

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 47

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

File No. \* SR 2022 - \* 068

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 *<br><input checked="" type="checkbox"/> | Amendment *<br><input type="checkbox"/> | Withdrawal<br><input type="checkbox"/> | Section 19(b)(2) *<br><input type="checkbox"/> | Section 19(b)(3)(A) *<br><input checked="" type="checkbox"/> | Section 19(b)(3)(B) *<br><input type="checkbox"/> |
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| Pilot<br><input type="checkbox"/> | Extension of Time Period for Commission Action *<br><input type="checkbox"/> | Date Expires *<br><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 modify entry and all inclusive annual fees for certain companies

### 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 11/22/2022


(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.

 Date: 2022.11.22 14:43:19 -05'00'

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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SR-NASDAQ-2022-068 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 \***

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SR-NASDAQ-2022-068 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**

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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**

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SR-NASDAQ-2022-068 Exhibit 5.doc

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify entry and all-inclusive annual fees for certain companies, as described below. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2023.

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 attached as Exhibit 5.

(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”). 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 (i) replace the tiered entry fee structure with a flat fee of \$270,000 when a Company first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange’s all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets; (iii) replace the two-tier entry fee structure with a flat fee of \$80,000 when an Acquisition Company, as defined below, first lists a class of equity securities on Nasdaq; and (iv) to adopt a fee structure specific to Acquisition Companies and to replace the current three-tier all-inclusive annual listing fee structure with a two-tier structure, as described below.

Entry Fees

Currently, Nasdaq charges Companies listing pursuant to Rule 5910(a)(1), other than Acquisition Companies, entry fees for the Nasdaq Global and Global Select Market based on the number of shares outstanding according to the following tiers<sup>3</sup>:

|                          |           |
|--------------------------|-----------|
| Up to 30 million shares  | \$150,000 |
| 30+ to 40 million shares | \$170,000 |
| 40+ to 50 million shares | \$210,000 |
| 50+ to 60 million shares | \$250,000 |
| 60+ to 70 million shares | \$290,000 |
| Over 70 million shares   | \$295,000 |

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<sup>3</sup> Companies must also submit a \$25,000 initial application fee, which is credited towards the entry fee upon listing. The initial application fee for an Acquisition Company is \$5,000. See Rule 5910(a)(11).

These fees are based on the aggregate of all classes of equity securities to be listed on the Nasdaq Global and Global Select Market, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

The entry fees for companies listing on the Nasdaq Global and Global Select Markets were last modified in 2018.<sup>4</sup> Nasdaq now proposes to replace the tiered structure with a flat fee of \$270,000 when a Company, other than an Acquisition Company, first lists a class of equity securities on the Nasdaq Global or Global Select Market.

Nasdaq proposes to make this change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when a Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher (or lower) initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this change is not unfairly discriminatory because all newly listing Companies will be subject to the same flat entry fee.

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<sup>4</sup> See Securities Exchange Act Release No. 84930 (December 21, 2018), 83 FR 67752 (December 31, 2018) (SR-NASDAQ-2018-105).

Nasdaq also proposes to provide that any company that lists an additional class of equity securities (not otherwise identified in this Rule 5900 Series) is not subject to entry fees under this rule but is charged a non-refundable \$25,000 initial application fee.

#### All-Inclusive Annual Listing Fees

Currently, for companies listed on the Capital Market, other than, in part, ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee ranges from \$45,000 to \$81,000; for ADRs listed on the Capital Market the all-inclusive annual fee ranges from \$45,000 to \$54,500; and for Limited Partnerships listed on the Capital Market the all-inclusive annual fee ranges from \$33,000 to \$40,500. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than, in part, ADRs, Closed-end Funds and Limited Partnerships ranges from \$48,000 to \$167,000; for ADRs the all-inclusive annual fee ranges from \$48,000 to \$86,000; and for Limited Partnerships the all-inclusive annual fee ranges from \$40,500 to \$83,500. The all-inclusive annual fee for Closed-end Funds listed on any market tier ranges from \$33,000 to \$107,500. In each case, a company's all-inclusive annual fee is based on its total shares outstanding.<sup>5</sup>

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<sup>5</sup> REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. See Listing Rules 5910(b)(2) and 5920(b)(2).

Nasdaq proposes to amend the all-inclusive annual fee for all domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,<sup>6</sup> effective January 1, 2023:

Global/Global Select Markets

|  | <b>Total Shares Outstanding</b>                          | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2023</b> |
|--|--|--|---|
| Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships | Up to 10 million shares                                  | \$48,000                                     | \$50,000                                    |
|  | 10+ to 50 million shares                                 | \$59,500                                     | \$62,000                                    |
|  | 50+ to 75 million shares                                 | \$81,000                                     | \$84,000                                    |
|  | 75+ to 100 million shares                                | \$107,500                                    | \$112,000                                   |
|  | 100+ to 125 million shares                               | \$134,500                                    | \$140,000                                   |
|  | 125+ to 150 million shares                               | \$145,500                                    | \$151,500                                   |
|  | Over 150 million shares                                  | \$167,000                                    | \$173,500                                   |
| ADRs   | Up to 10 million ADRs and other listed equity securities | \$48,000                                     | \$50,000                                    |
|  | 10+ to 50 million ADRs and other listed equity           | \$54,500                                     | \$56,500                                    |

<sup>6</sup> The proposed fee change reflects about a 4.0% increase rounded to the nearest \$500.

