

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71017; File No. SR-NASDAQ-2013-134)

December 6, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Listing of Additional Shares Fees Payable by Non-U.S. Companies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on November 29, 2013, 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 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 listing of additional shares fees payable by non-U.S. companies.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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's listing of additional shares fees are designed, in part, to offset the costs of NASDAQ's regulatory program associated with oversight of listed companies, including the review of share issuances for compliance with the shareholder approval and voting rights rules, the regulatory review of entities and individuals that purchase a significant interest in a listed company in a transaction with the company, and NASDAQ's efforts to increase the transparency of interpretations of its rules. Currently, the applicable fees depend on whether the company is a domestic or non-U.S. company. Domestic companies pay a fee of \$0.01 per share, subject to a minimum quarterly fee of \$5,000, for any amount of shares in excess of 49,999 shares issued during a quarter, and a maximum fee of \$65,000 per year.³ In contrast, non-U.S. companies pay a flat fee of \$5,000 for any amount of shares in excess of 49,999 shares issued during a year.⁴ There is no fee for issuances of up to 49,999 shares per quarter for domestic companies and up to 49,999 shares per year for non-U.S. companies.

NASDAQ proposes to make two changes to the listing of additional shares fees payable by non-U.S. companies. First, NASDAQ proposes to modify the rule such that a foreign company that is not a Foreign Private Issuer⁵ pays the same listing of additional shares fees as a domestic company. For purposes of NASDAQ's other rules, a foreign company that is not a

³ Rules 5910(b)(1) and 5920(b)(1).

⁴ Rules 5910(b)(2) and 5920(b)(2).

⁵ "Foreign Private Issuer" is defined in Rule 3b-4 under the Act, 17 CFR 240.3b-4. See Rule 5005(a)(18). A foreign company that is not a Foreign Private Issuer would be considered a "foreign issuer" under Rule 3b-4. A foreign issuer is also defined to include a foreign government that issues securities.

Foreign Private Issuer is treated the same as a domestic company.⁶ Further, unlike a Foreign Private Issuer, a foreign company that is not a Foreign Private Issuer files the same quarterly reports as a domestic company⁷ and is typically not primarily traded on another marketplace. As such, NASDAQ believes it is appropriate to treat these companies the same as domestic companies for purposes of the listing of additional shares fee because they are subject to the same rules and generally trade primarily on NASDAQ.

Second, NASDAQ proposes to increase the listing of additional shares fee applicable to Foreign Private Issuers from \$5,000 to \$7,500 per year effective January 1, 2014. As under the current rule, no fee would be charged for issuances of up to 49,999 shares per year. NASDAQ believes this change would reduce the current disparity in the listing of additional shares fees paid by Foreign Private Issuers, which also benefit from NASDAQ's regulatory program, and other companies, while still recognizing that those Foreign Private Issuers generally also trade on another marketplace and are subject to an exemption from many of NASDAQ's corporate governance rules. While the proposed \$7,500 per year fee would exceed the \$5,000 minimum fee applicable to companies that are not Foreign Private Issuers, NASDAQ believes that this higher fee is appropriate given that fee [sic] for Foreign Private Issuers is assessed annually, instead of quarterly, and that Foreign Private Issuers are not subject to per share fees, which can range as high as \$65,000 per year.⁸

⁶ For example, while a Foreign Private Issuer can rely on an exemption from most of NASDAQ's corporate governance requirements under Rule 5615(a)(3), a foreign company that is not a Foreign Private Issuer is not eligible for that exemption.

⁷ Under SEC Rule 13a-13(b)(2), 17 CFR 240.13a-13(b)(2), a Foreign Private Issuer is not required to file quarterly reports with the Commission.

⁸ NASDAQ also proposes to make non-substantive changes to replace the term "issuer" with the defined term "Company" throughout the rules and to improve readability of the rule text.

