compliance with" the Bid Price Rule. Hearings Panel Decision at 2. "In light of the Company's challenging history, and the lack of any certainty regarding the new business operations," the Hearings Panel concluded that it would be "inappropriate to grant the Company an exception." *Id.*

Following the Hearings Panel decision, Shineco sent an e-mail to Nasdaq on the morning of July 28, requesting that the Listing Council call the Hearings Panel decision for review and stay the decision, and threatening to seek an injunction in federal court if Nasdaq failed to do so by 10:00 a.m. Eastern on the day of the request. *See* Listing Council Decision at 2; D.E. 10-1, *Shineco, Inc. v. Nasdaq Stock Market LLC*, No. 25-cv-06159 (S.D.N.Y. July 28, 2025). That same morning, Shineco filed suit in the Southern District of New York and moved for a temporary restraining order. *See* Compl.; D.E. 6, *Shineco, Inc. v. Nasdaq Stock Market LLC*, No. 25-cv-06159 (S.D.N.Y. July 28, 2025). Later that day, Nasdaq confirmed to Shineco that the Listing Council had decided to call for review of the Hearings Panel's decision, which stayed that decision pending the Listing Council's review. Listing Council Decision at 2-3; D.E. 13, *Shineco, Inc. v. Nasdaq Stock Market LLC*, No. 25-cv-06159 (S.D.N.Y. July 29, 2025). The next day, Shineco provided notice that it was withdrawing its motion for a temporary restraining order as moot. *Id.*

After full briefing—including the submission of both initial and reply briefs from Shineco—the Listing Council issued its decision on October 1 affirming the Hearings Panel's decision to delist Shineco. Listing Council Decision at 6. The Listing Council explained that "at the time when the Hearings Panel issued its decision, and for the fifth time in three years, the Company was in violation of the Bid Price Rule." *Id.* Accordingly, "the Hearings Panel had ample

authority to act based solely upon the Company's latest Bid Price Rule violation," and to delist Shineco on that basis, because the Excessive Split Rule "disqualif[ied] the Company from receipt of an automatic 180-day cure period, such that any exception it sought from its Bid Price Rule violation became subject to the discretion of the Hearings Panel," which "exercised its discretion reasonably to refuse to grant the Company additional time." *Id.* at 7. The Listing Council further found that Shineco "waived its right to challenge the applicability of the Excessive Split Rule by not raising this argument before the Hearings Panel," which Shineco "d[id] not dispute" it had failed to do. Listing Council Decision at 10.[2]

Alternatively and independently, the Listing Council determined that, "[e]ven if the Excessive Split Rule was inapplicable," the Hearings Panel "still could have delisted the Company's securities pursuant to Listing Rule 5101," which "affords Nasdaq broad discretionary authority to deny continued listing on its markets." Listing Council Decision at 7. "[T]he reputation and quality of a listing market like Nasdaq is diminished," the Listing Council reasoned, "when it continues to list companies that demonstrate an inability to sustain long term compliance with its listing standards despite the market offering deficient companies multiple opportunities over the course of months or years to correct their courses." *Id.* at 8. "Such a course of action," the Listing Council continued, "would in turn have negative externalities that can unfairly affect other listed companies." *Id.* The Listing Council therefore concluded that, "even in the absence of the Excessive Split Rule, the presence of such concerns raised by this particular Company's history would have amply warranted the Hearing Panel's decision to delist Shineco." *Id.*

[2] Because the Listing Council "does not consider a Company's post-hearing actions to regain compliance with the Listing Rules when it reviews the propriety of a Hearing Panel decision," the Listing Council did not consider in its analysis Shineco's August 11, 2025, 1:50 reverse stock split that "caused its securities to trade above $1.00 for 10 consecutive days, thereby demonstrating renewed compliance with the Bid Price Rule." Listing Council Decision at 3 n.1.

