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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-73647; File No. SR-NASDAQ-2014-087]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt an All-Inclusive Annual Listing Fee and Modify Certain Other Listing Fees

November 19, 2014.

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 November 7, 2014, 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 adopt an all-inclusive annual listing fee and modify certain other listing fees. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2015.

The text of the proposed rule change is available at http://nasdaq.cchwallstreet.com, at NASDAQ's principal office, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 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

Nasdaq proposes to adopt an all-inclusive annual listing fee, which will simplify billing and provide transparency and certainty to companies as to the annual cost of listing, modify annual fees for listed companies that remain on the existing fee schedule, and clarify certain fee rules.

Nasdaq understands from speaking with listed companies that many companies object to the number and in some cases the variable nature of certain of Nasdaq's listing fees. For example, a company may owe fees when it issues additional shares as a result of events that do not raise money and cannot always be forecasted or budgeted for by the company, such as the exercise by employees of stock options or the implementation of a reverse stock split. To address such concerns, Nasdaq has determined to create an alternative fee schedule, which eliminates fees related to the issuance of additional shares, record-keeping changes, and substitution listing events, thereby simplifying and clarifying for companies the annual fees to which they are subject. In addition, under this alternative fee structure, Nasdaq will also eliminate the fee for a written interpretation of the listing rules and for review by Nasdaq Staff of a compliance plan. As a result,

companies subject to this alternative structure will pay only a single annual fee to Nasdaq, which will include all the ordinary costs of listing for the year.[3] This change will also benefit Nasdaq, by eliminating the multiple invoices that must be sent to a company each year[4] and providing more certainty as to revenue.

As detailed in the charts below, for companies listed on the Capital Market, other than ADRs and Closed-end Funds, the all-inclusive annual fee will range from $42,000 to $75,000; for ADRs listed on the Capital Market the all-inclusive annual fee will range from $37,000 to $45,000. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than ADRs and Closed-end Funds will range from $45,000 to $155,000 and the all-inclusive annual fee for ADRs will range from $45,000 to $75,000. The all-inclusive annual fee for Closed-end Funds listed on any market tier will range from $30,000 to $100,000. In each case, a company's all-inclusive annual fee will be based on its total shares outstanding.[5]

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[3] A company that receives a delisting determination or public reprimand letter must still pay fees for review of that decision by an independent Hearings Panel or the Nasdaq Listing and Hearing Review Council. Companies also will pay application and entry fees to list new classes of securities.

[4] In addition to the annual fee, companies are also billed quarterly for listing of additional shares fees and upon the occurrence of events that result in record keeping and substitution listing fees.

[5] In establishing the fee changes described in this rule filing, including the changes to the number and cut-off point of pricing tiers, Nasdaq considered various factors that distinguish companies, including market tier, shares outstanding, and security type, as well as the perceived use of various Nasdaq regulatory and support services by companies of various characteristics. Pricing for similar securities on other national securities exchanges was also considered. 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 Nasdaq believes that companies of various sizes typically make of Nasdaq's services. In setting the all-inclusive annual fee, Nasdaq reviewed the billing history of more than 1,800 companies that had been listed on Nasdaq for at least four years to determine the fees assessed these companies for all listing-related

While this alternative is being introduced in response to feedback from Nasdaq's listed-companies, Nasdaq also understands that this innovation may not be appealing to all companies and therefore proposes to allow currently listed companies the option to switch to the proposed all-inclusive annual fee schedule for 2015 or to wait until 2018, when it will become mandatory for all companies. However, Nasdaq will offer incentives to companies that voluntarily elect the all-inclusive annual fee schedule for 2015.[6] Specifically, any company that chooses to be subject to the all-inclusive annual fee beginning in 2015 will be billed for 2015, 2016 and 2017 based on the lower of its then-current total shares outstanding or the total shares outstanding reflected in information held by Nasdaq as of December 31, 2014. As such, regardless of any increase in the company's shares outstanding during that time, the tier upon which its all-inclusive annual fee is based will not increase until at least January 1, 2018. In addition, because listing of additional shares fees are billed based on a company's public filings, share changes in the last reporting period of 2014 could be billed after the company has opted in and, in many cases, not until 2015. In order to eliminate confusion by companies that elect to pay the all-inclusive annual fee, and therefore believe they should not receive any further listing of additional shares fee bills, Nasdaq proposes to forgive these listing of additional shares fees. Specifically, a company that elects to be subject to

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services, including those assessed for listing of additional shares, record-keeping changes, substitution listing events, rule interpretations, and compliance plan reviews. Nasdaq established the all-inclusive annual fee for each security type and shares outstanding tier based on this analysis of historical fees paid and regulatory services used, taking into account the changes also proposed to the annual fee schedule.

