

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

OPPOSITION BRIEF OF THE NASDAQ STOCK MARKET LLC

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	2
I. Nasdaq’s Listing Rules And Delisting Procedures.....	2
II. Shineco’s Listing, Suspension, And Delisting.....	6
III. Shineco’s Federal-Court Lawsuits And Application For Review	9
LEGAL STANDARD.....	11
ARGUMENT.....	11
I. Shineco’s Challenge To The Application Of The Excessive Split Rule Is Waived And Meritless	12
II. Nasdaq’s Delisting Process Provided A Fair Procedure.....	17
III. Nasdaq’s Delisting Decision Is Fully Consistent With Its Listing Agreement And Associated Listing Rules.....	19
CONCLUSION.....	21

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Arevalo v. Ashcroft</i> , 344 F.3d 1 (1st Cir. 2003).....	16
<i>Belfort v. NASD</i> , 1994 WL 97021 (S.D.N.Y. Mar. 24, 1994).....	4
<i>C.C.C. Renovations, Inc. v. Victoria Towers Dev. Corp.</i> , 2015 WL 13778781 (N.Y. Sup. Ct. May 12, 2015)	19
<i>Cleantech Innovations, Inc. v. Nasdaq Stock Market, LLC</i> , 2011 WL 7138696 (S.D.N.Y. Dec. 30, 2011)	10
<i>D.L. Cromwell Invs., Inc. v. NASD Regul., Inc.</i> , 279 F.3d 155 (2d Cir. 2002).....	16
<i>Desiderio v. NASD</i> , 191 F.3d 198 (2d Cir. 1999).....	16
<i>DL Cap. Grp., LLC v. Nasdaq Stock Mkt.</i> , 409 F.3d 93 (2d Cir. 2005).....	2
<i>Fog Cutter Cap. Grp. Inc. v. SEC</i> , 474 F.3d 822 (D.C. Cir. 2007).....	4, 14
<i>Free Enter. Fund v. PCAOB</i> , 561 U.S. 477 (2010).....	16
<i>Jones v. SEC</i> , 115 F.3d 1173 (4th Cir. 1997)	16
<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244 (1994).....	15, 16
<i>Lunn v. Silfies</i> , 106 Misc. 2d 41 (N.Y. Sup. Ct. 1980).....	19
<i>MFS Sec. Corp. v. SEC</i> , 380 F.3d 611 (2d Cir. 2004).....	12
<i>Otto v. SEC</i> , 253 F.3d 960 (7th Cir. 2001)	11

TABLE OF AUTHORITIES
(continued)

	<u>Page(s)</u>
<i>Shineco, Inc. v. Nasdaq Stock Market LLC</i> , No. 25-cv-06159 (S.D.N.Y.).....	8
<i>Sparta Surgical Corp. v. NASD</i> , 159 F.3d 1209 (9th Cir. 1998)	13, 14
<i>Tour Cent. Park Inc. v. Thor 38 Park Row LLC</i> , 203 N.Y.S.3d 576 (N.Y. App. Div. 1st Dept. 2024).....	21
<i>United States v. Rodriguez</i> , 553 U.S. 377 (2008).....	15
<i>United States v. Solomon</i> , 509 F.2d 863 (2d Cir. 1975).....	16
 Statutes	
15 U.S.C. § 78f	2
15 U.S.C. § 78l.....	2
15 U.S.C. § 78s	2, 5
15 U.S.C. § 78s(d)(1).....	11
15 U.S.C. § 78s(d)(2).....	11
15 U.S.C. § 78y.....	5
 Regulations	
17 C.F.R. § 201.401	5
17 C.F.R. § 201.420	11
17 C.F.R. § 201.450(b)	13
17 C.F.R. § 240.12d2-2.....	5
17 C.F.R. § 240.19d-1.....	5
SEC Release No. 34-34151, 59 Fed. Reg. 29,843 (June 9, 1994)	13
SEC Release No. 34-39326, 62 Fed. Reg. 62,385 (Nov. 21, 1997).....	2

TABLE OF AUTHORITIES
(continued)

