

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 5, 2019

SPAR Group, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware  
(State or Other Jurisdiction  
of Incorporation)

0-27408  
(Commission  
File No.)

33-0684451  
(IRS Employer  
Identification No.)

333 Westchester Avenue, South Building, Suite 204, White Plains, NY  
(Address of Principal Executive Offices)

10604  
(Zip Code)

Registrant's telephone number, including area code: (914) 332-4100

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)  
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)  
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))  
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## **Item 3.01 - Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing**

### **I. Correction of Failure to Maintain a Majority of Independent Directors on the Board**

SPAR Group, Inc. ("SGRP", the "Corporation" or the "Registrant") received a notification letter from the Nasdaq Stock Market, Inc. ("Nasdaq"), dated December 13, 2018 (the "Nasdaq Board Independence Deficiency Letter"), stating that SGRP no longer complied with Nasdaq's majority independent director requirement, as set forth in Nasdaq Listing Rule 5605(b)(1). Nasdaq Listing Rule 5605(b)(1) requires a majority of the board of directors of a listed company to be comprised of independent directors, as defined in Rule 5605(b)(1) (the "Board Independence Rule").

SGRP had until January 31, 2019, to submit a plan to Nasdaq to regain compliance with the independence requirement. SGRP submitted that plan to Nasdaq on January 30, 2019 (the "Compliance Plan").

In the Compliance Plan, SGRP explained that it had more fully vetted and re-evaluated the independence of Mr. Mayer, based on (among other things) Mr. Mayer's independent business skills, his contribution to the Settlement (as defined in the Compliance Plan) process, his interactions with the Board of Directors of the Corporation (the "Board") over the last five months, and his lack of financial dealings with the Majority Stockholders (as defined in the Compliance Plan), and determined that he has the requisite independence from the management of the Corporation (to be considered an independent director under Rule 5605 (a)(2) for the purposes of serving on the Board and its Compensation Committee. He will, however, be considered an interested director and excluded from any decision respecting any Related Party Matter (as defined in the Compliance Plan), which are within the Audit Committees purview and he is not being appointed to either the Audit Committee or the Governance Committee.

On February 5, 2019, Nasdaq sent SGRP a letter (the "Compliance Letter"), stating that Nasdaq "Staff has determined that since the Company's Board of Directors currently consists of four independent and three non-independent directors, it complies with the Rule and this matter is now closed".

The foregoing descriptions are qualified in their entirety by reference to the Compliance Plan and the Compliance Letter, copies of which are filed herewith as Exhibit 99.1 and Exhibit 99.9, respectively, and are incorporated herein by reference. The Nasdaq Board Independence Deficiency Letter is incorporated herein by reference from SGRP's Current Report on Form 8-K as filed with the SEC on December 14, 2018.

### **II. Continued Failure to Maintain the Minimum Bid Price**

SGRP received a notification letter from Nasdaq dated December 10, 2018 (the "Nasdaq Bid Price Deficiency Letter"), stating that SGRP is no longer in compliance with certain requirements for continued listing on Nasdaq.

The Nasdaq Bid Price Deficiency Letter stated SGRP had failed to maintain a minimum closing bid price of \$1.00 per share for its shares of its Common Stock for the prior 30 consecutive business days preceding its notice (i.e., October 25, 2018 - December 7, 2018) as required by Nasdaq Listing Rule 5550(a) (2) (the "Bid Price Rule"). The Nasdaq Bid Price Deficiency Letter provides that SGRP has until June 10, 2019, as a grace period to regain compliance with the Bid Price Rule by maintaining a closing bid price of \$1.00 per share for a minimum of ten consecutive business days. If at any time during the grace period the bid price of SGRP's Common Stock closes at \$1.00 per share or more for a minimum of ten consecutive business days, Nasdaq will provide SGRP with written confirmation of compliance.

SGRP has not yet regained compliance with the Bid Price Rule. Failure to do so could lead to the delisting of SGRP's securities. See "*Failure to Maintain the Minimum Bid Price*" in SGRP's Current Report on Form 8-K as filed with the SEC on December 14, 2018

The Nasdaq Bid Price Deficiency Letter does not affect the listing of SGRP's Common Stock at this time, and those shares will continue to trade on Nasdaq under the symbol "SGRP".

