

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ Stock Market  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change to reduce the fees for certain Real Estate Investment Trusts (REITS) listed on Nasdaq.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Nikolai      Last Name \* Utochkin  
 Title \* Counsel - Listing and Governance  
 E-mail \* Nikolai.Utochkin@nasdaq.com  
 Telephone \* (301) 978-8029      Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Executive Vice President and General Counsel

Date 06/14/2016  
 By Edward S. Knight  
 (Name \*)

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to reduce the fees for certain Real Estate Investment Trusts (“REITs”) listed on Nasdaq.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

\* \* \* \* \*

**IM-5910-1. All-Inclusive Annual Listing Fee**

(a) - (c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares	\$45,000
10+ to 50 million shares	\$55,000
50+ to 75 million shares	\$75,000
75+ to 100 million shares	\$100,000
100+ to 125 million shares	\$125,000
125+ to 150 million shares	\$135,000
Over 150 million shares	\$155,000

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the

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

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

total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Global Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed \$155,000. For purposes of this rule, a "REIT Family" means three or more REITs that are provided management services by the same entity or by entities under common control.

(2) – (3) No change.

(e) No change.

\* \* \* \* \*

### **IM-5920-1. All-Inclusive Annual Listing Fee**

(a) - (c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares \$42,000

10+ to 50 million shares \$55,000

Over 50 million shares \$75,000

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Capital Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed \$75,000. For purposes of this rule, a "REIT Family" means three or more REITs that are provided management services by the same entity or by entities under common control.

(2) - (3) No change.

(e) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on July 1, 2015. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Nikolai Utochkin  
Counsel  
Listing and Governance  
Nasdaq, Inc.  
(301) 978-8029

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

a. Purpose

Nasdaq proposes to allow three or more REITs that are provided management services by the same entity or by entities under common control (a “REIT Family”) to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee payable to Nasdaq, thus lowering the fees paid by the REIT Family.<sup>3</sup>

Some publicly traded REITs have their operations externally managed by another entity pursuant to a management agreement. In such cases, the REIT itself does not have any employees. Rather, the external manager is entirely responsible for managing and staffing the operations of the company, in return for management fees. In a limited number of cases, a single entity or affiliated entities externally manage three or more REITs, thus forming a REIT Family.

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<sup>3</sup> REITs currently pay the same annual fees that apply to other equity securities.

As an incentive for all of the REITs in such a group to list on Nasdaq, Nasdaq proposes to allow three or more REITs under common management to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee payable to Nasdaq.<sup>4</sup> Nasdaq believes that this will be attractive to management companies that externally manage multiple REITs as it will reduce the REITs' expenses and, therefore, increase the REITs' earnings available to shareholders.

Nasdaq already allows the sponsor of a family of closed-end funds to aggregate the funds' shares outstanding in a similar manner.<sup>5</sup> REITs are similar to closed-end funds in that they receive special tax treatment if they distribute most of their income each year. As a result, like closed-end funds, REITs are judged by investors, in large part, based upon the yield that they provide and REITs are therefore extremely fee sensitive.

The Exchange expects that the proposed fee change will incentivize external managers to encourage the boards of their managed REITs to avail themselves of the potential reduction in the annual fee and that it will therefore motivate eligible REITs to remain listed on Nasdaq or to transfer their listing to the Nasdaq.

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<sup>4</sup> For example, three REITs in a REIT Family, each having 55 million total shares outstanding, listed on the Nasdaq Global Market, would be charged \$75,000 each under the current All-Inclusive Annual Listing Fee schedule for a total of \$225,000. Under the proposed rule such REITs would be charged \$155,000 in total, as one entity with 165 million total shares outstanding.

<sup>5</sup> See Securities Exchange Act Release No. 52277 (August 17, 2005), 70 FR 49347 (August 23, 2005) (SR-NASD-2005-96).

The proposed REIT fee structure would apply to both the Nasdaq Global Market and the Nasdaq Capital Market.<sup>6</sup> REITs listed on the Nasdaq Global Market that are part of a REIT Family will be permitted to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee, and such aggregated shares outstanding will be subject to the same fee schedule as a single REIT listed on the Nasdaq Global Market.

Similarly, REITs listed on the Nasdaq Capital Market that are part of a REIT Family will be permitted to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee, and such aggregated shares outstanding will be subject to the same fee schedule as a single REIT listed on the Nasdaq Capital Market.

The proposed amendment will affect only the All-Inclusive Annual Listing Fee schedule. In 2014, Nasdaq adopted a new All-Inclusive Annual Listing Fee schedule and this new fee structure currently applies to all newly listing companies and will become operative for all listed companies in 2018.<sup>7</sup> On June 10, 2016, Nasdaq filed a proposed rule change with the Commission to allow currently listed companies that are not on the All-Inclusive Annual Listing Fee schedule to opt-in for 2017.<sup>8</sup> This will allow any currently listed REIT Family that would like to take advantage of this fee change to do so for their next annual fee.