[6] Companies may make this election on the NASDAQ OMX Listing Center website. A copy of the electronic form that will be used for this purpose is attached to the rule filing as Exhibit 3.

the all-inclusive annual fee will not be billed for listing of additional shares after it notifies Nasdaq of its election by filing the required form. As such, fees for shares issued in the final period of 2014, which otherwise could be billed during 2015, will be forgiven. Nasdaq does not believe that these incentives will have any adverse impact on the amount of funds available for its regulatory programs.

All companies that list after January 1, 2015 will be subject to the proposed all-inclusive annual fee. However, Nasdaq acknowledges that companies that have already applied to list, or apply in the near term, may have made their listing decision based on Nasdaq's current fee schedule. As such, Nasdaq proposes to make the following accommodation for any company that applied to list on Nasdaq prior to January 1, 2015, and lists after that date. Until December 31, 2017, such an applicant will be billed the all-inclusive annual fee based on the lower of its then-current total shares outstanding or the total shares outstanding reflected in information held by Nasdaq as of the date of listing. As such, regardless of any increase in shares outstanding, the tier upon which the all-inclusive annual fee is based for such companies will not increase until at least January 1, 2018.

The proposed rule change also raises the annual fees that will be paid by listed companies that remain on the existing fee schedule. The annual fee paid by most Capital Market companies last increased effective January 1, 2013.[7] Fees have not been increased on Global Market companies since January 1, 2010.[8] Since then, Nasdaq has invested in upgrades to the NASDAQ MarketSite, which houses a state-of-the-art digital

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[7] Securities Exchange Act Release No. 68129 (November 1, 2012), 77 FR 66907 (November 7, 2012) (approving SR–NASDAQ–2012–120).

[8] Securities Exchange Act Release No. 61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (approving SR–NASDAQ–2009–081).

broadcast studio and can be utilized as a New York venue by listed companies, and the MarketSite Tower. In addition, Nasdaq has invested in its online tools, including the Listing Center and Reference Library. The Listing Center allows companies to submit their notifications to Nasdaq electronically, using on-line forms that are pre-populated with much of the required information. The Reference Library contains more than 400 frequently asked questions describing the application of the listing rules, and summaries of approximately 450 interpretive letters and decisions of the Nasdaq Listing and Hearing Review Council. These tools, which provide transparency to the application of the listing rules and simplify some burdens of being a listed company, have had approximately 440,000 page views from January 1 to July 31, 2014. Nasdaq believes it is appropriate to modify its fees to allow continued investment in these initiatives and other innovative ideas that benefit listed companies and enhance the effectiveness of Nasdaq's regulatory program.[9]

The revised annual fees for most companies listed on the Capital Market will range from $32,000 to $45,000 based on total shares outstanding, compared with the current $32,000. The revised annual fees for most companies listed on the Global or Global Select Markets will range from $40,000 to $125,000 based on total shares outstanding, compared with the current range of $35,000 to $99,500.

The following charts summarize the current annual fee, the proposed annual fee and the proposed all-inclusive annual fee applicable to domestic and foreign companies, ADRs, and Closed-end Funds.

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[9] The proposed all-inclusive annual fee described above was based off of the proposed increased annual fees and also reflects Nasdaq's investment in these initiatives and enhancements.

The revised fees for domestic and foreign companies, other than ADRs and Closed-end Funds, are as follows:

Global/Global Select Markets

Total Shares Outstanding	2014 Annual Fee*	2015 Annual Fee*	2015 All-Inclusive Fee**
Up to 10 million shares	$35,000	$40,000	$45,000
10+ to 50 million shares	$37,500	$40,000	$55,000
50+ to 75 million shares	$46,500	$46,500	$75,000
75+ to 100 million shares	$68,500	$69,000	$100,000
100+ to 125 million shares	$89,000	$93,000	$125,000
125+ to 150 million shares	$89,000	$125,000	$135,000
Over 150 million shares	$99,500	$125,000	$155,000

