

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 004

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<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
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend the Exchanges listing fees at Rule 5910(b)

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 * Nikolai Last Name * Utochkin

Title * Counsel, Listing and Governance

E-mail * nikolai.utochkin@nasdaq.com

Telephone * (301) 978-8029 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 01/13/2022


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 DN:
email=john.zecca@nasdaq.com
Date: 2022.01.13 12:52:58
-05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-NASDAQ-2022-004 19b-4.doc

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 *

Add Remove View

SR-NASDAQ-2022-004 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies *

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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 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

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

Add Remove View

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 proposal to amend the Exchange’s listing fees at Rule 5910(b) to insert language concerning a \$15,000 annual listing fee applicable to a Dually Listed Company, which was erroneously removed, as described further below.

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.

The Nasdaq Stock Market Rules

* * * * *

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

(a) No change.

(b) All-Inclusive Annual Listing Fee

(1) No change.

(2)(A) - (F) No change.

(G) Dually-Listed Companies, whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq: \$15,000. Such fee shall be assessed on the first anniversary of the Company's listing on Nasdaq, and annually thereafter on the anniversary of the Company's listing. If an issuer of such securities ceases to maintain its listing on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

New York Stock Exchange that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except if the securities remain listed on the Nasdaq Global or Global Select Markets and are designated as national market securities pursuant to the plan governing Nasdaq securities such fee shall be applied to The Nasdaq Global Market All-Inclusive Annual Listing Fee due for that calendar year.

(3) 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 November 5, 2020. 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

And

Vivian Hui
Regulatory Compliance Analyst
Nasdaq, Inc.
(301) 978 8062

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

a. Purpose

The purpose of the proposed rule change is to insert language concerning the relevant all-inclusive annual fee applicable to the listing of securities that are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on the Nasdaq Global or Global Select Markets, and maintains such listing and designation after it lists such securities on Nasdaq (“Dually-Listed Securities”).³ Such language was erroneously deleted in a previous filing.⁴

In 2014, Nasdaq adopted an all-inclusive annual listing fee schedule to simplify, clarify and enhance transparency around the annual fee to which listed companies are subject.⁵ The new annual fee schedule became operative on January 1, 2015, and applied to all companies listed after that date. Effective January 1, 2018, all Nasdaq-listed companies became subject to the all-inclusive annual fee schedule and the standard annual fee schedule ceased to have applicability or effect for such companies.

³ See Rules 5005(a)(11) (defining a Dually-Listed Security as a security, listed on The Nasdaq Global Market or The Nasdaq Global Select Market, which is also listed on the New York Stock Exchange). As explained below, former Rule 5910(c)(5) described and set forth the fees applicable to a Dually Listed Company but referenced only The Nasdaq Global Market. Nasdaq proposes to clarify that a Dually Listed Company may list on the Nasdaq Global or Global Select Markets.

⁴ Securities Exchange Act Release No. 84634 (November 20, 2018), 83 FR 60522 (November 26, 2018) (SR-NASDAQ-2018-092) (The “Annual Fee Transition Filing”).

⁵ Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-87).

In 2018, Nasdaq eliminated expired and obsolete provisions in connection with Nasdaq's completed transition to the all-inclusive annual fee program.⁶ In the Annual Fee Transition Filing Nasdaq deleted the language in former Rules 5910(c) - (f) and 5920(c) - (e) that described and set forth the standard annual fee. However, former Rules 5910(c)(5) described and set forth the fees applicable to a company (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq (a "Dually Listed Company"). The rule language further stated that if an issuer of such securities ceases to maintain such listing and designation and the securities are instead designated under the Rule 5400 Series, that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except such fee shall be applied to annual listing fee due for the calendar year of the transfer. In lieu of the annual fees applicable to a Nasdaq-listed company, a Dually Listed Company annual fee was set at \$15,000 per year. Such annual fee was set to be assessed on the first anniversary of the Company's listing on Nasdaq.⁷ While not identical to the current all-inclusive annual listing fee schedule, this provision was similar in that companies also were not subject to

⁶ The Annual Fee Transition Filing, supra note 4.

