

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78047; File No. SR-NASDAQ-2016-077)

June 13, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Certain Fees Charged to Securities Listed on Nasdaq Under the Rule 5700 Series

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 June 1, 2016, 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 eliminate certain fees charged to securities listed on Nasdaq under the Rule 5700 Series.

The text of the proposed rule change is detailed below. Proposed new language is underlined and proposed deletions are in brackets.

* * * * *

5930. Linked Securities, SEEDS, and Other Securities

(a) – (b) No change.

[(c) Record-Keeping Fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 to Nasdaq and submit the appropriate form as designated by Nasdaq.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event, including the replacement of, or any significant modification to, the index, portfolio, or Reference Asset underlying a security, shall pay a fee of \$5,000 to Nasdaq for each event or change and submit the appropriate form as designated by Nasdaq.]

5940. Exchange Traded Products

The fees in this Rule 5940 shall apply to securities listed under the Rule 5700 Series where no other fee schedule is specifically applicable. These securities include, but are not limited to, Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, and NextShares.

(a) – (b) No change.

[(c) 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 to Nasdaq and submit the appropriate form as designated by Nasdaq.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event, including the replacement of, or any significant modification to, the index, portfolio, or Reference Asset underlying a security, shall pay a fee of \$5,000 to Nasdaq for each event or change and submit the appropriate form as designated by Nasdaq.]

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

The purpose of the proposed rule change is to eliminate the fees for record-keeping changes and substitution listing events charged to Linked Securities, SEEDS, Other Securities, and Exchange Traded Products listed on Nasdaq. These fees were adopted in November 2015,³ and, upon further reflection, Nasdaq has determined to remove them. The proposed rule change would not affect the notice companies must give Nasdaq about record-keeping changes or substitution listing events.⁴

³ Securities Exchange Act Release No. 76550 (December 3, 2015), 80 FR 76605 (December 9, 2015) (SR-NASDAQ-2015-146).

⁴ Rule 5250(e)(3) defines a “Record Keeping Change” as any change to a company’s name, the par value or title of its security, its symbol, or a similar change and requires a listed company to provide notification to Nasdaq no later than 10 days after the change. Rule 5005(a)(40) defines a “Substitution Listing Event” as certain changes in the equity or legal structure of a company, including the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider). Rule 5250(e)(4) requires a listed company to provide notification to Nasdaq about a Substitution Listing Event no later than 15 calendar days prior to the implementation of the event.

2. Statutory Basis

Nasdaq believes that this proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. This proposal is, in addition, not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷ Similarly, the Justice Department has noted the intense competitive environment for exchange listings.⁸

Nasdaq believes that the proposed change to eliminate the recently adopted fees for record-keeping changes and substitution listing events charged to securities listed under the Rule

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

⁸ 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.

5700 Series is reasonable because it is a competitive response to the fees of other exchanges and issuers' reaction to Nasdaq's fee change.⁹

Nasdaq also believes that the proposed change is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated issuers. While issuers of securities listed under the Rule 5700 Series will not be subject to fees for record-keeping changes and substitution listing events, and other companies will be subject to such fees, this difference is not unfairly discriminatory.

The proposed change merely reinstates a longstanding difference by removing fees that were only recently adopted. This longstanding difference is not unfairly discriminatory because the fees for securities listed under the Rule 5700 Series are generally lower than the listing fees for other types of issuers, reflecting the passive nature of these issuers and the extreme focus on their expenses as a means for various products to compete.¹⁰

Further, other companies that could pay fees for record-keeping changes and substitution listing events had the option to avoid the fee by electing to be on Nasdaq's all-inclusive annual fee, which eliminates the fees for these events. Securities listed under the Rule 5700 Series do not, at this time, have the option to elect an all-inclusive fee alternative. Nasdaq believes that the lower existing fees, lack of an all-inclusive fee alternative, and competitive considerations are reasonable, fair, and equitable reasons to charge issuers of securities listed under the Rule 5700

⁹ BATS does not charge a fee for equivalent events. See Chapter XIV of the Rules of the BATS Exchange and Rule 14.13 of the BATS Exchange Listing Rules. NYSE Arca charges \$2,500 for equivalent events, but has recently modified other listing fees in connection with the listing of Exchange Traded Products. See NYSE Arca Equities: Listing Fees; Securities Exchange Act Release No. 77883 (May 23, 2016), 81 FR 33720 (May 27, 2016) (SR-NYSEArca-2016-69).

¹⁰ For example, entry fees for securities listed on the Nasdaq Global Market under the Rule 5700 Series range from \$5,000 to \$45,000 pursuant to Rules 5930 and 5940, whereas entry fees for other companies listed on the Nasdaq Global Market range from \$125,000 to \$225,000 pursuant to Rule 5910(a).

Series different fees than other Nasdaq-listed companies, including not charging them for record-keeping changes and substitution listing events.

The proposed change will not impact the resources available to Nasdaq's regulatory program. In that regard, Nasdaq notes that these fees were traditionally not charged to securities listed under the Rule 5700 Series and that there will be no significant decline in expected revenue by eliminating the fees.

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

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The market for listing services is extremely competitive and listed companies may easily list on competing venues if they deem fee levels at a particular exchange to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges.

This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees, but rather reflects the competition between listing venues and will further enhance such competition. 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.

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.¹¹

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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. Please include File Number SR-NASDAQ-2016-077 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-077. 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 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-2016-077 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.¹²

Robert W. Errett
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).