	<u>Page(s)</u>
SEC Release No. 34-52029, 70 Fed. Reg. 42,456 (July 22, 2005).....	5
SEC Release No. 34-53128, 71 Fed. Reg. 3,550 (Jan. 23, 2006).....	2
SEC Release No. 34-90201, 85 Fed. Reg. 67,024 (Oct. 21, 2020).....	17
SEC Release No. 34-100767, 2024 WL 5670058 (Aug. 19, 2024).....	14
SEC Release No. 34-101238, 89 Fed. Reg. 81,956 (Oct. 9, 2024).....	14
SEC Release No. 34-102245, 90 Fed. Reg. 8,081 (Jan. 23, 2025).....	3, 14
 SRO Rules	
Nasdaq Rule 5000.....	2
Nasdaq Rule 5101.....	1, 4, 9, 13, 14, 18, 20
Nasdaq Rule 5550.....	3, 4, 6
Nasdaq Rule 5801.....	4
Nasdaq Rule 5805.....	4
Nasdaq Rule 5810.....	4
Nasdaq Rule 5810(c)(3)(A).....	3
Nasdaq Rule 5810(c)(3)(A)(iv).....	3, 6, 12, 20
Nasdaq Rule 5815.....	4
Nasdaq Rule 5815(a)(5).....	12
Nasdaq Rule 5820.....	4
Nasdaq Rule 5825.....	5, 9
Nasdaq Rule 5830.....	5
 Other Authorities	
25-NSE, SEC File No. 001-37776 (Nov. 20, 2025).....	10, 11
<i>In re Alpine Sec. Corp.</i> , Release No. 34-98867, 2023 WL 7379397 (Nov. 6, 2023).....	15

TABLE OF AUTHORITIES
(continued)

	<u>Page(s)</u>
<i>In re Jones</i> , Release No. 34-91045, 2021 WL 396767 (Feb. 2, 2021).....	13
<i>In re Kielczewski</i> , Release No. 34-104352, 2025 WL 3537495 (Dec. 9, 2025)	12, 16
<i>In re Minim, Inc.</i> , Release No. 34-101502 (Nov. 1, 2024)	5
<i>In re Potomac Cap. Markets, LLC</i> , Release No. 34-91172, 2021 WL 666510 (Feb. 19, 2021).....	13
<i>In re Shineco, Inc.</i> , Release No. 34-104272 (Nov. 26, 2025).....	1, 3, 10, 12, 13, 14, 17, 18, 19
Submitted Comments on SEC Release No. 34-100767	14

Pursuant to U.S. Securities and Exchange Commission Rule of Practice 450 and the Commission’s November 26, 2025 Order, The Nasdaq Stock Market LLC (“Nasdaq”) respectfully submits this brief in opposition to the opening brief of Shineco Inc. (“Shineco”) supporting its application for review of the delisting of its securities from Nasdaq.

INTRODUCTION

In denying Shineco’s motion for a stay, the Commission determined that Shineco had “not shown a likelihood of success or raised a serious legal question on the merits.” *In re Shineco, Inc.*, Release No. 34-104272, at 4 (Nov. 26, 2025) (“Stay Order”). Shineco repeats many of the same arguments in its opening brief challenging 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. Nothing in Shineco’s latest submission warrants a different outcome.

Nasdaq’s 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 and Nasdaq’s broad discretion to deny continued listing, Shineco was not entitled to a further period to regain compliance. The Commission thereafter declined to enter a stay of the delisting, emphasizing Nasdaq’s “‘broad discretionary authority’ to suspend or delist securities immediately—without additional time to cure—based on any ‘event, condition, or circumstance’ that makes continued listing ‘inadvisable or unwarranted.’” Stay Order 1 (quoting Nasdaq Rule 5101).

Consistent with the Commission’s reasoning in denying Shineco’s motion for a stay, Shineco’s challenge to its delisting fails because Shineco does not dispute that it repeatedly violated Nasdaq’s Bid Price Rule and because Nasdaq’s delisting determination rests squarely

within its broad discretion under its Commission-approved rules. None of Shineco's arguments can overcome those fundamental obstacles to its delisting challenge. Shineco's collateral attack on the validity of the Excessive Split Rule is waived, unnecessary to reach on this record, and wrong on the merits. And Shineco received fair process during the delisting proceedings, which, pursuant to Nasdaq's Commission-approved rules, gave Shineco a full opportunity to be heard. Shineco's contract arguments are equally baseless: Nasdaq followed its own rules and the terms of its Listing Agreement in delisting Shineco based on its serial noncompliance with the Bid Price Rule, and Shineco fails to identify a single rule that Nasdaq purportedly violated.

