

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84634; File No. SR-NASDAQ-2018-092)

November 20, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Expired and Obsolete Provisions in Connection with Nasdaq's Transition to an All-Inclusive Annual Fee Program, Rename Certain Existing Annual Fees as All-Inclusive Annual Listing Fees, and Make Other Related Changes

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 November 13, 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 and II 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 expired and obsolete provisions in connection with Nasdaq's transition to an all-inclusive annual fee program for all listed companies effective January 1, 2018; clarify that Linked Securities, SEEDS, Other Securities and Exchange Traded Products are also subject to an all-inclusive annual fee applicable to such issues; and modify existing fee waiver rules related to listing transfers in light of differences between Nasdaq's all-inclusive annual fee and the listing fees of other exchanges.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In 2014, Nasdaq adopted an all-inclusive annual listing fee schedule to simplify, clarify and enhance transparency around the annual fee to which listed companies are subject.³ The new annual fee schedule became operative on January 1, 2015, and applied to all companies listed after that date. Companies already listed at that time could voluntarily elect the new fee schedule, but were not then required to do so. Effective January 1, 2018, however, all listed companies became subject to the all-inclusive annual fee schedule and the standard annual fee schedule has ceased to have applicability or effect.

Accordingly, as a result of the completion as of January 1, 2018, of the transition of all listed companies from the standard annual fee schedule to the all-inclusive annual fee schedule, Nasdaq is proposing to revise the listing rules to delete obsolete and out of date references to the standard annual fee schedule, the transition to the all-inclusive annual fee schedule, and other listing fees no longer in effect. In addition, Nasdaq is proposing other clarifying and conforming

³ Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-87).

adjustments necessitated by completion of the transition, including relocating and renumbering revised rules as applicable.

As of January 1, 2018, the all-inclusive annual listing fee program completely supersedes and replaces the standard annual fee, which is no longer applicable to any listed company.⁴ Accordingly, Nasdaq is proposing to delete the obsolete language in Rules 5910(c) - (f) and 5920(c) - (e) that describes and sets forth the standard annual fee as well as language in IM-5900-1, IM-5900-4, IM-5900-5(b) and IM-5900-6 that refers to the standard annual fee and to rules about the standard annual fee that Nasdaq is proposing to delete. The all-inclusive annual listing fee program also encompasses the additional shares fee, which is also no longer applicable to any listed company. Thus, Nasdaq is proposing to delete Rules 5910(b) and 5920(b), which describe and set forth the additional shares fee. The all-inclusive annual listing fee program, however, does not encompass the annual fee for convertible debentures, which remains in effect. Therefore, Nasdaq is proposing to relocate the provision for the annual fee for convertible debentures, formerly in Rule 5920(c)(2), to new Rule 5920(b)(2)(F).

The provisions that refer to the transition from the standard annual fee to the all-inclusive annual listing fee program are also obsolete. Accordingly, to reflect completion of this transition, Nasdaq is proposing to delete references to the transition in IM-5900-6(b)(1), Rule 5901, and IM-5910-1 and IM-5920-1. With respect to the remaining provisions in IM-5910-1 and IM-5920-1, which relate to the all-inclusive annual listing fee, Nasdaq is proposing to relocate them to Rule 5910(b) and 5920(b). Therefore, as a result of these changes, the Exchange is also proposing to delete IM-5910-1 and IM-5920-1.

⁴ Entry fees are not encompassed by the All-Inclusive Annual Listings Fee. Accordingly, Nasdaq is not proposing to revise or amend the entry fees set forth in the Rule 5900 Series.

Certain other fees previously applicable to listed companies have been superseded by the all-inclusive annual fee program. Accordingly, Nasdaq is proposing to delete references to these listing fees, which include the record-keeping fee, substitution listing fee, request for written interpretation fee, and compliance plan review fee. These fees are referenced in Rules 5250(e), 5250(e)(3)(A) and (B), 5250(e)(4), 5602(a) - (d), 5810(c)(2)(A), 5901, 5910(e) and (f), IM-5910-1(c), 5920(d) and (e), and IM-5920-1(c). Nasdaq also proposes to relocate into Rule 5602(a) provisions currently in Rule 5602(c) and (f), which specify that applicants and certain companies in the delisting process can request a written interpretation of the Listing Rules, and delete the provision for listed companies to request an expedited response in Rule 5602(b). To reflect the proposed changes to Rule 5602, Nasdaq is proposing to renumber the paragraphs of that rule that remain applicable.