⁷ Former Rule 5920(c)(8) also included similar language about the fee for a Dually Listed Company on the Nasdaq Capital Market. However, under Rule 5005(a)(11) and IM-5220 companies are not (and were not previously) permitted to dually list on the Nasdaq Capital Market. As such this Capital Market fee was inapplicable to any companies and its deletion was appropriate.

fees for listing additional shares or for substitution listing events.⁸ The companies were still subject to fees in relation to request for written interpretation, compliance plan review and record-keeping. The foregoing fees are included in the all-inclusive annual fees and Dually Listed Companies will pay only a single annual fee to Nasdaq, which includes all the ordinary costs of listing for the year.⁹

Nasdaq believes it is appropriate to maintain the \$15,000 fee on an all-inclusive basis because it is not the primary listing venue for such companies. The Dual Listing program was originally designed, and continues to operate, to encourage NYSE-listed companies to compare services provided by Nasdaq and NYSE without creating undue burden by assessing duplicated fees. As required by Listing Rules, Nasdaq monitors Dually Listed Companies for compliance with the Nasdaq listing standards. In that regard, based on Nasdaq's experience, Dually Listed Companies require less time and effort to review and to ensure compliance because they seldom involve time-consuming regulatory issues. This is, in part, due to the fact that NYSE listed companies are already subject to the ongoing scheme of regulation by the NYSE that is fairly similar to the Nasdaq's regulation regime.

Notwithstanding the similarities in regulatory regimes, the Dual Listing program increases the regulatory burden on a listed company, in part, by subjecting it to both the NYSE's and Nasdaq's corporate governance regulations. As a result, the program targets

⁸ See former Rule 5910(b)(5) and 5910(f).

⁹ See former Rules 5602, 5810(c) and 5910(e). In Nasdaq's experience, Dually Listed Companies are, typically, established companies that are used to being a public company and familiar with the exchanges' requirements thus rarely having a need to pay for written interpretation, compliance plan review and record-keeping fees.

bigger and better established companies that are used to being a public company and can afford a moderate increase in the regulatory burden. Nasdaq believes that these larger companies will pay higher listing fees if and when they become listed exclusively on Nasdaq and become subject to the fee schedule applicable to Nasdaq listed companies thereby making their listing more valuable to Nasdaq. Nasdaq also believes that inducing these companies to compare services provided by Nasdaq and the NYSE, may encourage these companies to list exclusively on Nasdaq and to provide its listing market broader benefits from attracting the larger, better known companies that are listed on the NYSE. Accordingly, given the competitive nature of the dual listing program and the potential benefits it may bring to Nasdaq and its listing market, Nasdaq believes it is reasonable to set the all-inclusive annual fee for Dually Listed Companies at \$15,000.

Absent this provision, a Dually Listed Company would be subject to the typical all-inclusive annual listing fee, which is higher than \$15,000.¹⁰ Nasdaq did not intend to subject the Dually Listed Companies to the all-inclusive annual listing fee applicable to other companies. Accordingly, Nasdaq now proposes to insert language, similar to the language covering annual fees paid by Dually Listed Companies that was erroneously removed, by adding proposed Rule 5910(b)(2)(G) setting the all-inclusive annual fee for Dually Listed Companies, which now covers fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above, at \$15,000.

¹⁰ Under Rule 5910(b)(2)(A) the minimum all-inclusive annual fee for most companies is \$48,000.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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, will promote just and equitable principles of trade, and will remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule will insert language concerning the \$15,000 annual listing fee applicable to a Dually Listed Company, which Nasdaq erroneously deleted, while also making this fee an all-inclusive fee, which now covers fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above. The Commission previously approved the \$15,000 annual fee applicable to a Dually Listed Company, and the manner in which it is assessed, and found it consistent with requirements of the Act that rules provide for equitable allocation of reasonable fees and not be designed to permit unfair discrimination between issuers.¹³ There has been no changes to the objectives of the Dual Listing program since Nasdaq adopted the all-inclusive annual listing fee schedule for companies, and the NYSE annual fee schedule