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 application for review should be dismissed.

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 Cap. Grp., LLC v. Nasdaq Stock Mkt.*, 409 F.3d 93, 95 (2d Cir. 2005); 15 U.S.C. § 78l(d). "As the

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

Commission has repeatedly emphasized, . . . Nasdaq’s listing standards 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.’” Stay Order 5-6 (footnote omitted).

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; *see also* Stay Order 6 (“investors have the potential to be harmed by relying on the company’s listing on Nasdaq as an

indication that the company meets Nasdaq’s listing requirements when, in fact, it has repeatedly fallen short of those standards and Nasdaq has found the company’s plans for regaining compliance to be inadequate”).

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 and request a stay of the delisting. *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, 2024 WL 4650996 (Nov. 1, 2024) (granting administrative stay of delisting determination during 10-day period preceding delisting). 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." Nasdaq_Shineco_000439. 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, Suspension, And Delisting

Shineco listed its securities on Nasdaq's exchange in 2016. Shineco Br. 10. As with all other companies listed on Nasdaq's exchange, Shineco's Listing Agreement required it to follow Nasdaq's rules and procedures. Nasdaq_Shineco_000432. 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* Nasdaq_Shineco_000429-30. 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. Nasdaq_Shineco_000430. 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. Nasdaq_Shineco_000007. Shineco had the opportunity to submit a detailed, written submission to the Hearings Panel ahead of the hearing, Nasdaq_Shineco_000018 (written submission), as well as an opportunity to present orally to the Hearings Panel itself on July 24, 2025, Nasdaq_Shineco_000062 (Shineco presentation deck); Nasdaq_Shineco_000081 (transcript).

Shineco’s presentation to the Hearings Panel “outlined its compliance plan,” including its plan to “divest[] from pandemic-impacted business lines that were unprofitable and pivot[] to the high-growth stem cell sector” and its plan to complete another reverse stock split. Nasdaq_Shineco_000112-13; *see also* Nasdaq_Shineco_000075 (presentation explaining plan to complete another reverse stock split); Shineco Br. 9 (discussing Shineco’s “Pre-Hearing Submission,” “detailed business slides in [its] PowerPoint Presentation to the Hearing[s] Panel,” and its “verbal presentation” before the Hearings Panel).

On July 25, the Hearings Panel issued a written decision upholding the listing staff’s delisting notice. Nasdaq_Shineco_000112-13. The Hearings Panel explained that Shineco “ha[d] experienced significant challenges in maintaining compliance with the Exchange’s Bid Price Rule,” with the “current bid price deficiency represent[ing] the fifth time since September of 2022, that the Company has run afoul of that rule.” Nasdaq_Shineco_000113. Despite Shineco’s efforts to “implement a change in strategy” through new acquisitions and “transitioning its operations,” the Panel reasoned that the “dramatic pivot in business model” did not “inspire confidence on the part of the Panel” and concluded that there was “no proof” that such changes would “allow the Company to continue as a functioning operating company.” *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. *Id.* “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.* The Hearings Panel further noted that its conclusion would not permanently bar Shineco from listing its securities on Nasdaq; Shineco “should take the time

necessary to solidify its new business model and may return to apply for listing on the Exchange should it find a sound footing at a later date.” *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* Nasdaq_Shineco_000430; 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* D.E. 1 & 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 the Hearings Panel’s decision and to stay that decision pending the Listing Council’s review. Nasdaq_Shineco_000121; 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. Nasdaq_Shineco_000434. 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.” Nasdaq_Shineco_000435. The Listing Council further found that Shineco had “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. Nasdaq_Shineco_000438.²

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.” Nasdaq_Shineco_000435. “[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.” Nasdaq_Shineco_000436. “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.*

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

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.” Nasdaq_Shineco_000431 n.1.

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. Shineco Ex. A. 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. Shineco Ex. B at 2-3 (quoting *Cleantech Innovations, Inc. v. Nasdaq Stock Market, LLC*, 2011 WL 7138696, at *4 (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. Shineco Exs. C, D.

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, raising many of the same arguments it makes in its opening brief. On October 29, Nasdaq's board declined to call Shineco's delisting for review. Nasdaq_Shineco_000440. Nasdaq filed a Form 25 regarding Shineco's securities on November 20. 25-NSE, SEC File No. 001-37776 (Nov. 20, 2025).

