

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100518; File No. SR-NASDAQ-2024-031)

July 12, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Fee for Requests for Review of Membership Decisions and Decisions Related to Changes in Ownership, Control, or Material Business Operations

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 June 28, 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 establish a fee for requests for review of membership decisions and decisions related to changes in ownership, control, or material business operations, as described further below.

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.

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

Pursuant to General 3, Rule 1015, Applicants³ may seek review of a decision by the Exchange’s Membership Department regarding an application for membership under General 3, Rule 1014 (“Membership Decisions”). In addition, pursuant to Rule 1015, Members may seek review of a decision by the Exchange’s Membership Department (“Department”) regarding changes to its ownership, control, or business operations under Rule 1017 (“Change Decisions”). Rule 1015(a) provides that, to initiate a review, an Applicant must, within 25 days after service of a decision under Rule 1014 or 1017, file a written request for review with the Exchange Review Council.⁴ Rule 1015(a) specifies that a request for review shall state with specificity why the Applicant believes that the Department’s decision is inconsistent with the bases for denial set forth in Rule 1014, or

³ The term “Applicant” means a person that applies for membership in the Exchange under Rule 1013 or a Member that files an application for approval of a change in ownership, control, or business operations under Rule 1017. See General 3, Rule 1011(a).

⁴ The Exchange Review Council serves as the appellate body for disciplinary actions appealed from FINRA Hearings Panels, Nasdaq Membership Department determinations, decisions made by the Exchange relating to market maker withdrawal/reinstatement and obvious error and catastrophic error petitions, and Nasdaq Phlx floor-based rules.

otherwise should be set aside, and state whether a hearing is requested. Rule 1015(a) also specifies that the Applicant must simultaneously file a copy of the request with the Department.

Nasdaq proposes to establish a fee of \$15,000 for review of Membership Decisions and Change Decisions by the Exchange Review Council (“ERC”). Nasdaq proposes to establish a fee for review by the ERC to offset some of the costs that the Exchange incurs in preparing for and conducting reviews of Membership Decisions and Change Decisions, as described further below.

The costs of the review process include significant time and resources to maintain the infrastructure for the processes and to prepare for and conduct hearings (if requested). For example, with respect to review by the ERC, Nasdaq incurs expenses related to the Nasdaq staff that facilitates the hearings and provides support to the ERC members, expenses related to regulatory services provided by FINRA, the honorarium paid to the ERC members, and the cost of maintaining a transcript of the hearing. Nasdaq staff and FINRA are involved in reviewing Applicant submissions, requesting and reviewing additional documents and information provided by Applicants, preparing and reviewing briefs, and preparing exhibits and evidence for hearings. In addition, Nasdaq staff may attend hearings and other meetings related to these reviews. Where hearings are held in person, Nasdaq also incurs expenses related to securing and maintaining a location for the hearings and travel expenses for ERC members. Nasdaq staff must manage and coordinate the membership application dockets, maintain the systems that track membership matters, and draft initial decisions for review by the ERC members.

The Exchange Board has authority to call the ERC decision for review. There are related costs associated with the Exchange Board review of every ERC decision in determining whether to call a decision for review as described in General 3, Rule 1016. In that regard, Nasdaq incurs expenses related to the Nasdaq staff that facilitates the call for review process and that provides legal counsel and support to the Exchange Board members, as well as the honorarium paid to the Exchange Board. In addition, to the extent a decision is appealed to the SEC, the Exchange would incur additional costs in connection with such an appeal.

The Exchange estimates that the expenses incurred in such reviews are comparable to or greater than the expenses incurred during reviews before a Hearings Panel⁵ or appeals to the Nasdaq Listing and Hearing Review Council (“NLHRC”).⁶ Nasdaq charges a fee of \$20,000 for review by a Hearings Panel⁷ and a fee of \$15,000 to appeal a Hearings Panel decision to the NLHRC.⁸ Accordingly, Nasdaq proposes to establish a fee of \$15,000 for reviews of Membership Decisions and Change Decisions by the ERC to offset expenses associated with such reviews. The new fee will allow Nasdaq to recoup a portion of the expenses it incurs in the review process. The Exchange

⁵ When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. See Rule 5815.

⁶ A Company may appeal a Hearings Panel Decision to the NLHRC. See Rule 5820.

⁷ See Rule 5815(a)(3).

⁸ See Rule 5820(a).

has reviewed all costs associated with ERC reviews and does not expect or intend that the proposed fee will exceed the costs.⁹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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, establishing the proposed fee is reasonable because it will help offset Nasdaq's costs related to reviews of Membership Decisions and Change Decisions, which serve to ensure that Nasdaq's membership standards are properly enforced for the protection of investors. The proposed changes are equitable and not unfairly discriminatory because they would apply equally to all Applicants that choose to request a review of a Membership Decision or Change Decision. In addition, aligning the fee for reviews with the underlying costs of the review process is equitable because doing so will help minimize the extent that Applicants that meet all membership standards may subsidize the costs of review for Applicants that fail to meet the membership standards.

Nasdaq also believes that the proposed fee is consistent with the investor protection objectives of Section 6(b)(5) of the Act¹² in that it is designed to promote just

⁹ A precise cost-per-appeal analysis is not possible given the need to maintain an infrastructure for which the Exchange incurs expenses irrespective of the number of reviews requested in a given year.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² 15 U.S.C. 78f(b)(5).

and equitable principles of trade, to remove impediments to a free and open market and national market systems, and in general to protect investors and the public interest. Specifically, the fee is designed to provide adequate resources for appropriate preparation to conduct reviews of Membership Decisions and Change Decisions, which help to assure that the Exchanges' membership standards are properly enforced and investors are protected.

Nasdaq also believes that the proposed fee is consistent with Section 6(b)(7) of the Act,¹³ in that the proposed fee is consistent with the provision by the Exchange of fair procedures for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange. In particular, the Exchange believes that the new fee should not deter Applicants from availing themselves of the right to appeal because the fee will still be set at a level that will be affordable for Applicants. Nasdaq does not believe that the proposed fee is unduly burdensome or would discourage any Applicant from seeking a review.

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. As discussed above, this proposed fee is based on the costs to the Exchange to provide a review process for Membership Decisions and Change Decisions, which is in turn necessary to ensure investor protection as well as a transparent process for Applicants. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fees at a

¹³ 15. U.S.C. 78f(b)(7).

particular venue to be excessive or opportunities available at other venues to be more favorable. Applicants may freely choose alternative venues based on the aggregate fees assessed. This rule proposal does not burden competition with other venues, which are similarly free to align their fees based on the costs incurred by the process they offer. 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.

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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-031 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-2024-031. 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-2024-031 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

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).