

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96532; File No. SR-NASDAQ-2022-068)

December 19, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Entry and All-Inclusive Annual Fees for Certain Companies

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 12, 2022, 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 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 modify entry and all-inclusive annual fees for certain companies, as described below. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2023.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 (i) replace the tiered entry fee structure with a flat fee of \$270,000 when a Company first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange's all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets; (iii) replace the two-tier entry fee structure with a flat fee of \$80,000 when an Acquisition Company, as defined below, first lists a class of equity securities on Nasdaq; (iv) to adopt an all-inclusive annual listing fee structure specific to Acquisition Companies listing on the Nasdaq Capital Market; and (v) to replace the current three-tier all-inclusive annual listing fee structure for all Acquisition Companies with a two-tier structure, as described below.

Entry Fees on the Nasdaq Global Market³

Currently, Nasdaq charges Companies listing pursuant to Rule 5910(a)(1), other than Acquisition Companies, entry fees for the Nasdaq Global and Global Select Market based on the number of shares outstanding according to the following tiers⁴:

³ Nasdaq is not proposing to amend the Entry Fees on the Nasdaq Capital Market, except for the Acquisition Companies, as explained below.

⁴ Companies must also submit a \$25,000 initial application fee, which is credited towards the entry fee upon listing. The initial application fee for an Acquisition Company is \$5,000. See Rule 5910(a)(11).

Up to 30 million shares	\$150,000
30+ to 40 million shares	\$170,000
40+ to 50 million shares	\$210,000
50+ to 60 million shares	\$250,000
60+ to 70 million shares	\$290,000
Over 70 million shares	\$295,000

These fees are based on the aggregate of all classes of equity securities to be listed on the Nasdaq Global and Global Select Market, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

The entry fees for companies listing on the Nasdaq Global and Global Select Markets were last modified in 2018.⁵ Nasdaq now proposes to replace the tiered structure with a flat fee of \$270,000 when a Company, other than an Acquisition Company, first lists a class of equity securities on the Nasdaq Global or Global Select Market.

Nasdaq proposes to make this change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when a Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher (or lower) initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this change is not unfairly discriminatory because,

⁵ See Securities Exchange Act Release No. 84930 (December 21, 2018), 83 FR 67752 (December 31, 2018) (SR-NASDAQ-2018-105).

similarly, the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding.

Nasdaq also proposes to provide that any company, including an Acquisition Company (until it has satisfied the condition in Rule IM-5101-2(b)),⁶ that lists an additional class of equity securities (not otherwise identified in Rule 5900 Series) is not subject to entry fees but is charged a non-refundable \$25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable \$5,000 initial application fee).⁷ Currently, Rule 5910(a)(1) provides that a company, including an Acquisition Company, that submits an application to list any class of its securities (not otherwise identified in Rule 5900 Series) on the Nasdaq Global Market is subject to the entry fees. Nasdaq proposes to make this change to better reflect the value of listing an additional class of securities for already listed companies and to better align such value with Nasdaq's regulatory resources expended in connection with such applications. In particular, the Exchange believes it is reasonable to charge only a non-refundable \$25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable \$5,000 initial application fee) because the company listing an additional class of equity securities is already subject to Nasdaq rules, including the applicable corporate governance requirements.

⁶ After an Acquisition Company completes a business combination where all conditions in Rule IM-5101-2(b) are met, the combined Company must meet the requirements for initial listing, but the company is not subject to Entry Fee because the company is either already listed on Nasdaq or the Entry Fees do not apply pursuant to Listing Rule 5910(a)(7)(v). After that, the combined Company is no longer subject to the additional requirements of Listing Rule IM-5101-2.

⁷ Nasdaq is not proposing to change Rule 5910(a)(11), which provides that a company (except for an Acquisition Company) subject to the Entry Fee described in Rule 5910(a)(1) must submit a non-refundable \$25,000 initial application fee with its application. An Acquisition Company must submit a non-refundable \$5,000 initial application fee with its application.

Accordingly, Nasdaq, typically, expends less regulatory resources qualifying an additional class of equity securities for listing.

