1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to specify that issuers seeking a review of a delisting determination must have paid all prior fees owed to the Exchange before the Exchange will accept payment of the applicable appeal fee.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board"). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

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Senior Counsel Listing and Governance
Nasdaq, Inc.
(202) 329-2787

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

[2] 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

Nasdaq proposes to amend Listing Rules 5815 and 5820 to provide that issuers seeking a review of a Delisting Determination, as defined in Rule 5805(h), issued under Rule 5810 with respect to that security, must have paid all prior fees owed to the Exchange before the Exchange will accept payment of the applicable appeal fee. Nasdaq also proposes to clarify that such appeal fees are non-refundable.

Companies listed on Nasdaq are subject to certain fees throughout the life of their listing, including annual fees for each class or series of security listed on the Exchange as well as fees associated with initial and secondary listing applications. Although all fees are due immediately when billed, on some limited occasions listed companies fail to remit payment for fees due to the Exchange. If payment is not received when due, the Exchange has procedures in place to collect on outstanding bills, but if notwithstanding these efforts, the company fails to pay fees due to the Exchange, it will be subject to delisting.[3]

Nasdaq monitors listed companies for compliance with Exchange rules and can initiate delisting proceedings in the event of non-compliance or deny initial listing. Pursuant to Listing Rule 5815, companies may seek review of a determination by the Nasdaq's Listing Qualifications Department ("LQ Staff") to deny initial listing or delist a company's securities or to issue a Public Reprimand Letter, by requesting a hearing before an independent Hearings Panel (the "Hearings Panel"). Listing Rule 5815(a)(3)

[3] Listing Rule 5250(f) requires listed companies to "pay all applicable fees as described in the Rule 5900 Series."

provides that to request a hearing, the company must, within seven calendar days of the date of the LQ Staff delisting determination, public reprimand letter, or written denial of an initial listing application, submit a hearing fee in the amount of $20,000. Companies may also appeal a Hearings Panel decision to the Nasdaq Listing and Hearing Review Council (the "NLHRC"). Listing Rule 5820(a) requires a company seeking such an appeal to submit a fee of $15,000.

In the Exchange's experience, listed companies that are non-compliant with Exchange rules, and thus subject to delisting, frequently also struggle financially and may be unable to pay their vendors or service providers. It is possible, therefore, that a company subject to delisting for failure to comply with Exchange rules may also be delinquent in the payment of fees due to the Exchange. If Nasdaq commences delisting proceedings against such a company, the Exchange believes it is fair to require that the company first pay all past-due fees before it can submit the applicable appeal fee and request a review of staff's delisting decision. To that end, Nasdaq proposes to amend Listing Rule 5815(a)(2) to require that if a company fails to timely[4] pay the hearing fee described in Listing Rule 5815(a)(3), the company waives its right to request review of a Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application. Nasdaq also proposes to amend Listing Rule 5815(a)(3) to provide that (i) no payment will be credited and applied towards the hearings fee unless the issuer has previously paid all applicable fees due to the Exchange and (ii) the hearing fee of $20,000 the company must submit is non-refundable.

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[4] Listing Rule 5815(a)(3) provides that the company must submit a hearing fee of $20,000 within seven calendar days of the date of the Staff Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application.

When a company appeals a Delisting Determination to the Hearings Panel or the NLHRC, the staff of Nasdaq invests a significant amount of time and effort preparing appeal briefs and other related documentation. Before the staff of Nasdaq expends these additional resources, it believes it is appropriate to require that companies seeking an appeal have paid the Exchange in full for all services already provided. To that end, Nasdaq proposes to amend Listing Rule 5820(a) to provide that (i) no payment will be credited and applied towards an appeal fee unless the issuer has previously paid all applicable fees due to the Exchange and (ii) the appeal fee of $15,000 the company must submit is non-refundable. The proposed requirement is consistent with the rules of the NYSE.[5]

Nasdaq is also proposing to revise Listing Rule 5815(a)(3) to delete obsolete and out of date references.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, 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, in general to protect investors and the public interest. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(7)[8] of the

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5 See Section 804.00 of the NYSE Listed Company Manual.

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(5).

8 15 U.S.C. 78f(b)(7).

Act because listed companies will still have adequate due process rights to appeal any delisting action.

The Exchange believes that it is reasonable to require that a company seeking to appeal a Delisting Determination made by LQ Staff first pay all past due fees owed to the Exchange. All companies listed on the Exchange are subject to annual and other fees.

The Exchange believes that its proposal is reasonable because it is consistent with the Exchange's goal of ensuring that all issuers pay for the benefit of having their securities listed on the Exchange as well as other regulatory benefits received from the Exchange and therefore ensures that fees are equitably allocated among listed companies. The proposed rule change is not designed to permit unfair discrimination because all listed companies seeking to appeal a delisting decision will be subject to the proposed provisions of Listing Rules 5815 and 5820 and each company will be required to pay only the amount it has incurred under the Exchange's fee rules as generally applied to all listed companies.

4. 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 change simply requires that listed companies first pay all past due fees owed to the Exchange before they can request an appeal of a delisting determination. Such a requirement ensures that all listed companies pay for the benefit of having their securities listed on the Exchange. Accordingly, the Exchange does not believe that the proposed change will impose any burden on competition.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[9] of the Act and Rule 19b-4(f)(6) thereunder[10] in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed amendment will not significantly affect the protection of investors and the public interest because it merely requires that a company pay fees for the regulatory benefit that it has already received before seeking to appeal a delisting decision. Further, the Exchange believes that the proposed amendment will not impose any significant burden on competition because it harmonizes the Exchange's policy in this regard with the comparable policy of the NYSE and ensures that all companies pay for the benefit of having their securities listed on the Exchange.

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9 15 U.S.C. 78s(b)(3)(A)(iii).

10 17 CFR 240.19b-4(f)(6).

Furthermore, Rule 19b-4(f)(6)(iii)[11] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 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 should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

[11] 17 CFR 240.19b-4(f)(6)(iii).