|                      | <b>Total Shares Outstanding</b>                           | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2023</b> |
|----------------------|---|--|---|
|                      | securities  |  |   |
|                      | 50+ to 75 million ADRs and other listed equity securities | \$64,500                                     | \$67,000                                    |
|                      | Over 75 million ADRs and other listed equity securities   | \$86,000                                     | \$89,500                                    |
| Closed-end Funds     | Up to 50 million shares                                   | \$33,000                                     | \$34,500                                    |
|                      | 50+ to 100 million shares                                 | \$54,500                                     | \$56,500                                    |
|                      | 100+ to 250 million shares                                | \$81,000                                     | \$84,000                                    |
|                      | Over 250 million shares                                   | \$107,500                                    | \$112,000                                   |
| Limited Partnerships | Up to 75 million shares                                   | \$40,500                                     | \$42,000                                    |
|                      | 75+ to 100 million shares                                 | \$54,500                                     | \$56,500                                    |
|                      | 100+ to 125 million shares                                | \$67,000                                     | \$69,500                                    |
|                      | 125+ to 150 million shares                                | \$72,500                                     | \$75,500                                    |
|                      | Over 150 million shares                                   | \$83,500                                     | \$87,000                                    |



Capital Market

|  | <b>Total Shares Outstanding</b>                          | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2021</b> |
|--|--|--|---|
| Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships | Up to 10 million shares                                  | \$45,000                                     | \$47,000                                    |
|  | 10+ to 50 million shares                                 | \$59,500                                     | \$62,000                                    |
|  | Over 50 million shares                                   | \$81,000                                     | \$84,000                                    |
| ADRs   | Up to 10 million ADRs and other listed equity securities | \$45,000                                     | \$47,000                                    |
|  | Over 10 million ADRs and other listed equity securities  | \$54,500                                     | \$56,500                                    |
| Closed-end Funds   | Up to 50 million shares                                  | \$33,000                                     | \$34,500                                    |
|  | 50+ to 100 million shares                                | \$54,500                                     | \$56,500                                    |
|  | 100+ to 250 million shares                               | \$81,000                                     | \$84,000                                    |
|  | Over 250 million shares                                  | \$107,500                                    | \$112,000                                   |
| Limited Partnerships   | Up to 75 million shares                                  | \$33,000                                     | \$34,500                                    |
|  | Over 75 million shares                                   | \$40,500                                     | \$42,000                                    |

Nasdaq also proposes to update the maximum fee applicable to a Closed-End Fund family to \$112,000 and the maximum fee applicable to a REIT Family listed on the Nasdaq Global Market and the Nasdaq Capital Market to \$173,500 and \$84,000,

respectively, to reflect the proposed fee change for other equity securities, as described above.<sup>7</sup>

Finally, Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2023.

As described below, Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

#### Entry Fee for Acquisition Companies

Nasdaq proposes to modify the Entry Fee for companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM-5101-2, ("Acquisition Companies").

Nasdaq currently charges entry fees for Acquisition Companies listing on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers<sup>8</sup>:

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<sup>7</sup> See footnote 3 above.

<sup>8</sup> Listing Rules 5910(a)(1)(B) and 5920(a)(1) for the Nasdaq Global or Global Select Market and the Nasdaq Capital Market, respectively. Companies must also submit a \$5,000 initial application fee, which is credited towards the entry fee upon listing. See Listing Rules 5910(a)(11) and 5920(a)(11).

|                         |          |
|-------------------------|----------|
| Up to 15 million shares | \$50,000 |
| Over 15 million shares  | \$75,000 |

These fees are based on the aggregate of all classes of equity securities to be listed on Nasdaq, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

Nasdaq now proposes to replace the two-tier structure with a flat fee of \$80,000 when an Acquisition Company first lists a class of equity securities on Nasdaq. The flat entry fee would cover both an Acquisition Company's common shares and also warrants and rights, if any.

Nasdaq proposes to make these fee increases to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when an Acquisition Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory because all newly listing Acquisition Companies will be subject to the same flat entry fee. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions with operating companies.

In addition, the Exchange observes that many companies may not know their share structure or how many shares will ultimately be outstanding at the time they are considering whether to list on the Exchange. Therefore, the Exchange believes that adopting a flat entry fee will provide prospective Acquisition Companies listing on Nasdaq with greater transparency on the costs associated with initially listing on the Exchange.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq currently charges an All-Inclusive Annual Listing Fee for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers:

|                          |          |
|--------------------------|----------|
| Up to 10 million shares  | \$45,000 |
| 10+ to 50 million shares | \$59,500 |
| Over 50 million shares   | \$81,000 |

Currently, the securities of an Acquisition Company are subject to the same all-inclusive annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. These fees were last modified in 2021, effective for 2022, as part of the Exchange's modification of all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets.<sup>9</sup>

Nasdaq now proposes to adopt a fee structure specifically for Acquisition Companies and to replace the current three-tier structure with the following two-tier structure:

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<sup>9</sup> See Securities Exchange Act Release No. 34- 93713 (December 3, 2021), 86 FR 70156 (December 9, 2021) (SR-NASDAQ-2021-091).

|                         |          |
|-------------------------|----------|
| Up to 50 million shares | \$70,000 |
| Over 50 million shares  | \$81,000 |

As described above, securities listed by an Acquisition Company are, and have been, subject to the same annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. This structure was maintained since Nasdaq first adopted a rule to impose additional listing requirements on Acquisition Companies, which allowed such companies to list on Nasdaq.