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<sup>6</sup> Listing Rule 5910 provides that fee schedules for the Nasdaq Global Select Market are the same as fee schedules for the Nasdaq Global Market.

<sup>7</sup> Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-87).

<sup>8</sup> SR-NASDAQ-2016-085.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

Nasdaq believes that the proposed fee change allowing a REIT Family to aggregate shares, and pay a lower fee, is reasonable and not unfairly discriminatory because there is a reasonable justification for charging a REIT Family different fees from those charged to other issuers of equity securities.

In particular, REITs are similar to closed-end funds in that they receive special tax treatment if they distribute most of their income each year. As a result, like closed-end funds, REITs are judged by investors, in large part, based upon the yield that they provide and are therefore extremely fee sensitive. For these reasons, it is not unfairly discriminatory to afford a REIT Family a similar fee benefit as afforded to a family of

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).



closed-end funds, even if such treatment differs from the treatment of operating companies.

In addition, Nasdaq notes that a substantial portion of the regulatory cost it incurs in connection with the continued listing of an issuer relates to the review by Nasdaq staff of the issuer's compliance with Nasdaq's corporate governance requirements. Because the REITs in a REIT Family are provided management services by the same entity or by entities under common control, established rapport between REIT managers and Nasdaq staff allows Nasdaq to more efficiently monitor all members of a REIT Family.

Nasdaq believes that allowing aggregation of shares outstanding for three or more REITs, rather than two or more REITs, managed by the same entity or entities under common control is not unfairly discriminatory. First, the benefits to Nasdaq described above are more pronounced when there are three or more REITs in the family. In addition, if aggregation is allowed for two REITs, it would lead to additional loss of revenue to Nasdaq. Finally, the proposed fee change is a competitive response to the discount allowed by NYSE, which is also available only to families of three or more REITs.<sup>11</sup>

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<sup>11</sup> In 2007, the New York Stock Exchange ("NYSE") adopted a rule that provides for a discount in annual fees for three or more REITs sharing a common external manager. Securities Exchange Act Release No. 57061 (December 28, 2007), 73 FR 0902 (January 4, 2008) (SR-NYSE-2007-113). In an order approving the NYSE's discount the Commission found that "it is reasonable for the Exchange to balance its need to remain competitive, while at the same time ensuring adequate revenue to meet its regulatory responsibilities." The Commission further found that the NYSE's proposed discount "does not constitute an inequitable allocation of reasonable dues, fees, and other charges, does not permit unfair discrimination between issuers, and is generally consistent with the Act." See Securities Exchange Act Release No. 57291 (February 7, 2008), 73 FR 8387 (February 13, 2008) (approving SR-NYSE-2007-113).

Nasdaq also notes that no other company will be required to pay higher fees as a result of the proposed amendments. Therefore, Nasdaq believes that allowing a REIT Family to aggregate the shares outstanding of all REITs that are part of the REIT Family is reasonable and not inequitable or unfairly discriminatory.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act<sup>12</sup> in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest.

Specifically, the amount of revenue forgone by allowing REIT Families to aggregate shares outstanding when calculating fees is not substantial, and the reduced fees may result in more REITs listing on Nasdaq, thereby increasing the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

Consequently, Nasdaq believes that the potential loss of revenue from the aggregation of shares outstanding in a REIT Family, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

#### 4. 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 based on the aggregate fees assessed and the value provided by each listing. This rule proposal does not burden competition with

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<sup>12</sup> 15 U.S.C. 78f(b)(5).

other listing venues, which are similarly free to set their fees.<sup>13</sup> For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>15</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it defines a REIT Family and sets a new fee schedule for a small number of listed REITs that fall within the definition of a REIT Family. The amount of revenue forgone by allowing REIT Families to aggregate shares outstanding when calculating fees is not substantial, and the reduced fees may result in more REITs listing on Nasdaq, thereby increasing the resources available for

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<sup>13</sup> See footnote 11 above.