III. Shineco's Federal-Court Lawsuits And Application For Review

Although the Listing Council's decision was still subject to potential review by Nasdaq's board, Nasdaq Rule 5825, Shineco filed a second motion for a temporary restraining order on October 3, asking the Southern District of New York to enjoin Nasdaq's suspension of trading in Shineco's securities, which was set to take effect on October 7. Mot. Ex. 11. On October 4, the court denied the motion *sua sponte* because the Exchange Act's review process "'provides the exclusive route by which [Shineco] can seek a stay of the delisting of its stock'" and does not provide for district court jurisdiction. Order (Mot. Ex. 12) at 2-3 (quoting *Cleantech Innovations, Inc. v. Nasdaq Stock Market, LLC*, 2011 WL 7138696, at *2 (S.D.N.Y. Dec. 30, 2011)). On October 6, Shineco filed a petition for a writ of prohibition in the D.C. Circuit, which the court summarily denied the same day. Mot. Ex. 13.

Before Nasdaq's board had decided whether to review the Listing Council's decision and before the filing of Form 25, Shineco filed its Application for Review and motion for a stay with the Commission on October 17. Despite styling its filing an "emergency motion," Shineco did not seek relief from the blanket stay on Commission proceedings during the government shutdown. *See* Order, *In re: Pending Administrative Proceedings* (SEC Oct. 1, 2025), https://www.sec.gov/files/litigation/opinions/2025/33-11392.pdf. On October 29, Nasdaq's board declined to call Shineco's delisting for review. As of the filing of this opposition, no Form 25 has been filed.

LEGAL STANDARD

"A stay pending appeal is an extraordinary remedy, and the movant bears the burden of establishing that relief is warranted. In determining whether to grant a stay, the Commission considers whether (i) there is a strong likelihood that the movant will eventually succeed on the merits of the appeal; (ii) the movant will suffer irreparable harm without a stay; (iii) no other

person will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest." *In re Application of NYPPEX, LLC*, 2024 WL 2289209, at *1 (SEC May 20, 2024) (footnotes and internal quotation marks omitted).

ARGUMENT

The Commission should deny Shineco's motion because Shineco cannot meet any of the legal requirements for a stay.

I. Shineco Has No Likelihood Of Success On The Merits.

Shineco's motion for a stay should be denied because Shineco has no prospect of success on the merits of its challenge to Nasdaq's delisting determination. As an initial matter, Shineco's Application for Review is fatally premature. In addition, Shineco's challenge to the Excessive Split Rule is not properly before the Commission because Shineco waived that argument and because the Listing Council's decision can be sustained on alternative grounds independent of the Excessive Split Rule. In any event, Nasdaq acted in compliance with its Commission-approved listing rules, and well within its broad discretion under those rules and its listing agreement with Shineco, when it concluded that Shineco repeatedly failed to comply with the minimum bid price requirement and that delisting is therefore warranted.

A. The Application For Review Is Premature.

As an initial matter, Shineco's Application for Review is fatally premature because it was filed before Nasdaq's board had the opportunity to decide whether to review the Listing Council's decision (which it declined to do on October 29) and before Nasdaq filed Form 25 to effectuate Shineco's delisting (which, as of this filing, still has not occurred). This is a sufficient basis, standing alone, to deny the motion for a stay.

The Commission's jurisdiction to review delisting decisions is limited to final delisting determinations embodied in a Form 25 filed by the exchange after the completion of the

exchange's internal administrative process. This finality requirement is clear from the face of the Exchange Act and the Commission's rules and regulations. Section 19(d)(2) of the Exchange Act provides for Commission review of "[a]ny action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice," with review to be provided upon the agency's own motion or upon application of an aggrieved person "within thirty days *after* the date such notice was filed." 15 U.S.C. § 78s(d)(2) (emphasis added). Section 19(d)(1), in turn, requires a self-regulatory organization to file notice after it "prohibits or limits any person in respect to access to services offered." *Id.* § 78s(d)(1).