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ Securities Exchange Act Release No. 51005 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR-NASD-2004-142, approving the predecessor NASD rule), 70 FR 2917 (January 18, 2005) (the “Approval Order”). This finding was under Section 15A(b)(5) and (6) of the Act, which applied to Nasdaq at the time as a facility of the NASD.

has been changing to accommodate the shifts in the competitive landscape.¹⁴ Nasdaq believes that, to maintain consistency with the original objective of the Dual Listing program, the annual listing fee assessed towards Dually Listed Companies, noting the fact that they are paying the fees to the NYSE, should remain the same as previously adopted, although now covering fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above. The erroneous removal of language describing the fee, resulting in the need for this rule filing to reinsert it, does not change that conclusion.¹⁵

Nasdaq believes it is appropriate and not unfairly discriminatory to maintain the \$15,000 fee on an all-inclusive basis because Nasdaq is not the primary listing venue for such companies. The Dual Listing program is designed to encourage NYSE-listed companies to compare services provided by Nasdaq and the NYSE without creating undue burden by assessing duplicated fees. Based on Nasdaq's experience, Dually Listed Companies require less time and effort to review and to ensure compliance because they seldom involve time-consuming regulatory issues. This is, in part, due to the fact that NYSE listed companies already are, and, typically, have been subject to the ongoing scheme of regulation by the NYSE that is fairly similar to the Nasdaq's regulation regime.

¹⁴ See Securities Exchange Act Release No. 93862 (December 22, 2021), 86 FR 74198 (December 29, 2021) (SR-NYSE-2021-76).

¹⁵ Although the all-inclusive annual fee for Dually Listed Companies will now include some additional services for the same \$15,000 annual fee, Nasdaq notes that Dually Listed Companies, typically, do not use these services. See footnote 9 above.

Notwithstanding the similarities in regulatory regimes, the Dual Listing program increases the regulatory burden on a listed company, in part, by subjecting it to both NYSE and Nasdaq corporate governance regulations. As a result, the program targets bigger and better established companies that are used to being a public company and can afford the increased regulatory burden. Nasdaq believes that these larger companies will pay higher listing fees if and when they become listed exclusively on Nasdaq and become subject to the fee schedule applicable to Nasdaq listed companies thereby making their listing more valuable to Nasdaq. Nasdaq also believes that inducing these companies to compare services provided by Nasdaq and the NYSE, may encourage these companies to list exclusively on Nasdaq and to provide its listing market broader benefits from attracting the larger, better known companies that are listed on the NYSE.

Finally, Nasdaq believes that the proposal does not result in unfair discrimination by offering its program only to companies already listed on the NYSE, and not on other exchanges, because Nasdaq believes attracting the NYSE-listed companies will bring greater future value to Nasdaq.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act but instead will reinstate a portion of the fee schedule that was erroneously deleted.

Nasdaq's dual listing program is designed to allow issuers to undertake focused comparison of the services and market quality offered by Nasdaq and NYSE, with the explicit goal to encourage eventual switch of companies that dual list. Without a lower annual fee, an NYSE-listed company would be unlikely to choose to dually list its

securities, either initially or on an ongoing basis. Accordingly, reinstating the proposed fee would promote competition among listing markets.¹⁶

The lower fees on Dually Listed Companies also will not burden competition between Dually Listed Companies and other companies listing on Nasdaq. The lower fee reflects that Dually Listed Companies are also subject to ongoing fees to the NYSE. In the Approval Order, the Commission found the fees applicable to Dually Listed Companies consistent with the requirements of the Act, and noted that “[w]ithout this program, it is unlikely that an issuer would choose to dually list its securities” and expressed its belief that “competition among listing markets has the potential to benefit the public, issuers, and the listing markets.”

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,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

¹⁶ Nasdaq believes that national securities exchanges other than the NYSE do not have established listing programs that attract marquee operating companies and therefore the dually listed program will not have any competitive impact on such exchanges because the goal of the program is to allow an established exchange-listed company to compare services provided by Nasdaq with those it already receives.

