

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72538; File No. SR-NASDAQ-2014-067)

July 3, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Rule 5305 to Eliminate the Automatic Transfer of Companies from The NASDAQ Global Market to The NASDAQ Global Select Market

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 June 25, 2014, 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 NASDAQ. 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

NASDAQ proposes to modify Rule 5305 to eliminate the automatic transfer of companies from The NASDAQ Global Market to The NASDAQ Global Select Market.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.<sup>3</sup>

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**5305. General Information for The Nasdaq Global Select Market**

(a) No change.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(b) Reserved. [Each October, Nasdaq will review the qualifications of all securities listed on the Nasdaq Global Market that are not included in the Nasdaq Global Select Market. Any security that meets the requirements for initial listing on the Nasdaq Global Select Market contained in Rule 5315 at the time of this review will be transferred to the Global Select Market the following January, provided it meets the continued listing criteria at that time. A Company will not owe any application or entry fees in connection with such a transfer.]

(c) – (f) 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, NASDAQ 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. NASDAQ 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 consists of three listing tiers: The NASDAQ Global Select Market, The NASDAQ Global Market, and The NASDAQ Capital Market. Each tier has different listing requirements, designed to appeal to companies with different characteristics.

When NASDAQ created the Global Select tier in 2006, it implemented a process whereby NASDAQ conducts an annual review of all Global Market listed companies’ qualifications and automatically places qualified Global Market companies in the Global Select

segment the following January.<sup>4</sup> While this annual review occurs automatically, a Global Market listed company may also apply to list on the Global Select Market at any time.

Companies transferring from the Global Market to the Global Select Market, whether as part of the annual review process or upon their own application, are not assessed entry or application fees.

NASDAQ initiated this automatic review process in 2006 to provide a proactive mechanism to notify companies about their qualification for this new market tier, which was then unfamiliar to companies. NASDAQ believes that companies generally are now familiar with the three tiers of NASDAQ and that the automatic review and transfer to the Global Select Market is no longer necessary. In addition, NASDAQ also believed that the automatic annual review would achieve economies of scale by allowing review of all Global Market companies at the same time, rather than individually. However, in recent years there have been fewer companies that qualify for transfer<sup>5</sup> and, as such, these economies of scale are reduced. Finally, a Global Market company may still seek to transfer to the Global Select tier at any point in the year by submitting a listing application. Accordingly, NASDAQ proposes to eliminate the automatic annual review and will review Global Market companies for transfer to the Global Select Market only upon application by the company. NASDAQ acknowledges that, as a result, companies will have to monitor whether they qualify to transfer rather than rely on NASDAQ's automatic review. But, while a company does not currently have to submit an application, much of the information required for the application is pre-populated for a company, and NASDAQ,

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<sup>4</sup> This review is conducted in November and December based on data as of October 31.

<sup>5</sup> Based on NASDAQ's automatic review, 228 securities transferred in January 2011. This number reflected a number of issues that first qualified based on a new listing standard adopted during 2010. In 2012, 2013 and 2014, between 58 and 77 securities transferred each year.

therefore, does not believe that the application is burdensome.<sup>6</sup>

NASDAQ proposes to implement this change upon approval. As such, companies transferred in January 2014 would be the last group automatically transferred upon NASDAQ's review under existing Rule 5305(b). NASDAQ will notify Global Market listed companies about this change via an e-mail communication. A company can continue to request transfer at any point during the year, and the review of an application to transfer from the Global Market to the Global Select Market will continue to be conducted without cost to the issuer. Qualified companies also will not owe any entry or other fees in connection with a transfer from the Global Market to the Global Select Market.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general and with Section 6(b)(5) of the Act,<sup>8</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change is designed to eliminate the annual review of companies for transfer from

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<sup>6</sup> The application to transfer from the Global Market to the Global Select Market is available on the NASDAQ Listing Center (<https://listingcenter.nasdaqomx.com>) and is completed online. Based on a company's symbol and CIK code or CUSIP number, the application is pre-populated with the company's identifying information. The applicant generally will only need to provide contact information, affirm the accuracy of the information in the application and accept the Listing Agreement.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the Global Market to the Global Select Market, which NASDAQ believes is an unnecessary process. This would remove an unnecessary burden on NASDAQ staff. However, given the ease of the automated application process, it would continue to be simple for qualified companies to request review at any time, and without cost. Qualified companies that apply could transfer immediately upon confirmation by NASDAQ staff that the company meets the listing requirements. NASDAQ recognizes that companies will have to monitor whether they qualify for transfer, rather than rely upon NASDAQ's automatic review. However, on balance, NASDAQ does not believe that this burden is significant enough to warrant continuing the automatic transfer process.

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 proposed rule change would simply require an eligible company to initiate the transfer from the Global Market to the Global Select Market, which will result in no additional burden on competition between NASDAQ and other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or

- (B) institute proceedings to determine whether the proposed rule change should be 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-2014-067 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-2014-067. 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; 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-2014-067 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>9</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).