

how the Network Access Fee is assessed, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change is reasonable because the amount assessed for unicast connectivity and multicast connectivity to TPHs using 1 Gbps Network Access Port(s) is the same. Additionally, the Exchange believes this change is equitable and not unfairly discriminatory because it will apply to all TPHs who use a 1 Gbps Network Access Port equally. The Exchange notes that whether a TPH receives unicast and multicast connectivity via a single 1 Gbps Network Access Port, two separate 1 Gbps Network Access Ports or two separate 10 Gbps Network Access Ports, in each instance, the TPH would be charged for each type of access regardless of how many physical ports they use.

Lastly, the Exchange believes it will be beneficial to market participants to make it explicitly clear that it is the "executing" CTPH that would be rebated under the Clearing Trading Permit Holder Position Re-Assignment Rebate Program. The Exchange believes this proposed rule change reduces confusion as to which CTPHs are entitled to a rebate under the Rebate Program, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to alleviate confusion are not intended for competitive reasons and only apply to CBOE.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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)

of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. 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 will institute proceedings to determine whether the proposed rule change 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. Please include File Number SR-CBOE-2014-065 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-CBOE-2014-065. 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-CBOE-2014-065 and should be submitted on or before September 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72899; File No. SR-NASDAQ-2014-067]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Rule 5305 To Eliminate the Automatic Transfer of Companies From The NASDAQ Global Market to The NASDAQ Global Select Market

August 22, 2014.

I. Introduction

On June 25, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules in order to eliminate the Exchange's automatic annual review and transfer of qualified companies from The NASDAQ Global Market to The NASDAQ Global Select Market. The proposed rule change was published for comment in the **Federal Register** on July 10, 2014.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NASDAQ consists of three listing tiers: The NASDAQ Global Select Market ("Global Select" or "Global Select Market"), The NASDAQ Global Market ("Global Market"), and The NASDAQ Capital Market ("Capital

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72538 (July 3, 2014), 79 FR 39446 ("Notice").

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR. 240.19b-4(f).

Market”). Each tier has different listing requirements; Capital Market has the lowest quantitative criteria to qualify for listing and Global Select has the highest quantitative criteria to qualify for listing. In its filing NASDAQ states that the tiers were designed to appeal to companies with different characteristics.⁴ Currently, pursuant to NASDAQ Rule 5305(b), NASDAQ conducts an annual review of all Global Market-listed companies’ qualifications each year in November and December based on data as of October 31, and automatically places qualified Global Market companies in the Global Select tier the following January.⁵ While this annual review currently occurs automatically, a Global Market-listed company also may apply to list on the Global Select tier at any time.⁶ Companies transferring from the Global Market to the Global Select Market, whether as part of the annual review process or upon their own application, are not assessed entry or application fees.⁷

The Exchange has proposed to eliminate NASDAQ’s automatic annual review and transfer of qualified companies to the Global Select Market. Under the proposal, NASDAQ would review Global Market-listed companies for transfer to the Global Select Market only upon application by the company. To effect this change, the Exchange has proposed to delete the text of Rule 5305(b). According to the Exchange, the reasons for the implementation of the automatic annual review and transfer process in 2006, when the Global Select tier was created, are less relevant today, and eliminating this process would remove an unnecessary burden on NASDAQ staff.⁸ NASDAQ proposes to implement this change upon approval, and states that it will notify Global Market-listed companies about this change via an email communication.⁹

As a result of the proposed rule change, companies automatically transferred in January 2014 would be the last group automatically transferred upon NASDAQ’s review under Rule 5305(b). A Global Market-listed company could continue to apply for transfer to the Global Select tier at any point during the year by submitting a

listing application, and the review of an application would continue to be conducted without cost to the issuer.¹⁰ Qualified companies that apply could transfer immediately upon confirmation by NASDAQ staff that the company meets the Global Select Market listing requirements, and would not owe any entry or other fees in connection with a transfer from the Global Market to the Global Select tier.¹¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

As a result of the proposed rule change, Global Market-listed companies will have to monitor whether they qualify for transfer to the Global Select Market and submit an application for listing on the Global Select Market, rather than rely on the Exchange’s automatic review and transfer process. The Commission observes that this could create an additional burden for Global Market-listed issuers that would otherwise rely on the Exchange’s automatic process for transfer to the Global Select tier. The Exchange acknowledges this burden, but believes that, on balance, it is not significant enough to warrant continuing the automatic transfer process, which places a burden on NASDAQ staff that the Exchange believes is unnecessary.¹⁴ The Exchange notes that much of the information required for the application is pre-populated for a company, and

asserts that, given the ease of the application process, it would continue to be simple for qualified companies to request review at any time and without cost.¹⁵

Balancing the apparent simplicity of the application process and the fact that Global Market-listed companies may apply for a transfer to the Global Select tier at any time and with no charge from NASDAQ against the unnecessary burden that NASDAQ asserts is placed on its staff by the automatic review and transfer process, the Commission believes that the proposed rule change is reasonable and consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade, protects investors and the public interest, and is not designed to permit unfair discrimination between issuers. Under the proposal, a Global Market-listed company that is unsure of its status could continue to submit an application and request review of its qualifications at any time during the year through what appears to be a relatively simple application process, and with no charge or additional fees imposed by NASDAQ.¹⁶ While the Commission expects that companies would monitor their listing qualifications, even a company that performs little or no such monitoring could obtain a review of its qualifications from NASDAQ at any time and potentially transfer to the Global Select tier with apparent ease.