The Commission's Rule of Practice 420 similarly provides that an application for review may be filed with respect to any "[p]rohibition or limitation in respect to access to services" offered by a self-regulatory organization "within 30 days *after* the notice of the determination is filed with the Commission and received by the aggrieved person applying for review." 17 C.F.R. § 201.420(a)(3), (b) (emphasis added). The Commission's regulations specify that the notice required for "limitation or prohibition of access to services by delisting of security" is Form 25. 17 C.F.R. § 240.19d-1(j)-(k). And they build in a 10-day review period for every Form 25 before delisting becomes effective, which facilitates further review by the Commission, where appropriate. *Id.* § 240.12d2-2(d)(1), (3).

Under Nasdaq's Commission-approved rules, Nasdaq will not file a Form 25 with the Commission until after Nasdaq's board has had an opportunity to review the Listing Council's decision upholding a delisting determination. *See* Nasdaq Rules 5825, 5830. Nasdaq's board declined to review the Listing Council's decision affirming Shineco's delisting on October 29, but, as of this filing, Nasdaq has not filed Form 25 with the Commission. Accordingly, at the time Shineco filed its application for review on October 17, there was no final delisting decision for the

Commission to review—which will remain true until Nasdaq files Form 25. In fact, Shineco has publicly acknowledged that the Listing Council's decision is *not* the final step in Nasdaq's delisting process. *See* Shineco, Form 8-K (July 31, 2025) (in the event the Listing Council concludes that delisting is warranted, "then trading in the Company's securities will be suspended on The Nasdaq Stock Market, and the trading suspension will be converted to a delisting *at some point thereafter following completion of all Nasdaq administrative processes*") (emphasis added), *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/0001300734/000164117225021606/form8-k.htm.

The Commission need proceed no further to deny the motion for a stay based on Shineco's prematurely filed application for review.

B. Nasdaq's Delisting Process Provided A Fair Procedure.

Even beyond the absence of jurisdiction, Shineco is not likely to succeed on the merits of its application because Nasdaq provided Shineco with fair procedures when deciding to delist the company based on its repeated noncompliance with Nasdaq's listing standards.

Shineco's primary complaint is Nasdaq's purportedly "retroactive" application of its Excessive Split Rule, which rendered Shineco ineligible for an additional 180-day cure period in light of its November 2024 stock split. Mot. at 10-12; Nasdaq Rule 5810(c)(3)(A)(iv). But, as the Listing Council found, Shineco "waived its right to challenge the applicability of the Excessive Split Rule by not raising this argument before the Hearings Panel." Listing Council Decision at 10. Indeed, Shineco "d[id] not dispute the fact that it failed to raise its argument prior to th[e] [Listing Council] proceeding," *id.*, which bars Shineco from challenging the Excessive Split Rule's validity before the Commission, *see MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

Moreover, even if properly preserved, the Commission could uphold Nasdaq's delisting determination without reaching Shineco's challenge to the purported "retroactive" application of the Excessive Split Rule. The Listing Council explained in an alternative and independent holding

that, "[e]ven if the Excessive Split Rule was inapplicable, the Hearings Panel still could have delisted the Company's securities pursuant to" Nasdaq's "broad discretionary authority" under Nasdaq Rule 5101 "to deny the continued listing" of securities "'in order to maintain the quality of and public confidence in its market . . . and to protect investors and the public interest.'" Listing Council Decision at 7 (quoting Nasdaq Rule 5101). Shineco's challenge to the purported "retroactive" application of the Excessive Split Rule does not call into question this entirely separate basis for delisting Shineco.

