

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81837; File No. SR-NASDAQ-2017-096)

October 6, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive Nasdaq's Entry Fee When a New Entity Lists in Connection with Certain Transactions between Two or More Nasdaq-Listed 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 September 26, 2017, The NASDAQ Stock Market LLC ("Nasdaq" or the "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 waive Nasdaq's Entry Fee when a new entity lists in connection with a transaction between two or more Nasdaq-listed companies (or involving assets from such companies), where at least one of the Nasdaq-listed companies ceases to be separately listed.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

5910. The Nasdaq Global Market (including the Nasdaq Global Select Market)

(a) Entry Fee

(1) – (6) No change.

(7) The fees described in this Rule 5910(a) shall not be applicable with respect to any securities that:

(i) No change.

(ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated as national market securities under Rule 5220; [or]

(iii) are listed on another national securities exchange but not listed on Nasdaq, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Nasdaq Global Market; or

(iv) are listed on Nasdaq by a newly formed Company resulting from a transaction between two or more Nasdaq-listed Companies (or involving assets from such Companies), where at least one of the Nasdaq-listed Companies ceases to be separately listed.

(8) – (11) No change.

(b) – (f) No change.

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5920. The Nasdaq Capital Market

(a) Entry Fee

(1) – (6) No change.

(7) The fees described in this Rule 5920(a) shall not be applicable with respect to any securities that:

(i) No change.

(ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated under the plan applicable to Nasdaq Capital Market securities; [or]

(iii) are listed on another national securities exchange, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Nasdaq Capital Market; or

(iv) are listed on Nasdaq by a newly formed Company resulting from a transaction between two or more Nasdaq-listed Companies (or involving assets from such Companies), where at least one of the Nasdaq-listed Companies ceases to be separately listed.

(8) – (11) No change.

(b) – (e) No change.

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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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a waiver of Nasdaq's entry fee for a newly formed company resulting from a transaction between two or more Nasdaq-listed companies (or involving assets from such companies), where at least one of the Nasdaq-listed companies ceases to be separately listed.

Nasdaq charges most newly listing companies an entry fee, but excludes certain new listings from that fee where it believes it is equitable to do so. For example, Nasdaq does not charge an entry fee for companies that transfer from another national securities exchange given that these companies had previously paid an entry fee to that other exchange and to encourage companies to switch their listing to Nasdaq.³ In addition, Nasdaq does not charge an entry fee for a previously unlisted company that lists in connection with a transaction whereby it acquires a company listed on another national securities exchange because this situation is similar to a company switching its listing.⁴

³ Nasdaq Rules 5910(a)(7)(i) and 5920(a)(7)(i).

⁴ Nasdaq Rules 5910(a)(7)(iii) and 5920(a)(7)(iii).

Nasdaq now proposes to exclude an additional category of companies from the entry fee: newly formed companies resulting from a transaction between two or more Nasdaq-listed companies (or involving assets from such companies) where at least one of the Nasdaq-listed companies ceases to be separately listed. In such a case, while there may technically be a new legal entity created and listed for the first time, at least one of the companies ceases to be separately listed and so Nasdaq believes it is equitable to treat the new combined company as succeeding to that listing, which has already been subject to the applicable entry fees. In addition, given that all companies involved in the transaction are already listed on Nasdaq, the Exchange's regulatory staff will already be familiar with the companies and the transaction and the companies will be familiar with the Exchange's rules, which will result in a reduced burden on staff to review the new company than would otherwise be the case.

2. Statutory Basis

The Exchange believes that its 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

Nasdaq believes that the proposed waiver of Nasdaq's entry fee for a newly formed company resulting from a transaction between two or more Nasdaq-listed companies (or involving assets from such companies), where at least one of the Nasdaq-listed companies ceases to be separately listed, is reasonable and not unfairly discriminatory because it recognizes that the new combined company is essentially succeeding to the listing of the company that ceases to be separately listed in the transaction, which has already been subject to the applicable entry fees. In addition, given that all companies involved in the transaction are already listed on Nasdaq, the Exchange's regulatory staff will already be familiar with the companies and the transaction and the companies will be familiar with the Exchange's rules, which will result in a reduced burden on staff to review the new company than would otherwise be the case. These are non-discriminatory reasons to waive the fee for this situation. Nasdaq also notes that the proposed waiver would be applied in the same manner to all similarly situated companies.

Nasdaq also believes that the proposed waiver is not unfairly discriminatory in that it will encourage the new company to remain listed on Nasdaq at a time when the company is undergoing a change and may otherwise consider alternative listing venues. This competitive dynamic provides an additional reason as to why it is appropriate to distinguish companies in this situation from other new listings.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act⁷ 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 amount of revenue forgone by this limited waiver of Nasdaq's entry fee is not substantial, and may result in

⁷ 15 U.S.C. 78f(b)(5).

more companies remaining listed on Nasdaq in connection with such transactions, thereby increasing the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected. Consequently, Nasdaq believes that the potential loss of revenue from this change will not hinder its ability to fulfill its regulatory responsibilities.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. 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. In such an environment, Nasdaq must continually adjust its fees to remain competitive with other exchanges. Because other listing venues are similarly free to modify their own fees in response, Nasdaq believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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.⁸

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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

(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-2017-096 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-2017-096. 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-2017-096, 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.⁹

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Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).