¹⁷ 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-2022-004)

January __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchanges Listing Fees at Rule 5910(b) to Insert Language Concerning a \$15,000 Annual Listing Fee Applicable to a Dually Listed Company

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 January 13, 2022, 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 amend the Exchange’s listing fees at Rule 5910(b) to insert language concerning a \$15,000 annual listing fee applicable to a Dually Listed Company, which was erroneously removed, as described further below.

The text of the proposed rule change is detailed below: proposed new language is underlined and proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

The Nasdaq Stock Market Rules

* * * * *

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

(a) No change.

(b) All-Inclusive Annual Listing Fee

(1) No change.

(2)(A) - (F) No change.

(G) Dually-Listed Companies, whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq: \$15,000. Such fee shall be assessed on the first anniversary of the Company's listing on Nasdaq, and annually thereafter on the anniversary of the Company's listing. If an issuer of such securities ceases to maintain its listing on the New York Stock Exchange that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except if the securities remain listed on the Nasdaq Global or Global Select Markets and are designated as national market securities pursuant to the plan governing Nasdaq securities such fee shall be applied to The Nasdaq Global Market All-Inclusive Annual Listing Fee due for that calendar year.

(3) No change.

* * * * *

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 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

The purpose of the proposed rule change is to insert language concerning the relevant all-inclusive annual fee applicable to the listing of securities that are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on the Nasdaq Global or Global Select Markets, and maintains such listing and designation after it lists such securities on Nasdaq ("Dually-Listed Securities").³ Such language was erroneously deleted in a previous filing.⁴

³ See Rules 5005(a)(11) (defining a Dually-Listed Security as a security, listed on The Nasdaq Global Market or The Nasdaq Global Select Market, which is also listed on the New York Stock Exchange). As explained below, former Rule 5910(c)(5) described and set forth the fees applicable to a Dually Listed Company but referenced only The Nasdaq Global Market. Nasdaq proposes to clarify that a Dually Listed Company may list on the Nasdaq Global or Global Select Markets.

In 2014, Nasdaq adopted an all-inclusive annual listing fee schedule to simplify, clarify and enhance transparency around the annual fee to which listed companies are subject.⁵ The new annual fee schedule became operative on January 1, 2015, and applied to all companies listed after that date. Effective January 1, 2018, all Nasdaq-listed companies became subject to the all-inclusive annual fee schedule and the standard annual fee schedule ceased to have applicability or effect for such companies.

In 2018, Nasdaq eliminated expired and obsolete provisions in connection with Nasdaq's completed transition to the all-inclusive annual fee program.⁶ In the Annual Fee Transition Filing Nasdaq deleted the language in former Rules 5910(c) - (f) and 5920(c) - (e) that described and set forth the standard annual fee. However, former Rules 5910(c)(5) described and set forth the fees applicable to a company (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq (a "Dually Listed Company"). The rule language further stated that if an issuer of such securities ceases to maintain such listing and designation and the securities are instead designated under the Rule 5400 Series, that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except such fee shall be applied to

⁴ Securities Exchange Act Release No. 84634 (November 20, 2018), 83 FR 60522 (November 26, 2018) (SR-NASDAQ-2018-092) (The "Annual Fee Transition Filing").

⁵ Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-87).

⁶ The Annual Fee Transition Filing, supra note 4.

annual listing fee due for the calendar year of the transfer. In lieu of the annual fees applicable to a Nasdaq-listed company, a Dually Listed Company annual fee was set at \$15,000 per year. Such annual fee was set to be assessed on the first anniversary of the Company's listing on Nasdaq.⁷ While not identical to the current all-inclusive annual listing fee schedule, this provision was similar in that companies also were not subject to fees for listing additional shares or for substitution listing events.⁸ The companies were still subject to fees in relation to request for written interpretation, compliance plan review and record-keeping. The foregoing fees are included in the all-inclusive annual fees and Dually Listed Companies will pay only a single annual fee to Nasdaq, which includes all the ordinary costs of listing for the year.⁹