In establishing the proposed All-Inclusive Annual Fees for Acquisition Companies, including the changes to the number and cut-off point of pricing tiers, Nasdaq considered various factors that distinguish Acquisition Companies from other issuers of primary equity securities on Nasdaq, the use of various Nasdaq regulatory and support services by Acquisition Companies, as well as, pricing for similar securities on other national securities exchanges. Based on this analysis, Nasdaq proposes to modify the number of fee tiers within the annual fee schedule to better align fees with the size of the companies that pay those fees and the use that companies of various sizes typically make of Nasdaq's services. In setting the proposed All-Inclusive Annual Fee, Nasdaq reviewed the billing history of more than 450 Acquisition Companies that had been listed on Nasdaq to determine the fees assessed these companies. Nasdaq also reviewed listing-related services provided to Acquisition Companies, including reviews of various regulatory forms, rule interpretations requests, and compliance plan reviews. Nasdaq established the proposed two tier All-Inclusive Annual Fee for Acquisition Companies and shares outstanding tier based on this analysis of historical fees paid and regulatory services used.

Based on this analysis, Nasdaq determined that only a small minority of Acquisition companies were listed on Nasdaq with less than 10 million of total shares outstanding, but the services provided to them and the Exchange's regulatory resources dedicated to such listings are substantially the same regardless of the number of shares the company has outstanding. The vast majority of listed Acquisition companies fall within the current second tier. Accordingly, Nasdaq believes that the new tier of up to 50 million shares better reflects both the value of the listing to Acquisition Companies and the expenditure of regulatory resources by Nasdaq. Nasdaq also believes that the all-inclusive fee increase for this tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the current third tier (over 50 million shares) and that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore require fewer resources from Nasdaq. In addition, Nasdaq obtains value from being associated with these experienced sponsors. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this tier as is, is reasonable given the competitive landscape.

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2023.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the adoption of a flat entry fee on the Nasdaq Global and Global Select Markets represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings. Nasdaq proposes to make the aforementioned fee structure change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat fee when a company first lists a class of securities as the value to the company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, the Exchange believes that this increase is not unfairly discriminatory, as the resources the Exchange expends in connection with the initial listing of those companies are typically consistent with the resources the Exchange expends on many companies that are already subject to the similar fees under the current structure. This proposal is consistent with the approach of other exchanges.<sup>12</sup>

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> See Section 902.03 Fees for Listed Equity Securities; of the NYSE Listed Company Manual.

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees<sup>13</sup> as set forth above because of the increased costs incurred by Nasdaq since it established the current rates. In that regard, the Exchange notes that its general costs to support our listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies, the technology to deliver those services and the customer experience at the Nasdaq MarketSite. These improvements include, ESG services, governance solutions and support, the remodeling of a portion of the New York Headquarters and the investment in technology to support direct listings with a capital raise, IPO innovations and ongoing trading.

Nasdaq also believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees while rounding the increase to the nearest \$500 as set forth above because such rounding represents de minimis variation in fees for Nasdaq listed companies. In addition, Nasdaq has used the same methodology since the adoption of the all-inclusive annual listing fee schedule and all annual listing fees under Listing Rules 5910(b)(2) and 5920(b)(2) are rounded to \$500.

The proposed change to update amounts in examples clarifying the application of the rules for companies transferring between Nasdaq tiers and to update the maximum fee

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<sup>13</sup> Effective January 1, 2022, Nasdaq modified the fee schedule for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets. Securities Exchange Act Release No. 93713 (December 3, 2022), 86 FR 70156 (December 9, 2022) (SR-NASDAQ-2021-095).



applicable to a Closed-End Fund family and the maximum fee applicable to a REIT Family to reflect the proposed fee change for other equity securities, as described above, is not unfairly discriminatory because it merely reflects the change in fees without changing the substance of the rule.

Nasdaq believes that the Exchange operates in a highly competitive marketplace for the listing of companies, including the Acquisition Companies.<sup>14</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange's listing fees. In other words, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, Nasdaq believes that the adoption of a flat Entry Fee and a modification to the All-Inclusive Annual Fee schedule for Acquisition Companies represent a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

Nasdaq believes it is reasonable to apply a flat Entry Fee when an Acquisition Company lists a class of securities as the value of the listing to a company is substantially

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<sup>14</sup> The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at [http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

the same regardless of the number of shares the company has outstanding. While Acquisition Companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory because all newly listing Acquisition Companies will be subject to the same flat Entry Fee. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

Nasdaq believes it is reasonable to transition from the current three-tier structure for the All-Inclusive Annual Fee for Acquisition Companies to the proposed two-tier structure because Nasdaq's analysis, as described above, indicates that the proposed structure better reflects the value of services Nasdaq provides to Acquisition Companies. Nasdaq also believes that the All-Inclusive Fee increase for the proposed first tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the proposed second tier (over 50 million shares) that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore have more value to Nasdaq when they list. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq

believes that maintaining this third tier as is, is reasonable given the competitive landscape.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

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, both within the U.S. and internationally. For this reason, 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,<sup>15</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-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.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2022-068)

November \_\_, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Entry and All-Inclusive Annual Fees for Certain Companies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 22, 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 modify entry and all-inclusive annual fees for certain companies, as described below. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2023.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 (i) replace the tiered entry fee structure with a flat fee of \$270,000 when a Company first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange's all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets; (iii) replace the two-tier entry fee structure with a flat fee of \$80,000 when an Acquisition Company, as defined below, first lists a class of equity securities on Nasdaq; and (iv) to adopt a fee structure specific to Acquisition Companies and to replace the current three-tier all-inclusive annual listing fee structure with a two-tier structure, as described below.

