

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81838; File No. SR-NASDAQ-2017-100)

October 6, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce the Fees for Certain Investment Management Entities and Eligible Portfolio Companies

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 September 26, 2017, 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 reduce the fees for certain Investment Management Entities and Eligible Portfolio Companies.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2018.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

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5910. The Nasdaq Global Market (including the Nasdaq Global Select Market)

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IM-5910-1. All-Inclusive Annual Listing Fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(a) - (c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) – (3) No change.

(4) Limited Partnerships[(effective January 1, 2017)]:

Up to 75 million shares \$37,500

75+ to 100 million shares \$50,000

100+ to 125 million shares \$62,500

125+ to 150 million shares \$67,500

Over 150 million shares \$77,500

(5) Investment Management Entities and Eligible Portfolio Companies (effective January 1, 2018):

Nasdaq will apply a 50% fee discount to the annual fee otherwise owed under paragraph (d)(1) of this rule for Eligible Portfolio Companies and Investment Management Entities that have one or more Eligible Portfolio Companies. For purposes of this rule, an “Investment Management Entity” is a company listed on Nasdaq or another national securities exchange that manages private investment vehicles not registered under the Investment Company Act. An “Eligible Portfolio Company” of an Investment Management Entity is a Nasdaq-listed Company in which an Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company’s initial listing.

In order to qualify for this discount in any calendar year, a Company, other than a new listing, must submit satisfactory proof to Nasdaq no later than December 31st of the prior year that it satisfies the requirements specified above. A new listing that satisfies these requirements is eligible for the discount upon listing.

Notwithstanding the foregoing, if an Investment Management Entity or Eligible Portfolio Company would otherwise be subject to an All-Inclusive Annual Fee that is lower than the fee provided for in this paragraph (5), then the alternative fee schedule shall apply.

(e) No change.

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5920. The Nasdaq Capital Market

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IM-5920-1. All-Inclusive Annual Listing Fee

(a) - (c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) – (3) No change.

(4) Limited Partnerships[(effective January 1, 2017)]:

Up to 75 million shares \$30,000

Over 75 million shares \$37,500

(5) Investment Management Entities and Eligible Portfolio Companies (effective January 1, 2018):

Nasdaq will apply a 50% fee discount to the annual fee otherwise owed under paragraph (d)(1) of this rule for Eligible Portfolio Companies and Investment Management Entities that have one or more Eligible Portfolio Companies. For purposes of this rule, an “Investment Management Entity” is a company listed on Nasdaq or another national securities exchange that manages private investment vehicles not registered under the Investment Company Act. An “Eligible Portfolio Company” of an Investment Management Entity is a Nasdaq-listed Company in which an Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company’s initial listing.

In order to qualify for this discount in any calendar year, a Company, other than a new listing, must submit satisfactory proof to Nasdaq no later than December 31st of the prior year that it satisfies the requirements specified above. A new listing that satisfies these requirements is eligible for the discount upon listing.

Notwithstanding the foregoing, if an Investment Management Entity or Eligible Portfolio Company would otherwise be subject to an All-Inclusive Annual Fee that is lower than the fee provided for in this paragraph (5), then the alternative fee schedule shall apply.

(e) 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, 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 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 reduce the fees for certain Investment Management Entities and Eligible Portfolio Companies. An Investment Management Entity for purposes of this provision would be defined as a company listed on Nasdaq or another national securities exchange which manages private investment vehicles that are not registered under the Investment Company Act. There are a small number of such companies that engage in the business of managing such private equity funds. Through these private equity funds, Investment Management Entities invest in private companies. An "Eligible Portfolio Company" of an Investment Management Entity is a Nasdaq-listed company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing.

Investment Management Entities typically provide significant managerial and advisory assistance to their portfolio companies, in part, based on their familiarity, as a public company listed on a national securities exchange, with the requirements for an exchange listing. An Investment Management Entity will frequently seek to exit its funds' investment in a privately-held portfolio company by conducting an initial public offering (IPO) on behalf of that portfolio company. The Investment Management Entity does not typically sell shares in the IPO but, rather, shares not sold in the IPO are gradually sold off over a period of years in the public market. While these Investment Management Entities have control or influence over the decision making of their portfolio companies in both their pre- and post-public phases, the

decision as to where to list is typically made jointly by the portfolio company's senior management team and the Investment Management Entity. Nasdaq benefits from its ongoing relationships with these Investment Management Entities (and members of the management teams that had previously dealt with Nasdaq) when competing for the listing of their portfolio companies. In addition, Nasdaq benefits from the efficiencies in dealing with portfolio companies that are benefiting from the guidance and experience of the Investment Management Entities to which they are related.

