SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84880; File No. SR-NASDAQ-2018-103)

December 20, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's All-Inclusive Annual Listing Fees for American Depositary Receipts

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, 2018, 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. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change</u>

The Exchange proposes to amend the Exchange's all-inclusive annual listing fees for American Depositary Receipts.

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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 modify the Exchange's all-inclusive annual listing fees for American Depositary Receipts.

Currently, ADRs listed on Nasdaq pay an all-inclusive annual fee based on the number of shares they have outstanding, which ranges from $37,000 to $45,000 on the Capital Market and from $45,000 to $75,000 on the Global and Global Select Markets.[3] Nasdaq proposes to amend the all-inclusive annual fee for ADRs in Listing Rules 5910(b)(2)(B) and 5290(b)(2)(B) to the following amounts, effective January 1, 2019:

| Global/Global Select Markets | |
|---|---|
| Up to 10 million ADRs and other listed equity securities | $45,000 |
| 10+ to 50 million ADRs and other listed equity securities | $50,000 |
| 50+ to 75 million ADRs and other listed equity securities | $60,000 |
| Over 75 million ADRs and other listed equity securities | $80,000 |

| Capital Market | |
|---|---|
| Up to 10 million ADRs and other listed equity securities | $42,000 |
| Over 10 million ADRs and other listed equity securities | $50,000 |

Under the revised fee schedule, companies that list ADRs will pay the same minimum fee as other companies listing equity securities on the same tier of Nasdaq. Nasdaq believes that it is

3 See Listing Rules 5910(b)(2)(B) and 5920(b)(2)(B). Specifically, on the Capital Market, the all-inclusive annual fee for companies listing ADRs with up to 10 million ADRs and other listed equity securities outstanding (collectively "Securities Outstanding") is $37,000 and for companies with over 10 million Securities Outstanding it is $45,000. On the Global Market and Global Select Market, the all-inclusive annual fee for companies listing ADRs with up to 50 million Securities Outstanding is $45,000, for companies with 50+ to 75 million Securities Outstanding it is $52,500, and for companies with over 75 million Securities Outstanding it is $75,000.

appropriate to charge ADRs the same minimum fees as other companies because these minimum fees reflect the minimum value of a Nasdaq listing and Nasdaq does not believe that this minimum value differs for companies listing ADRs: they trade on the same trading platform, are subject to the substantially the same regulatory oversight, and receive the same listing services as other companies. To effect this change, Nasdaq will create a new fee tier on the Global and Global Select Markets for companies with more than 10 million but not more than 50 million ADRs and other listed equity securities outstanding. The all-inclusive annual fee for companies on the Global and Global Select Markets with 10 million or fewer ADRs and other listed equity securities will remain at $45,000, which is the same as the minimum all-inclusive annual fee for other companies listing up to 10 million equity securities on the Global and Global Select Markets.[4] On the Capital Market, the all-inclusive annual fee for companies with 10 million or fewer ADRs and other listed equity securities will be increased to $45,000 [sic],[5] which is the same as the minimum all-inclusive annual fee for other companies listing up to 10 million equity securities on the Capital Market.[6]

The all-inclusive annual fees for all other companies listing ADRs on Nasdaq will also increase to reflect the value of the listing, although such fees will remain lower than the fees paid by other domestic and foreign companies listing equity securities.[7] Nasdaq believes it is

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4 See Listing Rule 5910(b)(2)(A).

5 The Commission notes that this reference to $45,000 is an error in Nasdaq's description of its proposed rule change and, in accordance with the proposed rule text and as described correctly above, the all-inclusive annual fee for companies on the Capital Market with 10 million or fewer ADRs and other listed equity securities will be increased to $42,000.

6 See Listing Rule 5920(b)(2)(A).

7 The all-inclusive annual fee for common stock and ordinary shares ranges from $42,000 to $75,000 on the Capital Market and from $45,000 to $155,000 on the Global and Global Select Markets. See Listing Rules 5910(b)(2)(A) and 5920(b)(2)(A).

appropriate to charge companies that list ADRs lower fees than companies that list common stock or ordinary shares, once they have reached the minimum fee. For many companies that list ADRs Nasdaq is not the primary listing and therefore the lower fee serves as an incentive to list or maintain their listing. In addition, issuers of ADRs are not subject to all of the same regulatory requirements as other companies and therefore Nasdaq's regulatory costs to list these companies is lower.[8]

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2019.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general and with Section 6(b)(4) and (5) of the Act,[10] 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.

The proposed fee change is an equitable allocation of reasonable fees because it will better align the all-inclusive annual fees paid by companies listing ADRs with the fees paid by other Nasdaq-listed companies and with the value that such a listing provides to the company. Specifically, under the proposed rule change, the minimum all-inclusive annual fee for companies that list ADRs would be the same minimum fees as are paid by other companies,

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8 Because ADRs can only be issued by foreign private issuers, their issuers may rely on exemptions to certain corporate governance rules. See Listing Rule 5615(a)(3) and IM-5615-3. In addition, ADRs are not subject to the requirement to notify Nasdaq prior to certain share issuances. See Listing Rule 5250(e)(2).

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4) and (5).

which Nasdaq believes is reasonable and an equitable allocation of fees because companies that list ADRs receive the same services and trade on the same trading platform as other companies. For the same reason, Nasdaq also believes that it is an equitable allocation of reasonable fees to raise the fees paid by companies that list more ADRs than are included in the minimum fee tier because that change will result in fees that are closer to the fees paid by other companies listing the same number of securities.

Under the proposed fee schedule, the all-inclusive annual fee for companies that list more ADRs than the minimum fee tier will be lower than the fee charged to other companies. Further, the difference between the fees charged a company that lists ADRs and a company that lists other equity securities increases when there are more shares outstanding. Because companies that list ADRs also typically have primary trading on another market, and because companies that list ADRs are not subject to all of Nasdaq's governance and notification requirements and therefore Nasdaq's regulatory costs for such companies can be lower,[11] Nasdaq believes that it is an equitable allocation of reasonable fees, and not unfairly discriminatory to charge lower fees beyond the minimum fee tier and to have a lower maximum fee for ADRs than for other companies listing equity securities.

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.[12] In such an environment, NASDAQ must continually review its fees to assure that they remain competitive.

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11 See footnote 8, supra.

12 The Justice Department has 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.

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, both within the U.S. and internationally. For this reason, 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.[13]

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:

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2018-103 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 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-103. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-103, 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.[14]

Brent J. Fields
Secretary

[14] 17 CFR 200.30-3(a)(12).