Nasdaq endeavors to respond to all requests for written interpretations of the Listing Rules in as timely a manner as possible. Thus, notwithstanding that Nasdaq is proposing to delete the provision for listed companies to request an expedited response to such requests, a Company may nonetheless request an expedited response and Nasdaq will respond as promptly as practicable.

Listed companies, however, remain subject to the fees described in Rules 5815(a)(3) and 5820(a) that apply to review by a Hearings Panel or the Nasdaq Listing and Hearing Review Council, respectively, of a Staff Delisting Determination or Public Reprimand Letter. Listed companies also remain subject to the entry fees described in Rules 5910(a) and 5920(a) relating to the listing of an additional class of securities of the listed company.⁵

⁵ Listing Rules 5910(a) and 5920(a) provide that a Company that submits an application to list any class of its securities shall pay to Nasdaq an entry fee. Equity Investment

In addition, Nasdaq is proposing to renumber certain of the rules regarding the authority of the Nasdaq Board of Directors or its designee, in its discretion, to defer or waive all or any part of the annual fee prescribed therein. The authority to defer or waive the annual fee, which is currently set forth in Rules 5910(c)(2), 5910(d)(5), 5920(c)(4), 5930(b)(2) and 5940(b)(3) [sic], is generally exercised only in limited cases, under circumstances that are not likely to be frequently replicated and where requiring payment of an annual fee would be inequitable.⁶ To Nasdaq's knowledge, it has never used this authority to defer an annual fee. The Exchange represents it would do so only under the same circumstances as it would to waive an annual fee.

Because Nasdaq, as described above, is proposing to delete the language in Rules 5910(c) - (f) and 5920(c) - (e) that describes and sets forth the standard annual fee, which encompasses Rules 5910(c)(2), 5910(d)(5) and 5920(c)(4) that set forth the authority of the Nasdaq Board of directors or its designees to defer or waive all or any part of the annual fee, Nasdaq is proposing, without substantive changes, to renumber these rules in proposed new Rules 5910(b)(3)(G) and 5920(b)(3)(G) that apply to the all-inclusive annual listing fee.⁷ To fully reflect these proposed changes, Nasdaq is proposing to eliminate cross references to these rules and other similar provisions contained in IM-5900-1 and IM-5900-4.

Tracking Stocks listed pursuant to Rule 5222 are subject to the entry fees described in Rules 5910(a) and 5920(a).

⁶ For example, the Exchange granted a waiver to a company that was removed during the first week of January pursuant to a decision of a Nasdaq Listing Qualifications Panel, where the Panel had all the information necessary to make its decision in the prior year. The Exchange also granted a waiver to a company that [sic] intended to voluntarily delist prior to the end of a calendar year but was delayed until early in January, where there was clear evidence of the company's intent to delist before the end of the year and there was limited trading prior to the delisting. In each of these cases, the Exchange believed it would be inequitable to subject the company to the annual fee.

⁷ Nasdaq is not proposing to renumber Rules 5930(b)(2) and 5940(b)(3) [sic]. These rules remain unchanged by this proposal and the authority to defer or waive an annual fee set forth therein will continue to apply.

Nasdaq is also proposing revisions to Rules 5930(b)(1) and 5940(b)(1) and (2) and to add new Rules 5930(b)(4) and 5940(b)(5) to provide that Linked Securities, SEEDS, Other Securities and Exchange Traded Products are subject to an all-inclusive annual listing fee applicable to such issues. Currently, Linked Securities, SEEDS, and Other Securities are subject to the annual fee set forth in Rule 5930(b) and Exchange Traded Products are subject to the annual fee set forth in Rule 5940(b). Previously, Nasdaq eliminated the fees for record-keeping changes and substitution listing events charged to these entities⁸ and they are not subject to the compliance plan or additional shares fees.⁹ Under these circumstances, and to promote clarity, consistency and uniformity, Nasdaq is proposing to rename the annual fee for Linked Securities, SEEDS, Other Securities and Exchange Traded Products to make clear that these securities are subject to an all-inclusive annual listing fee applicable to such issues.¹⁰

Nasdaq also proposes to remove a January 1, 2018 effective date contained in current IM-5910-1(d)(5) and IM-5920-1(d)(5) because that date has passed and these rules are now effective and to clarify that the annual fee referred to in those rules is the all-inclusive annual listing fee.