Nasdaq incurs substantial costs in connection with its marketing to companies choosing a listing venue for their IPO. In those cases where the Exchange has a longstanding relationship with the Investment Management Entity controlling a listing applicant, Nasdaq's costs of marketing to the prospect company can be much lower than usual because of the Investment Management Entity's prior experience with Nasdaq. Typically, when pitching for the listing of a company that is choosing a listing venue for its IPO, Nasdaq incurs significant expense, including the time spent by its CEO and other senior management in preparing for and traveling to meetings with the prospect company, travel costs, the cost of developing pitching strategies and the cost of producing marketing materials. In addition, it has been the Exchange's experience that an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and that the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from Nasdaq's business and regulation departments to assist them in navigating the initial and continued listing process and Nasdaq devotes significantly smaller staff resources to those companies on average than to the

typical newly-listed company that is not controlled prior to listing by an Investment Management Entity.

Nasdaq believes that these cost savings attributable to its relationship with an Investment Management Entity allow for a reduction in continued listing fees to the Investment Management Entities that are significant shareholders in other Nasdaq-listed companies, as well as to those portfolio companies that have listed on Nasdaq as a consequence of those relationships. Nasdaq also believes that the proposed fee reduction would provide an incentive to Investment Management Entities to list on Nasdaq (or remain listed) themselves, as well as to list additional portfolio companies on Nasdaq. Accordingly, Nasdaq proposes to offer Eligible Portfolio Companies and Investment Management Entities that have one or more Eligible Portfolio Companies listed on Nasdaq a 50% discount to the annual fee otherwise owed by issuers of equity securities.

A new listing that satisfies these requirements will be eligible for the discount upon listing based upon Nasdaq's review of public filings disclosing ownership. In order to qualify for this discount in any subsequent calendar year, an issuer must submit satisfactory proof to Nasdaq no later than December 31st of the prior year that it is eligible for the discount.³ Investment Management Entities that do not have Eligible Portfolio Companies listed on Nasdaq, are not eligible to receive the discount and will be billed on the same fee schedule as other equity securities.

³ Nasdaq will also review public filings to determine if a company remains eligible to receive a discount.

The proposed amendment will affect the All-Inclusive Annual Listing Fee schedule⁴ on the Nasdaq Global Market, the Nasdaq Global Select Market and the Nasdaq Capital Market.⁵ In 2014, when Nasdaq adopted the All-Inclusive Annual Listing Fee schedule, Nasdaq considered various factors that distinguish companies, including market tier, shares outstanding and security type, as well as the perceived use of various Nasdaq regulatory and support services by companies of various characteristics.⁶ Due to the relatively few Investment Management Entities and Eligible Portfolio Companies listed on the Exchange at that time, Nasdaq's analysis did not focus on the special characteristics of such companies. Upon further consideration, Nasdaq now believes that the cost savings attributable to its relationship with Investment Management Entities and generally lower levels of support required for Eligible Portfolio Companies and Investment Management Entities with listed Eligible Portfolio Companies warrant a reduced fee.

Nasdaq notes that American Depositary Receipts (ADRs), closed-end funds and limited partnerships also have different fee schedules than other listed equity securities. Nasdaq believes that the characteristics of ADRs, closed-end funds and limited partnerships are different than the characteristics of Investment Management Entities and Eligible Portfolio Companies and that it is therefore appropriate to apply a different fee schedule for Investment Management Entities and Eligible Portfolio Companies. If an Eligible Portfolio Company or an Investment

⁴ In 2014, Nasdaq adopted an All-Inclusive Annual Listing Fee schedule. Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-87). Since then, newly listed companies have been subject to the All-Inclusive fee structure and other listed companies could have elected to be on the All-Inclusive fee structure. All companies will be subject to the All-Inclusive fee structure effective January 1, 2018.

⁵ Listing Rule 5910 provides that fee schedules for the Nasdaq Global Select Market are the same fee schedules as for the Nasdaq Global Market.

⁶ See Securities Exchange Act Release No. 73647, supra note 4.

Management Entity with listed Eligible Portfolio Companies lists ADRs, or is a closed-end fund or a limited partnership, its All-Inclusive fee will be the lower of: (i) the fee applicable to ADRs, closed-end funds or limited partnerships, as applicable, or (ii) the 50% fee discount to the fee applicable to other equity securities listed on the same tier.

Nasdaq notes that no other company will be required to pay higher fees as a result of the proposed amendments and represents that the proposed fee change will have no impact on the resources available for its regulatory programs.

