



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99042; File No. SR-NASDAQ-2023-048]

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

November 30, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,² notice is hereby given that on November 15, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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, 2024.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) modify the entry fee for a Company that 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 certain domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets; and (iii) replace the tiered all-inclusive annual listing fee structure with a flat fee of \$81,000 for an Acquisition Company, as defined below.

All revised fees will be applied in the same manner to all issuers and the changes will not disproportionately affect any specific category of issuers. While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2024.

Entry Fees on the Nasdaq Global Market

Currently, Nasdaq charges companies listing pursuant to Rule 5910(a)(1)(A)(i) a \$270,000 entry fee the first time the company lists a class of its securities (not otherwise identified in the Rule 5900 Series) on the Nasdaq Global and Global Select Market. Nasdaq is proposing to increase the entry fee for these companies from \$270,000 to \$295,000 to better align its fees with the value of a listing to issuers and to reflect costs in servicing these listings, such as from the remodeling of a portion of the New York Headquarters used for company events, including market opening and closing bells, conducting the required associated regulatory oversight, and Nasdaq's advocacy efforts on behalf of the public company model. In establishing these fee changes Nasdaq also considered the competitive atmosphere in which the Exchange operates.

Nasdaq does not propose to increase the minimum entry fees described in Rule 5910(a) charged for additional classes of equity securities, Acquisition Companies, Closed-End Funds, and any class of rights.³ The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current fee levels. Further, issuers of those types of listings are not generally entitled to the types of services provided and resources offered in connection with a primary equity security listing. As such, the Exchange has not incurred the same level of cost increases associated with them.

While the new entry fees are effective upon filing and Nasdaq has proposed that they be operative on January 1, 2024, Nasdaq will offer a short period for any company that applies before January 1, 2024 to complete the listing process and list under the current fee schedule. Specifically, any company that submits its application to Nasdaq before January 1, 2024, and lists before February 15, 2024, would be subject to fees under the existing fee schedule. Nasdaq believes that it is appropriate to continue to apply the prior fee schedule for these companies because they will be substantially far along in the process of going public at the time of this filing and may have made decisions based on that fee schedule.

All-Inclusive Annual Listing Fees

Currently, for companies listed on the Capital Market, other than Acquisition Companies (i.e., 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), ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee described in Listing Rule 5920 ranges from \$47,000 to \$84,000; for Acquisition Companies listing on the Capital Market the all-inclusive annual fee ranges from \$70,000 to \$81,000; and for ADRs listed on the Capital Market the all-inclusive annual fee ranges from \$47,000 to \$56,500.⁴ On the Global and Global Select Markets, the all-inclusive annual fee

³ Nasdaq also is not proposing to amend the Entry Fees on the Nasdaq Capital Market.

⁴ Nasdaq is not proposing to amend the all-inclusive annual fee for Closed-end Funds and Limited

described in Listing Rule 5910 for companies other than Acquisition Companies, ADRs, Closed-end Funds and Limited Partnerships ranges from \$50,000 to \$173,500; for Acquisition Companies on the Global and Global Select Markets the all-inclusive annual fee ranges from \$70,000 to \$81,000; for ADRs the all-inclusive annual fee ranges from \$50,000 to \$89,500.⁵ In each case, a company's all-inclusive annual fee is based on its total shares outstanding.⁶

Nasdaq proposes to amend the all-inclusive annual fee for certain domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,⁷ effective January 1, 2024:

Global/Global Select Markets

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2024
Equity securities other than, in part, Acquisition Companies, ADRs, Closed-end Funds and Limited Partnerships	Up to 10 million shares	\$50,000	\$52,500
	10+ to 50 million shares	\$62,000	\$65,500
	50+ to 75 million shares	\$84,000	\$85,000
	75+ to 100 million shares	\$112,000	\$113,500

Partnerships on any Nasdaq tier.