Entry Fees

Currently, Nasdaq charges Companies listing pursuant to Rule 5910(a)(1), other than Acquisition Companies, entry fees for the Nasdaq Global and Global Select Market based on the number of shares outstanding according to the following tiers<sup>3</sup>:

|                          |           |
|--------------------------|-----------|
| Up to 30 million shares  | \$150,000 |
| 30+ to 40 million shares | \$170,000 |
| 40+ to 50 million shares | \$210,000 |
| 50+ to 60 million shares | \$250,000 |
| 60+ to 70 million shares | \$290,000 |
| Over 70 million shares   | \$295,000 |

These fees are based on the aggregate of all classes of equity securities to be listed on the Nasdaq Global and Global Select Market, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

The entry fees for companies listing on the Nasdaq Global and Global Select Markets were last modified in 2018.<sup>4</sup> Nasdaq now proposes to replace the tiered structure with a flat fee of \$270,000 when a Company, other than an Acquisition Company, first lists a class of equity securities on the Nasdaq Global or Global Select Market.

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<sup>3</sup> Companies must also submit a \$25,000 initial application fee, which is credited towards the entry fee upon listing. The initial application fee for an Acquisition Company is \$5,000. See Rule 5910(a)(11).

<sup>4</sup> See Securities Exchange Act Release No. 84930 (December 21, 2018), 83 FR 67752 (December 31, 2018) (SR-NASDAQ-2018-105).

Nasdaq proposes to make this change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when a Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher (or lower) initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this change is not unfairly discriminatory because all newly listing Companies will be subject to the same flat entry fee.

Nasdaq also proposes to provide that any company that lists an additional class of equity securities (not otherwise identified in this Rule 5900 Series) is not subject to entry fees under this rule but is charged a non-refundable \$25,000 initial application fee.

#### All-Inclusive Annual Listing Fees

Currently, for companies listed on the Capital Market, other than, in part, ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee ranges from \$45,000 to \$81,000; for ADRs listed on the Capital Market the all-inclusive annual fee ranges from \$45,000 to \$54,500; and for Limited Partnerships listed on the Capital Market the all-inclusive annual fee ranges from \$33,000 to \$40,500. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than, in part, ADRs, Closed-end Funds and Limited Partnerships ranges from \$48,000 to \$167,000; for ADRs the all-inclusive annual fee ranges from \$48,000 to \$86,000; and for Limited Partnerships the all-inclusive annual fee ranges from \$40,500 to \$83,500. The all-inclusive annual fee for Closed-end Funds listed on any market tier ranges from \$33,000



to \$107,500. In each case, a company's all-inclusive annual fee is based on its total shares outstanding.<sup>5</sup>

Nasdaq proposes to amend the all-inclusive annual fee for all domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,<sup>6</sup> effective January 1, 2023:

Global/Global Select Markets

|  | <b>Total Shares Outstanding</b> | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2023</b> |
|--|---------------------------------|--|---|
| Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships | Up to 10 million shares         | \$48,000                                     | \$50,000                                    |
|  | 10+ to 50 million shares        | \$59,500                                     | \$62,000                                    |
|  | 50+ to 75 million shares        | \$81,000                                     | \$84,000                                    |
|  | 75+ to 100 million shares       | \$107,500                                    | \$112,000                                   |
|  | 100+ to 125 million shares      | \$134,500                                    | \$140,000                                   |
|  | 125+ to 150 million shares      | \$145,500                                    | \$151,500                                   |

<sup>5</sup> REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. See Listing Rules 5910(b)(2) and 5920(b)(2).

<sup>6</sup> The proposed fee change reflects about a 4.0% increase rounded to the nearest \$500.

|                      | <b>Total Shares Outstanding</b>                           | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2023</b> |
|----------------------|---|--|---|
|                      | Over 150 million shares                                   | \$167,000                                    | \$173,500                                   |
| ADRs                 | Up to 10 million ADRs and other listed equity securities  | \$48,000                                     | \$50,000                                    |
|                      | 10+ to 50 million ADRs and other listed equity securities | \$54,500                                     | \$56,500                                    |
|                      | 50+ to 75 million ADRs and other listed equity securities | \$64,500                                     | \$67,000                                    |
|                      | Over 75 million ADRs and other listed equity securities   | \$86,000                                     | \$89,500                                    |
| Closed-end Funds     | Up to 50 million shares                                   | \$33,000                                     | \$34,500                                    |
|                      | 50+ to 100 million shares                                 | \$54,500                                     | \$56,500                                    |
|                      | 100+ to 250 million shares                                | \$81,000                                     | \$84,000                                    |
|                      | Over 250 million shares                                   | \$107,500                                    | \$112,000                                   |
| Limited Partnerships | Up to 75 million shares                                   | \$40,500                                     | \$42,000                                    |
|                      | 75+ to 100 million shares                                 | \$54,500                                     | \$56,500                                    |
|                      | 100+ to 125 million                                       | \$67,000                                     | \$69,500                                    |

|  | <b>Total Shares Outstanding</b> | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2023</b> |
|--|---------------------------------|--|---|
|  | shares                          |  |   |
|  | 125+ to 150 million shares      | \$72,500                                     | \$75,500                                    |
|  | Over 150 million shares         | \$83,500                                     | \$87,000                                    |