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The foregoing description of the Nasdaq Bid Price Deficiency Letter is qualified in its entirety by reference to Nasdaq Bid Price Deficiency Letter, a copy of which is incorporated herein by reference from SGRP's Current Report on Form 8-K as filed with the SEC on December 14, 2018.

### **III. Risks of a Nasdaq Delisting and Penny Stock Trading**

There can be no assurance that SGRP will be able to correct the Nasdaq Rule deficiencies described in the Nasdaq Bid Price Deficiency Letter, or that SGRP will be able to comply in the future with Nasdaq's Board Independence Rule (requiring that independent directors be a majority of the SGRP Board of Directors and the only members of its Audit, Compensation and Governance Committees), Nasdaq's Bid Price Rule (requiring a minimum bid price of \$1.00/share), or other Nasdaq continued listing requirements.

If SGRP fails to satisfy the applicable continued listing requirement and continues to be in non-compliance after notice and the applicable grace period ends (which is six months in the case of the Bid Price Rule), Nasdaq may commence delisting procedures against SGRP (during which SGRP may have additional time of up to six months to appeal and correct its non-compliance). If the SGRP Common Stock shares were ultimately delisted by Nasdaq, the market liquidity of the SGRP Common Stock could be adversely affected and its market price could decrease, even though such shares may continue to be traded "over the counter", due to (among other things) the potential for increased spreads between bids and asks, lower trading volumes and reporting delays in over-the-counter trades and the negative implications and perceptions that could arise from such a delisting.

In addition to the foregoing, if the SGRP Common Stock is delisted from Nasdaq and is traded on the over-the-counter market, the application of the "penny stock" rules could adversely affect the market price of the SGRP Common Stock and increase the transaction costs to sell those shares. The SEC has adopted regulations which generally define a "penny stock" as any equity security not listed on a national securities exchange or quoted on Nasdaq that has a market price of less than \$5.00 per share, subject to certain exceptions. If the SGRP Common Stock is delisted from Nasdaq and is traded on the over-the-counter market at a price of less than \$5.00 per share, the SGRP Common Stock would be considered a penny stock. Unless otherwise exempted, the SEC's penny stock rules require a broker-dealer, before a transaction in a penny stock, to deliver a standardized risk disclosure document that provides information about penny stock and the risks in the penny stock market, the current bid and offer quotations for the penny stock, the compensation of the broker-dealer and the salesperson in the transaction, and monthly account statements showing the market value of each penny stock held in the customer's account. Further, prior to a transaction in a penny stock occurs, the penny stock rules require the broker-dealer to provide a written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's agreement to the transaction. If applicable in the future, the penny stock rules may restrict the ability of brokers-dealers to sell the SGRP Common Stock and may affect the ability of investors to sell their shares, until the SGRP Common Stock is no longer a penny stock.

### **Forward Looking Statements**

This Current Report on Form 8-K and the attached Exhibit (this "Current Report"), contain "forward-looking statements" within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, made by, or respecting, SGRP and its subsidiaries (together with SGRP, the "SPAR Group" or the "Company"), and this Current Report has been filed by SGRP with the Securities and Exchange Commission (the "SEC"). There also are "forward-looking statements" contained in SGRP's Annual Report on Form 10-K for its fiscal year ended December 31, 2017 (as filed, the "Annual Report"), as filed with the SEC on April 2, 2018, in SGRP's definitive Proxy Statement respecting its Annual Meeting of Stockholders held on May 2, 2018 (as filed, the "Proxy Statement"), which SGRP filed with the SEC on April 18, 2018, SGRP's preliminary Information Statement filed pursuant to Section 14(c) of the Securities Exchange Act of 1934 and Rule 14c-2 thereunder as filed with the SEC on July 30, 2018 (as filed, the "Preliminary Information Statement"), and SGRP's Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports and statements as and when filed with the SEC (including this Current Report, the Annual Report and the Proxy Statement, each a "SEC Report"). "Forward-looking statements" are defined in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and other applicable federal and state securities laws, rules and regulations, as amended (together with the Securities Act and Exchange Act, the "Securities Laws").