The Commission denied Shineco's motion to stay the delisting on November 26, concluding that Shineco had "not shown a likelihood of success or raised a serious legal question on the merits." Stay Order 4. The Commission noted that "Shineco does not dispute that it violated the Bid Price Rule," "disagree[d]" with Shineco's claim that Nasdaq's decision to suspend and delist Shineco's securities was "arbitrary and capricious," and emphasized the "strong public interest in Nasdaq's enforcing its listing standards." *Id.* at 4, 5. The Commission reasoned that "[b]oth the hearings panel and Listing Council . . . decisions provide[d] detailed examinations of Shineco's arguments, including the company's repeated violations of the Bid Price Rule and its plan to regain compliance." *Id.* at 4. The Commission further concluded that it did not "need to

reach” Shineco’s argument that Nasdaq “did not provide fair notice” of a purported retroactive application of the Excessive Split Rule because the Listing Council “recognized that even if the Excessive Split Rule did not apply, Nasdaq had ‘broad discretionary authority’ to determine that Shineco’s circumstances warranted suspending and delisting Shineco’s securities immediately to maintain the quality of and public confidence in its market and for the protection of investors and the public interest.” *Id.* Finally, the Commission determined that Shineco had not “shown that Nasdaq failed to comply with its own rules or deprived the company of a fair procedure.” *Id.*

Shineco’s securities were delisted from Nasdaq on December 1, 2025, SEC File No. 001-37776 (Nov. 20, 2025).

LEGAL STANDARD

A person “aggrieved” by a self-regulatory organization’s final decision “prohibit[ing] or limit[ing] any person in respect to access to services offered by such organization,” including a delisting decision, can seek review by the Commission within thirty days of the date that the self-regulatory organization files the required notice with the Commission. 15 U.S.C. § 78s(d)(1)–(2); 17 C.F.R. § 201.420. The Commission’s review of the self-regulatory organization’s decision is *de novo*. *Otto v. SEC*, 253 F.3d 960, 964 (7th Cir. 2001).

ARGUMENT

Consistent with the Commission’s reasoning in denying Shineco’s motion for a stay, the Commission should dismiss Shineco’s application for review. 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 was therefore warranted. Shineco does not dispute that it failed to comply with Nasdaq’s listing rules, and its challenges to Nasdaq’s application of those rules are uniformly without merit.

I. Shineco’s Challenge To The Application Of The Excessive Split Rule Is Waived And Meritless.

Shineco’s primary complaint is Nasdaq’s purportedly “retroactive” application of the Excessive Split Rule, which rendered Shineco ineligible for an additional 180-day cure period in light of its November 2024 stock split. Shineco Br. 6-8; Nasdaq Rule 5810(c)(3)(A)(iv). Although the Commission need not reach the merits of that argument—Shineco waived the argument and the Listing Council’s decision rests on independent grounds unrelated to the Excessive Split Rule—Shineco’s collateral attack on that Commission-approved rule also fails on the merits.

To start, and 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.” Nasdaq_Shineco_000438. Nasdaq Rule 5815(a)(5) required Shineco to raise “all legal arguments on which it intend[ed] to rely” to challenge the staff’s delisting decision before the Hearings Panel. *See id.* 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 In re Kielczewski*, Release No. 34-104352, 2025 WL 3537495, at *13 (Dec. 9, 2025) (holding that “[a]s a threshold matter, Kielczewski forfeited these [constitutional] arguments by failing to raise them before FINRA”); *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004) (applying the “SEC’s requirement that aggrieved members of SROs ordinarily must fully exhaust the remedies made available by those organizations before seeking Commission review”).

Even if properly preserved, the Commission could uphold Nasdaq’s delisting decision without reaching Shineco’s challenge to the purported “retroactive” application of the Excessive Split Rule. The Commission did precisely that in denying Shineco’s motion for a stay, where it explained that it did “not need to reach that argument,” Stay Order 4, because the Listing Council

concluded 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.” Nasdaq_Shineco_000435 (quoting Nasdaq Rule 5101); *see also* Stay Order 4. Shineco’s challenge to the purported “retroactive” application of the Excessive Split Rule does not call into question this entirely separate and independent basis for delisting Shineco. In fact, Shineco does not even mention this alternative basis for the Listing Council’s decision or cite Rule 5101 in its opening brief—waiving any opportunity to contest this alternative basis before the Commission. *See* Rule of Practice 450(b), 17 C.F.R. § 201.450(b) (“[E]xcept as otherwise determined by the Commission in its discretion, any argument raised for the first time in a reply brief shall be deemed to have been waived.”); *In re Jones*, Release No. 34-91045, 2021 WL 396767, at *3 n.17 (Feb. 2, 2021) (arguments raised for the first time in a reply brief are waived); *In re Potomac Cap. Markets, LLC*, Release No. 34-91172, 2021 WL 666510, at *4 n.30 (Feb. 19, 2021) (same).

