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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68129; File No. SR-NASDAQ-2012-120)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Annual Fees for Companies Listed on the Nasdaq Capital Market

November 1, 2012

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 October 18, 2012, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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

NASDAQ is proposing a change to modify the annual fees for companies listed on the Nasdaq Capital Market.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

5920. The Nasdaq Capital Market

(a) – (b) No change.

(c) Annual Fee

(1)

(A) The issuer of each class of securities that is a domestic or foreign issue, other than

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

American Depositary Receipts (ADRs), listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee in the amount of [\$27,500] \$32,000.

(B) [The] Effective January 1, 2013, the issuer of each class of securities that is an ADR listed on [The] the Nasdaq Capital Market shall pay to Nasdaq an annual fee in the amount of \$25,000. Effective January 1, 2014, the issuer of each class of securities that is an ADR listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee in the amount of \$32,000. [calculated on ADRs outstanding according to the following schedule:

Up to 10 million ADRs	\$17,500
Over 10 million ADRs	\$21,000]

(2) – (8) No change.

(d) - (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 self-regulatory organization 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 those 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 parts 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 modify the annual fee charged to companies that list securities on the Nasdaq Capital Market ("Capital Market"), effective January 1, 2013. Currently, the annual fee

for securities other than American Depositary Receipts (“ADRs”) is \$27,500. Nasdaq proposes to increase this fee to \$32,000. This fee was last changed in 2007.

In addition, the annual fee charged for ADRs is currently tiered, based on the number of ADRs outstanding. Issuers with 10 million or fewer ADRs outstanding pay an annual fee of \$17,500, while issuers with more than 10 million ADRs outstanding pay an annual fee of \$21,000. Nasdaq has determined that companies that list ADRs on the Capital Market should be charged the same fee as other companies. However, given that these companies currently pay lower annual fees than other companies, Nasdaq proposes to reduce the impact of this change by phasing in the increase over two years. Specifically, Nasdaq proposes that effective January 1, 2013, the annual fee for ADRs will be \$25,000 and effective January 1, 2014, the annual fee for ADRs will be \$32,000.

Companies currently listed on the Capital Market have already paid their 2012 annual fee. However, any company that lists prior to December 31, 2012 will owe a prorated annual fee based on the existing \$27,500 fee schedule or the existing tiered structure applicable to ADRs. The new fees will become effective on January 1, 2013, and companies will be billed their 2013 annual fee based on the new fee schedule shortly thereafter.³

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general and with Section 6(b)(4) of the Act,⁵ in particular in that it provides for

³ Until January 1, 2013, the online Nasdaq rule book will reflect the currently effective fees with a note indicating that this fee change is pending and will become effective on January 1, 2013. The online Nasdaq rule book will also contain a link to the text of the revised rule.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

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.⁶

Nasdaq believes that the proposed increase in the annual fee for companies listing on the Capital Market is reasonable because the revised fee will better reflect Nasdaq's costs related to companies listed on the Capital Market and the value that such a listing provides to the company. In that regard, Nasdaq notes that it has not increased the annual fees for listing on the Capital Market since January 1, 2007,⁷ but has continued to enhance the listing experience and has invested in its regulatory and compliance program.⁸ These initiatives have been funded through listing fees, including the Capital Market annual fee.

Nasdaq also believes that the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all companies listed on the Capital Market. While the increase on ADRs would be implemented over two years, this is also equitable and not unfairly discriminatory because these companies currently pay lower fees based on a recognition that the U.S. listing is not typically their primary listing. While Nasdaq believes it is equitable to charge them the same fee as other companies because they receive the same benefits from their

⁶ The Commission notes that Section 6(b)(5) of the Act contains the provision that states rules of an exchange "are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers." See 15 U.S.C. 78f(b)(5).

⁷ Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007) (approving SR-NASDAQ-2006-040). The annual fees for ADRs have not been changed since 2005. Securities Exchange Act Release No. 50838 (December 10, 2004), 69 FR 75578 (December 17, 2004) (approving SR-NASD-2004-128).

⁸ For example, Nasdaq now accepts many notifications from listed companies through a web-based interface and provides detailed compliance information to companies through the Nasdaq Listing Center's Reference Library. See https://listingcenter.nasdaqomx.com/Show_Doc.aspx?File=listing_information.html#forms and https://listingcenter.nasdaqomx.com/assets/Get_Started_Guide.pdf.

listing, the Exchange also believes that implementing the increase over two years will help reduce its impact and is appropriate given the currently reduced fees that they pay. Nasdaq also notes that other exchanges charge the same annual fee for ADRs as for other securities.⁹

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily switch exchanges if they deem the listing fees excessive.¹⁰ In such an environment, NASDAQ must continually review its fees to assure that they remain competitive. In that regard, Nasdaq notes that the proposed fees remain similar to the fees charged by NYSE MKT.¹¹

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. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, 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

Written comments were neither solicited nor received.

⁹ See, e.g., NYSE MKT Listed Company Guide Section 220(b); NYSE Listed Company Manual Section 902.03.

¹⁰ The Justice Department recently 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.

¹¹ NYSE MKT has proposed to charge annual fees in 2013 that range from \$30,000 to \$45,000, based on a company's shares outstanding. See SR-NYSEMKT-2012-51 (filed September 28, 2012) [sic].

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.¹² 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.

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. Please include File Number SR-NASDAQ-2012-120 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-120. 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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 20549-1090, 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 offices 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-2012-120, 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.¹³

Kevin M. O'Neill
Deputy Secretary

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¹³ 17 CFR 200.30-3(a)(12).