All statements (other than those that are purely historical) are forward-looking statements. Words such as "may," "will," "expect," "intend," "believe," "estimate," "anticipate," "continue," "plan," "project," or the negative of these terms or other similar expressions also identify forward-looking statements. Forward-looking statements made by the Company in this Current Report or the SEC Reports may include (without limitation) statements regarding: risks, uncertainties, cautions, circumstances and other factors ("Risks"); and plans, intentions, expectations, guidance or other information respecting the potential negative effects of the Company's inability to correct the Nasdaq Rule deficiencies described in the Nasdaq Bid Price Deficiency Letter or to comply with the Board Independence Rule or Bid Price Rule in the future, then Status Quo Order or the Proposed Amendments, the By-Laws Case or 225 Action, or the pursuit or achievement of the Company's five corporate objectives (growth, customer value, employee development, greater productivity & efficiency, and increased earnings per share), building upon the Company's strong foundation, leveraging compatible global opportunities, growing the Company's client base and contracts, continuing to strengthen its balance sheet, growing revenues and improving profitability through organic growth, new business development and strategic acquisitions, and continuing to control costs. The Company's forward-looking statements also include (without limitation) those made in the Annual Report in "Business", "Risk Factors", "Legal Proceedings", "Management's Discussion and Analysis of Financial Condition and Results of Operations", "Directors, Executive Officers and Corporate Governance", "Executive Compensation", "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters", and "Certain Relationships and Related Transactions, and Director Independence".

You should carefully review and consider the Company's forward-looking statements (including all risk factors and other cautions and uncertainties) and other information made, contained or noted in or incorporated by reference into this Current Report, the Annual Report, the Proxy Statement and the other applicable SEC Reports, but you should not place undue reliance on any of them. The results, actions, levels of activity, performance, achievements or condition of the Company (including its affiliates, assets, business, clients, capital, cash flow, credit, expenses, financial condition, income, liabilities, liquidity, locations, marketing, operations, performance, prospects, sales, strategies, taxation or other achievement, results, risks, trends or condition) and other events and circumstances planned, intended, anticipated, estimated or otherwise expected by the Company (collectively, "Expectations"), and our forward-looking statements (including all Risks) and other information reflect the Company's current views about future events and circumstances. Although the Company believes those Expectations and views are reasonable, the results, actions, levels of activity, performance, achievements or condition of the Company or other events and circumstances may differ materially from our Expectations and views, and they cannot be assured or guaranteed by the Company, since they are subject to Risks and other assumptions, changes in circumstances and unpredictable events (many of which are beyond the Company's control). In addition, new Risks arise from time to time, and it is impossible for the Company to predict these matters or how they may arise or affect the Company. Accordingly, the Company cannot assure you that its Expectations will be achieved in whole or in part, that it has identified all potential Risks, or that it can successfully avoid or mitigate such Risks in whole or in part, any of which could be significant and materially adverse to the Company and the value of your investment in the Company's Common Stock.

These forward-looking statements reflect the Company's Expectations, views, Risks and assumptions only as of the date of this Current Report, and the Company does not intend, assume any obligation, or promise to publicly update or revise any forward-looking statements (including any Risks or Expectations) or other information (in whole or in part), whether as a result of new information, new or worsening Risks or uncertainties, changed circumstances, future events, recognition, or otherwise.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits:

- 99.1. [Letter from SPAR Group, Inc. \("SGRP"\), to the Nasdaq Stock Market, Inc. \("Nasdaq"\), dated January 30, 2019, containing SGRP's plan for board independence \(as attached hereto and filed herewith\).](#)
- 99.2. [Letter to SGRP, from Nasdaq dated February 5, 2019, stating that SGRP had regained compliance with Nasdaq's board independence rule \(as attached hereto and filed herewith\).](#)
- 99.3. [Letter to SGRP, from Nasdaq dated December 13, 2018, stating that SGRP no longer complies with Nasdaq's majority independent director requirement, as set forth in Nasdaq Listing Rule 5605\(b\)\(1\) \(incorporated by reference from SGRP's Current Report on Form 8-K as filed with the SEC on December 15, 2018\).](#)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: February 11, 2018