Shineco characterizes the Listing Council's application of Rule 5101 as impermissibly "subjective[]" and a "failure to provide fair notice of [Nasdaq's] rules." Mot. at 14. But the discretion authorized by Nasdaq's Commission-approved listing rules is by design. "[T]here are few functions more quintessentially regulatory than suspension of trading." *Sparta Surgical Corp. v. NASD*, 159 F.3d 1209, 1214 (9th Cir. 1998), *abrogated in part on other grounds by Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374 (2016). "Under the Exchange Act's philosophy of cooperative regulation, [Nasdaq] is 'entrusted with the authority to preserve and strengthen the quality of and public confidence in its market.'" *Id.* (quoting SEC Release No. 34-34151, 59 Fed. Reg. 29,843, 29,843 (June 9, 1994)). Because "[i]nclusion of an issue[r] [on Nasdaq's exchange] creates the public expectation that the company meets minimum financial criteria," Nasdaq "sought and received SEC approval" to "exercise broad discretionary authority over the initial and continued inclusion of securities" on its exchange. *Id.* at 1214-15. For these reasons, courts have recognized that Nasdaq listing rules give it "broad discretion to determine whether the public interest requires delisting securities in light of events at a company" and that they are "obviously consistent with the Exchange Act." *Fog Cutter*, 474 F.3d at 825-26. Rule 5101 fits squarely within those holdings.

In any event, Shineco is wrong that Nasdaq gave "retroactive" effect to the Excessive Split Rule when it applied the rule as one of two alternative grounds for delisting Shineco's securities. Nasdaq proposed the Excessive Split Rule on August 6, 2024, the proposal was published in the Federal Register on August 23, 2024, SEC Release No. 34-100767, 89 Fed. Reg. 68,228 (Aug. 23, 2024), and it was subject to a months-long public-comment process, SEC Release No. 34-101238, 89 Fed. Reg. 81,956 (Oct. 9, 2024); Submitted Comments on SEC Release No. 34-100767, *available at* https://www.sec.gov/comments/sr-nasdaq-2024-045/srnasdaq2024045.htm. After designating a longer time to "consider the proposed rule change and the comments received" in October 2024, 89 Fed. Reg. at 81,956, the Commission approved the Excessive Split Rule in January 2025, 90 Fed. Reg. at 8,081. Nasdaq thereafter applied the rule to Shineco's violation of the minimum bid price requirement during trading days in *May and June 2025*, events that occurred months after the Excessive Split Rule was approved by the Commission. *See* Listing Council Decision at 4.

There is nothing remotely retroactive about applying an existing listing rule to assess whether Shineco was entitled to another 180-day compliance period to cure its fifth violation of the minimum bid price requirement months *after* the rule went into effect. A contrary rule would permit any listed company to argue that they may have made different business judgments in the distant past if they had foreseen the effect of a future rule applied to future conduct. Such an approach would make particularly little sense as applied to Shineco because, as the Listing Council found, "when [Shineco] conducted the November 2024" reverse stock split that was the basis for denying it an additional 180-day cure period, Shineco "either knew or should have known that Nasdaq had already proposed to adopt the Excessive Split Rule in August 2024." Listing Council Decision at 10. "One could reasonably expect a listed company with a history of frequent Bid

Price Rule violations and [reverse stock splits] to have been aware of and attuned to this development." *Id.*

Finally, even if the Excessive Split Rule had been applied "retroactively," "[a] new [rule] is not *impermissibly* retroactive simply because subsequent proceedings under that [rule's] authority implicate past events." *Arevalo v. Ashcroft*, 344 F.3d 1, 11 (1st Cir. 2003) (emphasis added). A rule's "temporal reach becomes unacceptable only when its retrospective application would significantly impair existing *substantive* rights and thereby disappoint legitimate expectations." *Id.* (emphasis added). Procedural rights, such as a 180-day cure period, "can be taken away retroactively." *Id.* at 13 (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 275 (1994)).

C. Nasdaq's Delisting Decision Is Fully Consistent With Its Rules And Listing Agreement.

Shineco also has no likelihood of success on its argument that Nasdaq violated New York common law by supposedly delisting Shineco in violation of its listing rules and Shineco's listing agreement. *See* Mot. at 15-17.

