

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101483; File No. SR-NASDAQ-2024-059)

October 30, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Package of Complimentary Services Provided to Certain Eligible Switches and to Modify the Definition of an Eligible Switch

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 October 17, 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 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 the package of complimentary services provided to certain Eligible Switches and to modify the definition of an Eligible Switch.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Listing Rule IM-5900-7 to Eligible New Listings³ and Eligible Switches⁴ newly listing on Nasdaq.⁵ 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, and makes listing on Nasdaq more attractive to these companies. The services offered include a whistleblower hotline, investor relations website, disclosure services for earnings or other press releases, webcasting, market analytic tools, environmental, social and governance services, and may include market advisory tools such as stock surveillance (collectively the “Service Package”).⁶ Based on Nasdaq’s experience with the program and given the competitive landscape, Nasdaq is

³ IM-5900-7 defines an Eligible New Listing as “a Company listing on the Global or Global Select Market in connection with: (i) an initial public offering in the United States, including American Depositary Receipts (other than a Company listed under IM-5101-2), (ii) upon emerging from bankruptcy, (iii) in connection with a spin-off or carve-out from another Company, (iv) in connection with a Direct Listing as defined in IM-5315-1 (including the listing of American Depositary Receipts), or (v) in conjunction with a business combination that satisfies the conditions in IM-5101-2(b).”

⁴ IM-5900-7 defines an Eligible Switch as “a Company: (i) (other than a Company listed under IM-5101-2) switching its listing from the New York Stock Exchange to the Global or Global Select Markets, or (ii) that has switched its listing from the New York Stock Exchange and listed on Nasdaq under IM-5101-2 after the Company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.”

⁵ IM-5900-7A describes the Service Package available to companies that listed before March 12, 2021, the effective date of SR-Nasdaq-2021-002. See Securities Exchange Act Release No. 91318 (March 12, 2021), 86 FR 14774 (March 18, 2021) (modifying the package of complimentary services provided to eligible companies and memorializing as IM-5900-7A the services offered to eligible companies that listed before the effective date of the change).

⁶ In addition, all companies listed on Nasdaq receive other standard services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

filing this proposed rule change to modify the manner in which Market Advisory Tools are offered to Eligible Switches that have a market capitalization of \$750 million or more, as described below. Nasdaq is also proposing to modify the definition of an Eligible Switch to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing to the Global or Global Select Market not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange. Similarly, Nasdaq is proposing to modify the definition of an Eligible Switch to also include a company that switched its listing from another national securities exchange and listed on Nasdaq under Listing Rule IM-5101-2 after the company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in Listing Rule IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.⁷

Currently, an Eligible Switch that has a market capitalization of \$750 million or more but less than \$5 billion receives the following complimentary services for four years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Media Monitoring/Social Listening, Market Analytic Tools for three users, the Core ESG Software Solution, ESG Education & Sector Benchmarking Services, and the choice of one Market Advisory Tool.⁸ Instead of the choice of one of the three Market Advisory Tools (e.g., Stock Surveillance, Global Targeting, or an Annual Perception Study) for four years,⁹ Nasdaq

⁷ The definition of an Eligible Switch already includes such a company that was previously listed on the New York Stock Exchange.

⁸ The total retail value of these services is up to approximately \$220,200 per year. The company also receives one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. In addition, one-time development fees of approximately \$6,000 to establish the services in the first year is waived. See Listing Rule IM-5900-7(d)(2).

⁹ Once the Company elects a service it cannot subsequently change to a different alternative, including in a

proposes to modify Listing Rule IM-5900-7(d)(2) to provide an Eligible Switch that has a market capitalization of \$750 million or more but less than \$5 billion with one Annual Perception Study during the four-year period and the choice of the remaining two Market Advisory Tools (i.e., Stock Surveillance or Global Targeting) for four years.

Nasdaq also proposes to modify Listing Rule IM-5900-7(d)(2) to reflect that an Eligible Switch that had a market capitalization of \$750 million or more but less than \$5 billion that listed on Nasdaq prior to the effective date of this proposed rule change is not eligible for the one Annual Perception Study during the four-year period but received, upon listing (as provided by the rules in effect at that time), the choice of Stock Surveillance, Global Targeting or Annual Perception Study.

Currently, an Eligible Switch that has a market capitalization of \$5 billion or more receives the following complimentary services for four years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Media Monitoring/Social Listening, Market Analytic Tools for four users, the Advanced ESG Software Solution, ESG Education & Sector Benchmarking Service, \$60,000 per year of ESG Advisory Services, and the choice of two Market Advisory Tools.¹⁰ Instead of the choice of two of the three Market Advisory Tools (e.g., Stock Surveillance, Global Targeting, or Annual Perception Study) for four years, Nasdaq proposes to modify Listing Rule IM-5900-7(d)(3) to provide an Eligible Switch that has a market capitalization of \$5 billion or more with one Annual Perception

subsequent year. See Listing Rule IM-5900-7(e).

¹⁰ The total retail value of these services is up to approximately \$373,700 per year. The company also receives one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. In addition, one-time development fees of approximately \$26,500 to establish the services in the first year is waived. See Listing Rule IM-5900-7(d)(3).

Study during the four-year period and with both of the remaining Market Advisory Tools (i.e., Stock Surveillance and Global Targeting) for four years.