Finally, given completion of Nasdaq's transition to the all-inclusive annual listing fee, Nasdaq is also proposing revisions to IM-5900-4 to account for differences between Nasdaq's all-inclusive annual fee and the fees of other listing exchanges. Specifically, IM-5900-4

⁸ Securities Exchange Act Release No. 78047 (June 13, 2016), 81 FR 39736 (June 17, 2016) (SR-NASDAQ-2016-077).

⁹ Rule 5810(c)(2)(A) currently does not require the compliance plan fee for plans submitted for failure to meet a continued listing standard contained in the Rule 5700 Series, which includes continued listing standards for those securities charged fees under Rules 5930 and 5940.

¹⁰ Because Linked Securities, SEEDS, Other Securities and Exchange Traded Products are now subject to an all-inclusive annual listing fee applicable to such issues, consistent with the treatment of equity securities, Nasdaq proposes to no longer subject the issuer of these securities to the written interpretation fee.

currently provides for the waiver of a portion of the applicable annual fee for a company whose securities: (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to Nasdaq; or (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 governing Nasdaq securities. This waiver is provided as a pro-rated credit in the amount of any annual listing fees paid to the prior exchange applicable to the period of time after the transfer. The purpose of this waiver is to remove a disincentive for companies to switch markets when they had already paid an annual fee in that year.¹¹ While Nasdaq's all-inclusive annual listing fee remains lower in most cases than the annual fee of competitor exchanges, in limited cases it can be higher than just the annual fee charged by a competitor exchange, which (unlike Nasdaq's all-inclusive annual listing fee) does not include fees that the competitor exchange separately charges for additional shares or other events such as record keeping changes or substitution listing events. To ensure uniform treatment and simplify application of this waiver given these structural differences between Nasdaq's all-inclusive annual fee and the potential range of other fees encompassed by the all-inclusive annual fee that a company may have also paid to the competitor exchange in the year of the switch in addition to the annual fee, Nasdaq proposes to modify the rule to waive the entire all-inclusive annual listing fee in the year of transfer.

Nasdaq acknowledges the possibility that the all-inclusive annual listing fee it charges may be higher in some cases than the annual fee charged by a competitor exchange and that in such cases an issuer that transfers its listing may receive a relatively greater benefit than other issuers that transfer their listings where the all-inclusive annual listing fee is lower than the

¹¹ Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR-NASD-2006-47) (adopting the predecessor to IM-5900-4).

annual fee charged by a competitor exchange. However, Nasdaq does not believe that this possibility is unfairly discriminatory. Nasdaq anticipates that there will be few instances where Nasdaq's all-inclusive annual listing fee is higher than the annual fee charged by a competitor exchange. Further, by simplifying these provisions, they are transparent to issuers and the public, ensure consistent application, and limit any unnecessary burdens related to the administration and implementation of these provisions. Nasdaq represents that this proposed modification will have no impact on the resources available for its regulatory programs or Nasdaq's ability to enforce its listing standards and protect investors.

2. Statutory Basis

The Exchange believes that its proposal, by eliminating obsolete or unnecessary provisions from its rule book and, thus, simplifying and adding clarity to the fees charged by the Exchange, is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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 its facilities. For the same reasons, the Exchange also believes its proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Except as described below with respect to the proposed changes to IM-5900-4, the proposal does not change the listing fees to which listed companies are subject. Rather, Nasdaq is making this proposal to make certain the rules fully reflect completion of the phased transition

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

from the standard annual fee schedule to the all-inclusive annual fee schedule. Completion of this transition rendered certain existing fee provisions obsolete, unnecessary or out of date and necessitated their deletion or modification. Completion of the transition also necessitated other clarifying and conforming adjustments, including relocating or renumbering certain rules. Nasdaq believes that updating Nasdaq's rules to eliminate obsolete provisions and make related clarifications and conforming changes will simplify Nasdaq's rule book and add transparency. As noted above, except as described below with respect to the changes to IM-5900-4, it will not change the listing fees to which listed companies are subject. Thus, the proposal does not reduce the resources available for Nasdaq's regulatory program or otherwise hinder or limit the ability of Nasdaq to enforce its listing standards and protect investors.

The proposal's clarification in Rules 5930 and 5940 that Linked Securities, SEEDS, Other Securities and Exchange Traded Products are also subject to an all-inclusive annual fee applicable to such issues is similarly consistent with Section 6(b) of the Act. In this regard, by adding clarity to the rules regarding the fees applicable to these products, the proposal simplifies and adds transparency to Nasdaq's rule book, including by fully reflecting the fact that, as noted above, these products are not subject to fees for Record Keeping, Substitution Listing Events and compliance plans.¹⁴ This proposed change does not change the listing fees to which these products are subject. Instead, it ensures the rules reflect that these products, like all other listings, are subject to an all-inclusive annual fee.