Capital Market

Total Shares Outstanding	2014 Annual Fee*	2015 Annual Fee*	2015 All-Inclusive Fee**
Up to 10 million shares	$32,000	$32,000	$42,000
10+ to 50 million shares	$32,000	$40,000	$55,000
Over 50 million shares	$32,000	$45,000	$75,000

The revised fees for ADRs and Closed-end Funds are as follows:

ADRs	NASDAQ Global/Global Select Market			NASDAQ Capital Market		
Total ADRs Outstanding	2014 Annual Fee*	2015 Annual Fee*	2015 All-Inclusive Fee**	2014 Annual Fee*	2015 Annual Fee*	2015 All-Inclusive Fee**
Up to 10 million ADRs	$30,000	$40,000	$45,000	$32,000	$32,000	$37,000
10+ to 50 million ADRs	$37,500	$40,000	$45,000	$32,000	$40,000	$45,000
50+ to 75 million ADRs	$42,500	$46,500	$52,500	$32,000	$40,000	$45,000
Over 75 million ADRs	$50,000	$69,000	$75,000	$32,000	$40,000	$45,000

Closed-end Funds	NASDAQ Global/Global Select and Capital Markets		
Total Shares Outstanding	2014 Annual Fee*	2015 Annual Fee*	2015 All-Inclusive Fee**
Up to 5 million shares	$15,000	$22,500	$30,000
5 to 10 million shares	$17,500	$22,500	$30,000
10 to 25 million shares	$20,000	$22,500	$30,000
25 to 50 million shares	$22,500	$22,500	$30,000
50+ to 100 million shares	$30,000	$35,000	$50,000
100+ to 250 million shares	$50,000	$55,000	$75,000
Over 250 million shares	$75,000	$80,000	$100,000

* Company must also pay listing of additional shares, record-keeping, substitution listing, and certain regulatory fees.

** Company does not pay any additional listing of additional shares, record-keeping, substitution listing, or certain regulatory fees in connection with its continued listing.

Finally, Nasdaq proposes to make certain clarifying changes to the existing annual fee rule text and incorporate these same concepts in the proposed all-inclusive fee. First, Nasdaq proposes to clarify how annual fees (including the proposed all-inclusive annual fees) are assessed when a company first lists or transfers between market tiers. Specifically, Nasdaq proposes to codify its practice of pro-rating annual fees based on the month of a company's listing, and provide examples to demonstrate how this proration is applied. Nasdaq's rules already provide that annual fees previously paid are not refundable if a company's securities are removed from Nasdaq. Nasdaq proposes to continue to apply this provision to the proposed all-inclusive fee and to also clarify under both the annual fee and the all-inclusive fee that if a company is removed before it has paid the applicable fee, the fee is nonetheless owed and that Nasdaq will not waive the amount owed.[10] In recognition of the fact that a company does not get a refund or waiver of annual fees or all-inclusive annual fees if its securities are delisted, Nasdaq also proposes to clarify that if a company relists in the same year where it had previously paid an annual fee, that the company would not be subject to a second annual fee for that same year.

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[10] This situation would most commonly arise when the Company delists early in the year before it has paid its annual fee invoice.

In the case of a company that transfers between Nasdaq's tiers, the proposed rule change would clarify that the annual fee or all-inclusive annual fee, as applicable, would be prorated based on the month of the company's transfer. However, no amount of the annual fee previously assessed or paid would be refunded if the prorated fee for the new market tier is lower.

The proposed rule would also modify the way a company is charged if it has securities listed on both the Global or Global Select Market and the Capital Market under both the standard annual fee and the all-inclusive annual fee. Presently, while Nasdaq's rules provide that Nasdaq will aggregate shares of all securities listed on the Global Market (including the Global Select Market) in calculating the fee for the Global Market and shares of all securities listed on the Capital Market in calculating the fee for the Capital Market, the rules do not address the situation where the same company has a security listed on each the Global or Global Select Market and the Capital Market. As a result, a company presently is charged separately for the securities on each market tier. Nasdaq believes that this is an inequitable result, and proposes to modify the rules such that in this situation shares listed on the Capital Market are not assessed a separate fee for the Capital Market, but instead are aggregated with the shares listed on the Global or Global Select Market in calculating the fee for that market.[11]

Nasdaq proposes to clarify that where Nasdaq rules waive fees in connection with certain merger situations, the company will receive a credit for the amount waived if the