Capital Market

|  | <b>Total Shares Outstanding</b>                          | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2021</b> |
|--|--|--|---|
| Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships | Up to 10 million shares                                  | \$45,000                                     | \$47,000                                    |
|  | 10+ to 50 million shares                                 | \$59,500                                     | \$62,000                                    |
|  | Over 50 million shares                                   | \$81,000                                     | \$84,000                                    |
| ADRs   | Up to 10 million ADRs and other listed equity securities | \$45,000                                     | \$47,000                                    |
|  | Over 10 million ADRs and other listed equity securities  | \$54,500                                     | \$56,500                                    |
| Closed-end Funds   | Up to 50 million shares                                  | \$33,000                                     | \$34,500                                    |
|  | 50+ to 100 million shares                                | \$54,500                                     | \$56,500                                    |
|  | 100+ to 250 million shares                               | \$81,000                                     | \$84,000                                    |
|  | Over 250 million shares                                  | \$107,500                                    | \$112,000                                   |

|                      | <b>Total Shares Outstanding</b> | <b>Annual fee before the proposed change</b> | <b>Annual Fee effective January 1, 2021</b> |
|----------------------|---------------------------------|--|---|
| Limited Partnerships | Up to 75 million shares         | \$33,000                                     | \$34,500                                    |
|                      | Over 75 million shares          | \$40,500                                     | \$42,000                                    |

Nasdaq also proposes to update the maximum fee applicable to a Closed-End Fund family to \$112,000 and the maximum fee applicable to a REIT Family listed on the Nasdaq Global Market and the Nasdaq Capital Market to \$173,500 and \$84,000, respectively, to reflect the proposed fee change for other equity securities, as described above.<sup>7</sup>

Finally, Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2023.

As described below, Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

#### Entry Fee for Acquisition Companies

Nasdaq proposes to modify the Entry Fee for companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or

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<sup>7</sup> See footnote 3 above.

more unidentified companies within a specific period of time, as described in IM-5101-2, (“Acquisition Companies”).

Nasdaq currently charges entry fees for Acquisition Companies listing on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers<sup>8</sup>:

|                         |          |
|-------------------------|----------|
| Up to 15 million shares | \$50,000 |
| Over 15 million shares  | \$75,000 |

These fees are based on the aggregate of all classes of equity securities to be listed on Nasdaq, as shown in the company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular or registration statement. In the case of foreign companies, total shares outstanding includes only those shares issued and outstanding in the United States.

Nasdaq now proposes to replace the two-tier structure with a flat fee of \$80,000 when an Acquisition Company first lists a class of equity securities on Nasdaq. The flat entry fee would cover both an Acquisition Company’s common shares and also warrants and rights, if any.

Nasdaq proposes to make these fee increases to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat entry fee when an Acquisition Company first lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While companies would pay a higher initial listing fee under

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<sup>8</sup> Listing Rules 5910(a)(1)(B) and 5920(a)(1) for the Nasdaq Global or Global Select Market and the Nasdaq Capital Market, respectively. Companies must also submit a \$5,000 initial application fee, which is credited towards the entry fee upon listing. See Listing Rules 5910(a)(11) and 5920(a)(11).

the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory because all newly listing Acquisition Companies will be subject to the same flat entry fee. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions with operating companies.

In addition, the Exchange observes that many companies may not know their share structure or how many shares will ultimately be outstanding at the time they are considering whether to list on the Exchange. Therefore, the Exchange believes that adopting a flat entry fee will provide prospective Acquisition Companies listing on Nasdaq with greater transparency on the costs associated with initially listing on the Exchange.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq currently charges an All-Inclusive Annual Listing Fee for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets based on the number of shares outstanding according to the following tiers:

|                          |          |
|--------------------------|----------|
| Up to 10 million shares  | \$45,000 |
| 10+ to 50 million shares | \$59,500 |
| Over 50 million shares   | \$81,000 |

Currently, the securities of an Acquisition Company are subject to the same all-inclusive annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. These fees were last modified in 2021, effective for 2022, as part of the Exchange's modification of all-inclusive annual listing fees for all

domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets.<sup>9</sup>

Nasdaq now proposes to adopt a fee structure specifically for Acquisition Companies and to replace the current three-tier structure with the following two-tier structure:

|                         |          |
|-------------------------|----------|
| Up to 50 million shares | \$70,000 |
| Over 50 million shares  | \$81,000 |

As described above, securities listed by an Acquisition Company are, and have been, subject to the same annual fee schedule as all domestic and foreign companies listing equity securities on the Nasdaq Capital Market. This structure was maintained since Nasdaq first adopted a rule to impose additional listing requirements on Acquisition Companies, which allowed such companies to list on Nasdaq.

In establishing the proposed All-Inclusive Annual Fees for Acquisition Companies, including the changes to the number and cut-off point of pricing tiers, Nasdaq considered various factors that distinguish Acquisition Companies from other issuers of primary equity securities on Nasdaq, the use of various Nasdaq regulatory and support services by Acquisition Companies, as well as, pricing for similar securities on other national securities exchanges. Based on this analysis, Nasdaq proposes to modify the number of fee tiers within the annual fee schedule to better align fees with the size of the companies that pay those fees and the use that companies of various sizes typically make of Nasdaq's services. In setting the proposed All-Inclusive Annual Fee, Nasdaq reviewed the billing history of more than 450 Acquisition Companies that had been listed

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<sup>9</sup> See Securities Exchange Act Release No. 34- 93713 (December 3, 2021), 86 FR 70156 (December 9, 2021) (SR-NASDAQ-2021-091).

on Nasdaq to determine the fees assessed these companies. Nasdaq also reviewed listing-related services provided to Acquisition Companies, including reviews of various regulatory forms, rule interpretations requests, and compliance plan reviews. Nasdaq established the proposed two tier All-Inclusive Annual Fee for Acquisition Companies and shares outstanding tier based on this analysis of historical fees paid and regulatory services used.