**SPAR Group, Inc.**

By: /s/ James R. Segreto  
James R. Segreto, Chief Financial Officer

By Electronic Delivery to: moira.keith@nasdaq.com

January 30, 2019

Ms. Moira Keith  
Associate Director  
Nasdaq Listing Qualifications  
805 King Farm Boulevard, 2nd Floor  
Rockville, Maryland 20850

Re: SPAR Group, Inc. (the "Company")

Dear Ms. Keith:

**Summary:**

In connection with the Settlement described below, the Governance Committee of SPAR Group, Inc. ("**SGRP**" or the "**Corporation**"), more fully vetted and re-evaluated the independence of Mr. Mayer, based on (among other things) Mr. Mayer's independent business skills, his contribution to the Settlement (as defined below) process, his interactions with the Board of Directors of the Corporation (the "**Board**") over the last five months, and his lack of financial dealings with the Majority Stockholders (as defined below), and determined that he has the requisite independence from the management of the Corporation (to be considered an independent director under Rule 5605 (a)(2) for the purposes of serving on the Board and its Compensation Committee. He will, however, be considered an interested director and excluded from any decision respecting any Related Party Matter (as defined below), which are within the Audit Committees purview and he is not being appointed to either the Audit Committee or the Governance Committee.

Accordingly, the Corporation believes that the Board now has a majority of independent directors and satisfies Nasdaq Listing Rule 5605(b)(1).

In addition, the negotiated compromises in the Settlement respecting the By-Laws preserves the current roles of the Governance Committee (which consists of all independent directors) and Board in the location, evaluation and selection of candidates for director and in the nominations of those candidates for the annual stockholders meeting and appointment of those candidates to fill Board vacancies (other than those under a stockholder written consent making a removal and appointment, which process is unchanged), all in accordance with Corporation's nomination policy, standards and procedures.

The Governance Committee and the Board believe that such re-evaluation and redetermination respecting Mr. Mayer and those negotiated compromises in the 2019 Restated By-Laws will help the Corporation maintain the independent Board desired by the Governance Committee and the Board and required under Nasdaq rules.

**The Board Seating Settlement:**

On June 29, 2018, and July 5, 2018, the Corporation received Written Consents (collectively, the "**Director Consent**") from Robert G. Brown and William H. Bartels, the majority stockholders (59%) of the Corporation (together, the "**Majority Stockholders**"). The Director Consent adopted resolutions unilaterally selecting and appointing Mr. Jeffrey Mayer and removing Lorrence T. Kellar as a director of the Corporation, which could not take effect until all required the notices, filings and other conditions under applicable law had been satisfied (which was indefinitely delayed as a result of the Proposed Amendments, as defined below). Mr. Mayer was not nominated or appointed by the Board or its Governance Committee, and was never fully vetted under the Corporation's nomination policy, standards and procedures.

On September 18, 2018, Robert G Brown (one of the Majority Stockholders) commenced an action in the Court pursuant to 8 Del. C. §225(a) from (C.A. No. 2018-00687-TMR) (the "**225 Action**") against the 225 Defendants seeking to enforce the Director Consent. Please see Note 9 to the Company's Condensed Consolidated Financial Statements – *Commitments and Contingencies -- Legal Matters - Board Seating Litigation*, in the Corporation's Quarterly Report on Form 10-Q as filed with the SEC on November 19, 2018, and the Corporation's Current Report on Form 8-K as filed with the SEC on September 28, 2018.

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On November 20, 2018, the Court of Chancery of the State of Delaware (the "**Court**") issued a Status Quo Order in the 225 Action (the "**Status Quo Order**") that (among other things) seated Jeffrey Mayer on the Board, provided for Lorrence T. Kellar to remain seated on the Board, and effectively increased the Board size from seven to eight for the duration of the order. Pursuant to the Settlement, on January 23, 2019, the Court granted the dismissal of the 225 Action and vacated its previously entered Status Quo Order entered in that action.