All-Inclusive Annual Listing Fees

Currently, for companies listed on the Capital Market, other than ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee ranges from \$45,000 to \$81,000; for ADRs listed on the Capital Market the all-inclusive annual fee ranges from \$45,000 to \$54,500; and for Limited Partnerships listed on the Capital Market the all-inclusive annual fee ranges from \$33,000 to \$40,500. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than, in part,⁸ ADRs, Closed-end Funds and Limited Partnerships ranges from \$48,000 to \$167,000; for ADRs the all-inclusive annual fee ranges from \$48,000 to \$86,000; and for Limited Partnerships the all-inclusive annual fee ranges from \$40,500 to \$83,500. The all-inclusive annual fee for Closed-end Funds listed on any market tier ranges from \$33,000 to \$107,500. In each case, a company's all-inclusive annual fee is based on its total shares outstanding.⁹

⁸ Rule 5930 sets forth the all-inclusive annual listing fees applicable to SEEDS and Other Securities; and Rule 5940 sets forth the all-inclusive annual listing fees applicable to Exchange Traded Products that are listed on the Nasdaq Global Market.

⁹ REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. See Listing Rules 5910(b)(2) and 5920(b)(2).

Nasdaq proposes to amend the all-inclusive annual fee for all domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,¹⁰ effective January 1, 2023:

Global/Global Select Markets

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2023
Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships	Up to 10 million shares	\$48,000	\$50,000
	10+ to 50 million shares	\$59,500	\$62,000
	50+ to 75 million shares	\$81,000	\$84,000
	75+ to 100 million shares	\$107,500	\$112,000
	100+ to 125 million shares	\$134,500	\$140,000
	125+ to 150 million shares	\$145,500	\$151,500
	Over 150 million shares	\$167,000	\$173,500
ADRs	Up to 10 million ADRs and other listed equity securities	\$48,000	\$50,000
	10+ to 50 million ADRs and other listed equity securities	\$54,500	\$56,500

¹⁰ The proposed fee change reflects about a 4.0% increase rounded to the nearest \$500.

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2023
	50+ to 75 million ADRs and other listed equity securities	\$64,500	\$67,000
	Over 75 million ADRs and other listed equity securities	\$86,000	\$89,500
Closed-end Funds	Up to 50 million shares	\$33,000	\$34,500
	50+ to 100 million shares	\$54,500	\$56,500
	100+ to 250 million shares	\$81,000	\$84,000
	Over 250 million shares	\$107,500	\$112,000
Limited Partnerships	Up to 75 million shares	\$40,500	\$42,000
	75+ to 100 million shares	\$54,500	\$56,500
	100+ to 125 million shares	\$67,000	\$69,500
	125+ to 150 million shares	\$72,500	\$75,500
	Over 150 million shares	\$83,500	\$87,000

Capital Market

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2023
Equity securities other than ADRs, Closed-end Funds and Limited Partnerships	Up to 10 million shares	\$45,000	\$47,000
	10+ to 50 million shares	\$59,500	\$62,000
	Over 50 million shares	\$81,000	\$84,000
ADRs	Up to 10 million ADRs and other listed equity securities	\$45,000	\$47,000
	Over 10 million ADRs and other listed equity securities	\$54,500	\$56,500
Closed-end Funds	Up to 50 million shares	\$33,000	\$34,500
	50+ to 100 million shares	\$54,500	\$56,500
	100+ to 250 million shares	\$81,000	\$84,000
	Over 250 million shares	\$107,500	\$112,000
Limited Partnerships	Up to 75 million shares	\$33,000	\$34,500
	Over 75 million shares	\$40,500	\$42,000

Nasdaq also proposes to update the maximum fee applicable to a Closed-End Fund family to \$112,000 and the maximum fee applicable to a REIT Family listed on the Nasdaq

Global Market and the Nasdaq Capital Market to \$173,500 and \$84,000, respectively, to reflect the proposed fee change for other equity securities, as described above.¹¹

Finally, Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2023.

As described below, Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

Entry Fee for Acquisition Companies

Nasdaq proposes to modify the Entry Fee for companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM-5101-2, ("Acquisition Companies").

Nasdaq currently charges entry fees for Acquisition Companies listing on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers¹²:

Up to 15 million shares	\$50,000
Over 15 million shares	\$75,000

¹¹ See footnote 9 above.

¹² Listing Rules 5910(a)(1)(B) and 5920(a)(1) for the Nasdaq Global or Global Select Market and the Nasdaq Capital Market, respectively. Companies must also submit a \$5,000 initial application fee, which is credited towards the entry fee upon listing. See Listing Rules 5910(a)(11) and 5920(a)(11).