Shineco's motion and its attachments confirm that Nasdaq acted entirely appropriately and in compliance with the listing agreement and its Commission-approved rules—not in bad faith or in an "[un]workmanlike" manner—when it concluded that Shineco repeatedly failed to comply with the minimum bid price requirement and that delisting is therefore warranted. Listing Council Decision at 6-8. Under New York law, a duty of workmanlike services imposes "no requirement of perfection"; rather, "[t]he test is reasonableness in the terms of what the workman of average skill and intelligence would ordinarily do." *Lunn v. Silfies*, 106 Misc. 2d 41, 44 (N.Y. Sup. Ct. 1980). Shineco cannot meet its burden to establish a violation of that standard because it "ha[s] presented no evidence to show," or even allegations suggesting, that Nasdaq's provision of listing

services "was shoddy, unworkmanlike or substandard." *C.C.C. Renovations, Inc. v. Victoria Towers Dev. Corp.*, 2015 WL 13778781, at *4 (N.Y. Sup. Ct. May 12, 2015). Shineco's allegations instead raise a disagreement with Nasdaq's Commission-approved rules and review process—rules and procedures that Shineco specifically agreed to follow in its listing agreement. Indeed, Shineco's listing agreement made clear that "Nasdaq may amend its rules from time to time and that the Company agreed to be bound by such rules." Listing Council Decision at 4.

Nasdaq faithfully applied its Commission-approved rules in the Shineco delisting proceedings. It is undisputed that Shineco violated Nasdaq's minimum bid price requirement *five times* between September 2022 and June 2025 when its stock price repeatedly dropped below $1 for more than 30 consecutive business days. Listing Council Decision at 1-2. Twice in the 18 months leading up to the June 2025 staff delisting notice—in February and November 2024—Shineco "had attempted to cure its bid price deficiency by effecting [a reverse stock split], but each time, the bid price of its securities reverted to below $1 within a few months thereafter." *Id.* at 4. Shineco therefore was not entitled to a further 180-day cure period under the plain language of the Excessive Split Rule, which provides that a company "shall not be eligible for any compliance period" "if a Company's security fails to meet the continued listing requirement for minimum bid price and the Company has effected a reverse stock split over the prior one-year period." Nasdaq Rule 5810(c)(3)(A)(iv). Those are precisely the undisputed facts here. Listing Council Decision at 1-2. And, even setting aside the Excessive Split Rule, Nasdaq reasonably exercised its "broad discretionary authority over the initial and continued listing of securities" when it determined that delisting Shineco was appropriate because "[e]xtending yet another 180-day grace period . . . would raise significant public interest concerns" by "diminish[ing]" the "reputation and quality of

[Nasdaq's] listing market" and generating "negative externalities that can unfairly affect other listed companies." Nasdaq Rule 5101; Listing Council Decision at 8.

Nor can Shineco successfully repackage these same contractual arguments as a purported breach of the implied covenant of good faith and fair dealing. Mot. at 16. The covenant of good faith and fair dealing "'cannot be construed so broadly as effectively to nullify other express terms of a contract, or to create independent contractual rights.'" *Tour Cent. Park Inc. v. Thor 38 Park Row LLC*, 203 N.Y.S.3d 576, 578 (1st Dept. 2024) (citation omitted). Implied-covenant claims that are "duplicative" of breach-of-contract claims because they are "based on the same facts" fail as a matter of New York law. *Id.*

Shineco is therefore unlikely to succeed on any of its state-law arguments.

II. Shineco Fails To Make A Legally Sufficient Showing Of Irreparable Harm.

Shineco's stay motion fails for the additional reason that it cannot demonstrate irreparable harm. "To demonstrate irreparable harm, movants must show an injury that is 'both certain and great' and 'actual and not theoretical.' A stay 'will not be granted [based on] something merely feared as liable to occur at some indefinite time.'" *In re Application of Kabani & Co.*, 2017 WL 1295034, at *1 (SEC Apr. 7, 2017) (alteration in original; footnotes and internal quotation marks omitted).