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected. Therefore, Nasdaq believes that the potential loss of revenue from the aggregation of shares outstanding in a REIT Family, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

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 based on the aggregate fees assessed and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees.<sup>16</sup> For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

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<sup>16</sup> See footnote 11 above.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that REITs have an incentive to list on the Nasdaq sooner. This additional time helps to prevent potential disruptions to listing REITs that are part of a REIT Family, thereby enhancing competition with no negative impact on the protection of investors and the public interest.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

In 2007, the New York Stock Exchange adopted a rule that provides for a discount in annual fees for REITs sharing a common external manager.<sup>17</sup> While each rule has the same effect of providing certain REIT Families with a discount, the NYSE rule differs from the proposed rule filing in that the NYSE rule provides a fixed discount to the fees charged to each REIT in the family, whereas the proposed rule change would allow a REIT Family listed on Nasdaq to aggregate their shares in calculating the fees owed Nasdaq. The NYSE rule describes REITs subject to the discount in substantially the same way as the Nasdaq's proposed rule defines a REIT Family.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

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<sup>17</sup> See footnote 11 above.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2016-088)

June \_\_, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce the Fees for Certain Real Estate Investment Trusts Listed on Nasdaq

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> notice is hereby given that on June 14, 2016, 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 reduce the fees for certain Real Estate Investment Trusts (“REITs”) listed on Nasdaq.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

\* \* \* \* \*

**IM-5910-1. All-Inclusive Annual Listing Fee**

(a) - (c) No change.

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

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

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares \$45,000

10+ to 50 million shares \$55,000

50+ to 75 million shares \$75,000

75+ to 100 million shares \$100,000

100+ to 125 million shares \$125,000

125+ to 150 million shares \$135,000

Over 150 million shares \$155,000

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Global Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed \$155,000. For purposes of this rule, a "REIT Family" means three or more REITs that are provided management services by the same entity or by entities under common control.

(2) – (3) No change.



(e) No change.

\* \* \* \* \*

**IM-5920-1. All-Inclusive Annual Listing Fee**

(a) - (c) No change.

(d) The All-Inclusive Annual Listing Fee will be calculated on total shares outstanding according to the following schedules:

(1) All domestic and foreign Companies listing equity securities, except as described below:

Up to 10 million shares \$42,000

10+ to 50 million shares \$55,000

Over 50 million shares \$75,000

Real Estate Investment Trusts (REITs) are subject to the same fee schedule as other equity securities. For the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the Nasdaq Capital Market may be aggregated. The maximum annual fee applicable to such a REIT Family shall not exceed \$75,000. For purposes of this rule, a "REIT Family" means three or more REITs that are provided management services by the same entity or by entities under common control.

(2) - (3) No change.

(e) No change.

\* \* \* \* \*

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

Nasdaq proposes to allow three or more REITs that are provided management services by the same entity or by entities under common control (a "REIT Family") to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee payable to Nasdaq, thus lowering the fees paid by the REIT Family.<sup>3</sup>

Some publicly traded REITs have their operations externally managed by another entity pursuant to a management agreement. In such cases, the REIT itself does not have any employees. Rather, the external manager is entirely responsible for managing and staffing the operations of the company, in return for management fees. In a limited number of cases, a single entity or affiliated entities externally manage three or more REITs, thus forming a REIT Family.

As an incentive for all of the REITs in such a group to list on Nasdaq, Nasdaq proposes to allow three or more REITs under common management to aggregate the

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<sup>3</sup> REITs currently pay the same annual fees that apply to other equity securities.

shares outstanding of such REITs for the purpose of determining the annual fee payable to Nasdaq.<sup>4</sup> Nasdaq believes that this will be attractive to management companies that externally manage multiple REITs as it will reduce the REITs' expenses and, therefore, increase the REITs' earnings available to shareholders.

Nasdaq already allows the sponsor of a family of closed-end funds to aggregate the funds' shares outstanding in a similar manner.<sup>5</sup> REITs are similar to closed-end funds in that they receive special tax treatment if they distribute most of their income each year. As a result, like closed-end funds, REITs are judged by investors, in large part, based upon the yield that they provide and REITs are therefore extremely fee sensitive.

The Exchange expects that the proposed fee change will incentivize external managers to encourage the boards of their managed REITs to avail themselves of the potential reduction in the annual fee and that it will therefore motivate eligible REITs to remain listed on Nasdaq or to transfer their listing to the Nasdaq.

The proposed REIT fee structure would apply to both the Nasdaq Global Market and the Nasdaq Capital Market.<sup>6</sup> REITs listed on the Nasdaq Global Market that are part of a REIT Family will be permitted to aggregate the shares outstanding of such REITs for

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<sup>4</sup> For example, three REITs in a REIT Family, each having 55 million total shares outstanding, listed on the Nasdaq Global Market, would be charged \$75,000 each under the current All-Inclusive Annual Listing Fee schedule for a total of \$225,000. Under the proposed rule such REITs would be charged \$155,000 in total, as one entity with 165 million total shares outstanding.

<sup>5</sup> See Securities Exchange Act Release No. 52277 (August 17, 2005), 70 FR 49347 (August 23, 2005) (SR-NASD-2005-96).

