

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92663; File No. SR-NASDAQ-2021-061)

August 13, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Listing Rule 5910 to Modify the Application Fee for Companies Listing Under IM-5101-2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2021, 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 amend Listing Rule 5910 to modify the application fee for companies listing under IM-5101-2 (companies whose business plan is to complete one or more acquisitions) on the Nasdaq Global Market.

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

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

Nasdaq proposes to revise the application fee payable by Acquisition Companies listing on the Nasdaq Global Market to make it the same as the application fee payable by Acquisition Companies listing on the Nasdaq Capital Market, as described in more details below.

Historically, 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”) would choose to list on the Nasdaq Capital Market instead of the Nasdaq Global Market, primarily because it had lower fees. Recently Nasdaq modified the Entry and All-Inclusive Annual Listing Fees for Acquisition Companies listing on the Nasdaq Global Market.<sup>3</sup> As a result, the Entry and All-Inclusive Annual Listing Fees for Global Market Acquisition Companies are currently identical to the fees charged to Capital Market Acquisition Companies.

A company applying to list on Nasdaq is required to submit a non-refundable initial application fee with its application, which is subsequently credited towards the Entry Fee payable upon listing. A company listing on the Global Market is required to submit a non-refundable \$25,000 initial application fee, whereas the application fee on the Capital Market is \$5,000.<sup>4</sup>

---

<sup>3</sup> Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

<sup>4</sup> See Listing Rules 5910(a)(11) and 5920(a)(11).

Nasdaq proposes to revise the application fee for Acquisition Companies listing on the Nasdaq Global Market to make it the same as the application fee Acquisition companies pay on the Capital Market.

Nasdaq has limited resources and charges companies applying to list on Nasdaq an application fee to offset the cost of conducting its regulatory review in connection with the initial listing of the company. As explained above, the application fee is subsequently credited towards the Entry Fee payable upon listing. In Nasdaq's experience, conducting an initial listing review for an Acquisition Company is less costly than conducting an initial listing review for other types of companies for a number of reasons. Specifically, review of an Acquisition Company's IPO application is generally much simpler and quicker than an application of an operating company because an Acquisition Company has no underlying operating business. For the same reason, an Acquisition Company's SEC filings and IPO documentation are much less detailed and its financial statements are simple and do not have historical financials. An Acquisition Company's registration statement does not have an operating business to describe and has no risk factors related to an operating business. Further, Acquisition Companies always qualify as Emerging Growth Companies under Section 2(a)(19) of the Securities Act, which results in scaled requirements for narrative disclosure and financial reporting.

Accordingly, Nasdaq believes it is appropriate to charge Acquisition Companies listing on the Global Market a smaller application fee than the fee applicable to operating companies. Nasdaq notes that, as described above, the application fee is a part of the Entry Fee, and therefore, the overall Entry Fee payable by an Acquisition Company listing on Nasdaq remains unchanged under this proposal. Accordingly, this proposal has no financial impact on the level of listing fees collected from issuers that list on Nasdaq and thus has no impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> 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.<sup>7</sup>

The proposal is being implemented to avoid charging a higher application fee to an Acquisition Company that is listing on the Nasdaq Global Market over what such company is required to pay when applying to list on the Capital Market. As a result of a recent rule change, the Entry and All-Inclusive Annual Listing Fees for Global Market Acquisition Companies are currently identical to the fees charged Capital Market Acquisition Companies.<sup>8</sup> This proposal would fully equalize listing fees and the timing of paying such fees for Acquisition Companies listing on the Capital and Global Markets. Nasdaq believes it is equitable under Section 6(b)(4)

---

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> In that regard, Nasdaq notes that while the New York Stock Exchange charges most companies an Initial Application Fee of \$25,000 in connection with applying to list an equity security, Acquisition Companies are not subject to the Initial Application Fee. See Sections 902.03 and 902.11 of the NYSE Listed Company Manual.

<sup>8</sup> Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

of the Act<sup>9</sup> to charge Global Market Acquisition Companies the same application fee as Capital Market Acquisition Companies given that they are treated the same, and their applications are no more complicated, regardless of whether they are applying to list on the Global or Capital Market.

Moreover, the Exchange believes that it is not unfairly discriminatory to charge Acquisition Companies application fee different from the fee applicable to operating companies listing on the Global Market, because Acquisition Companies differ in some important respects from traditional operating companies and such differences make it less costly for Nasdaq to conduct an initial listing review. Specifically, an Acquisition Company's IPO process is generally much simpler and quicker than a regular IPO because an Acquisition Company has no underlying operating business. For the same reason, an Acquisition Company's SEC filings and IPO documentation, including its financial statements, are simple and do not have historical discussions or financials. An Acquisition Company's registration statement does not have an operating business to describe and has no risk factors related to an operating business. Further, Acquisition Companies always qualify as Emerging Growth Companies under Section 2(a)(19) of the Securities Act which results in scaled requirements for narrative disclosure and financial reporting. Therefore, Nasdaq believes that it is appropriate, and not unfairly discriminatory, to charge lower application fee to Global Market Acquisition Companies than application fee that are charged to operating companies listed on the Nasdaq Global Market.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

---

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 proposed modified application fee will be applicable to all similarly situated issuers on the same basis and will eliminate an existing distinction between Acquisition Companies listing on the Capital and Global Markets. The Exchange does not believe that the proposed fees will have any meaningful effect on the competition among issuers listed on the Exchange.

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. In that regard, Nasdaq notes that while the New York Stock Exchange charges most companies an Initial Application Fee of \$25,000 in connection with applying to list an equity security, Acquisition Companies are not subject to the Initial Application Fee.<sup>10</sup>

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.<sup>11</sup>

---

<sup>10</sup> See Sections 902.03 and 902.11 of the NYSE Listed Company Manual.

<sup>11</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-061 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-2021-061. 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-2021-061 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.<sup>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

---

<sup>12</sup> 17 CFR 200.30-3(a)(12).