

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79770; File No. SR-NASDAQ-2016-173)

January 10, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce the All-Inclusive Annual Listing Fee for Limited Partnerships Listed on Nasdaq

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 December 28, 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 reduce the fees for limited partnerships listed on Nasdaq.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2017.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 [sic]. The text of the proposed rule change is set forth below. Proposed new language is italicized; 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

(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 50 million shares \$30,000

Over 50 million shares \$37,500

(e) No change.

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 limited partnerships listed on Nasdaq. Historically, certain of Nasdaq's corporate governance requirements, including most shareholder approval requirements (other than for equity compensation), most independence requirements (other than for audit committees at the general partner level), and the annual meeting requirement (unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement), have not been applied to limited partnerships because their structure typically requires that public investors have limited rights and that the general partners make all significant decisions about the operation of the company.³ As such, limited partners do not expect to have a voice in the operations of the partnership. Reduced corporate governance requirements for limited partnerships, in turn, result in Nasdaq expending fewer resources on monitoring and enforcing its rules because a significant portion of the regulatory cost Nasdaq incurs in connection with the

³ See Rule 5615(a)(4).

continued listing of an issuer relates to the review by Nasdaq staff of complex transactions for compliance with Nasdaq's shareholder approval requirements, which limited partnerships are not subject to. Similarly, Nasdaq incurs lower regulatory costs in connection with the review by Nasdaq staff of limited partnerships' filings with the Commission because these issuers are not subject to most board and committee independence requirements (other than for audit committees at the general partner level), and most limited partnerships neither hold annual meetings nor file proxy statements. Accordingly, Nasdaq proposes to reduce the All-Inclusive Annual Listing Fee for limited partnerships listed on Nasdaq.

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 limited partnerships listed on the Exchange at that time, Nasdaq's analysis did not focus on the special characteristics of the limited partnerships. Upon further consideration, Nasdaq now believes that the reduced regulatory oversight needed for limited partnerships warrants a reduced fee.

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). All newly listed companies are subject to the All-Inclusive fee structure and other listed companies can elect 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.

As detailed in the proposed rule, for limited partnerships listed on the Capital Market the All-Inclusive Annual Listing Fee will range from \$30,000 to \$37,500. On the Global and Global Select Markets, the All-Inclusive Annual Listing Fee for limited partnerships will range from \$37,500 to \$77,500.⁷ The proposed fees will continue to be based on a limited partnership's total shares outstanding and will maintain the same pricing tiers based on shares outstanding as in the current fee schedule applicable to limited partnerships, except the tiers that otherwise would have their fees reduced below the minimum fee of \$37,500 for the Global and Global Select Markets or \$30,000 for the Capital Market are combined into a single pricing tier of up to 75 million shares outstanding on the Global and Global Select Markets and of up to 50 million shares outstanding on the Capital Market.

Nasdaq notes that American Depositary Receipts (ADRs) and Closed-end Funds also have different fee schedules than other listed equity securities. Nasdaq believes that the characteristics of ADRs and Closed-end Funds are different than the characteristics of limited partnerships and that it is therefore appropriate to apply a different fee schedule for limited partnerships.⁸

The proposed fee change will be operative January 1, 2017.

⁷ The proposed fees are generally 50% less than the fees applicable to issuers of equity securities other than ADRs and Closed-End Funds. However, Nasdaq maintained a minimum fee of \$37,500 for the Global and Global Select Markets and \$30,000 for the Capital Market in recognition of the regulatory work Nasdaq must nonetheless perform and the benefits a limited partnership accrues with listing, and in consideration of the minimum fees set by Nasdaq's competitors.

⁸ See Securities Exchange Act Release No. 73647, supra note 4, noting, among other differences, that the U.S. listing is not typically the issuer of an ADR's primary listing, and that Closed-end Funds are particularly sensitive to the expenses they incur, given that they compete for investment dollars based on return, but are otherwise subject to the same regulatory requirements as other listed companies.

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.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.

Nasdaq believes that the proposed fee change reducing the fee paid by limited partnerships is reasonable and not unfairly discriminatory because it recognizes the reduced regulatory cost Nasdaq incurs for limited partnerships. Specifically, certain of Nasdaq's corporate governance requirements, including most shareholder approval requirements (other than for equity compensation), most independence requirements (other than for audit committees at the general partner level), and the annual meeting requirement (unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

terms of the partnership's limited partnership agreement), do not apply to limited partnerships because their structure typically requires that public investors have limited rights and that the general partners make all significant decisions about the operation of the company. This allows Nasdaq to expend fewer resources on monitoring and enforcing its rules because a significant portion of the regulatory cost Nasdaq incurs in connection with the continued listing of an issuer relates to the review by Nasdaq staff of complex transactions for compliance with Nasdaq's shareholder approval requirements, which limited partnerships are not subject to. Similarly, Nasdaq incurs lower regulatory costs in connection with the review by Nasdaq staff of limited partnerships' filings with the Commission because these issuers are not subject to most board and committee independence requirements (other than for audit committees at the general partner level), and most limited partnerships neither hold annual meetings nor file proxy statements. These reduced costs are a non-discriminatory reason to charge limited partnerships a lower All-Inclusive Annual Listing Fee.

Currently, ADRs and Closed-end Funds 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 limited partnerships that is different from those applicable to either ADRs or Closed-end Funds 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.¹¹ 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.¹² As a result, offering a different discount to limited

¹¹ See Securities Exchange Act Release No. 73647, supra note 4.

¹² Id.

partnerships on the All-Inclusive Annual Fee schedule than to ADRs and Closed-end Funds is not inequitable or unfairly discriminatory.

While the proposed fee reduction only applies to limited partnerships on the All-Inclusive Annual Fee schedule, Nasdaq notes that any currently listed limited partnership can opt into the All-Inclusive Annual Fee schedule for 2017 prior to December 31, 2016, and that all companies will transition to that fee schedule in 2018. Moreover, Nasdaq accrues benefits from companies being on this schedule.¹³ These benefits to Nasdaq provide a reasonable basis for Nasdaq to adjust the fees only for limited partnerships on the All-Inclusive Annual Fee schedule and, as a result, offering a discount only to limited partnerships on the All-Inclusive Fee schedule is not inequitable or unfairly discriminatory.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act¹⁴ 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 limited partnerships to pay lower fees is not substantial, and the reduced fees may result in more limited partnerships 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 payable by limited partnerships, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

¹³ These benefits include eliminating the multiple invoices otherwise sent to a company each year and providing more certainty as to Nasdaq's revenues. See Securities Exchange Act Release No. 73647, supra note 4.

¹⁴ 15 U.S.C. 78f(b)(5).

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. 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-173 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-2016-173. 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-2016-173, 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

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).