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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99580; File No. SR-NASDAQ-2024-006]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Temporary Listing Fee Waiver for Ukrainian Companies Until December 31, 2028

February 21, 2024.

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 February 12, 2024, 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 a temporary listing fee waiver for Ukrainian companies until December 31, 2028

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 waive certain entry fees (including the application fee) and All-Inclusive Annual fees for Ukrainian Companies listing on Nasdaq for a time period until December 31, 2028.³ This fee waiver will be applicable to Ukrainian Companies listed on or after the effective date of this rule change.

On February 24, 2022, Russia invaded Ukraine causing a humanitarian crisis that has left tens of thousands of dead, displaced millions and sown economic turmoil in Ukraine. Ukraine’s economy has been crippled and some cities have faced massive devastation from the fighting. Ukraine's economy contracted by 30% in 2022 and was forecast to grow by of 1% to 3% in 2023, according to the International Monetary Fund.⁴

The White House supports Ukrainian efforts to stop the aggression and is also focused on reconstruction efforts. In this regard, President Biden recently stated that:

The United States will continue our work, together with partners all around the world, to support Ukraine’s ability to defend itself against Russia’s aggression, to uphold the foundational principles of the UN Charter, and to help the Ukrainian people build the secure, prosperous, and independent future they deserve.⁵

Further, according to USAID, a United States Agency that leads the U.S. government’s international development and humanitarian efforts:

³ As of the date of this filing, there are no Ukrainian Companies listed on Nasdaq.

⁴ See Reuters, Blood and billions: the cost of Russia's war in Ukraine at <https://www.nasdaq.com/articles/explainer-blood-and-billions:-the-cost-of-russias-war-in-ukraine>.

⁵ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/24/statement-from-president-joe-biden-on-ukraine-independence-day/>

Since Putin's full-scale war against Ukraine on February 24, 2022, the United States, through USAID, has surged support to rapidly address urgent humanitarian needs, while also investing in Ukraine's economy and building resilient infrastructure and institutions to help Ukraine recover from Putin's ruthless attacks and sustain a lasting peace.⁶

Nasdaq notes that the Government of the United States has identified the private sector as one of key factors for the successful Ukraine reconstruction efforts and is encouraging investment in Ukraine.

Similarly, Nasdaq also believes that reconstruction of Ukrainian infrastructure damaged or destroyed during the invasion and creation of a new European economic model for Ukraine will be based on free enterprise, attraction of international capital, the best international experience and market practices, and a fair and attractive business climate. As such, Nasdaq proposes to temporarily waive entry and annual fees for Ukrainian Companies listing on Nasdaq. Specifically, Nasdaq proposes to waive the entry fee (including the application fee) and the All-Inclusive Annual Listing Fee described in Rule 5910 (with respect to the Nasdaq Global Market, including the Nasdaq Global Select Market) and Rule 5920 (with respect to the Nasdaq Capital Market) for Ukrainian Companies until December 31, 2028.⁷ Nasdaq believes that this temporary waiver will ease the listing of Ukrainian companies on Nasdaq and thereby help those companies to attract international capital, facilitating capital formation and creating opportunities for economic growth both for these companies and the Ukrainian economy overall.

Nasdaq proposes to define a Ukrainian Company for purposes of this fee waiver to mean a Company⁸ incorporated in Ukraine or a Company whose business is principally administered in Ukraine. A Company's business will be considered to be principally

⁶ See USAID Response in Ukraine at <https://www.usaid.gov/usaid-response-ukraine>.

⁷ Based on conditions at the end of the waiver, Nasdaq may file a subsequent proposed rule change to extend this waiver.

⁸ Rule 5005(a)(6) defines "Company" as the issuer of a security listed or applying to list on Nasdaq.

administered in Ukraine if: (i) at least 50% of the Company's assets are located in that jurisdiction; or (ii) at least 50% of the Company's revenues are derived from that jurisdiction. The proposed definition of a Ukrainian Company is based in part on Rule 5005(a)(37) which defines when a company is from a Restrictive Market.⁹ Nasdaq believes the proposed definition of a Ukrainian Company is appropriate given the significant connection it requires to Ukraine and the Exchange's experience in applying the similar definition.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, Nasdaq believes that the proposed fee waivers are equitable and not unfairly discriminatory as they are being implemented to support companies that are incorporated in or whose business is principally administered in Ukraine – a country operating under conditions unprecedented during this century caused by a full scale military invasion, as described above. Nasdaq believes that Ukraine stands in unique circumstances, facing an almost two-year long invasion by a member of the United Nations Security Council, while the United Nations, in just its eleventh emergency special session ever, overwhelmingly adopted a resolution demanding the

⁹ Rule 5005(a)(37) defines Restrictive Market as a jurisdiction that does not provide the Public Company Accounting Oversight Board with access to conduct inspections of public accounting firms that audit Nasdaq-listed companies. A Company's business will be considered to be principally administered in a Restrictive Market if: (i) the Company's books and records are located in that jurisdiction; (ii) at least 50% of the Company's assets are located in such jurisdiction; or (iii) at least 50% of the Company's revenues are derived from such jurisdiction. While the location of the Company's books and records were a factor in determining whether a company was in a Restrictive Market because of the inability of the PCAOB to inspect those books and records, Nasdaq does not believe that element is appropriate as a sole determination as to whether a company is principally administered in Ukraine.

¹⁰ Id.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

Russian Federation immediately end its invasion and unconditionally withdraw.¹³ Nasdaq believes that waiving these fees will facilitate the listing of Ukrainian companies on Nasdaq in the United States, providing them access to a deep pool of liquidity to raise capital to use in the rebuilding of the Ukrainian economy, consistent with the goals of the United States government and Nasdaq's interest in speeding the recovery of the Ukraine economy in these unique circumstances. Finally, Nasdaq believes that it will also allow these companies to reinvest the money that otherwise would be paid to Nasdaq into those reconstruction efforts.

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 proposed waiver will be available to all similarly situated issuers on the same basis. Moreover, the companies eligible for the waiver will be faced with operating under conditions unprecedented during this century caused by a full scale military invasion, as described above, – conditions not generally experienced by other companies that are not eligible for the waiver. As such, the Exchange does not believe that the proposed temporary waivers will have any meaningful effect on the competition among issuers listed on the Exchange.

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change will impose any burden on intermarket competition.

¹³ See General Assembly Overwhelmingly Adopts Resolution Demanding Russian Federation Immediately End Illegal Use of Force in Ukraine, Withdraw All Troops at <https://press.un.org/en/2022/ga12407.doc.htm>.

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
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-006 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-2024-006. This file number should be included on the subject line if email is used. To help the Commission process and

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-006 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

Sherry R. Haywood,

Assistant Secretary.

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¹⁵ 17 CFR 200.30-3(a)(12).