<sup>6</sup> Listing Rule 5910 provides that fee schedules for the Nasdaq Global Select Market are the same as fee schedules for the Nasdaq Global Market.

the purpose of determining the annual fee, and such aggregated shares outstanding will be subject to the same fee schedule as a single REIT listed on the Nasdaq Global Market.

Similarly, REITs listed on the Nasdaq Capital Market that are part of a REIT Family will be permitted to aggregate the shares outstanding of such REITs for the purpose of determining the annual fee, and such aggregated shares outstanding will be subject to the same fee schedule as a single REIT listed on the Nasdaq Capital Market.

The proposed amendment will affect only the All-Inclusive Annual Listing Fee schedule. In 2014, Nasdaq adopted a new All-Inclusive Annual Listing Fee schedule and this new fee structure currently applies to all newly listing companies and will become operative for all listed companies in 2018.<sup>7</sup> On June 10, 2016, Nasdaq filed a proposed rule change with the Commission to allow currently listed companies that are not on the All-Inclusive Annual Listing Fee schedule to opt-in for 2017.<sup>8</sup> This will allow any currently listed REIT Family that would like to take advantage of this fee change to do so for their next annual fee.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> 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 or system

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<sup>7</sup> Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-87).

<sup>8</sup> SR-NASDAQ-2016-085.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, Nasdaq competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees Nasdaq can charge listed companies are constrained by the fees charged by its competitors and Nasdaq cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

Nasdaq believes that the proposed fee change allowing a REIT Family to aggregate shares, and pay a lower fee, is reasonable and not unfairly discriminatory because there is a reasonable justification for charging a REIT Family different fees from those charged to other issuers of equity securities.

In particular, REITs are similar to closed-end funds in that they receive special tax treatment if they distribute most of their income each year. As a result, like closed-end funds, REITs are judged by investors, in large part, based upon the yield that they provide and are therefore extremely fee sensitive. For these reasons, it is not unfairly discriminatory to afford a REIT Family a similar fee benefit as afforded to a family of closed-end funds, even if such treatment differs from the treatment of operating companies.

In addition, Nasdaq notes that a substantial portion of the regulatory cost it incurs in connection with the continued listing of an issuer relates to the review by Nasdaq staff of the issuer's compliance with Nasdaq's corporate governance requirements. Because the REITs in a REIT Family are provided management services by the same entity or by

entities under common control, established rapport between REIT managers and Nasdaq staff allows Nasdaq to more efficiently monitor all members of a REIT Family.

Nasdaq believes that allowing aggregation of shares outstanding for three or more REITs, rather than two or more REITs, managed by the same entity or entities under common control is not unfairly discriminatory. First, the benefits to Nasdaq described above are more pronounced when there are three or more REITs in the family. In addition, if aggregation is allowed for two REITs, it would lead to additional loss of revenue to Nasdaq. Finally, the proposed fee change is a competitive response to the discount allowed by NYSE, which is also available only to families of three or more REITs.<sup>11</sup>

Nasdaq also notes that no other company will be required to pay higher fees as a result of the proposed amendments. Therefore, Nasdaq believes that allowing a REIT Family to aggregate the shares outstanding of all REITs that are part of the REIT Family is reasonable and not inequitable or unfairly discriminatory.

Finally, Nasdaq believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act<sup>12</sup> in that they are designed to promote

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<sup>11</sup> In 2007, the New York Stock Exchange (“NYSE”) adopted a rule that provides for a discount in annual fees for three or more REITs sharing a common external manager. Securities Exchange Act Release No. 57061 (December 28, 2007), 73 FR 0902 (January 4, 2008) (SR–NYSE–2007–113). In an order approving the NYSE’s discount the Commission found that “it is reasonable for the Exchange to balance its need to remain competitive, while at the same time ensuring adequate revenue to meet its regulatory responsibilities.” The Commission further found that the NYSE’s proposed discount “does not constitute an inequitable allocation of reasonable dues, fees, and other charges, does not permit unfair discrimination between issuers, and is generally consistent with the Act.” See Securities Exchange Act Release No. 57291 (February 7, 2008), 73 FR 8387 (February 13, 2008) (approving SR–NYSE–2007–113).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest.

Specifically, the amount of revenue forgone by allowing REIT Families to aggregate shares outstanding when calculating fees is not substantial, and the reduced fees may result in more REITs listing on Nasdaq, thereby increasing the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

Consequently, Nasdaq believes that the potential loss of revenue from the aggregation of shares outstanding in a REIT Family, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

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 based on the aggregate fees assessed and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees.<sup>13</sup> For these reasons, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

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.

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<sup>13</sup> See footnote 11 above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</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: (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:

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.



Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-088 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-088. This file number should be included on the subject line if e-mail 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 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2016-088 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).