

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74472; File No. SR-NASDAQ-2015-017)

March 11, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide a Limited Price Guarantee to Certain Companies that Switch their Listing to Nasdaq from Another Exchange

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 February 25, 2015, 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 the Substance of the Proposed Rule Change

Nasdaq proposes to provide a limited price guarantee to certain companies that switch their listing to Nasdaq from another securities exchange. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 recently adopted an all-inclusive annual listing fee, which simplifies billing and provides transparency and certainty to companies as to the annual cost of listing.³ This new fee structure was designed, primarily, to address customer complaints about the number and in some cases the variable nature of certain of Nasdaq's listing fees. It also provides benefits to Nasdaq, including eliminating the multiple invoices that were sent to a company each year and providing more certainty as to revenue.⁴

While this new fee structure will become operative for all listed companies in 2018, currently listed companies were allowed to elect to be subject to the all-inclusive annual listing fee effective January 1, 2015, and were provided certain incentives to do so.⁵ In addition, because they may have made their listing decision based on Nasdaq's prior fee schedule, any company that applied to list on Nasdaq prior to January 1, 2015, and lists after that date, is also provided an accommodation: until December 31, 2017, such a company will be billed the all-inclusive annual fee based on the lower of its then-current total shares outstanding or the total shares outstanding reflected in information held by Nasdaq as of the date of listing. As such, regardless of any increase in shares outstanding, the tier upon which the all-inclusive annual fee

³ Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (approving SR-NASDAQ-2014-087).

⁴ Id.

⁵ See IM-5910-1(b)(1) and IM-5920-1(b)(1).

is based for such companies will not increase until at least January 1, 2018.⁶ Companies have reacted favorably to the new fee program and these incentives.

Nasdaq now proposes to offer certain other newly listing companies the same incentive provided to any company that applied to list on Nasdaq prior to January 1, 2015. Specifically, Rules 5910(a)(7) and 5920(a)(7) currently waive entry fees upon listing on Nasdaq for a company that switches from another national securities exchange (including if it is currently dually listed on such exchange) and when an unlisted company acquires a company listed on another national securities exchange and lists on Nasdaq in connection with the transaction.⁷ In order to better compete for these listings, Nasdaq proposes to charge them based on the lower of their shares outstanding as of the date of listing or at the time of billing until January 1, 2018. This will provide certainty to the companies as to their fee until at least 2018 and provides an incentive for a company to switch its listing to Nasdaq sooner than it might otherwise, before issuing additional shares that would result in the company being in a higher fee tier and paying a higher annual fee. Nasdaq believes that this proposed change will enhance the ability of Nasdaq to compete for these listings and may ultimately benefit all issuers and investors.⁸

Nasdaq notes that few companies qualify for the waivers in Rule 5910(a)(7) and 5920(a)(7). In addition, it is Nasdaq's experience that a company will typically do an extensive

⁶ IM-5910-1(b)(2) and IM-5910-2(b)(2).

⁷ See Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (approving SR-NASDAQ-2004-140); Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007) (approving SR-NASDAQ-2006-040).

⁸ See Release No. 51004, 70 FR at 2917 (expressing the Commission's belief that the adoption of the waivers now codified in Rules 5910(a)(7)(i) and (ii) and 5920(a)(7) (i) and (ii) "may ultimately benefit issuers and investors because competition among listing markets has the potential to enhance the quality of services that listing markets provide.").

review of Nasdaq's requirements before switching to Nasdaq, and therefore companies present few regulatory issues during the first few years after switching. As such, while the incentive may be meaningful to individual companies considering whether, and when, to switch their listing, Nasdaq does not believe that these incentives, in the aggregate, will have any adverse impact on the availability of funds for its regulatory programs.⁹

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general and with Sections 6(b)(4) and (5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate 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.¹² As a result, Nasdaq must carefully tailor its fees and incentives to compete with other listing venues and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable or unfairly discriminatory.

⁹ The proposed rule change will also modify existing rule language to reflect the expiration of the January 1, 2015 deadline for listed companies to opt in to the all-inclusive fee for 2016.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² The Justice Department noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/271214.htm.

Nasdaq also believes that the proposed incentives are reasonable and not unfairly discriminatory. These incentives would be provided to a category of companies aligned with another exchange and for which Nasdaq must therefore compete aggressively to have them transfer their listing. Moreover, attracting significant companies to switch listing venues to Nasdaq promotes the Exchange's image, which benefits all companies listed on Nasdaq. For these reasons, Nasdaq has already determined to waive entry fees for these companies and selecting only these companies for the proposed incentive is not an unfairly discriminatory basis to distinguish among companies.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act¹³ in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the proposed change will not impact the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

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 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. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees. Further, Nasdaq believes the proposed change reflects the existing

¹³ 15 U.S.C. 78f(b)(5).

competition between listing venues and will further enhance such competition.¹⁴ For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

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.¹⁵

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

¹⁴ See footnote 8, *supra*.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-017 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-2015-017. 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, D.C. 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; 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-2015-017, 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.¹⁶

Brent J. Fields
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).