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By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68677; File No. SR-NASDAQ-2013-003]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase the Record-Keeping and Substitution Listing Fees Payable by Companies Listed on Nasdaq

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 2, 2013, 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 Nasdaq. 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

Nasdaq is proposing to modify the record-keeping and substitution listing fees payable by companies listed on Nasdaq. While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule on January 2, 2013.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

#### 5910. The [NASDAQ] *Nasdaq* Global Market

(a)–(d) No change.

(e) Recordkeeping Fee.

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of [\$2,500] *\$7,500* to Nasdaq

and submit the appropriate form as designated by Nasdaq.

(f) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of [\$7,500] *\$15,000* to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

#### 5920. The Nasdaq Capital Market

(a)–(c) No change.

(d) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of [\$2,500] *\$7,500* to Nasdaq and submit the appropriate form as designated by Nasdaq.

(e) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of [\$7,500] *\$15,000* to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

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#### 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. 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 modify the fees charged to Nasdaq-listed companies for record-keeping changes and substitution listings. Currently, a company owes a \$2,500 record-keeping fee when it makes a change to its name, the par value or title of its security, or its symbol.<sup>4</sup> This fee was adopted in 2003

and has never been changed.<sup>5</sup> Nasdaq proposes to increase this record-keeping fee to \$7,500, for notifications made after January 2, 2013.

In addition, a company currently owes a \$7,500 substitution listing fee when it affects a reverse stock split, re-incorporation or a change in the company’s place of organization, forms a holding company that replaces the listed company, reclassifies or exchanges the company’s listed shares for another security, lists a new class of securities in substitution for a previously-listed class of securities, or makes any technical change whereby the shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.<sup>6</sup> This fee was adopted in 2005 and has never been changed.<sup>7</sup> Nasdaq proposes to increase this substitution listing fee to \$15,000, for notifications made after January 2, 2013.

Nasdaq also proposes to correct capitalization in the heading of Rule 5910 to be consistent with the capitalization used in the remainder of the Rule 5000 Series.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> 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.

Nasdaq believes that the proposed fees are reasonable because they will reflect Nasdaq’s higher costs related to processing record keeping changes and substitution listings since the fees were set in 2003 and 2005, respectively. In that regard, Nasdaq notes that expenses surrounding the processing and distribution of these changes, including technology costs and salaries, have increased since the fees were set, but that the fees have not been concomitantly increased. In addition, Nasdaq has developed an electronic notification system for listed companies and expects to launch early in 2013 an

<sup>5</sup> Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (approving SR-NASD-2003-127).

<sup>6</sup> See Rules 5910(d) and 5920(c) [sic] and Rule 5005(a)(40).

<sup>7</sup> Securities Exchange Act Release No. 52712 (November 1, 2005), 70 FR 67511 (November 7, 2005) (approving SR-NASD-2004-162).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

<sup>4</sup> See Rule 5910(e) and 5920(d).

interface allowing companies to notify Nasdaq about these changes through an on-line portal.<sup>10</sup> This web-based interface will simplify the notification process for the company and help eliminate errors that may otherwise have resulted from re-keying information. While over time, Nasdaq hopes that this technology will reduce the costs associated with maintaining the process, Nasdaq has invested significant up-front development costs in creating the system. Nasdaq has also committed resources to its online reference library, which includes a number of FAQs providing advice about these changes and the related forms and fees.<sup>11</sup>

Nasdaq also believes that the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all companies listed on Nasdaq that effect one of these changes. In this manner, the proposed fees will help assure that the expenses arising from changes initiated by certain companies are borne by those companies.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily switch exchanges if they deem the listing fees excessive.<sup>12</sup> In such an

<sup>10</sup> See the NASDAQ OMX Listing Center at [https://listingcenter.nasdaqomx.com/Show\\_Doc.aspx?File=listing\\_information.html#forms](https://listingcenter.nasdaqomx.com/Show_Doc.aspx?File=listing_information.html#forms). While the Change in Company Record and Substitution Listing Event forms are currently available as pdfs, which have to be emailed to Nasdaq, they are being converted into online forms, which can be completed and submitted to Nasdaq electronically.

<sup>11</sup> <https://listingcenter.nasdaqomx.com/MaterialHome.aspx?mcd=LQ>.