NASDAQ will implement these changes on January 1, 2014.⁹ A foreign company that is not a Foreign Private Issuer will first owe the \$0.01 per share listing of additional shares fee for the change in shares outstanding during its first fiscal quarter beginning on or after January 1, 2014.¹⁰ A Foreign Private Issuer will be subject to the new \$7,500 fee for the change in its shares outstanding starting with its first fiscal year beginning on or after January 1, 2014.¹¹ Following effectiveness, if a company ceases to be a Foreign Private Issuer, it will be assessed the listing of additional shares fee based on its new status effective with the start of its next fiscal year, when it is also required to start filing Forms 10-Q and 10-K.¹² If a company becomes a Foreign Private Issuer, it similarly will become subject to the fee applicable to Foreign Private Issuers at the beginning of its next fiscal year.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general and with Sections 6(b)(4) and (5) of the Act,¹⁴ in particular, in

⁹ Until January 1, 2014, the online NASDAQ rule book will reflect the currently effective fees with a note indicating that this fee change is pending and will become effective on January 1, 2014. The online NASDAQ rule book will also contain a link to the text of the revised rule.

¹⁰ For example, a company with a December 31st year end would first owe the fee under Rule 5910(b)(1) or Rule 5920(b)(1) for the change in its shares outstanding during its first quarter, as reflect [sic] in the difference between the shares outstanding reported on its Form 10-K for the year ended December 31, 2013, and its Form 10-Q for the quarter ended March 31, 2014.

¹¹ A Foreign Private Issuer with a December 31st fiscal year will first pay the new fee for shares issued between January 1, 2014 and December 31, 2014 and will be billed for those share issuances based on the Form 20-F filed in 2015.

¹² A foreign company is required to determine whether it is a Foreign Private Issuer on an annual basis as of the end of its second fiscal quarter. If the company determines that it is no longer a Foreign Private Issuer, it must transition to domestic reporting status beginning on the first day of the next fiscal year. SEC Rule 3b-4(e), 17 CFR 240.3b-4(e).

¹³ 15 U.S.C. 78f.

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 and not unfairly discriminatory because they will better allocate costs of NASDAQ's regulatory program across the listed companies that benefit from that program. NASDAQ believes that the proposed \$2,500 increase in the listing of additional shares fee applicable to Foreign Private Issuers is reasonable and an equitable allocation of a portion of the costs of NASDAQ's regulatory program, which benefits these companies. While the proposed \$7,500 per year fee would exceed the \$5,000 minimum quarterly fee applicable to companies that are not Foreign Private Issuers, NASDAQ believes that this higher fee is appropriate given that Foreign Private Issuers are not subject to per share fees, which can range as high as \$65,000 per year. In addition, continuing a separate, lower fee for Foreign Private Issuers remains a reasonable and equitable allocation of fees because Foreign Private Issuers generally trade on another marketplace and have exemptions available to many of NASDAQ's governance rules, including the shareholder approval and voting rights rules.

NASDAQ also believes that it is reasonable and not unfairly discriminatory to charge a foreign company that is not a Foreign Private Issuer the same fee as a domestic company. The listing situation of a foreign company that is not a Foreign Private Issuer is more similar to a domestic company than it is to a Foreign Private Issuer in that a Foreign Private Issuer often will trade on another marketplace and is subject to exemptions from many of NASDAQ's corporate governance rules. On the other hand foreign companies that are not Foreign Private Issuers, like domestic companies, do not typically trade on other marketplaces and are not eligible to

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

exemptions from the governance requirements. Similarly, a Foreign Private Issuer receives different treatment under the Commission's rules than a foreign company that is not a Foreign Private Issuer.¹⁵

Finally, NASDAQ believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act¹⁶ in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the fees are designed to ensure that there are adequate resources for NASDAQ's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

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 amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees. For these reasons, 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.

¹⁵ For example, a Foreign Private Issuer is not required to file quarterly reports and is exempt from the proxy rules. See SEC Rules 13a-13(b)(2), 17 CFR 240.13a-13(b)(2), and 3a12-3(b), 17 CFR 240.3a12-3(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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) of the Act¹⁷ and paragraph (f) of Rule 19b-4 thereunder.¹⁸ 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.

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-2013-134 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-2013-134. 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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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 the 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-2013-134 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.¹⁹

Elizabeth M. Murphy
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).