

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68677; File No. SR-NASDAQ-2013-003)

January 16, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Increase the Record-Keeping and Substitution Listing Fees Payable by Companies Listed on Nasdaq

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 2, 2013, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Nasdaq. 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

Nasdaq is proposing to modify the record-keeping and substitution listing fees payable by companies listed on Nasdaq. While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule on January 2, 2013.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>3</sup>

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**5910. The [NASDAQ] Nasdaq Global Market**

(a) – (d) No change.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

**(e) Record-Keeping Fee**

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of [~~\$2,500~~] \$7,500 to Nasdaq and submit the appropriate form as designated by Nasdaq.

**(f) Substitution Listing Fee**

A Company that implements a Substitution Listing Event shall pay a fee of [~~\$7,500~~] \$15,000 to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

**5920. The Nasdaq Capital Market**

(a) – (c) No change.

**(d) Record-Keeping Fee**

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of [~~\$2,500~~] \$7,500 to Nasdaq and submit the appropriate form as designated by Nasdaq.

**(e) Substitution Listing Fee**

A Company that implements a Substitution Listing Event shall pay a fee of [~~\$7,500~~] \$15,000 to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

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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. 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 proposes to modify the fees charged to Nasdaq-listed companies for record-keeping changes and substitution listings. Currently, a company owes a \$2,500 record-keeping fee when it makes a change to its name, the par value or title of its security, or its symbol.<sup>4</sup> This fee was adopted in 2003 and has never been changed.<sup>5</sup> Nasdaq proposes to increase this record-keeping fee to \$7,500, for notifications made after January 2, 2013.

In addition, a company currently owes a \$7,500 substitution listing fee when it affects a reverse stock split, re-incorporation or a change in the company's place of organization, forms a holding company that replaces the listed company, reclassifies or exchanges the company's listed shares for another security, lists a new class of securities in substitution for a previously-listed class of securities, or makes any technical change whereby the shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.<sup>6</sup> This fee was adopted in 2005 and has never been changed.<sup>7</sup> Nasdaq proposes to increase this substitution listing fee to \$15,000, for notifications made after January 2, 2013.

Nasdaq also proposes to correct capitalization in the heading of Rule 5910 to be consistent with the capitalization used in the remainder of the Rule 5000 Series.

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<sup>4</sup> See Rule 5910(e) and 5920(d).

<sup>5</sup> Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (approving SR-NASD-2003-127).

<sup>6</sup> See Rules 5910(d) and 5920(c) [sic] and Rule 5005(a)(40).

<sup>7</sup> Securities Exchange Act Release No. 52712 (November 1, 2005), 70 FR 67511 (November 7, 2005) (approving SR-NASD-2004-162).

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Nasdaq believes that the proposed fees are reasonable because they will reflect Nasdaq's higher costs related to processing record keeping changes and substitution listings since the fees were set in 2003 and 2005, respectively. In that regard, Nasdaq notes that expenses surrounding the processing and distribution of these changes, including technology costs and salaries, have increased since the fees were set, but that the fees have not been concomitantly increased. In addition, Nasdaq has developed an electronic notification system for listed companies and expects to launch early in 2013 an interface allowing companies to notify Nasdaq about these changes through an on-line portal.<sup>10</sup> This web-based interface will simplify the notification process for the company and help eliminate errors that may otherwise have resulted from re-keying information. While over time, Nasdaq hopes that this technology will reduce the costs associated with maintaining the process, Nasdaq has invested significant up-front development costs in creating the system. Nasdaq has also committed resources to its online reference library,

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See the NASDAQ OMX Listing Center at [https://listingcenter.nasdaqomx.com/Show\\_Doc.aspx?File=listing\\_information.html#forms](https://listingcenter.nasdaqomx.com/Show_Doc.aspx?File=listing_information.html#forms). While the Change in Company Record and Substitution Listing Event forms are currently available as pdfs, which have to be e-mailed to Nasdaq, they are being converted into online forms, which can be completed and submitted to Nasdaq electronically.

which includes a number of FAQs providing advice about these changes and the related forms and fees.<sup>11</sup>

Nasdaq also believes that the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all companies listed on Nasdaq that effect one of these changes. In this manner, the proposed fees will help assure that the expenses arising from changes initiated by certain companies are borne by those companies.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily switch exchanges if they deem the listing fees excessive.<sup>12</sup> In such an environment, NASDAQ must continually review its fees to assure that they remain competitive. In that regard, Nasdaq notes that the proposed fees remain similar to the fees charged by the New York Stock Exchange.<sup>13</sup>

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as

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<sup>11</sup> <https://listingcenter.nasdaqomx.com/MaterialHome.aspx?mcd=LQ>.

<sup>12</sup> The Justice Department recently noted the intense competitive environment for exchange listings. See “NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit” (May 16, 2011), available at [http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

<sup>13</sup> NYSE charges \$7,500 for “changes that involve modifications to [NYSE] records, for example, changes of name, par value, title of security or designation, and for applications relating to poison pills.” See Section 902.03 of the NYSE Listed Company Manual and Securities Exchange Act Release No. 68024 (October 10, 2012), 77 FR 63388 (October 16, 2012) (SR-NYSE-2012-51). In addition, NYSE charges \$15,000 for a new listing where the “change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights.” These changes include a change in a company's state of incorporation or a reincorporation or formation of a holding company that replaces a listed company, and a reverse stock split. See Section 902.03 of the NYSE Listed Company Manual.

amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues. In addition, Nasdaq's proposed fees are similar to the fees charged by its competitors. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

2013-003 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-003. 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-2013-003 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).