On January 18, 2019, the Corporation, the Majority Stockholders, and the 225 Defendants reached a settlement (the "**Settlement**") in the By-Laws Action and the 225 Action as all such terms are defined and the Settlement is described in the Corporation's Current Report on Form 8-K as filed with the SEC on January 25, 2019 (the "**Settlement Report**").

On January 18, 2019, the Board appointed Jeffrey Mayer to and seated him on the Board and accepted Lorrence T. Kellar's retirement from the Board in connection with the Settlement. The Board also appointed Mr. Mayer to the Board's Compensation Committee on the recommendation of its Governance Committee.

Mr. Mayer was first seated on the Board on November 20, 2018, pursuant to the Status Quo Order, which order has now been vacated. Mr. Mayer had previously been determined to not be independent principally because he was not chosen and never fully vetted pursuant to the Corporation's nomination policy, standards and procedures and he was instead unilaterally chosen by the Majority Stockholders, which the Corporation reported in its Current Report filed with the SEC on November 26, 2018. As a result of the Status Quo Order and resulting change in Board composition, SGRP received a notification letter from Nasdaq dated December 13, 2018 (the "**Nasdaq Letter**"), stating that SGRP no longer complies with Nasdaq's majority independent director requirement (the "**Nasdaq Board Independence Deficiency**"), as set forth in Nasdaq Listing Rule 5605(b)(1), as more fully described in the Corporation's Current Report on Form 8-K as filed with the SEC on December 14, 2018.

*Jeffrey Mayer* has had a long career as an entrepreneur and executive in the energy industry. See the Settlement Report.

Prior to and in connection with the Settlement, the Governance Committee more fully vetted and re-evaluated the independence of Mr. Mayer. Based on (among other things) Mr. Mayer's independent business skills, his contribution to the Settlement process, his interactions with the Board over the last five months, and his lack of financial dealings with the Majority stockholders, the Governance Committee determined that he has the requisite independence from the management of the Corporation to be a director and act on any matter except for any Related Party Matter (as defined below), and accordingly Mr. Mayer: (a) will be an independent director for all purposes other than any Related Party Matter; (b) will be a non-independent (i.e., interested) director respecting any Related Party Matter; and (c) may participate in discussions but will be excluded and shall recuse himself from any and all decisions of the Board and applicable Board Committees respecting any Related Party Matter. "**Related Party Matter**" shall mean any payment to or for, or any transaction or litigation with, Robert G. Brown, William H. Bartels, any of their respective family members, or any company or other business or entity directly or indirectly owned or controlled by any one or more of Mr. Brown, Mr. Bartels or their respective family members.

The Corporation believes this fuller vetting and re-determination is consistent with Nasdaq Rules for the following reasons.

Rule 5605(a)(2) provides: "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director." The Governance Committee has come to believe that Mr. Mayer can generally exercise independent judgment.

IM-5605 re Definition of Independence also provides that: "A director would not be considered independent while serving as an interim officer," but the director could later be determined to be independent." Similarly, following Mr. Mayer's service as a non-independent director, the Governance Committee and Board should be able to re-evaluate the independence of Mr. Mayer based on all relevant circumstances, and they have done so.

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The Corporation believes this fuller vetting and re-determination is consistent with Delaware law, where a person may be independent for all but a narrow exclusion.

#### **The By-Laws Settlement:**

On January 18, 2019, the Board adopted the 2019 Restated By-Laws in connection with the Settlement. See Settlement Terms, above. Through their written consents the Majority Stockholders adopted changes to the Corporation's By-Laws (the "**Proposed Amendments**") that the Corporation challenged as being detrimental to the interests of minority stockholders. Please see Note 9 to the Company's Condensed Consolidated Financial Statements – *Commitments and Contingencies -- Legal Matters - Stockholder By-Laws Litigation*, in the Corporation's Quarterly Report on Form 10-Q as filed with the SEC on November 19, 2018, and the Corporation's Current Report on Form 8-K as filed with the SEC on September 28, 2018.