These fees are based on the aggregate of all classes of equity securities to be listed on Nasdaq, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

Nasdaq now proposes to replace the two-tier structure with a flat fee of \$80,000 when an Acquisition Company first lists a class of equity securities on Nasdaq. The flat entry fee would cover both an Acquisition Company's common shares and also warrants and rights, if any.

Nasdaq proposes to make these fee increases to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when an Acquisition Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory because, similarly, the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions with operating companies.

In addition, the Exchange observes that many companies may not know their share structure or how many shares will ultimately be outstanding at the time they are considering whether to list on the Exchange. Therefore, the Exchange believes that adopting a flat entry fee

will provide prospective Acquisition Companies listing on Nasdaq with greater transparency on the costs associated with initially listing on the Exchange.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq currently charges an All-Inclusive Annual Listing Fee for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers:

Up to 10 million shares	\$45,000
10+ to 50 million shares	\$59,500
Over 50 million shares	\$81,000

Currently, the securities of an Acquisition Company listing on the Nasdaq Capital Market are subject to the same all-inclusive annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. These fees were last modified in 2021, effective for 2022, as part of the Exchange's modification of all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets.¹³ The securities of an Acquisition Company listing on the Nasdaq Global and Global Select Markets are subject to the same all-inclusive annual fee schedule as the securities of an Acquisition Company listing on the Nasdaq Capital Market as provided in Listing Rule 5910(a)(1)(B) [sic].¹⁴

¹³ See Securities Exchange Act Release No. 34- 93713 (December 3, 2021), 86 FR 70156 (December 9, 2021) (SR-NASDAQ-2021-091).

¹⁴ See Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021) (SR-NASDAQ-2021-055). In this filing Nasdaq explained its belief that Acquisition Companies listed on the Nasdaq Global Market receive the same services as Acquisition Companies listed on the Nasdaq Capital Market making it appropriate for Nasdaq to charge such companies the same fees.

Nasdaq now proposes to adopt a fee structure specifically for Acquisition Companies listing on the Nasdaq Capital Market and to replace the current three-tier structure for Acquisition Companies listing on the Nasdaq Capital, Global and Global Select Markets with the following two-tier structure:

Up to 50 million shares	\$70,000
Over 50 million shares	\$81,000

As described above, securities listed on the Nasdaq Capital Market by an Acquisition Company are, and have been, subject to the same annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. This structure was maintained since Nasdaq first adopted a rule to impose additional listing requirements on Acquisition Companies, which allowed such companies to list on Nasdaq.

In establishing the proposed All-Inclusive Annual Fees for Acquisition Companies across all tiers, including the changes to the number and cut-off point of pricing tiers, Nasdaq considered various factors that distinguish Acquisition Companies from other issuers of primary equity securities on Nasdaq, the use of various Nasdaq regulatory and support services by Acquisition Companies, as well as, pricing for similar securities on other national securities exchanges. Based on this analysis, Nasdaq proposes to modify the number of fee tiers within the annual fee schedule to better align fees with the size of the companies that pay those fees and the use that companies of various sizes typically make of Nasdaq's services. In setting the proposed All-Inclusive Annual Fee, Nasdaq reviewed the billing history of more than 450 Acquisition Companies that had been listed on Nasdaq to determine the fees assessed these companies. Nasdaq also reviewed listing-related services provided to Acquisition Companies, including reviews of various regulatory forms, rule interpretations requests, and compliance plan

reviews. Nasdaq established the proposed two tier All-Inclusive Annual Fee for Acquisition Companies and shares outstanding tier based on this analysis of historical fees paid and regulatory services used.

Based on this analysis, Nasdaq determined that only a small minority of Acquisition companies were listed on Nasdaq with less than 10 million of total shares outstanding, but the services provided to them and the Exchange's regulatory resources dedicated to such listings are substantially the same regardless of the number of shares the company has outstanding. The vast majority of listed Acquisition companies fall within the current second tier. Accordingly, Nasdaq believes that the new tier of up to 50 million shares better reflects both the value of the listing to Acquisition Companies and the expenditure of regulatory resources by Nasdaq. Nasdaq also believes that the all-inclusive fee increase for this tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the current third tier (over 50 million shares) and that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore require fewer resources from Nasdaq. In addition, Nasdaq obtains value from being associated with these experienced sponsors. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this tier as is, is reasonable given the competitive landscape.