<sup>12</sup> The Justice Department recently noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After

environment, NASDAQ must continually review its fees to assure that they remain competitive. In that regard, Nasdaq notes that the proposed fees remain similar to the fees charged by the New York Stock Exchange.<sup>13</sup>

#### *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. In addition, Nasdaq's proposed fees are similar to the fees charged by its competitors. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

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).

<sup>13</sup> NYSE charges \$7,500 for "changes that involve modifications to [NYSE] records, for example, changes of name, par value, title of security or designation, and for applications relating to poison pills." See Section 902.03 of the NYSE Listed Company Manual and Securities Exchange Act Release No. 68024 (October 10, 2012), 77 FR 63388 (October 16, 2012) (SR-NYSE-2012-51). In addition, NYSE charges \$15,000 for a new listing where the "change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights." These changes include a change in a company's state of incorporation or a reincorporation or formation of a holding company that replaces a listed company, and a reverse stock split. See Section 902.03 of the NYSE Listed Company Manual.

#### *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>14</sup> 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. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-003 on the subject line.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

### Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2013-003. 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 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 Web site 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 such 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-2013-003 and should be submitted on or before February 13, 2013.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-01245 Filed 1-22-13; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68662; File No. SR-NSX-2012-15]

#### Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 To Amend the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Act

January 15, 2013.

#### I. Introduction

On September 26, 2012, National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to modify the Exchange's rules for compensation committees of listed issuers to comply with Rule 10C-1 under the Act. On October 10, 2012, NSX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on October 17, 2012.<sup>4</sup> The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 13, 2013.<sup>5</sup> The Commission received no comment letters on the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of Proposed Rule Change

##### A. Background: Rule 10C-1 Under the Act

On March 30, 2011, to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection

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

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

<sup>3</sup> Amendment No. 1 replaced the filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 68039 (October 11, 2012), 77 FR 63914 ("Notice").

<sup>5</sup> See Securities Exchange Act Release No. 68313 (November 28, 2012), 77 FR 71853 (December 4, 2012).

<sup>6</sup> The Commission notes that comments were received on substantially similar proposals filed by the Nasdaq Stock Market LLC (Nasdaq) and the New York Stock Exchange, LLC ("NYSE"). For a summary and discussion of these comments see Securities Exchange Act Release Nos. 68640 (January 11, 2013) ("Nasdaq Approval Order") and 68639 (January 11, 2013) ("NYSE Approval Order").

Act of 2010 ("Dodd-Frank Act"),<sup>7</sup> the Commission proposed Rule 10C-1 under the Act,<sup>8</sup> which directs each national securities exchange (hereinafter, "exchange") to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C-1.<sup>9</sup>

Rule 10C-1 requires, among other things, each exchange to adopt rules providing that each member of the compensation committee<sup>10</sup> of a listed issuer must be a member of the board of directors of the issuer, and must otherwise be independent.<sup>11</sup> In determining the independence standards for members of compensation committees of listed issuers, Rule 10C-1 requires the exchanges to consider relevant factors, including, but not limited to: (a) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the issuer to the director (hereinafter, the "Fees Factor"); and (b) whether the director is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer (hereinafter, the "Affiliation Factor").<sup>12</sup>

In addition, Rule 10C-1 requires the listing rules of exchanges to mandate that compensation committees be given the authority to retain or obtain the advice of a compensation adviser, and have direct responsibility for the appointment, compensation and oversight of the work of any compensation adviser they retain.<sup>13</sup> The exchange rules must also provide that each listed issuer provide for appropriate funding for the payment of reasonable compensation, as determined by the compensation committee, to any

<sup>7</sup> Public Law 111-203, 124 Stat. 1900 (2010).

<sup>8</sup> See Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) ("Rule 10C-1 Proposing Release").

<sup>9</sup> See Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) ("Rule 10C-1 Adopting Release").

<sup>10</sup> For a definition of the term "compensation committee" for purposes of Rule 10C-1, see Rule 10C-1(c)(2)(i)-(iii).

<sup>11</sup> See Rule 10C-1(a) and (b)(1).

<sup>12</sup> See *id.* See also Rule 10C-1(b)(1)(iii)(A), which sets forth exemptions from the independence requirements for certain categories of issuers. In addition, an exchange may exempt a particular relationship with respect to members of a compensation committee from these requirements as it deems appropriate, taking into consideration the size of an issuer and any other relevant factors. See Rule 10C-1(b)(1)(iii)(B).

<sup>13</sup> See Rule 10C-1(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).