Based on this analysis, Nasdaq determined that only a small minority of Acquisition companies were listed on Nasdaq with less than 10 million of total shares outstanding, but the services provided to them and the Exchange's regulatory resources dedicated to such listings are substantially the same regardless of the number of shares the company has outstanding. The vast majority of listed Acquisition companies fall within the current second tier. Accordingly, Nasdaq believes that the new tier of up to 50 million shares better reflects both the value of the listing to Acquisition Companies and the expenditure of regulatory resources by Nasdaq. Nasdaq also believes that the all-inclusive fee increase for this tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the current third tier (over 50 million shares) and that will not be affected by the proposed fee change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore require fewer resources from Nasdaq. In addition, Nasdaq obtains



value from being associated with these experienced sponsors. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this tier as is, is reasonable given the competitive landscape.

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2023.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the adoption of a flat entry fee on the Nasdaq Global and Global Select Markets represents a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings. Nasdaq proposes to make the aforementioned fee structure change to better reflect the value of such listing to companies. In particular, the Exchange believes it is reasonable to apply a flat fee when a company first lists a class of securities as the value to the company is substantially the same regardless of the number of shares the company has outstanding. While some companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, the Exchange believes that this increase is not unfairly discriminatory, as the resources the Exchange expends in connection with the

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

initial listing of those companies are typically consistent with the resources the Exchange expends on many companies that are already subject to the similar fees under the current structure. This proposal is consistent with the approach of other exchanges.<sup>12</sup>

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees<sup>13</sup> as set forth above because of the increased costs incurred by Nasdaq since it established the current rates. In that regard, the Exchange notes that its general costs to support our listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies, the technology to deliver those services and the customer experience at the Nasdaq MarketSite. These improvements include, ESG services, governance solutions and support, the remodeling of a portion of the New York Headquarters and the investment in technology to support direct listings with a capital raise, IPO innovations and ongoing trading.

Nasdaq also believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees while rounding the increase to the nearest \$500 as set forth above because such rounding represents de minimis variation in fees for Nasdaq listed companies. In addition, Nasdaq has used the same methodology since the adoption

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<sup>12</sup> See Section 902.03 Fees for Listed Equity Securities; of the NYSE Listed Company Manual.

<sup>13</sup> Effective January 1, 2022, Nasdaq modified the fee schedule for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets. Securities Exchange Act Release No. 93713 (December 3, 2022), 86 FR 70156 (December 9, 2022) (SR-NASDAQ-2021-095).

of the all-inclusive annual listing fee schedule and all annual listing fees under Listing Rules 5910(b)(2) and 5920(b)(2) are rounded to \$500.

The proposed change to update amounts in examples clarifying the application of the rules for companies transferring between Nasdaq tiers and to update the maximum fee applicable to a Closed-End Fund family and the maximum fee applicable to a REIT Family to reflect the proposed fee change for other equity securities, as described above, is not unfairly discriminatory because it merely reflects the change in fees without changing the substance of the rule.

Nasdaq believes that the Exchange operates in a highly competitive marketplace for the listing of companies, including the Acquisition Companies.<sup>14</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange's listing fees. In other words, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, Nasdaq believes that the adoption of a flat Entry Fee and a modification to the All-Inclusive Annual Fee schedule for Acquisition

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<sup>14</sup> The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at [http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

Companies represent a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings.

Nasdaq believes it is reasonable to apply a flat Entry Fee when an Acquisition Company lists a class of securities as the value of the listing to a company is substantially the same regardless of the number of shares the company has outstanding. While Acquisition Companies would pay a higher initial listing fee under the proposed flat fee than under the current rate, Nasdaq believes that this increase is not unfairly discriminatory because all newly listing Acquisition Companies will be subject to the same flat Entry Fee. Nasdaq also believes that the fee increase is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

Nasdaq believes it is reasonable to transition from the current three-tier structure for the All-Inclusive Annual Fee for Acquisition Companies to the proposed two-tier structure because Nasdaq's analysis, as described above, indicates that the proposed structure better reflects the value of services Nasdaq provides to Acquisition Companies. Nasdaq also believes that the All-Inclusive Fee increase for the proposed first tier is reasonable given the substantial increase in new listings of the Acquisition Companies in the last few years, which caused Nasdaq to dedicate additional resources to conduct regulatory reviews of Acquisition Companies' IPOs and subsequent business combination transactions.

While there is a small minority of Acquisition Companies that fall within the proposed second tier (over 50 million shares) that will not be affected by the proposed fee

change, Nasdaq believes that this is not unfairly discriminatory because such large Acquisition Companies tend to have better known and more experienced sponsors and advisors, and therefore have more value to Nasdaq when they list. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that maintaining this third tier as is, is reasonable given the competitive landscape.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

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, both within the U.S. and internationally. For this reason, 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.<sup>15</sup>

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-068 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2022-068. 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-2022-068 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.<sup>16</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market LLC Rules**

\* \* \* \* \*

**5910. The Nasdaq Global Market (including the Nasdaq Global Select Market)****(a) Entry Fee**

- (1) (A)(i) A Company that submits an application [to] and lists any class of its securities (not otherwise identified in this Rule 5900 Series) on the Nasdaq Global Market prior to January 1, 2023, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of listing on the Nasdaq Global Market. Assessment of the application fees is described in paragraph (a)(11), below.

Up to 30 million shares \$150,000

30+ to 40 million shares \$170,000

40+ to 50 million shares \$210,000

50+ to 60 million shares \$250,000

60+ to 70 million shares \$290,000

Over 70 million shares \$295,000.

(ii) Any other company (not otherwise identified in this Rule 5900 Series) shall pay to Nasdaq a \$270,000 fee the first time the Company lists a class of its securities (not otherwise identified in this Rule 5900 Series).

