

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2016 - * 173	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed rule change to reduce the fees for limited partnerships listed on Nasdaq."/>				
Contact Information				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Nikolai"/>		Last Name *	<input type="text" value="Utochkin"/>
Title *	<input type="text" value="Counsel, Listing and Governance"/>			
E-mail *	<input type="text" value="nikolai.utochkin@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 078-8029"/>	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="12/28/2016"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="edward.knight@nasdaq.com"/>				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change 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. The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

* * * * *

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

* * * * *

IM-5910-1. 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 \$37,500

75+ to 100 million shares \$50,000

100+ to 125 million shares \$62,500

125+ to 150 million shares \$67,500

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Over 150 million shares \$77,500

(e) No change.

* * * * *

5920. The Nasdaq Capital Market

* * * * *

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.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Nikolai Utochkin
Counsel
Listing and Governance
Nasdaq, Inc.
(301) 978-8029

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. 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 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),

³ See Rule 5615(a)(4).

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.

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

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.

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.

b. 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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), 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

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

the expenses they incur, given that they compete for investment dollars based on return.¹²

As a result, offering a different discount to limited 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

¹² Id.

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).

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.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁵ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

EXHIBIT 1

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

December __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce the Fees 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. The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

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

* * * * *

IM-5910-1. 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 \$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.

* * * * *

5920. The Nasdaq Capital Market

* * * * *

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

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.

partnerships. Upon further consideration, Nasdaq now believes that the reduced regulatory oversight needed for limited partnerships warrants a reduced fee.

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

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

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

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

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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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), 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 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

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

¹² Id.

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).

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.

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.

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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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 Web site (<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-2016-173 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

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).