Nasdaq believes it is appropriate to maintain the \$15,000 fee on an all-inclusive basis because it is not the primary listing venue for such companies. The Dual Listing program was originally designed, and continues to operate, to encourage NYSE-listed companies to compare services provided by Nasdaq and NYSE without creating undue burden by assessing duplicated fees. As required by Listing Rules, Nasdaq monitors Dually Listed Companies for compliance with the Nasdaq listing standards. In that

⁷ Former Rule 5920(c)(8) also included similar language about the fee for a Dually Listed Company on the Nasdaq Capital Market. However, under Rule 5005(a)(11) and IM-5220 companies are not (and were not previously) permitted to dually list on the Nasdaq Capital Market. As such this Capital Market fee was inapplicable to any companies and its deletion was appropriate.

⁸ See former Rule 5910(b)(5) and 5910(f).

⁹ See former Rules 5602, 5810(c) and 5910(e). In Nasdaq's experience, Dually Listed Companies are, typically, established companies that are used to being a public company and familiar with the exchanges' requirements thus rarely having a need to pay for written interpretation, compliance plan review and record-keeping fees.

regard, based on Nasdaq's experience, Dually Listed Companies require less time and effort to review and to ensure compliance because they seldom involve time-consuming regulatory issues. This is, in part, due to the fact that NYSE listed companies are already subject to the ongoing scheme of regulation by the NYSE that is fairly similar to the Nasdaq's regulation regime.

Notwithstanding the similarities in regulatory regimes, the Dual Listing program increases the regulatory burden on a listed company, in part, by subjecting it to both the NYSE's and Nasdaq's corporate governance regulations. As a result, the program targets bigger and better established companies that are used to being a public company and can afford a moderate increase in the regulatory burden. Nasdaq believes that these larger companies will pay higher listing fees if and when they become listed exclusively on Nasdaq and become subject to the fee schedule applicable to Nasdaq listed companies thereby making their listing more valuable to Nasdaq. Nasdaq also believes that inducing these companies to compare services provided by Nasdaq and the NYSE, may encourage these companies to list exclusively on Nasdaq and to provide its listing market broader benefits from attracting the larger, better known companies that are listed on the NYSE. Accordingly, given the competitive nature of the dual listing program and the potential benefits it may bring to Nasdaq and its listing market, Nasdaq believes it is reasonable to set the all-inclusive annual fee for Dually Listed Companies at \$15,000.

Absent this provision, a Dually Listed Company would be subject to the typical all-inclusive annual listing fee, which is higher than \$15,000.¹⁰ Nasdaq did not intend to subject the Dually Listed Companies to the all-inclusive annual listing fee applicable to

¹⁰ Under Rule 5910(b)(2)(A) the minimum all-inclusive annual fee for most companies is \$48,000.

other companies. Accordingly, Nasdaq now proposes to insert language, similar to the language covering annual fees paid by Dually Listed Companies that was erroneously removed, by adding proposed Rule 5910(b)(2)(G) setting the all-inclusive annual fee for Dually Listed Companies, which now covers fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above, at \$15,000.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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, will promote just and equitable principles of trade, and will remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule will insert language concerning the \$15,000 annual listing fee applicable to a Dually Listed Company, which Nasdaq erroneously deleted, while also making this fee an all-inclusive fee, which now covers fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above. The Commission previously approved the \$15,000 annual fee applicable to a Dually Listed Company, and the manner in which it is assessed, and found it consistent with requirements of the Act that rules provide for equitable allocation of reasonable fees

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

and not be designed to permit unfair discrimination between issuers.¹³ There has been no changes to the objectives of the Dual Listing program since Nasdaq adopted the all-inclusive annual listing fee schedule for companies, and the NYSE annual fee schedule has been changing to accommodate the shifts in the competitive landscape.¹⁴ Nasdaq believes that, to maintain consistency with the original objective of the Dual Listing program, the annual listing fee assessed towards Dually Listed Companies, noting the fact that they are paying the fees to the NYSE, should remain the same as previously adopted, although now covering fees for written interpretation, compliance plan review and record-keeping fees, previously not covered as explained above. The erroneous removal of language describing the fee, resulting in the need for this rule filing to reinsert it, does not change that conclusion.¹⁵