Also, because the proposal does not change the fees to which these listings are subject, the proposal does not reduce the resources available for Nasdaq's regulatory program or otherwise hinder or limit the ability of Nasdaq to enforce its listing standards and protect

¹⁴ See, supra, notes 8 and 9.

investors. As such, Nasdaq believes these changes are consistent with the Section 6(b)(4) of the Act in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. For the same reasons, they are also consistent with the investor protection objectives of Section 6(b)(5) of the Act.

The proposed modifications to IM-5900-4 are similarly consistent with the Act because they are designed to simplify and clarify application of the pre-existing annual fee waiver to companies that transfer their listing from a national securities exchange to Nasdaq or, if they are already listed on Nasdaq, cease to be listed on the New York Stock Exchange. This change was necessitated because the all-inclusive annual fee schedule may not, in certain cases, be directly equivalent or comparable to other listing exchanges' annual fees because it includes a range of fees, such as for listing additional shares, record keeping changes and substitution listing events, that other listing exchanges charge separately in addition to an annual listing fee. As such, while most companies under the all-inclusive annual fee schedule incur lower fees in comparison to the annual fee charged by other exchanges, in some cases a company's fee under the all-inclusive annual fee schedule may be higher. In these cases, the existing waiver under the rules of a pro rata portion of the annual fee paid to the other listing exchange may not give the company full credit for other fees paid to the other exchange and may not completely remove the disincentive to transferring listing attributable to the fact that the company has already paid the annual fee for that year. Under the proposed change, all companies switching their listing will have the entire annual fee waived in the year of the switch.

As noted above, Nasdaq acknowledges the possibility that the all-inclusive annual listing fee it charges may be higher in some cases than the annual fee charged by a competitor exchange and that in such cases an issuer that transfers its listing may receive a relatively greater benefit

than other issuers that transfer their listings where the all-inclusive annual listing fee is lower than the annual fee charged by a competitor exchange. However, for several reasons, Nasdaq does not believe that this possibility is unfairly discriminatory. First, Nasdaq anticipates that there will be few instances where Nasdaq's all-inclusive annual listing fee is higher than the annual fee charged by a competitor exchange. Second, as described above, the waiver is intended to remove a disincentive to transfer and Nasdaq does not believe that the possibility that the all-inclusive annual listing fee is higher than the annual fee charged by a competitor exchange would have a material impact on a decision to transfer or not. Third, by simplifying these provisions, they are transparent to issuers and the public, ensure consistent application, and limit any unnecessary burdens related to the administration and implementation of these provisions.

For these reasons, Nasdaq believes that this proposed change is consistent with Section 6(b)(4) of the Act. Nasdaq also believes this proposed change is similarly consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, given the limited number of listings transfers each year, it is not expected that this waiver would materially impact the resources available for Nasdaq's regulatory program or otherwise hinder or limit the ability of Nasdaq to enforce its listing standards and protect investors. As such, Nasdaq believes these changes are consistent with the investor protection objectives of Section 6(b)(5) of the Act.

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

The Exchange does not believe that the proposed rule change will 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 freely choose alternative venues based on the aggregate fees assessed and the value provided by each listing. As such, because this proposal does not change the listing fees to which listed companies are subject, but merely reflects the completion of the phased transition from the prior standard annual fee schedule to the all-inclusive annual listing fee schedule, the application of an all-inclusive annual listing fee schedule to Linked Securities, SEEDS, Other Securities and Exchange Traded Products, and refinement and clarification of the operation of certain existing waivers based on the introduction of the all-inclusive listing fee schedule, Nasdaq believes that this proposed rule change does not encumber the competition for listings with other listing venues, which are similarly free to set their fees. Rather, it reflects the competition among listing venues and will further enhance such competition.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that its rules may fully reflect completion of the transition to the all-inclusive annual fee program, thereby providing clarity to this fee program and making the rule book simpler and more transparent. The Exchange represents that, as of January 1, 2018, all listed companies are subject to the all-inclusive annual listing fee program, which has completely superseded and replaced the standard annual fee. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹⁹

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or 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 change 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-2018-092 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-2018-092. 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-2018-092, 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).