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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76550; File No. SR- NASDAQ-2015-146)

December 3, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Record Keeping Change and Substitution Listing Event Fees for Securities Listed under the Rule 5700 Series

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 November 23, 2015, 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 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 to adopt record keeping change and substitution listing event fees for securities listed under the Rule 5700 Series.³ The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at Nasdaq’s principal office, 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, Nasdaq included statements concerning the purpose of,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange originally filed SR-NASDAQ-2015-118 on October 23, 2015, which was replaced by SR-NASDAQ-2015-139 on November 4, 2015. SR- NASDAQ-2015-139 was replaced by SR-NASDAQ-2015-141 on November 11, 2015. The instant proposal replaces SR-NASDAQ-2015-141 in its entirety.

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 rules require issuers to notify Nasdaq about certain record keeping changes and substitution listing events. Specifically, Rule 5250(e)(3) defines a "Record Keeping Change" as any change to a company's name, the par value or title of its security, its symbol, or a similar change and requires a listed company to provide notification to Nasdaq no later than 10 days after the change. Rule 5005(a)(40) defines a "Substitution Listing Event" as certain changes in the equity or legal structure of a company⁴ and Rule 5250(e)(4) requires a listed company to provide notification to Nasdaq about these events no later than 15 calendar days prior to the implementation of the event. While most listed companies pay fees in connection with these notifications,⁵ issuers of securities listed under the Rule 5700 Series, including Linked Securities and Exchange Traded Products such as Portfolio Depository Receipts, Index Fund Shares, and

⁴ A "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the company's place of organization, the formation of a holding company that replaces a listed company, reclassification or exchange of a company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2 (unless the transaction was publicly announced in a press release or Form 8-K prior to October 15, 2013), or any technical change whereby the Shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.

⁵ The fee is \$7,500 for a company making a Record Keeping Change and \$15,000 for a company executing a Substitution Listing Event. See Rules 5910(e) and (f) (Nasdaq Global and Global Select Markets) and Rules 5920(d) and (e) (Nasdaq Capital Market). Companies on the all-inclusive annual fee are not subject to these separate fees. See IM-5910-1(c) and IM-5920-1(c).

Managed Fund Shares, are required to notify Nasdaq about Record Keeping Changes and Substitution Listing Events, but are not currently subject to the fees for such notifications. Nasdaq proposes to adopt a \$2,500 fee for any such issuer providing a Record Keeping Change and a \$5,000 fee for any such issuer effecting a Substitution Listing Event. These fees will apply for each security affected by the event. The fees will be used to address the costs associated with maintaining and revising Nasdaq's records, collecting and verifying the underlying information, and distributing the information to market participants when issuers with securities listed under the Rule 5700 Series engage in these actions. In addition, in the case of a Substitution Listing Event, the fee will also offset the cost of Nasdaq's review of the substituted entity for compliance with the listing requirements.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and (5) of the Act,⁷ 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.

The proposed Record Keeping Change and Substitution Listing Event fees are reasonable and equitably allocated in that they are designed to compensate Nasdaq for the work required in connection with effecting changes that the issuer has initiated. Record Keeping Changes require Nasdaq to update its systems and distribute information about the changes to the marketplace. Substitution Listing Events involve similar updates and information dissemination and also require Nasdaq to review the issuer's listing compliance. Other listed companies currently pay

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

fees for these changes and it is reasonable and equitable to similarly allocate costs through these modest fees to issuers of securities listed under the Rule 5700 Series when they take actions resulting in Record Keeping Changes or Substitution Listing Events.

In addition, while the proposed fees could be lower than those charged other companies for similar actions, Nasdaq believes it is not unfairly discriminatory to charge a slightly lower fee for these issuers. First, the listing fees for securities listed under the Rule 5700 Series are generally lower than the listing fees for other types of issuers, reflecting the passive nature of these issuers and the extreme focus on their expenses as a means for various products to compete.⁸ In that regard, the proposed \$5,000 Substitution Listing Event fee is the same amount as the minimum Entry Fee paid under Rules 5930 and 5940 for these products, and will similarly offset the costs of reviewing the substitute entity for compliance with the listing requirements. On the other hand, the \$7,500 Record Keeping Fee and \$15,000 Substitution Listing Fee charged other companies would exceed the minimum entry fee that companies listed under the Rule 5700 Series are charged, and charging such a higher amount for these changes would be incongruent with the lower entry fees they are charged. Further, other companies that could pay the Record Keeping Fee and Substitution Listing Fee had the option to avoid the fee by electing to be on Nasdaq's all-inclusive annual fee, which eliminates the fees for these events. Securities listed under the Rule 5700 Series do not have the option to elect an all-inclusive fee alternative, and it is therefore reasonable and equitable to charge them a lower amount. Nasdaq also notes that

⁸ For example, entry fees for securities listed on the Nasdaq Global Market under the Rule 5700 Series range from \$5,000 to \$45,000 pursuant to Rules 5930 and 5940, whereas entry fees for other companies listed on the Nasdaq Global Market range from \$125,000 to \$225,000 pursuant to Rule 5910(a).

other market centers also charge lower fees when these types of issuers make changes.⁹ Nasdaq believes that the lower existing fees, lack of an all-inclusive fee alternative, and competitive considerations are reasonable, fair and equitable reasons to propose charging issuers of securities listed under the Rule 5700 Series different fees than other Nasdaq-listed companies.¹⁰

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act¹¹ 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 help ensure adequate resources are available for Nasdaq to process Record Keeping Changes and Substitution Listing Events and distribute information to the marketplace about these changes and events.

B. Self-Regulatory Organization's Statement on Burden on Competition

⁹ NYSE Arca charges \$2,500 for equivalent events. See NYSE Arca Equities: Listing Fees. BATS does not charge a fee for equivalent events. See Chapter XIV of the Rules of the BATS Exchange and Rule 14.13 of the BATS Exchange Listing Rules.

¹⁰ Nasdaq also notes that Rules 5910(f) and 5920(e) provide that the Substitution Listing Event Fee is not applicable to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities. Nasdaq IM-5220 describes the only current circumstance where Nasdaq does not designate a security as a Nasdaq national market system security. Specifically, IM-5220 provides that Nasdaq will not designate securities that are listed on the New York Stock Exchange (NYSE) when the issuing company also lists those securities on The Nasdaq Global Market, and that such securities therefore will not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by Nasdaq. Because NYSE does not list exchange traded products (such products are listed on the affiliated NYSE Arca Exchange), this fee exemption is not necessary in Rules 5930 and 5940 because the securities listed under the Rule 5700 Series would not be dually listed on the NYSE. If Nasdaq later determines to dually list products listed under the Rule 5700 Series, including those listed on NYSE Arca or BATS Exchange, Nasdaq would file a rule change and address whether the Substitution Listing Event Fee should be applicable to those securities.

¹¹ 15 U.S.C. 78f(b)(5).

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 the listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees, but rather reflects the competition between listing venues and will further enhance such competition. 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

Written comments were neither solicited nor received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹². 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.

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-146 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-2015-146. 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-2015-146 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

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).

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