Nasdaq’s exercise of discretion was authorized by its Commission-approved listing rules, as embodied in Rule 5101. “[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 (quotation marks omitted).

For these reasons, the Commission emphasized in denying Shineco’s stay motion that “Nasdaq has ‘broad discretionary authority’ to suspend or delist securities immediately—without additional time to cure—based on any ‘event, condition, or circumstance’ that makes continued listing ‘inadvisable or unwarranted.’” Stay Order 1 (quoting Nasdaq Rule 5101). And courts have likewise recognized that Nasdaq’s listing rules give it “broad discretion to determine whether the public interest requires delisting securities in light of events at a company” and that these rules 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 Commission approved the Excessive Split Rule. *See* Nasdaq_Shineco_000432.

There is nothing remotely retroactive about applying an existing listing rule to assess whether to grant Shineco another 180-day compliance period to cure its fifth violation of the minimum bid price requirement months *after* the rule went into effect. The relevant point in time for assessing retroactivity is the time of the latest violation of the minimum bid price requirement—which is the conduct that triggers Nasdaq’s application of the Excessive Split Rule to assess whether to grant a 180-day compliance period—not the time of an earlier reverse stock split that renders the company ineligible for an additional compliance period. *See In re Alpine Sec. Corp.*, Release No. 34-98867, 2023 WL 7379397, at *10 (Nov. 6, 2023) (“[A] rule ‘is not made retroactive merely because it draws upon antecedent facts for its operation.’”) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 n.24 (1994)); *cf. United States v. Rodriguez*, 553 U.S. 377, 386 (2008) (“When a defendant is given a higher sentence under a recidivism statute . . . 100% of the punishment is for the offense of conviction. None is for the prior convictions or the defendant’s ‘status as a recidivist.’”).

A contrary rule would permit any listed company to argue that it is not subject to a newly adopted Nasdaq rule because it may have made different business judgments in the distant past if it had foreseen the effect of that 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—as a listed company with a history of Bid Price Rule violations and reverse stock splits—“either knew or should have known that Nasdaq had already proposed to adopt the Excessive Split Rule in August 2024.” Nasdaq_Shineco_000438. “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” to Shineco, “[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; *see also Landgraf*, 511 U.S. at 275 (“Because rules of procedure regulate secondary rather than primary conduct, the fact that a new procedural rule was instituted after the conduct giving rise to the suit does not make application of the rule at trial retroactive.”).

In sum, Shineco’s retroactivity argument is waived, irrelevant to the validity of the delisting decision, and meritless.³

³ Shineco asserts, without explanation, that Nasdaq’s supposed “[r]etroactive [a]pplication” of the Excessive Split Rule was “[u]nconstitutional.” Shineco Br. 6 (bolding omitted). For all the reasons addressed above, Shineco’s fleeting constitutional argument is waived, not necessary for the Commission to reach, and meritless. In addition, numerous courts have rejected constitutional challenges to the actions of self-regulatory organizations like Nasdaq because they are private, not governmental, bodies. *See, e.g., Desiderio v. NASD*, 191 F.3d 198, 206-07 (2d Cir. 1999) (“The NASD is a private actor, not a state actor”); *D.L. Cromwell Invs., Inc. v. NASD Regul., Inc.*, 279 F.3d 155, 162 (2d Cir. 2002) (collecting cases “repeatedly” holding that “the NASD itself is not a government functionary”); *Jones v. SEC*, 115 F.3d 1173, 1183 (4th Cir. 1997) (“agree[ing] with the SEC” that the double jeopardy clause is not applicable because the NASD “is not a governmental agency”); *United States v. Solomon*, 509 F.2d 863, 867-71 (2d Cir. 1975) (Friendly, J.) (rejecting extension of Fifth Amendment self-incrimination claim to an interview before the private New York Stock Exchange); *see also Free Enter. Fund v. PCAOB*, 561 U.S. 477, 484-85 (2010) (contrasting “private self-regulatory organizations in the securities industry—such as the New York Stock Exchange”—with a “Government-created, Government-appointed entity” subject to constitutional constraints). The Commission has also repeatedly reached the same conclusion. *See, e.g., In re Kielczewski*, 2025 WL 3537495, at *14 (rejecting due-process challenge to FINRA).