Nasdaq also proposes to modify Listing Rule IM-5900-7(d)(3) to reflect that an Eligible Switch that had a market capitalization of \$5 billion or more that listed on Nasdaq prior to the effective date of this proposed rule change is not eligible for the one Annual Perception Study during the four-year period but received, upon listing (as provided by the rules in effect at that time), the choice of two of the following three services: Stock Surveillance, Global Targeting or Annual Perception Study.

Nasdaq believes that these changes will increase the value of the Service Package to the companies affected by this proposal because the perception study will be provided in addition to the Stock Surveillance and/or Global Targeting, whereas currently some companies may choose services that have higher value without benefiting from the perception study.¹¹ Nasdaq also believes these changes will streamline the offering of services to Eligible Switches because Eligible Switches with a market capitalization of \$750 million or more, generally, would benefit from a perception study that leverages extensive capital markets relationships and benchmark data amplifying the company's efforts to elevate their story, enhance stakeholder engagement, identify risk and attract new capital. Accordingly, Nasdaq believes these changes will make the package more attractive to the affected companies.

Finally, Nasdaq proposes to modify the definition of an Eligible Switch to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing to the

¹¹ Stock Surveillance, Global Targeting, and Annual Perception Study have a retail value of approximately \$56,500, \$48,000, and \$45,000 per year, respectively. In describing the value of the services in the rule text, Nasdaq presumed that a company would use stock surveillance and global targeting, where there is the choice of two services; and that a company would use the Stock Surveillance, where there is the choice of one service.

Global or Global Select Market not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange. Similarly, Nasdaq proposes to modify the definition of an Eligible Switch to include a company that switched its listing from another national securities exchange and listed on Nasdaq under Listing Rule IM-5101-2 after the company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in Listing Rule IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.¹² Nasdaq believes that given the competitive landscape and the increasing number of listing venues, issuers switching its listing to the Global or Global Select Market from other national securities exchanges will likely bring greater future value to Nasdaq than will other issuers by listing on its market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed 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

¹² Listing Rule IM-5101-2 imposes additional listing requirements on a company whose business plan is to complete an initial public offering (“IPO”) and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (“Acquisition Companies”). An Acquisition Company does not have an operating business and tends to trade infrequently and in a tight range until the company completes an acquisition. Therefore, these Acquisition Companies do not generally need shareholder communication services, market analytic tools or market advisory tools and, upon listing (whether as an IPO or when switching from another market), these Acquisition Companies do not receive complimentary services from Nasdaq under Listing Rule IM-5900-7. However, a company completing a business combination with a Nasdaq-listed Acquisition Company is eligible to receive services under Listing Rule IM-5900-7 when it lists on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in Listing Rule IM-5101-2(b). At this point, the Acquisition Company transitions to being an operating company and has a similar need as other companies for shareholder communication services, market analytic tools and market advisory tools.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

investors and the public interest. It is also consistent with this provision because it is not designed to permit unfair discrimination between issuers. Nasdaq also believes that the proposed rule change is consistent with the provisions of Sections 6(b)(4)¹⁵ and 6(b)(8),¹⁶ 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 facilities 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 Exchange Act.

Nasdaq faces competition in the market for listing services,¹⁷ 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. Nasdaq believes that the proposed changes to the manner in which Market Advisory Tools are offered to Eligible Switches that have a market capitalization of \$750 million or more will help eligible companies leverage extensive capital markets relationships and benchmark data amplifying the company's efforts to elevate their story, enhance stakeholder engagement, identify risk and attract new capital. While the proposed changes will affect services that will be available only to Eligible Switches with a market capitalization of \$750 million or more, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different Market Advisory Tools, and

¹⁵ 15 U.S.C. 78f(4).

¹⁶ 15 U.S.C. 78f(8).

¹⁷ The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange 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.

that those issuers will likely bring greater future value to Nasdaq than will other issuers with lower market capitalization by switching to its market.¹⁸

Nasdaq believes that the proposal to modify the definition of an Eligible Switch to include companies (including companies listed under Listing Rule IM-5101-2) switching their listing to the Nasdaq Global or Global Select Market not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposal is, in part, designed to enhance competition with other national securities exchanges. Nasdaq believes that given the competitive landscape and the increasing number of listing venues, issuers switching its listing to the Global or Global Select Market from other national securities exchanges will likely bring greater future value to Nasdaq than will other issuers by listing on its market.

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 Exchange Act.¹⁹

¹⁸ See Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 at 79265 (December 21, 2011).

¹⁹ 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)).

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. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. The proposed rule changes reflect that competition, but do not impose any burden on the competition with other exchanges. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders.

Further, all similarly situated companies are eligible for the same package of services. While the proposed changes will affect services that will be available only to Eligible Switches with a market capitalization of \$750 million or more, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different Market Advisory Tools, and that those issuers will likely bring greater future value to Nasdaq by switching to its market than would other issuers.

Nasdaq also believes that the proposal to modify the definition of an Eligible Switch to include companies switching their listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange will eliminate a potential existing burden on competition between companies listed on different exchanges, in that it will treat exchange-listed companies in a uniform manner, regardless of which national securities exchange they are currently listed on. Further, this change is designed to increase competition with other national securities exchanges.

Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-059 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-2024-059. 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-2024-059 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.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).