The proposed fee change will be operative January 1, 2018.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ 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 or system which the Exchange operates or controls, 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.

⁷ Nasdaq also proposes to delete an old effective date from IM-5910-1(d)(4) and IM-5920-1(d)(4).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

Nasdaq believes that the proposed fee change reducing the fee paid by Eligible Portfolio Companies and Investment Management Entities with listed Eligible Portfolio Companies is reasonable and not unfairly discriminatory because it recognizes the reduced regulatory and business costs Nasdaq incurs for listing these Investment Management Entities and Eligible Portfolio Companies. Specifically, Nasdaq benefits from significant cost and resource-utilization savings when listing portfolio companies of Investment Management Entities as it does not have to engage in significant marketing efforts because the decision makers at the Investment Management Entity are already familiar with Nasdaq. Typically when pitching for the listing of a company that is choosing a listing venue for its IPO, Nasdaq incurs significant expense, including: the time spent by its CEO and other senior management in preparing for and traveling to meetings with the prospect company, travel costs, the cost of developing pitching strategies and the cost of producing marketing materials. As Nasdaq saves much of this expense when pitching to a portfolio company of an Investment Management Entity with which Nasdaq has an established relationship, Nasdaq believes that it is reasonable to share some of those savings with listed Investment Management Entities and their Eligible Portfolio Companies. In addition, Nasdaq typically has lower costs and resource utilization in connection with the initial and continued listing of Eligible Portfolio Companies than with other new listings, as the Exchange benefits from dealing with the high-quality and experienced management teams Investment Management Entities put in place at portfolio companies prior to listing and the ongoing relationship those companies maintain with staff at the Investment Management Entity, who can share their experience as a public company listed on a national securities exchange. Nasdaq also believes that the proposed discount is reasonable in that it will create a reasonable commercial

incentive for Investment Management Entities and the management of their portfolio companies to consider listing on Nasdaq and to remain listed.

Nasdaq believes that it is not unfairly discriminatory to discount continued listing fees as a means of recognizing its cost savings related to the listing of an Investment Management Entity and its Eligible Portfolio Companies. This is because a significant portion of the Exchange's savings arise from the efficiencies it experiences on an ongoing basis in dealing with Eligible Portfolio Companies for such time as the Investment Management Entity retains a significant investment and is thereby motivated to provide ongoing advice and assistance. These reduced costs are a non-discriminatory reason to charge an Investment Management Entity and its Eligible Portfolio Companies a lower All-Inclusive Annual Listing Fee.

Currently, ADRs, closed-end funds and limited partnerships also pay lower All-Inclusive Annual Listing Fees than other issuers of equity securities. Nasdaq believes it is appropriate to apply a fee schedule to Investment Management Entities and Eligible Portfolio Companies that is different from those applicable to either ADRs, closed-end funds or limited partnerships due to their differing characteristics. Specifically, Nasdaq charges lower listing fees for ADRs because, among other differences, the U.S. listing is not typically the issuer of an ADR's primary listing.¹⁰ Similarly, Nasdaq charges lower listing fees for closed-end funds because they are particularly sensitive to the expenses they incur, given that they compete for investment dollars based on return.¹¹ Finally, Nasdaq charges lower listing fees for limited partnerships because they are not subject to most corporate governance requirements.¹² As a result, offering a different discount to

¹⁰ See Securities Exchange Act Release No. 73647, supra note 4.

¹¹ Id.

¹² See Securities Exchange Act Release No. 79770 (January 10, 2017), 82 FR 4947 (January 17, 2017) (SR-NASDAQ-2016-173).

Investment Management Entities and their Eligible Portfolio Companies on the All-Inclusive Annual Fee schedule than to ADRs, closed-end funds and limited partnerships is not inequitable or unfairly discriminatory.

While the proposed fee reduction only applies to Investment Management Entities and their Eligible Portfolio Companies on the All-Inclusive Annual Fee schedule, Nasdaq notes that all companies will transition to that fee schedule in 2018 at the same time that this fee change will become effective.

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 amount of revenue forgone by allowing an Investment Management Entity and its Eligible Portfolio Companies to pay lower fees is not substantial, and the reduced fees may result in more Investment Management Entities and their Eligible Portfolio Companies listing on Nasdaq, thereby increasing the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected. Consequently, Nasdaq believes that the potential loss of revenue from the reduction of fees for Investment Management Entities and their Eligible Portfolio Companies, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

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

¹³ 15 U.S.C. 78f(b)(5).

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. 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.¹⁴

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

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-100 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2017-100. 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 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-2017-100, 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).