As noted above, the automatic review process was developed at the inception of the Global Select tier to notify companies about their eligibility for that tier, which was, at that time, new and unfamiliar to them. As a result, the Commission notes that the automatic review process provided a mechanism for NASDAQ to promote, market, and expand the new Global Select tier to eligible companies. Now that companies are familiar with this process and also have an easy way to apply throughout the year, the Commission believes that it is consistent with the Act, and Section 6(b)(5) in particular, for NASDAQ no longer to offer this service to promote its Global Select tier. In addition, the Commission notes that it received no comments on the proposal, and thus is not aware of any objection to it from

⁴ See Notice, 79 FR at 39446.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 39446–47. NASDAQ notes that 228 securities transferred to the Global Select Market in January 2011 based on NASDAQ’s automatic review, and between 58 and 77 securities transferred in each subsequent year. *Id.* at 39446 n.5.

⁹ *Id.* at 39446.

¹⁰ *Id.*

¹¹ *Id.* at 39446–47. The Commission also notes that annual fees for continued listing are the same for the Global Market and Global Select tiers.

¹² In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See Notice, 79 FR at 39446–47.

¹⁵ *Id.* at 39446. The Exchange states that the application to transfer from the Global Market to the Global Select Market is available on its Web site, completed online and pre-populated with the company’s identifying information based on its symbol and CIK code or CUSIP number. The listed company generally will only need to provide contact information, affirm the accuracy of the information in the application, and accept the Listing Agreement. *Id.* at n. 6.

¹⁶ See *supra* note 11.

interested parties, in particular, Global Market-listed companies. Moreover, eliminating the automatic review process, which NASDAQ has stated is a burden on its staff, could free up additional resources that may be better used for the regulation and oversight of listed companies.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASDAQ-2014-067) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72902; File No. SR-C2-2014-018]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

August 22, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 2014, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "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

C2 proposes to make technical amendments to the C2 rules. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, 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 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 for, Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange proposes to amend a sentence in its Fees Schedule that reads: "After three months, all fees as assessed by the Exchange are considered final by the Exchange." The purpose of this statement is to encourage Permit Holders to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that this sentence is not intended to preclude the Exchange from assessing fees more than three months after they were incurred. Indeed, the Exchange is required to enforce compliance by its Permit Holders and persons associated with its Permit Holders the rules of the Exchange, including its Fees Schedule.³ As such, the Exchange must ensure that it assesses the fees set forth in its Fees Schedule so long as the fee(s) were required to be paid pursuant to the C2 Fees Schedule in effect at the time the fees were incurred, even if the Exchange must assess the fees more than three months after they have been incurred. The Exchange believes it would be beneficial to make this clear in the Fees Schedule and provide further clarifying language regarding the finality of fees. Specifically, the Exchange seeks to amend this sentence to state "Any potential billing errors relating to fees assessed by C2 must be brought to the attention of C2's Accounting Department within three months from the invoice date. All fees assessed shall be deemed final and non-refundable after three months from the invoice. The Exchange is not precluded from assessing fees more than three months after they were incurred if those fees were required to be paid pursuant to the

C2 Fees Schedule in effect at the time the fees were incurred." The Exchange notes that this has always been the case, and the clarification is simply reflecting how the current language of the C2 Fees Schedule applies. The Exchange also notes that its practice is to assess fees in a timely manner at the time such fees are incurred. However, the Exchange requires the ability to assess any fee upon discovering an error regardless of how much time has passed since the fee was incurred.

The Exchange next proposes to make an amendment to the Connectivity Charges table. Currently, the Exchange charges Permit Holders a \$500 per month Network Access Port fee for 1-gigabit ("1 Gbps") network access connectivity and \$1,000 per month for 10 Gbps network connectivity. The Network Access Ports provide direct access to C2's trading system. Network Access Ports are used to receive unicast (i.e., orders and quotes) and multicast (i.e., market data) traffic. The Exchange notes that a 1 Gbps port may receive both unicast and multicast traffic, whereas a 10 Gbps port may only receive either multicast or unicast traffic. The Exchange seeks to clarify that the Network Access Port fee is assessed separately for unicast and multicast connectivity. Accordingly, if a Permit Holder has 1 Gbps connectivity and receives both unicast and multicast traffic through a single port, the Permit Holder would be charged \$1,000 dollars per month (i.e., \$500 per month for unicast connectivity and \$500 per month for multicast connectivity). Similarly, if a Permit Holder has one 1 Gbps Network Access Port for unicast connectivity only and another 1 Gbps Network Access Port for multicast connectivity only, the Permit Holder would be charged \$1,000 dollars per month (i.e. \$500 per month for each port). As noted above, a single 10-Gbps Network Access Port cannot receive both unicast and multicast traffic. Accordingly, if a Permit Holder wants a 10 Gbps connection, in order to receive both traffic types the Permit Holder would need to purchase two 10 Gbps Network Access Ports (i.e., one to be used for multicast connectivity and one to be used for unicast activity) and would therefore be charged \$2,000 per month (i.e., \$1,000 per month for each port).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(1).