

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73912; File No. SR-NASDAQ-2014-102)

December 22, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Require That a Company Publicly Disclose the Denial of a Listing Application

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 11, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to require that companies publicly disclose the denial of a listing application.

The text of the proposed rule change is below; proposed new language is in italics. There are no proposed deletions.

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5205. The Applications and Qualifications Process

(a) – (h) No change.

(i) (1) A Company may withdraw its application for initial listing at any time.

(2) A Company that receives a written determination denying its application for listing must, within four business days, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Rule(s)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

upon which the determination is based, describing each specific basis and concern identified by Nasdaq in reaching its determination. If the public announcement is not made by the Company within the time allotted or does not include all of the required information, Nasdaq will make a public announcement with the required information and, if the Company appeals the determination as set forth in Rule 5815, the Hearings Panel will consider the Company's failure to make the public announcement in considering whether to list the Company.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq processes between 200 and 300 applications each year from companies seeking to list securities on Nasdaq. While most applicants meet the listing requirements, or are prepared to take action to meet those requirements before listing, in some cases a company does not meet the requirements and is not willing, or able, to comply. In other, rare instances, Nasdaq may determine to deny an application based on public interest concerns even though the company meets all initial listing requirements.³ In either of these cases, the company is informed of the outcome and can withdraw its application before the application is formally denied.⁴ If the

³ See Listing Rule 5101 and IM-5101-1.

⁴ While Nasdaq has always allowed a company to withdraw its application at any time, the proposed rule change will add this to the rules.

company does not withdraw the application, the Nasdaq Listing Qualifications Department will issue a written denial, which the company can appeal to a Listing Qualifications Hearings Panel.⁵

The procedures for such an appeal are similar to an appeal from a delisting determination. However, while the rules provide transparency to a delisting event by requiring the company to disclose a delisting determination, there is no comparable requirement for disclosure of an initial listing denial.

Just as a delisting determination may be considered a material event to the investing public, Nasdaq believes that a denial of initial listing is equally so, particularly in the context of a company that previously publicly announced its intention to seek a listing, which is often the case. Investors view such an announcement to list as a positive development and such announcements often attract investor interest. Nasdaq believes that the public is therefore equally interested in the outcome of such an application and proposes to adopt a rule that would require a listing applicant that has been denied listing to publicly disclose the receipt of the determination and the circumstances on which the decision was based.⁶ Just as is the case with a delisting determination, the proposed rule would require that the disclosure be made within four business days of receipt of Nasdaq's determination. In cases where the company fails to make the required disclosure, Nasdaq would make the disclosure and a Listing Qualifications Hearings

⁵ Listing Rule 5815(a)(1). A Company that has appealed a written denial may also withdraw its application (and appeal) while the appeal is pending.

⁶ The rule would not require disclosure if a company withdraws its listing application before receiving a written determination from Nasdaq. Companies withdraw listing applications for many reasons, including instances where the company is acquired, determines not to list on an exchange, or lists on another venue. In addition, Nasdaq does not believe it can enforce a disclosure requirement after a company has withdrawn from its process. Nonetheless, Nasdaq believes that such disclosure may be appropriate and encourages companies to make such disclosure.

Panel would consider the company's failure to make the required disclosure when it considers any subsequent appeal of the denial.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change will impose a disclosure requirement on companies that are denied initial listing on Nasdaq, which will help protect investors and the public interest by providing transparency to investors about the status of a company's application. The proposed rule change will not affect a company's ability to withdraw its listing application at any time and will add a statement about that ability to Nasdaq's rules, which will promote just and equitable principles of trade by enhancing transparency and allowing companies to maintain control over the consideration of their applications.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will impose an additional disclosure requirement on a small universe of companies and is not expected to affect the number of companies applying to list on Nasdaq or any other exchange, or any company's ability to list.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-102 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-NASDAQ-2014-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-102 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Brent J. Fields
Secretary

⁹ 17 CFR 200.30-3(a)(12).