

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72899; File No. SR-NASDAQ-2014-067)

August 22, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval 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

I. Introduction

On June 25, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend its rules in order to eliminate the Exchange’s automatic annual review and transfer of qualified companies from The NASDAQ Global Market to The NASDAQ Global Select Market. The proposed rule change was published for comment in the Federal Register on July 10, 2014.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NASDAQ consists of three listing tiers: The NASDAQ Global Select Market (“Global Select” or “Global Select Market”), The NASDAQ Global Market (“Global Market”), and The NASDAQ Capital Market (“Capital Market”). Each tier has different listing requirements; Capital Market has the lowest quantitative criteria to qualify for listing and Global Select has the highest quantitative criteria to qualify for listing. In its filing NASDAQ states that the tiers were

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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> See Securities Exchange Act Release No. 72538 (July 3, 2014), 79 FR 39446 (“Notice”).

designed to appeal to companies with different characteristics.<sup>4</sup> Currently, pursuant to NASDAQ Rule 5305(b), NASDAQ conducts an annual review of all Global Market-listed companies' qualifications each year in November and December based on data as of October 31, and automatically places qualified Global Market companies in the Global Select tier the following January.<sup>5</sup> While this annual review currently occurs automatically, a Global Market-listed company also may apply to list on the Global Select tier at any time.<sup>6</sup> 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.<sup>7</sup>

The Exchange has proposed to eliminate NASDAQ's automatic annual review and transfer of qualified companies to the Global Select Market. Under the proposal, NASDAQ would review Global Market-listed companies for transfer to the Global Select Market only upon application by the company. To effect this change, the Exchange has proposed to delete the text of Rule 5305(b). According to the Exchange, the reasons for the implementation of the automatic annual review and transfer process in 2006, when the Global Select tier was created, are less relevant today, and eliminating this process would remove an unnecessary burden on NASDAQ staff.<sup>8</sup> NASDAQ proposes to implement this change upon approval, and states that it will notify Global Market-listed companies about this change via an e-mail communication.<sup>9</sup>

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<sup>4</sup> See Notice, 79 FR at 39446.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. at 39446-47. NASDAQ notes that 228 securities transferred to the Global Select Market in January 2011 based on NASDAQ's automatic review, and between 58 and 77 securities transferred in each subsequent year. Id. at 39446 n.5.

<sup>9</sup> Id. at 39446.

As a result of the proposed rule change, companies automatically transferred in January 2014 would be the last group automatically transferred upon NASDAQ's review under Rule 5305(b). A Global Market-listed company could continue to apply for transfer to the Global Select tier at any point during the year by submitting a listing application, and the review of an application would continue to be conducted without cost to the issuer.<sup>10</sup> Qualified companies that apply could transfer immediately upon confirmation by NASDAQ staff that the company meets the Global Select Market listing requirements, and would not owe any entry or other fees in connection with a transfer from the Global Market to the Global Select tier.<sup>11</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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<sup>10</sup> Id.

<sup>11</sup> Id. at 39446-47. The Commission also notes that annual fees for continued listing are the same for the Global Market and Global Select tiers.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

As a result of the proposed rule change, Global Market-listed companies will have to monitor whether they qualify for transfer to the Global Select Market and submit an application for listing on the Global Select Market, rather than rely on the Exchange's automatic review and transfer process. The Commission observes that this could create an additional burden for Global Market-listed issuers that would otherwise rely on the Exchange's automatic process for transfer to the Global Select tier. The Exchange acknowledges this burden, but believes that, on balance, it is not significant enough to warrant continuing the automatic transfer process, which places a burden on NASDAQ staff that the Exchange believes is unnecessary.<sup>14</sup> The Exchange notes that much of the information required for the application is pre-populated for a company, and asserts that, given the ease of the application process, it would continue to be simple for qualified companies to request review at any time and without cost.<sup>15</sup>

Balancing the apparent simplicity of the application process and the fact that Global Market-listed companies may apply for a transfer to the Global Select tier at any time and with no charge from NASDAQ against the unnecessary burden that NASDAQ asserts is placed on its staff by the automatic review and transfer process, the Commission believes that the proposed rule change is reasonable and consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade, protects investors and the public interest, and is not designed to permit unfair discrimination between issuers. Under the proposal, a Global Market-listed company that is unsure of its status could continue to submit an application and request review of

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<sup>14</sup> See Notice, 79 FR at 39446-47.

<sup>15</sup> Id. at 39446. The Exchange states that the application to transfer from the Global Market to the Global Select Market is available on its website, completed online and pre-populated with the company's identifying information based on its symbol and CIK code or CUSIP number. The listed company generally will only need to provide contact information, affirm the accuracy of the information in the application, and accept the Listing Agreement. Id. at n. 6.

its qualifications at any time during the year through what appears to be a relatively simple application process, and with no charge or additional fees imposed by NASDAQ.<sup>16</sup> While the Commission expects that companies would monitor their listing qualifications, even a company that performs little or no such monitoring could obtain a review of its qualifications from NASDAQ at any time and potentially transfer to the Global Select tier with apparent ease.

As noted above, the automatic review process was developed at the inception of the Global Select tier to notify companies about their eligibility for that tier, which was, at that time, new and unfamiliar to them. As a result, the Commission notes that the automatic review process provided a mechanism for NASDAQ to promote, market, and expand the new Global Select tier to eligible companies. Now that companies are familiar with this process and also have an easy way to apply throughout the year, the Commission believes that it is consistent with the Act, and Section 6(b)(5) in particular, for NASDAQ no longer to offer this service to promote its Global Select tier. In addition, the Commission notes that it received no comments on the proposal, and thus is not aware of any objection to it from interested parties, in particular, Global Market-listed companies. Moreover, eliminating the automatic review process, which NASDAQ has stated is a burden on its staff, could free up additional resources that may be better used for the regulation and oversight of listed companies.

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<sup>16</sup> See supra note 11.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NASDAQ-2014-067) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).