II. Nasdaq’s Delisting Process Provided A Fair Procedure.

Nasdaq provided Shineco with fair procedures when determining to delist the company based on Shineco’s repeated noncompliance with Nasdaq’s listing standards. As the Commission recognized in denying a stay, the Hearings Panel and Listing Council decisions “provide[d] detailed examinations of Shineco’s arguments, including the company’s repeated violations of the Bid Price Rule and its plan to regain compliance,” and “Shineco has not otherwise shown that Nasdaq failed to comply with its own rules or deprived the company of a fair procedure.” Stay Order 4. None of Shineco’s arguments demonstrates otherwise.

Shineco is wrong to suggest that the speed with which the Hearings Panel rendered a decision is evidence of a lack of fair process. *See* Shineco Br. 8. Shineco provides no support for the proposition that efficient decision-making is indicative of a lack of process. Such an inference would be particularly misplaced here, where the Hearings Panel was in possession of each side’s respective positions—including Shineco’s written submission filed on July 3 and Shineco’s presentation deck filed on July 22—*before* the July 24 hearing. Nasdaq_Shineco_000018 (Shineco written submission); *id.* at 62 (Shineco presentation deck). Those written submissions played a significant role in the Hearings Panel’s decision-making because, as Nasdaq’s hearing guidelines made clear, absent “exceptional or unusual circumstances,” Shineco was not permitted to raise *new* information at the hearing itself. Nasdaq_Shineco_000016-17. The Hearings Panel therefore had multiple weeks before the hearing to consider Shineco’s key arguments. The fact that the Hearings Panel was able to rule promptly after the hearing suggests only that Shineco’s written submissions were unpersuasive and that its track record of noncompliance with the Bid Price Rule made the decision to delist Shineco relatively straightforward. This is precisely the type of efficient outcome that the Commission has sought to promote in the delisting setting. *See* SEC Release No. 34-90201, 85 Fed. Reg. 67,024, 67,029 (Oct. 21, 2020) (“The Commission believes

that where a company has received a delisting determination, it is important to have an efficient, fair, and effective process for reviewing such determination, given that the company's shares will likely continue to trade during the duration of the Hearings Panel's review.”).

Nor did Nasdaq “ignore[] entirely” or “g[ive] short shrift to Shineco’s” compliance plan. Shineco Br. 8. As explained in Nasdaq’s written decisions, the Hearings Panel and Listing Council were simply not convinced that Shineco’s business plan would be effective for maintaining minimum bid price compliance in the long term—especially in light of Shineco’s repeated compliance failures over the last three years and its repeated reliance on reverse stock splits to cure noncompliance. *See* Nasdaq_Shineco_000113 (“Such a dramatic pivot in business model does not inspire confidence on the part of the Panel nor justify yet another exception.”); *id* at 436 (“When the Company makes such claims after its fifth Bid Price Rule violation in three years, it is not clearly erroneous for the Staff, a Hearings Panel—or this Listing Council—to be cautious about such claims or to refuse to give the Company the benefit of the doubt.”). And, as the Listing Council found, “[i]t certainly did not help the Company’s credibility that it misrepresented its quarterly financial position to hide continued losses, even after it had begun executing its transformation plan.” *Id.*

Accordingly, Shineco had a full and fair opportunity to be heard before Nasdaq.⁴

⁴ Shineco’s passing suggestion that Nasdaq “applied to Shineco a different standard than to non-Asia based companies” is similarly unfounded. Shineco Br. 14. Shineco does not identify a single company, domiciled in or outside of Asia, that Nasdaq supposedly treated more favorably than Shineco. As the administrative record makes clear, Nasdaq delisted Shineco based on its long history of noncompliance with Nasdaq’s Bid Price Rule and afforded Shineco extensive process to challenge that delisting decision. In so doing, Nasdaq acted in conformity with its Commission-approved rules and its “‘broad discretionary authority’ to suspend or delist securities immediately” where “continued listing” is “‘inadvisable or unwarranted.’” Stay Order 1 (quoting Nasdaq Rule 5101).