(iii) Effective January 1, 2023, any Company that lists an additional class of equity securities (not otherwise identified in this Rule 5900 Series) is not subject to entry fees under this rule but is charged a non-refundable \$25,000 initial application fee as described in paragraph (a)(11) below.

(B) A Company that submits an application to first list under IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions) and lists prior to January 1, 2023, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. After January 1, 2023, these Companies are subject to a flat Entry Fee of \$80,000, which covers both the primary equity securities and warrants, if any. The Entry Fee for a Company first listed under IM-5101-2 is based on the fee schedule in effect on the date of listing



but is initially deferred and will be assessed on the first anniversary of the date of listing. Assessment of the application fees is described in paragraph (a)(11), below.

Up to 15 million shares \$50,000

Over 15 million shares \$75,000

(2) – (11) No change.

**(b) All-Inclusive Annual Listing Fee**

(1) No change.

(2) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(A) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares [\$48,000 (\$47,000 until December 31, 2021)]  
\$50,000 (\$48,000 until December 31, 2022)

10+ to 50 million shares [\$59,500 (\$58,000 until December 31, 2021)]  
\$62,000 (\$59,500 until December 31, 2022)

50+ to 75 million shares [\$81,000 (\$79,000 until December 31, 2021)]  
\$84,000 (\$81,000 until December 31, 2022)

75+ to 100 million shares [\$107,500 (\$105,000 until December 31, 2021)]  
\$112,000 (\$107,500 until December 31, 2022)

100+ to 125 million shares [\$134,500 (\$131,000 until December 31, 2021)]  
\$140,000 (\$134,500 until December 31, 2022)

125+ to 150 million shares [\$145,500 (\$142,000 until December 31, 2021)]  
\$151,500 (\$145,500 until December 31, 2022)

Over 150 million shares [\$167,000 (\$163,000 until December 31, 2021)]  
\$173,500 (\$167,000 until December 31, 2022)

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Global Market may be aggregated. The maximum annual fee applicable

to such a REIT Family shall not exceed [\$167,000 (\$163,000 until December 31, 2021)] \$173,500 (\$167,000 until December 31, 2022). For purposes of this rule, a "REIT Family" means three or more REITs that are provided management services by the same entity or by entities under common control.

(B) Companies listing American Depositary Receipts (ADRs):

Up to 10 million ADRs and other listed equity securities [\$48,000 (\$47,000 until December 31, 2021)] \$50,000 (\$48,000 until December 31, 2022)

10+ to 50 million ADRs and other listed equity securities [\$54,500 (\$53,000 until December 31, 2021)] \$56,500 (\$54,500 until December 31, 2022)

50+ to 75 million ADRs and other listed equity securities [\$64,500 (\$63,000 until December 31, 2021)] \$67,000 (\$64,500 until December 31, 2022)

Over 75 million ADRs and other listed equity securities [\$86,000 (\$84,000 until December 31, 2021)] \$89,500 (\$86,000 until December 31, 2022)

(C) Closed-end Funds:

Up to 50 million shares [\$33,000 (\$32,000 until December 31, 2021)] \$34,500 (\$33,000 until December 31, 2022)

50+ to 100 million shares [\$54,500 (\$53,000 until December 31, 2021)] \$56,500 (\$54,500 until December 31, 2022)

100+ to 250 million shares [\$81,000 (\$79,000 until December 31, 2021)] \$84,000 (\$81,000 until December 31, 2022)

Over 250 million shares [\$107,500 (\$105,000 until December 31, 2021)] \$112,000 (\$107,500 until December 31, 2022)

For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market, as shown in the Company's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. A fund family is subject to the same fee schedule as a single Closed-End Fund and the maximum All-Inclusive Annual Listing Fee applicable to a fund family shall not exceed [\$107,500 (\$105,000 until December 31, 2021)] \$112,000 (\$107,500 until December 31, 2022). For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(D) Limited Partnerships:

Up to 75 million shares [\$40,500 (\$39,500 until December 31, 2021)]  
\$42,000 (\$40,500 until December 31, 2022)

75+ to 100 million shares [\$54,500 (\$53,000 until December 31, 2021)]  
\$56,500 (\$54,500 until December 31, 2022)

100+ to 125 million shares [\$67,000 (\$65,500 until December 31, 2021)]  
\$69,500 (\$67,000 until December 31, 2022)

125+ to 150 million shares [\$72,500 (\$70,500 until December 31, 2021)]  
\$75,500 (\$72,500 until December 31, 2022)

Over 150 million shares [\$83,500 (\$81,500 until December 31, 2021)]  
\$87,000 (\$83,500 until December 31, 2022)

(E) No change.

(F) Companies listing under IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions) Market prior to January 1, 2023:

Up to 10 million shares \$45,000 [(\$44,000 until December 31, 2021)]

10+ to 50 million shares \$59,500 [(\$58,000 until December 31, 2021)]

Over 50 million shares \$81,000 [(\$79,000 until December 31, 2021)]

Companies listing under IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions) after January 1, 2023:

Up to 50 million shares \$70,000

Over 50 million shares \$81,000

(G) No change.

**(3) Assessment of All-Inclusive Annual Listing Fee**

(A) - (C) No change.

**(D) Transfers from Capital Market.** If a Company transfers its listing from the Capital Market to the Global or Global Select Market, its All-Inclusive Annual Listing Fee will be prorated based on the month of the transfer. Such a Company will owe the All-Inclusive Annual Listing Fee for the new market tier

starting in the month of transfer and the All-Inclusive Annual Listing Fee for the Capital Market for all earlier months in the calendar year.