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[11] This situation currently affects fewer than five companies, which have their common stock listed on the Global or Global Select Market and a secondary class listed on the Capital Market. Each of these companies would pay less under the proposed rule change than they would if Nasdaq continued to assess fees separately for each market tier.

acquired company has already paid that fee. Conversely, in cases where the acquired company has not paid the fee, the forgiven fee will be treated as a waiver. The proposed rule will also extend those fee waivers and credits to companies paying the all-inclusive annual fee. In addition, the proposed rule change will specify which of the entities involved in a merger will receive the waiver or credit. Further, while the rule currently requires that a company apply for a fee waiver if it is applicable, Nasdaq proposes instead to apply these waivers and credits automatically for all eligible companies.

Nasdaq also proposes to delete current IM-5920-1, which provides a waiver for listed securities exempt from registration under Section 12(g) of the Act pursuant to Rule 12g3-2(b). After Nasdaq registered as a national securities exchange, these securities were initially permitted to list pursuant to an exemption from Section 12(a) of the Act.[12] This exemption expired on August 1, 2009, and companies described in the interpretive material can no longer be listed on Nasdaq.

The proposed rule change will also modify the fee accommodation available to companies that list upon emerging from bankruptcy to reflect the addition of the all-inclusive annual fee alternative. Under that rule, the annual fee for a company that lists upon emerging from bankruptcy is the minimum annual fee for the year of listing and the subsequent two full calendar years (the "Bankruptcy Annual Fee Accommodation"). As revised, such a company can opt to transition to the all-inclusive annual fee for 2015, just like any other company. And, consistent with the current rule, a company that does so will pay the minimum all-inclusive annual fee until the end of its second full calendar year following listing. In this manner, irrespective of when the company listed, it will

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[12] Securities Exchange Act Release No. 54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

receive the benefit of the Bankruptcy Annual Fee Accommodation. Moreover, the company will receive the benefits of proposed IM-5910-1(b)(1) for the period after the Bankruptcy Annual Fee Accommodation ends until December 31, 2017.[13]

Last, Nasdaq proposes to modify a cross reference to the record-keeping fee in Rule 5250(e)(3), since that fee will not be payable by all companies, update the preamble to the listing fee section to reflect the changes discussed herein and remove from the rules certain effective dates that are no longer applicable.

While the changes proposed herein are effective upon filing, Nasdaq has designated that the changes be operative on January 1, 2015. Until January 1, 2015, Nasdaq will maintain the existing, applicable fee schedule in its online manual, and will also display the changes proposed herein as being effective in the future.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general and with Sections 6(b)(4) and (5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

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[13] If the company initially listed in 2014, it would pay the minimum $45,000 all-inclusive annual fee for 2015 and 2016 and be subject to the all-inclusive annual fee in 2017 based on its total shares outstanding as of December 31, 2014. Alternatively, if the company initially listed in 2013, it would pay the minimum $45,000 all-inclusive annual fee for 2015 and be subject to the all-inclusive annual fee in 2016 and 2017 based on its total shares outstanding as of December 31, 2014. Fewer than 10 companies have listed on Nasdaq upon emerging from bankruptcy in 2013 or 2014.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4) and (5).

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues.[16] As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable or unfairly discriminatory.

Nasdaq believes that the proposed all-inclusive annual fees are reasonable because Nasdaq is eliminating multiple fees in favor of a single annual fee for listed companies. Under the proposed fee structure, companies can pay less than they would if they remain on the existing structure and pay annual fees, listing of additional shares fees (which can be as much as $65,000 annually) or incur record-keeping or substitution listing fees. The proposed all-inclusive annual fees are also equitably allocated and not unfairly discriminatory because they will be assessed based on a company's shares outstanding, consistent with the way Nasdaq and other national securities exchanges charge fees today.[17] This allocation method, previously approved by the Commission, is not inequitable or unfairly discriminatory because companies with fewer shares outstanding tend to be smaller companies, which may use fewer of the Exchange's services and be more willing to forgo an exchange listing if it costs more. In addition, while companies may pay separate fees today for certain corporate actions, record-keeping events, and share issuances, as well as fees for written interpretations of listing

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[16] The Justice Department noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and IntercontinentalExchange 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.

