

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82791; File No. SR-NASDAQ-2018-015)

February 28, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify IM-5900-7 to Update the Values of, and Permit a Third-Party Provider Selected by Nasdaq to Offer, Certain Complimentary Services Provided to Certain Newly Listing Companies Pursuant to the Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on February 15, 2018, 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 and II 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 modify IM-5900-7, which describes the package of complimentary services provided to certain new listings, to update the value of the services and allow services to be provided either by Nasdaq Corporate Solutions or a third-party service provider selected by Nasdaq.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, 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

Nasdaq offers complimentary services under IM-5900-7 to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering (other than a company listed under IM-5101-2), upon emerging from bankruptcy, in connection with a spin-off or carve-out from another company, or in conjunction with a business combination that satisfies the conditions in Nasdaq IM-5101-2(b) ("Eligible New Listings") and to companies (other than a company listed under IM-5101-2) switching their listing from the New York Stock Exchange ("NYSE") to the Global or Global Select Markets ("Eligible Switches").³ Nasdaq believes that the complimentary service program offers valuable services to newly listing companies, designed to help ease the transition of becoming a public company or switching markets, makes listing on Nasdaq more attractive to these companies, and also provides Nasdaq

³ See Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR-NASDAQ-2011-122) (adopting IM-5900-7); Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR-NASDAQ-2014-058) (adopting changes to IM-5900-7); Exchange Act Release No. 78806 (September 9, 2016), 81 FR 63523 (September 15, 2016) (SR-NASDAQ-2016-098); Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663 (November 28, 2016) (SR-NASDAQ-2016-106).

Corporate Solutions the opportunity to demonstrate the value of its services and forge a relationship with the company. The services offered include a whistleblower hotline, investor relations website, disclosure services for earnings or other press releases, webcasting, market analytic tools, and may include market advisory tools such as stock surveillance.⁴

Nasdaq proposes to update the values of the services contained in IM-5900-7 to their current values. Depending on a company's market capitalization and whether it is an Eligible New Listing or an Eligible Switch, the total revised value of the services provided ranges from \$150,000 to \$824,000, and one-time development fees of approximately \$5,000 are waived.⁵

In addition, on January 29, 2018, Nasdaq, Inc., the parent of Nasdaq, announced that it had entered into a definitive agreement to sell the Public Relations Solutions and Digital Media Services units within its Corporate Solutions business.⁶ Given that these units include the investor relations website, disclosure services, audio webcasting and whistleblower hotline services offered under Nasdaq Rule IM-5900-7, Nasdaq proposes to modify IM-5900-7 to state

⁴ In addition, all companies listed on Nasdaq receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

⁵ The exact values are set forth in proposed IM-5900-7. Under the current rule the stated value of the services provided ranges from \$141,000 to \$754,000, and one-time development fees of approximately \$3,500 are waived. In describing the total value of the services for companies that can select more than one market advisory tool, Nasdaq presumes that a company would use stock surveillance, which has an approximate retail value of \$56,000 as revised (\$51,000 previously), and global targeting, which has an approximate retail value of \$44,000 as revised (\$40,000 previously). A company using the stock surveillance tool would be unlikely also to use the monthly ownership analytics and event driven targeting because there is considerable overlap between these services. Companies could, of course, select different combinations of the four offered services that do not overlap, but these other combinations would have lower total approximate retail values. See Exchange Act Release No. 78392 (July 22, 2016), 81 FR 49705, 49706 n.10 (July 28, 2016) (Notice of Filing for SR-NASDAQ-2016-098).

⁶ See <http://www.globenewswire.com/news-release/2018/01/29/1313528/0/en/West-Corporation-Agrees-to-Acquire-Nasdaq-s-Public-Relations-Solutions-and-Digital-Media-Services-Businesses.html>. This transaction is expected to close in the second quarter of 2018.

that the services will be provided either by Nasdaq Corporate Solutions or a third-party service provider selected by Nasdaq. In the event that Nasdaq Corporate Solutions no longer offers the services, this change will allow Nasdaq to arrange for an alternate provider, such as the purchaser of these units.⁷

Finally, Nasdaq proposes to: (i) update the preamble of IM-5900-7 to reflect the expiration of a transitional period that previously allowed companies listed at the time of changes to the complimentary services package in 2016 to choose to receive the package in effect at the time of their listing or the revised package; and (ii) clarify that the services described in IM-5900-7(a) are the only corporate solutions services offered to companies, to the extent they qualify pursuant to the rule. All companies will continue to receive additional services, such as Nasdaq Online and the Market Intelligence Desk, on an equal basis.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and Sections 6(b)(4),⁹ 6(b)(5),¹⁰ and 6(b)(8),¹¹ in particular, in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its

⁷ Upon completion of the announced transaction, the purchaser of the whistleblower hotline, investor relations website, disclosure and audio webcasting services will be expected to provide those services under IM-5900-7 pursuant to an exclusive agreement, subject to meeting specific service level commitments. Nasdaq Corporate Solutions is expected to continue to provide the market analytic and market advisory tools, although under the proposed rule change Nasdaq could instead select a third party provider for these services in the future.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(4).