Shineco cannot meet this burden. The three at-risk business transactions identified by Shineco occurred in March, April, and May 2025, respectively, and thus all postdate the Commission's approval of the Excessive Split Rule in January 2025. Mot. 17-18. Shineco was therefore fully on notice of, and bound by, the Excessive Split Rule when it entered into these transactions. Shineco nevertheless chose to finalize agreements that depend upon its continued listing on Nasdaq—even though, at the time, Shineco had violated the minimum bid requirement *four times in the last three years* and, under the terms of the Excessive Split Rule, would be unable

to rely on a reverse stock split to regain compliance for an additional violation occurring before mid-November 2025. Shineco thus knowingly and voluntarily exposed itself to the risk that these transactions would unravel in the event that it again violated Nasdaq's minimum bid price requirement and was delisted from the exchange.

The self-inflicted, predictable consequences of Shineco's freely negotiated contractual agreements are legally insufficient to establish irreparable harm for purposes of a stay. *See* 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.1 (3d ed., Sept. 2025 Update) ("[A] party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted"); *Bennett v. Isagenix Int'l LLC*, 118 F.4th 1120, 1129-30 (9th Cir. 2024) (same); *Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995) (finding no irreparable harm where plaintiff "contracted . . . to permit the outcome which they find unacceptable").

III. A Stay Is Not In The Public Interest And Would Harm Investors.

Finally, Shineco cannot meet its burden to show that the public interest favors a stay and that a stay would harm no other person. The public interest strongly favors the prompt enforcement of Nasdaq's listing standards, which the Commission has emphasized are "important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance." SEC Release No. 34-65708, 76 Fed. Reg. 70,799, 70,802 (Nov. 15, 2011). Those compelling interests extend to the enforcement of Nasdaq's Bid Price Rule and Excessive Split Rule, which "help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets." 90 Fed. Reg. at 8,083. Granting a stay would undermine these important investor-protection interests by perpetuating the listing of a company that has repeatedly demonstrated its inability to satisfy Nasdaq's Commission-approved listing criteria.

In addition, in challenging Nasdaq's delisting determination, Shineco failed to proceed with the expedition it now seeks from the Commission. If the Listing Council's decision is subject to immediate SEC review even before Form 25 has been filed—which Shineco maintains and Nasdaq disputes, *see supra* Section I.A—Shineco could have acted with far greater urgency to secure a Commission ruling on its stay request. Indeed, it waited sixteen days from the Listing Council's October 1 ruling to file its application for review and motion for a stay with the Commission (in the interim, filing a quixotic petition for a writ of prohibition with the D.C. Circuit, rather than seeking relief from the Commission). And Shineco failed to seek emergency relief from the blanket stay on Commission proceedings during the government shutdown, a procedure that is outlined on the Commission's website. *See* Order, SEC, *In re: Pending Administrative Proceedings* (Oct. 1, 2025), https://www.sec.gov/files/litigation/opinions/2025/33-11392.pdf. Shineco should not be rewarded with the extraordinary remedy of an "emergency" stay when it could have acted far more quickly in seeking Commission review and securing a ruling on its stay motion.

CONCLUSION

Shineco's motion for a stay should be denied.

Dated: November 3, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to the SEC Rules of Practice, I hereby certify that this opposition complies with the applicable length limitations in Rule 154(c) because it contains 5,903 words.

Dated: November 3, 2025

/s/ Amir C. Tayrani
Amir C. Tayrani

CERTIFICATE OF SERVICE

Pursuant to SEC Rule of Practice 151(d), I hereby certify that, on November 3, 2025, I caused the foregoing document to be served on Shineco, Inc. via email to:

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Per the Commission's Order Directing Briefing in this matter, a courtesy copy of this filing was also sent via email to Secretarys-Office@sec.gov with the subject line "Admin. Proc. File No. 3-22553; The Nasdaq Stock Market LLC's Opposition To Shineco's Motion For A Stay."

Dated: November 3, 2025

/s/ Amir C. Tayrani
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