[17] See NYSE Listed Company Manual Section 902.03 (charging an annual fee per share); NYSE MKT Company Guide Section 141 (charging an annual fee based on tiers of outstanding shares).

rules and reviews of compliance plans, it is not inequitable or unfairly discriminatory to eliminate those fees because all companies will benefit similarly from that elimination in years where they otherwise would have had to pay these fees. In that regard, Nasdaq reviewed the historic activities of companies with various amounts of shares outstanding to assess the use of listing-related services, and established the all-inclusive annual fee for each security type and tier of outstanding shares based on this analysis.[18] Further, the expenses associated with maintaining the infrastructure to process share issuances and corporate actions and events and to review rule interpretation requests and compliance plans is part of Nasdaq's overhead, which helps Nasdaq protect investors and the public interest to the benefit of all listed companies. That necessary overhead does not vary materially based on the number of companies that utilize these services, and it is therefore equitable to spread their costs across all companies. All listed companies also benefit from the transparency provided when Nasdaq publishes summaries of its interpretive letters. As such, spreading the costs of such interpretations across all listed companies represents an equitable allocation of reasonable fees and is not unfairly discriminatory.

Nasdaq also believes that the proposed incentives offered to companies that elect the all-inclusive annual listing fee for 2015 are reasonable and not unfairly discriminatory. These incentives are available equally to all companies and would provide the same benefit to all companies that make the election. In addition, as noted above, Nasdaq will accrue benefits from companies electing the all-inclusive annual listing fee structure, including by eliminating the multiple invoices that are sent to a

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[18] See footnote 5, supra.

company each year and providing more certainty as to revenue, and the incentives are designed to help Nasdaq capture these benefits sooner, which is a reasonable and non-discriminatory reason to provide the incentives to companies.

The proposed increase to the annual fee for companies that do not elect the all-inclusive fee, which increase is also reflected in the all-inclusive annual fee, is also an equitable allocation of reasonable fees and not unfairly discriminatory based on the enhancements Nasdaq has made since fees were last increased in 2010, for Global and Global Select Market companies, and 2013, for most Capital Market companies.[19] As described above, Nasdaq has invested in upgrades to the NASDAQ MarketSite and MarketSite Tower, and its online tools, including the Listing Center and Reference Library, to the benefit of all listed companies and their investors and prospective investors. The proposed increase also will help Nasdaq continue to invest in these initiatives and its regulatory programs.

Changes to the tier ranges for fees charged issuers that do not elect the all-inclusive fee, including ADRs and Closed-end Funds , are not unreasonable nor unfairly discriminatory because these changes were based on a review of the number and size of companies in the existing tier ranges, their historic use of listing-related services, and the fees charged by other markets.

Nasdaq believes that having lower maximum fees for ADRs under the proposed all-inclusive and standard annual fees is an equitable allocation of reasonable fees and not unfairly discriminatory because the U.S. listing is not typically an ADR's primary listing. In addition, because ADRs are foreign private issuers, which currently pay a maximum

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[19] See footnotes 7 and 8, supra.

listing of additional shares fee of $7,500, it is appropriate to charge ADRs a lower all-inclusive annual fee than a domestic company, which could pay a listing of additional shares fee of up to $65,000. On the other hand, Nasdaq believes that it is no longer appropriate to grant a preference for listing of additional shares fees to foreign private issuers other than ADRs, because Nasdaq is generally the primary listing for such companies and other exchanges charge additional listing fees for these companies in the same manner as domestic companies. As a result, Nasdaq proposes that foreign private issuers other than ADRs pay the same all-inclusive annual fee as domestic issuers, even though they are subject to a lower listing of additional shares fee under the current fee schedule. Nasdaq would continue to base its fees for these companies only on the shares issued and outstanding in the United States, however, so to the extent a foreign private issuer has another listing, it would only pay fees on those shares that trade on Nasdaq. As a result, Nasdaq believes it is an equitable allocation of reasonable fees and not unfairly discriminatory to require foreign private issuers, other than ADRs, pay all-inclusive fees on the same schedule as domestic companies. In addition, in light of the historic benefit provided to foreign private issuers by way of a lower listing of additional shares fee, Nasdaq believes it is not unreasonable nor unfairly discriminatory to maintain that benefit until the existing annual fee schedule is completely phased out in 2018.