Nasdaq also proposes to renumber certain rules to improve the clarity and readability of these rules.

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2023.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the adoption of a flat entry fee on the Nasdaq Global and Global Select Markets represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings. Nasdaq proposes to make the aforementioned fee structure change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat fee when a company first lists a class of securities as the value to the company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, the Exchange believes that this increase is not unfairly discriminatory, as the resources the Exchange expends in connection with the initial listing of those companies are typically consistent with the resources

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

the Exchange expends on many companies that are already subject to the similar fees under the current structure. This proposal is consistent with the approach of other exchanges.¹⁷

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rule 5910(a)(1) to provide that any company, including an Acquisition Company (until it has satisfied the condition in Rule IM-5101-2(b)), that lists an additional class of equity securities (not otherwise identified in Rule 5900 Series) is not subject to entry fees under this rule but is charged a non-refundable \$25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable \$5,000 initial application fee) because this change better reflects the value of listing an additional class of securities for already listed companies and better aligns such value with Nasdaq's regulatory resources expended in connection with such applications. In particular, the Exchange believes it is reasonable to charge only a non-refundable \$25,000 initial application fee (except for an Acquisition Company that is charged a non-refundable \$5,000 initial application fee), because the company listing an additional class of equity securities is already subject to Nasdaq rules, including the applicable corporate governance requirements. Accordingly, Nasdaq, typically, expends less regulatory resources qualifying an additional class of equity securities for listing.

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the all-inclusive annual fees listing fees¹⁸ as set forth above because of the increased costs incurred

¹⁷ See Section 902.03 Fees for Listed Equity Securities; of the NYSE Listed Company Manual.

¹⁸ Effective January 1, 2022, Nasdaq modified the fee schedule for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets. Securities Exchange Act Release No. 93713 (December 3, 2022), 86 FR 70156 (December 9, 2022) (SR-NASDAQ-2021-095).

by Nasdaq since it established the current rates. In that regard, the Exchange notes that its general costs to support our listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies, the technology to deliver those services and the customer experience at the Nasdaq MarketSite. These improvements include, ESG services, governance solutions and support, the remodeling of a portion of the New York Headquarters and the investment in technology to support direct listings with a capital raise, IPO innovations and ongoing trading.

Nasdaq also believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the all-inclusive annual listing fees while rounding the 4% increase to the nearest \$500 as set forth above because such rounding represents de minimis variation in fees for Nasdaq listed companies. In addition, Nasdaq has used the same methodology since the adoption of the all-inclusive annual listing fee schedule and all annual listing fees under Listing Rules 5910(b)(2) and 5920(b)(2) are rounded to \$500.

The proposed change to update amounts in examples clarifying the application of the rules for companies transferring between Nasdaq tiers and to update the maximum fee applicable to a Closed-End Fund family and the maximum fee applicable to a REIT Family to reflect the proposed fee change for other equity securities, as described above, is not unfairly discriminatory because it merely provides transparency to the application of fees without changing the substance of the rule.

Nasdaq believes that the Exchange operates in a highly competitive marketplace for the listing of companies, including the Acquisition Companies.¹⁹ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange's listing fees. In other words, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, Nasdaq believes that the adoption of a flat Entry Fee and a modification to the All-Inclusive Annual Fee schedule for Acquisition Companies represent a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

Nasdaq believes it is reasonable to apply a flat Entry Fee when an Acquisition Company lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While Acquisition Companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory, similarly, the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. Nasdaq also believes that the fee increase is reasonable given the substantial

¹⁹ The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange 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.

increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

Nasdaq believes it is reasonable to transition from the current three-tier structure for the All-Inclusive Annual Fee for Acquisition Companies to the proposed two-tier structure because Nasdaq's analysis, as described above, indicates that the proposed structure better reflects the value of services Nasdaq provides to Acquisition Companies. Nasdaq also believes that the All-Inclusive Fee increase for the proposed first tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the proposed second tier (over 50 million shares) that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore have more value to Nasdaq when they list. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this tier as is, is reasonable given the competitive landscape.

The proposed removal of text relating to fees that are no longer applicable and renumbering certain rules to improve their clarity and readability is ministerial in nature and has no substantive effect.

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.²⁰

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2022-068 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-2022-068. 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. 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-2022-068 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.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).