¹⁰ 15 U.S.C. 78f(5).

¹¹ 15 U.S.C. 78f(8).

facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nasdaq faces competition in the market for listing services,¹² and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. All similarly situated companies are eligible for the same package of services and the eligibility of companies for services is not changing under this proposed rule change. The Commission has previously indicated pursuant to Section 19(b) of the Act¹³ that updating the values of the services within the rule is necessary,¹⁴ and Nasdaq does not believe this update has an effect on the allocation of fees nor does it permit unfair discrimination, as issuers will continue to receive the same services. Further, this update will enhance the transparency of Nasdaq's rules and the value of the services it offers companies, thus promoting just and equitable principles of trade. As such, the proposed rule change is consistent with the requirements of Section 6(b)(4) and (5) of the Act.

¹² The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/271214.htm.

¹³ 15 U.S.C. 78s(b).

¹⁴ See Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR-NASDAQ-2014-058) (footnote 39 and accompanying text: "We would expect Nasdaq, consistent with Section 19(b) of the Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.")

Nasdaq believes that the proposed change to allow services to be provided by third-party providers, instead of an affiliated service provider, reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) in furtherance of the purposes of the Act. Specifically, Nasdaq believes that the current competitive environment for listings necessitates that it continue to offer services described in IM-5900-7 through a third-party service provider if its affiliate no longer offers those services. Further, Nasdaq believes that the ability to select the third-party providers of these services will enable it to select partners Nasdaq believes will provide quality service to listed companies and make adjustments if that quality is not maintained.¹⁵ While this may disadvantage third-party providers that are not selected, the impact on competition among service providers is expected to remain small, as it is today where Nasdaq Corporate Solutions provides the services directly,¹⁶ and does not impose an inappropriate burden on competition because issuers are not forced or required to utilize the complimentary products and services and other service providers can choose to offer their own complimentary services to issuers.

Nasdaq notes that the proposed change to allow third-party service providers does not affect the Commission's prior conclusion that offering these services is an equitable allocation of reasonable dues, fees, and other charges among exchange members and issuers and other persons using its facilities and that the rule is designed to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, consistent with Sections

¹⁵ Nasdaq expects that following the announced transaction it will initially rely on the purchaser of the whistleblower hotline, investor relations website, disclosure and audio webcasting services as its selected third-party provider, subject to that provider meeting specific service level commitments.

¹⁶ See Exchange Act Release No. 65963, 76 FR at 79266-67.

6(b)(4) and 6(b)(5) of the Act because the underlying services will not change and all eligible companies will be given the identical choice of service providers.

Nasdaq believes that clarifying that the services described in IM-5900-7(a) are the only corporate solutions services offered to companies to the extent they qualify pursuant to the rule¹⁷ is consistent with Section 6(b)(5) of the Act. Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Act.¹⁸

Finally, Nasdaq notes that the proposed update to the preamble of IM-5900-7 to reflect the expiration of old transitional periods is consistent with Section 6(b)(5) of the Act because it will clarify the rule without making any substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule changes reflect that competition, but do not impose any burden on the competition with other exchanges.

Nasdaq also does not believe that allowing a third-party selected by Nasdaq to provide certain services will impose any burden on competition not necessary or appropriate in furtherance of the Act. Such selection will allow Nasdaq to select third-party service providers

¹⁷ All companies listed on Nasdaq receive certain services from Nasdaq on an equal basis, including Nasdaq Online and the Market Intelligence Desk.

¹⁸ See Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE-2011-20)).

that it believes will provide quality service to listed companies and make adjustments if that quality is not maintained. Multiple third-party vendors offer similar services and listed companies are not required to accept any discounted products and services as a condition to listing. Nasdaq-listed companies are free to purchase similar products and services from other vendors, or not to use any such products and services, instead of accepting the products and services offered by the Exchange. Other vendors can also choose to offer their own complimentary packages to compete with Nasdaq's offering. Further, complimentary services are only available to a company for either two or four years. Thus, Nasdaq does not believe that the proposed rule change will adversely impact competition for such products and services in a manner not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the 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) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the accurate values of the complimentary services can immediately be reflected in Nasdaq's rules and so that Nasdaq can rely upon a third-party service provider if it chooses to do so. Because waiver of the operative delay would increase transparency in the Exchange's rules by allowing the Exchange to immediately update the current market values of the complimentary services it provides to certain newly listing companies, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.²³

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.

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:

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-NASDAQ-2018-015 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-2018-015. 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 website (<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 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-015, 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.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).