For example, a Company with 80 million total shares outstanding is listed on the Capital Market and transfers to the Global Market on October 20, [2022]2023. Its new All- Inclusive Annual Listing Fee for the Global Market is [\$107,500]\$112,000, which is prorated from October to December, resulting in an All-Inclusive Annual Listing Fee due of [\$26,875]\$28,000 for its first calendar year of listing on the Global Market. Since this Company already paid an All-Inclusive Annual Listing Fee of [\$81,000]\$84,000 on the Capital Market, it will be credited [\$20,250]\$21,000, which represents the portion of the All-Inclusive Annual Listing Fee already paid for listing on the Capital Market for the remainder of the year. The Company, therefore, has a balance due to Nasdaq of [\$6,625]\$7,000.

(E) - (G) No change.

\* \* \* \* \*

## 5920. The Nasdaq Capital Market

### (a) Entry Fee

(1) (A) A Company that submits an application to list any class of its securities (not otherwise identified in this Rule 5900 Series) on the Nasdaq Capital Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. For a Company (other than a company listed under IM-5101-2) this fee will be assessed on the date of entry on the Nasdaq Capital Market. The Entry Fee for a Company listed under IM-5101-2 prior to January 1, 2023, is based on the fee schedule below [in effect on the date of listing] but is initially deferred and will be assessed on the first anniversary of the date of listing. Assessment of the application fees is described in paragraph (a)(11) below.

Up to 15 million shares \$50,000

Over 15 million shares \$75,000

(B) After January 1, 2023, a Company that submits an application to first list under IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions) shall pay to Nasdaq a flat Entry Fee of \$80,000. The Entry Fee for a Company first listed under IM-5101-2 is based on the fee schedule in effect on the date of listing but is initially deferred and will be assessed on the first anniversary of the date of listing. Assessment of the application fees is described in paragraph (a)(11), below.

(2) – (12) No change.

**(b) All-Inclusive Annual Listing Fee**

(1) No change.

(2) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(A) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares [\$45,000 (\$44,000 until December 31, 2021)] \$47,000 (\$45,000 until December 31, 2022)

10+ to 50 million shares [\$59,500 (\$58,000 until December 31, 2021)] \$62,000 (\$59,500 until December 31, 2022)

Over 50 million shares [\$81,000 (\$79,000 until December 31, 2021)] \$84,000 (\$81,000 until December 31, 2022)

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Capital Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed [\$81,000 (\$79,000 until December 31, 2021)] \$84,000 (\$81,000 until December 31, 2022). For purposes of this rule, a "REIT Family" means three or more REITs that are provided management services by the same entity or by entities under common control.

(B) Companies listing American Depositary Receipts (ADRs):

Up to 10 million ADRs and other listed equity securities [\$45,000 (\$44,000 until December 31, 2021)] \$47,000 (\$45,000 until December 31, 2022)

Over 10 million ADRs and other listed equity securities [\$54,500 (\$53,000 until December 31, 2021)] \$56,500 (\$54,500 until December 31, 2022)

(C) Closed-end Funds:

Up to 50 million shares [\$33,000 (\$32,000 until December 31, 2021)] \$34,500 (\$33,000 until December 31, 2022)

50+ to 100 million shares [\$54,500 (\$53,000 until December 31, 2021)] \$56,500 (\$54,500 until December 31, 2022)

100+ to 250 million shares [\$81,000 (\$79,000 until December 31, 2021)] \$84,000 (\$81,000 until December 31, 2022)

Over 250 million shares [\$107,500 (\$105,000 until December 31, 2021)]  
\$112,000 (\$107,500 until December 31, 2022)

For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market, as shown in the Company's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. A fund family is subject to the same fee schedule as a single Closed-End Fund and the maximum All-Inclusive Annual Listing Fee applicable to a fund family shall not exceed [\$107,500 (\$105,000 until December 31, 2021)]\$112,000 (\$107,500 until December 31, 2022). For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(D) Limited Partnerships:

Up to 75 million shares [\$33,000 (\$32,000 until December 31, 2021)]\$34,500 (\$33,000 until December 31, 2022)

Over 75 million shares [\$40,500 (\$39,500 until December 31, 2021)]\$42,000 (\$40,500 until December 31, 2022)

(E) – (F) No change.

(G) Companies listing under IM-5101-2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions):

Up to 50 million shares \$70,000 (until December 31, 2022, \$45,000 for a company with up to 10 million shares and \$59,500 for a company with 10+ to 50 million shares)

Over 50 million shares \$81,000

**(3) Assessment of All-Inclusive Annual Listing Fee**

(A) - (C) No change.

**(D) Transfers from Global and Global Select Market.** If a Company transfers its listing from the Global or Global Select Market to the Capital Market, it will not owe any additional All-Inclusive Annual Listing Fee for the Capital Market, nor shall it receive any credit or offset of the portion of the All-Inclusive Annual Listing Fee paid or assessed for the prior market.

For example, a Company with 110 million total shares outstanding is listed on the Global Market and transfers to the Capital Market on October 20, 2022. Its new All-Inclusive Annual Listing Fee for the Capital Market is [~~\$81,000~~]\$84,000. Since this Company already paid an All-Inclusive Annual Listing Fee of [~~\$134,500~~]\$140,000 on the Global Market, it will not owe any additional All-Inclusive Annual Listing Fee for that calendar year. However, the Company would not receive any further credit of the amount previously paid for listing on the Global Market and would owe the full [~~\$81,000~~]\$84,000 Capital Market All-Inclusive Annual Listing Fee in the following year.

(E) - (G) No change.

\* \* \* \* \*