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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-78149; File No. SR-NASDAQ-2016-085]

June 24, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Listed Companies Not Currently Subject to Nasdaq's All-Inclusive Annual Listing Fee To Opt In to That Fee Program For 2017

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 June 10, 2016, 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 allow listed companies not currently subject to Nasdaq's all-inclusive annual listing fee to opt in to that fee program for 2017. The changes proposed herein are effective upon filing.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Effective January 1, 2015, Nasdaq 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, 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 the second half of 2015, Nasdaq offered listed companies that did not choose to participate in the all-inclusive annual fee program for 2015 to do so effective January 1, 2016. The incentive offered to these companies was similar to the one offered to companies that opted to participate in the all-inclusive annual fee program for 2015. Companies have reacted favorably to the new fee program and these incentives.

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

⁴ Id.

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

Nasdaq now proposes to allow currently listed companies that did not previously opt in to the all-inclusive annual fee program to do so effective January 1, 2017. Specifically, from June 15, 2016 until December 31, 2016, Nasdaq will allow companies to opt in to the all-inclusive annual fee program for 2017. Any company that does so will not be billed for the next \$30,000 in fees for the listing of additional shares otherwise payable to Nasdaq, regardless of when the shares were issued. Fees for share issuances that were already billed at the time the opt-in form is submitted will not be forgiven. Nasdaq does not believe that this incentive will have an adverse impact on the amount of funds available for its regulatory programs.

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.

Nasdaq believes that the proposed incentive offered to companies that elect the all-inclusive annual listing fee starting in 2017 is reasonable, equitable, and not unfairly discriminatory. This incentive is available equally to all companies. Moreover, no company is required to opt in to the all-inclusive annual fee program under this change.

In addition, as noted above, Nasdaq will accrue benefits from companies electing the all-inclusive annual listing fee structure. These benefits include eliminating the multiple invoices that are sent to a company each year and providing more certainty as to revenue. The incentive

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

is designed to help Nasdaq capture those benefits sooner, which is a reasonable and non-discriminatory reason to provide the incentive to companies.

Finally, the proposed incentive is consistent with the investor protection objectives of Section 6(b)(5) of the Act⁸ in that it is 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

The proposed rule change will not 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. As such, Nasdaq believes that this proposed rule change does not encumber the competition for listings 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.

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.

⁸ 15 U.S.C. 78f(b)(5).

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.⁹

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-085 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-2016-085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-085 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.¹⁰

Brent J. Fields
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