⁵ Rule 5930 sets forth the all-inclusive annual listing fees applicable to SEEDS and Other Securities; and Rule 5940 sets forth the all-inclusive annual listing fees applicable to Exchange Traded Products that are listed on the Nasdaq Global Market. Nasdaq is not proposing to amend these rules.

⁶ 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).

⁷ In establishing the fee changes described in this rule filing, 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 to better align fees with the size of the companies that pay those fees. Pricing for similar securities on other national securities exchanges was also considered. Based on this analysis, Nasdaq does not propose to modify the structure and the number of fee tiers within the annual fee schedule at this time.

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2024
	100+ to 125 million shares	\$140,000	\$141,500
	125+ to 150 million shares	\$151,500	\$157,500
	Over 150 million shares	\$173,500	\$182,500
ADRs	Up to 10 million ADRs and other listed equity securities	\$50,000	\$52,500
	10+ to 50 million ADRs and other listed equity securities	\$56,500	\$59,500
	50+ to 75 million ADRs and other listed equity securities	\$67,000	\$70,500
	Over 75 million ADRs and other listed equity securities	\$89,500	\$94,000

Capital Market

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2024
Equity securities other than Acquisition Companies, ADRs, Closed-end Funds and Limited Partnerships	Up to 10 million shares	\$47,000	\$49,500
	10+ to 50 million shares	\$62,000	\$65,500
	Over 50 million shares	\$84,000	\$85,000
ADRs	Up to 10 million ADRs and other	\$47,000	\$49,500

	Total Shares Outstanding	Annual fee before the proposed change	Annual Fee effective January 1, 2024
	listed equity securities		
	Over 10 million ADRs and other listed equity securities	\$56,500	\$59,500

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 2024.

Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange’s costs related to listing equity securities, such as from the remodeling of a portion of the New York Headquarters used for company events, including market opening and closing bells, conducting the required associated regulatory oversight, and Nasdaq’s advocacy efforts on behalf of listed companies, and the corresponding value of such listing to companies. In establishing these fee changes Nasdaq also considered the competitive atmosphere in which the Exchange operates.

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:⁸

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

Nasdaq now proposes to replace the tiered structure for Acquisition Companies listed on the Nasdaq Capital, Global and Global Select Markets with a flat fee of \$81,000 effective

⁸ See Listing Rules 5910(b)(2)(F) and 5920(b)(2)(G).

January 1, 2024. 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 all-inclusive annual listing fee for Acquisition Companies because the value of the listing for an Acquisition Company, given the limited scope of operations and the requirement to engage in a merger or acquisition with one or more unidentified companies within a 36 months of the effectiveness of the Acquisition Company's IPO registration statement, is substantially similar regardless of the number of shares the Acquisition Company has outstanding.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq notes that the Exchange operates in a highly competitive marketplace for the listing of companies.¹¹ 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 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. Moreover, new competitors can enter the space, including existing exchanges without listing programs.¹² Accordingly, competitive forces constrain the Exchange's listing

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ 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.

¹² In that regard, Nasdaq notes that CBOE BZX has announced a new listing offering. See "Cboe Launches New Global Listing Offering for Companies and ETFs of the Purpose-Driven Innovation Economy" (June 2, 2023), available at <https://ir.cboe.com/news/news-details/2023/Cboe-Launches-New-Global-Listing->

fees and changes to the listing fees can have a direct effect on the ability of Nasdaq to compete for new listings and retain existing listings.

Entry Fees on the Nasdaq Global Market

Nasdaq believes that the modification of the entry fees on the Nasdaq Global and Global Select Markets represents a reasonable attempt to address the Exchange's increased costs in servicing these listings and conducting the required associated regulatory oversight while also considering competitive dynamics and continuing to attract new listings. Nasdaq proposes to make the aforementioned fee change to better reflect the value of such listing to companies. While newly listing companies would pay a higher initial listing fee under the proposed fee than under the current rule, 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 consistent with the proposed fees. Nasdaq does not propose to increase the entry fees described in Rule 5910(a) charged for additional classes of equity securities, Acquisition Companies, Closed-End Funds, and any class of rights. The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current fee levels, as those types of listings do not generally entitle issuers to the types of services provided in connection with a primary common or preferred stock listing of an operating company and the Exchange has therefore not incurred the same level of cost increase associated with them. As such, Nasdaq does not think it is unfairly discriminatory to increase the entry fees only for operating companies listing their primary equity security.