Nasdaq also believes that it is appropriate to maintain a separate fee schedule for Closed-end Funds based on their unique characteristics. These companies are particularly sensitive to the expenses they incur, given that they compete for investment dollars based on return. In addition, they need to issue shares as a primary means to expand their businesses and raise additional money to invest. As such, Nasdaq already

applies a different annual fee and maximum quarterly listing of additional shares fee for these companies, and the proposed rule change maintains a separate, lower fee schedule for them, which remains an equitable allocation of reasonable fees that is not unfairly discriminatory. Nasdaq believes that continuing to assess separate fees for the review of delisting decisions by the Hearings Panels and the Nasdaq Listing and Hearing Review Council is an equitable allocation of reasonable fees that is not unfairly discriminatory. These reviews come only after Nasdaq staff has either allowed the company the maximum extension permitted under the listing rules or determined that such an extension is inappropriate. Such reviews are not an ordinary cost of a company's annual listing and any benefit from consideration by the Hearings Panel or Listing and Hearing Review Council is limited to the particular company that requests review and is not precedential with respect to other companies. As such, Nasdaq believes it is appropriate to exclude the fees associated with these activities from the all-inclusive annual fee.

Nasdaq believes that the proposed clarifying changes describing how fees are assessed when a company first lists or transfers between Nasdaq's tiers is an equitable allocation of reasonable fees. In addition, these changes and the addition of examples demonstrating the application of various rules will clarify Nasdaq's rules, and thereby remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Nasdaq rules already provide that a company that is removed or voluntarily delists will not receive a refund of the listing fee. Clarifying that a company that transfers to the Capital Market from the Global or Global Select Market receives a credit for the fee previously assessed, but not a refund, aligns the treatment within the rules of these companies with

that of companies that are removed or voluntarily delist. Similarly, clarifying that a company that paid an annual fee or all-inclusive annual fee for the year will not be subject to a second fee if it delists and relists in the same year assures that companies do not pay twice for the same services. As such, in each of these cases the company receives listing services for the year it paid the annual fee, and the proposed changes are therefore equitable allocations of reasonable fees.

Prorating fees for new listings based on the month of listing or transfer assures that companies are not subject to fees before listing and are not subject to the higher fees of a particular market tier before they are listed on that tier, subject to the constraints of Nasdaq's monthly billing cycles. The rules already allocate annual fees in this manner for companies that transfer between Nasdaq market tiers.[20] As such, this method of assessing fees is an equitable allocation of reasonable fees.

Aggregating shares listed on the Global or Global Select Market with shares listed on the Capital Market when calculating fees provides an equitable allocation of fees in a manner that is not unfairly discriminatory because it provides the same benefit to a company with shares on both market tiers as is available to a company with all of its shares on the Global or Global Select Market and such a company does not receive any additional benefit from having some of its shares listed on the Capital Market.

A company that listed upon emerging from bankruptcy currently pays the minimum annual fee for the year of listing and subsequent two years. Allowing such companies that opt in to the all-inclusive annual fee to also pay the minimum fee on that fee schedule during the same period, and forgiving a portion of the all-inclusive annual

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[20] Nasdaq Rules 5910(c)(3), 5910(d)(6) and 5920(c)(5).

fee in certain merger situations where the annual fee is similarly forgiven, is not unreasonable or unfairly discriminatory because these proposed changes extend benefits available to companies under the existing fee schedule to companies that will be on the all-inclusive fee schedule, thereby perpetuating features that the Commission has previously concluded satisfy the statutory requirements. Clarifying when a company receives a credit, instead of a waiver, and which company involved in a merger receives that credit or waiver clarifies Nasdaq's rules and is not unreasonable or unfairly discriminatory because these clarifications give effect to the intent of the current waivers while respecting the difference between the two entities involved in a merger.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act[21] in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the fees are designed, in part, to ensure that there are adequate resources for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing. This rule proposal does not burden competition

[21] 15 U.S.C. 78f(b)(5).

with other listing venues, which are similarly free to set their fees. Further, this proposed rule change would introduce an all-inclusive annual listing fee, which no other market currently offers and which may therefore increase competition with other listing venues. Nasdaq believes that this innovative fee proposal reflects the existing competition between listing venues and will further enhance such competition. For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[22] and paragraph (f) of Rule 19b-4 thereunder.[23]

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 necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act.

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:

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[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b-4(f).

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-2014-087 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2014-087. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-2014-087 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.[24]

Kevin M. O'Neill,
Deputy Secretary.

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[24] 17 CFR 200.30-3(a)(12).