In the Settlement the parties agreed to amend and restate SGRP's By-Laws (the "**2019 Restated By-Laws**") with negotiated changes to the Proposed Amendments that (among other things) preserve the current roles of the Governance Committee and Board in the location, evaluation, and selection of candidates for director and in the nominations of those candidates for the annual stockholders meeting and appointment of those candidates to fill Board vacancies (other than those under a stockholder written consent making a removal and appointment, which is unchanged). The Governance Committee determined that those negotiated changes were better for all stockholders than the Proposed Changes and recommended approval of the 2019 Restated By-Laws to the Board. The Board approved and adopted the 2019 Restated By-Laws on January 18, 2018.

The Governance Committee and the Board believe that those changes in the 2019 Restated By-Laws will help the Corporation maintain the independent Board desired by them.

However, the Corporation must note that in addition to the compromise provisions described above the Governance Committee and Board accepted certain of the Proposed Amendments with negotiated changes and clarifications that are now contained in the 2019 Restated By-Laws, including the following:

- Any vacancy that results from the death, retirement or resignation of a director that remains unfilled by the directors for more than 90 days may be filled by the stockholders.
- Certain stockholder proposals may now be made up to the 90th day prior to the first anniversary of the preceding year's Annual Meeting.
- The Board size has been fixed at seven and can only be changed by the stockholders (as provided in the Proposed Amendments).
- The section requiring majority Board independence has been removed (as provided in the Proposed Amendments).
- The By-Laws now require that each candidate for director sign a written irrevocable letter of resignation and retirement effective upon such person failing to be re-elected by the required majority stockholder vote.
- A "super majority" vote of at least 75% of all directors is now required for (and any two directors can block) certain any of the following (as provided in the Proposed Amendments):
  - By-Laws modification;
  - Formation or expansion of the authority of any Committee or subcommittee; or
  - Appointment or removal of any Committee director.

The Governance Committee believes that the Settlement generally restores the Board's independence to the level it had before the Majority Stockholder consents and Proposed Amendments and will continue to promote the independent governance of the Corporation.

Regards,

/s/ James R. Segreto

James R. Segreto

Chief Financial Officer, Treasurer and Secretary

Cc: Christiaan Olivier, President and CEO  
Lawrence D. Swift, Corporate Counsel

*Sent via Electronic Delivery to: jsegreto@sparinc.com; ldswift@sparinc.com; ldswift007@gmail.com*

Mr. James R. Segreto  
Chief Financial Officer, Treasurer and Secretary  
SPAR Group, Inc.  
333 Westchester Avenue, South Building, Suite 204  
White Plains, New York 10604

Re: SPAR Group, Inc. (the "Company")  
Nasdaq Symbol: SGRP

Dear Mr. Segreto:

On December 13, 2018, Staff notified the Company that it did not comply with the independent director requirement for continued listing on The Nasdaq Capital Market set forth in Listing Rule 5605(b)(1) (the "Rule"). As described in the Company's Form 8-K filed on January 25, 2019, its officers, directors and majority shareholders reached a settlement agreement on January 18, 2019 (the "Settlement"), resulting in the Court's dismissal of the Actions under the Status Quo Order.<sup>1</sup>

In your submission to Staff dated January 30, 2019, you confirmed that in connection with the Settlement, Jeffery Mayer's director status has been more thoroughly vetted by the Governance Committee. In that regard, you have concluded that Mr. Mayer is independent under the Rule and eligible to serve on the Compensation Committee, but will be excluded from any decision-making pertaining to related party matters under the purview of the Audit Committee.<sup>2</sup> Accordingly, Staff has determined that since the Company's Board of Directors currently consists of four independent and three non-independent directors, it complies with the Rule and this matter is now closed.

If you have any questions, please contact me at +1 301 978 8052.

Sincerely,

/s/ Moira Keith  
Moira Keith  
Associate Director  
Nasdaq Listing Qualifications Enclosures

<sup>1</sup> Consisting of the By-Laws Action and the 225 Action.

<sup>2</sup> Under the Settlement terms, the Board also accepted the retirement of a former independent director, Lorrence T. Kellar.