III. Nasdaq’s Delisting Decision Is Fully Consistent With Its Listing Agreement And Associated Listing Rules.

Finally, as the Commission concluded in denying a stay, Shineco cannot establish that Nasdaq breached its contractual duties under the Listing Agreement, or the listing rules incorporated into that agreement, when it delisted Shineco. *See* Shineco Br. 10-12; Stay Order 5 (“Shineco has not shown at this stage of the proceedings that Nasdaq has not complied with its rules”).

As the administrative record confirms, Nasdaq acted 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 was therefore warranted. Nasdaq_Shineco_000434-36; Shineco Br. 10-11. 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” 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). As the Commission previously recognized, “Shineco does not dispute that it violated the Bid Price Rule.” Stay Order 4. And Shineco has not identified a single listing rule that Nasdaq purportedly violated in delisting Shineco based on its longstanding violations of the Bid Price Rule. Shineco’s challenge instead raises a disagreement with the substance of Nasdaq’s Commission-approved rules and the procedures afforded by Nasdaq’s 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.”
Nasdaq_Shineco_000432.

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. Nasdaq_Shineco_000429-30. 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.” Nasdaq_Shineco_000432. Shineco therefore was not entitled to a further 180-day cure period under the plain language of the Excessive Split Rule. Nasdaq Rule 5810(c)(3)(A)(iv). And, even setting aside the Excessive Split Rule, Nasdaq reasonably exercised its “broad discretionary authority over the initial and continued listing of securities,” Nasdaq Rule 5101, 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_Shineco_000436.⁵

Nor can Shineco successfully repackage these contractual arguments as a purported breach of the implied covenant of good faith and fair dealing. Shineco Br. 12-13. The covenant of good

⁵ Shineco faults Nasdaq for supposedly failing to provide a “vehicle to stay” the suspension of trading in Shineco’s shares after the Hearings Panel’s decision. Shineco Br. 10. That assertion is belied by Shineco’s request that the Listing Council stay the suspension, which the Listing Council exercised its discretion to do when calling the Hearings Panel’s decision for review. Nasdaq_Shineco_000121. And even if the Listing Council had not granted a discretionary stay, granting immediate effect to the suspension would have been fully consistent with Nasdaq’s delisting procedures, which are embodied in rules that the Commission has reviewed and approved and that Shineco agreed to follow in its Listing Agreement.

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 (N.Y. App. Div. 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.* That is precisely the case here, where Shineco’s implied-covenant arguments add nothing to its flawed arguments based on the express terms of the Listing Agreement.

CONCLUSION

The Commission should dismiss Shineco’s application for review.

Dated: January 7, 2026

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Amir C. Tayrani

Amir C. Tayrani
Alex Gesch
1700 M Street, N.W.
Washington, D.C. 20036
Tel.: (202) 887-3692
Fax: (202) 467-0539
atayrani@gibsondunn.com

David Salant
200 Park Avenue
New York, New York 10166
Tel.: (212) 351-4000
Fax: (212) 351-4035
dsalant@gibsondunn.com

Attorneys for The Nasdaq Stock Market LLC

CERTIFICATE OF COMPLIANCE

Pursuant to the SEC Rules of Practice, I hereby certify that this opposition complies with the applicable length limitations in Rule 450(c) because it contains 6,514 words.

Dated: January 7, 2026

/s/ Amir C. Tayrani
Amir C. Tayrani

CERTIFICATE OF SERVICE

Pursuant to SEC Rule of Practice 151(d), I hereby certify that, on January 7, 2026, I caused the foregoing document to be served on Shineco, Inc. via email to:

Jacob S. Frenkel, Esq.
Gregory L. Ewing, Esq.
Brian S. Yu, Esq.
DICKINSON WRIGHT PLLC
International Square Bldg.
1825 I St. N.W., Suite 900
Washington, D.C. 20006
Tel: (202) 466-5953
Fax: (844) 670-6009
JFrenkel@dickinsonwright.com
GEwing@dickinsonwright.com
BYu@dickinsonwright.com

Attorneys of Record for Shineco, Inc.

Dated: January 7, 2026

/s/ Amir C. Tayrani
Amir C. Tayrani