Nasdaq believes it is appropriate and not unfairly discriminatory to maintain the \$15,000 fee on an all-inclusive basis because Nasdaq is not the primary listing venue for such companies. The Dual Listing program is designed to encourage NYSE-listed companies to compare services provided by Nasdaq and the NYSE without creating undue burden by assessing duplicated fees. Based on Nasdaq's experience, Dually Listed

¹³ Securities Exchange Act Release No. 51005 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR-NASD-2004-142, approving the predecessor NASD rule), 70 FR 2917 (January 18, 2005) (the "Approval Order"). This finding was under Section 15A(b)(5) and (6) of the Act, which applied to Nasdaq at the time as a facility of the NASD.

¹⁴ See Securities Exchange Act Release No. 93862 (December 22, 2021), 86 FR 74198 (December 29, 2021) (SR-NYSE-2021-76).

¹⁵ Although the all-inclusive annual fee for Dually Listed Companies will now include some additional services for the same \$15,000 annual fee, Nasdaq notes that Dually Listed Companies, typically, do not use these services. See footnote 9 above.

Companies require less time and effort to review and to ensure compliance because they seldom involve time-consuming regulatory issues. This is, in part, due to the fact that NYSE listed companies already are, and, typically, have been subject to the ongoing scheme of regulation by the NYSE that is fairly similar to the Nasdaq's regulation regime.

Notwithstanding the similarities in regulatory regimes, the Dual Listing program increases the regulatory burden on a listed company, in part, by subjecting it to both NYSE and Nasdaq corporate governance regulations. As a result, the program targets bigger and better established companies that are used to being a public company and can afford the increased regulatory burden. Nasdaq believes that these larger companies will pay higher listing fees if and when they become listed exclusively on Nasdaq and become subject to the fee schedule applicable to Nasdaq listed companies thereby making their listing more valuable to Nasdaq. Nasdaq also believes that inducing these companies to compare services provided by Nasdaq and the NYSE, may encourage these companies to list exclusively on Nasdaq and to provide its listing market broader benefits from attracting the larger, better known companies that are listed on the NYSE.

Finally, Nasdaq believes that the proposal does not result in unfair discrimination by offering its program only to companies already listed on the NYSE, and not on other exchanges, because Nasdaq believes attracting the NYSE-listed companies will bring greater future value to Nasdaq.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act but instead will reinstate a portion of the fee schedule that was erroneously deleted.

Nasdaq's dual listing program is designed to allow issuers to undertake focused comparison of the services and market quality offered by Nasdaq and NYSE, with the explicit goal to encourage eventual switch of companies that dual list. Without a lower annual fee, an NYSE-listed company would be unlikely to choose to dually list its securities, either initially or on an ongoing basis. Accordingly, reinstating the proposed fee would promote competition among listing markets.¹⁶

The lower fees on Dually Listed Companies also will not burden competition between Dually Listed Companies and other companies listing on Nasdaq. The lower fee reflects that Dually Listed Companies are also subject to ongoing fees to the NYSE. In the Approval Order, the Commission found the fees applicable to Dually Listed Companies consistent with the requirements of the Act, and noted that “[w]ithout this program, it is unlikely that an issuer would choose to dually list its securities” and expressed its belief that “competition among listing markets has the potential to benefit the public, issuers, and the listing markets.”

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.

¹⁶ Nasdaq believes that national securities exchanges other than the NYSE do not have established listing programs that attract marquee operating companies and therefore the dually listed program will not have any competitive impact on such exchanges because the goal of the program is to allow an established exchange-listed company to compare services provided by Nasdaq with those it already receives.

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.¹⁷

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-2022-004 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.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2022-004. 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-2022-004 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).