Nasdaq also does not think it is unfairly discriminatory to allow companies that apply to list before January 1, 2024, and list before February 15, 2024, to pay the existing fee schedule. These companies will be substantially far along in the process of going public at the time of this filing and may have made decisions based on the existing fee schedule.

All-Inclusive Annual Listing Fees

Nasdaq believes that the proposed amendments to Listing Rules 5910(b)(2) and 5920(b)(2) to increase the all-inclusive annual fees listing fees as set forth above are reasonable because of the increased costs incurred by Nasdaq, including due to price inflation. In that regard, the Exchange notes that its general costs to support listed companies and conduct the required associated regulatory oversight have increased. 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 the remodeling of a portion of Nasdaq's New York Headquarters used for company events, including market opening and closing bells, and the investment in technology to support ongoing trading.

The Exchange also believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of certain of the fees to reflect increases in operating costs and the perceived value of a listing, including as a result of Nasdaq's advocacy efforts on behalf of listed companies. Similarly, as the fee structure remains effectively unchanged apart from increases in the rates paid by certain issuers, as described above, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer of equity securities.

The Exchange believes that the proposal to increase annual fees for operating companies is not unfairly discriminatory because Nasdaq will maintain the current fee structure, based on shares outstanding, and the same fee schedule will apply to all such issuers. While the Exchange does not propose to increase the minimum annual fees charged for various products including Closed-end Funds, Limited Partnerships, and securities covered by Rule 5930 (that sets forth the all-inclusive annual listing fees applicable to SEEDS and Other Securities), Rule 5935 (that sets forth the all-inclusive annual listing fees applicable to Non-Convertible Bonds) and Rule 5940

(that sets forth the all-inclusive annual listing fees applicable to Exchange Traded Products), the Exchange believes that this is not unfairly discriminatory because the benefits the issuers of those other types of securities receive in connection with their listings are consistent with the current fee levels paid by those issuers. Specifically, those types of listings do not generally benefit to the same extent from services provided by the Exchange and the Exchange's advocacy efforts as do issuers of operating company equity securities.

All-Inclusive Annual Listing Fee for Acquisition Companies

Nasdaq believes the proposed change to apply a flat all-inclusive annual fee for all listed Acquisition Companies is reasonable, and not unfairly discriminatory, because the value of the listing to an Acquisition Company, and Nasdaq's costs in regulating and supporting the listing of an Acquisition Company, is substantially similar regardless of the number of shares the company has outstanding or its market tier, and, as revised, all Acquisition Companies would pay the same fee. While some companies would pay a higher fee under the proposed flat fee than under the current rate, Nasdaq believes that this change is not unfairly discriminatory because the value of the listing to an Acquisition Company is substantially similar regardless of the number of shares the company has outstanding. Pricing for similar securities on other national securities exchanges was also considered, and Nasdaq believes that a proposed flat all-inclusive annual listing fee for Acquisition Companies is reasonable given the competitive landscape.¹³

The proposed renumbering of certain rules to improve their clarity and readability is ministerial in nature and has no substantive effect.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The market

¹³ See, e.g., Section 902.11 of the NYSE Listed Company Manual imposing a flat annual fee of \$85,000 on Acquisition Companies.

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. The Exchange also does not believe that the proposed rule change will have any meaningful impact on competition among listed companies because all similarly situated companies will be charged the same fee.

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.¹⁴

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 (<https://www.sec.gov/rules/sro.shtml>); or

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-048 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-2023-048. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-048 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

¹⁵ 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

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