

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72311; File No. SR-NASDAQ-2014-058)

June 4, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend IM-5900-7 to, Among Other Things, Modify the Free Services Offered to Certain Newly Listing Companies

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 May 27, 2014, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend IM-5900-7 to modify the services offered to certain newly listing companies. Nasdaq will implement the proposed rule upon approval. However, any company that applies to list on Nasdaq before July 31, 2014, and lists before September 30, 2014, may elect to instead receive services under the terms of the rule as in effect before this amendment.³

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.

³ Nasdaq will maintain, in its online rule book, a link to the text of the rule as in effect before this amendment.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

In December 2011, Nasdaq adopted a rule to provide complimentary services to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company ("Eligible New Listings") and to companies that switch their listing from the New York Stock Exchange to the Nasdaq Global or Global Select Markets ("Eligible Switches").⁴ Under this rule, Eligible Switches with a market capitalization of \$500 million or more receive complimentary services for four years from the date of their listing. All other Eligible Switches and Eligible New Listings receive complimentary services for two years from the date of their listing. In addition, Eligible Switches and Eligible New Listings with a market capitalization of \$500 million or more receive additional services that companies with a market capitalization below \$500 million do not receive (the "Additional Services").⁵

⁴ Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR-NASDAQ-2011-122, approving the adoption of IM-5900-7) (the "Prior Filing").

⁵ The Additional Services include extra licenses for Directors Desk, additional press release distribution services and market surveillance tools.

Based on Nasdaq's experience with the program, Nasdaq now proposes to modify certain aspects of the program. First, Nasdaq proposes to increase the threshold for an Eligible Switch or Eligible New Listing to receive Additional Services from \$500 million to \$750 million or more in market capitalization. Nasdaq believes that this higher threshold better reflects the level where a company will most benefit from the Additional Services, and will most likely continue to purchase those services after the complimentary period has expired. In addition, Nasdaq believes that the higher threshold will better reflect the type of companies that, when listing on Nasdaq, will assist in Nasdaq's efforts to attract and retain other listings. Nasdaq also proposes to provide three years of services, instead of four, to Eligible Switches with a market capitalization of \$750 million or more.

Next, based on customer usage and demand for services, Nasdaq proposes to remove Directors Desk, an online board portal, from the program and instead offer companies four interactive webcasts, which can be used in connection with a company's quarterly earnings call. A number of companies have expressed interest in interactive webcasts during their discussions with Nasdaq and many purchase this service from NASDAQ OMX Corporate Solutions. Furthermore, Nasdaq has observed that companies offered the complimentary Directors Desk package may decline to use it, or may only use a few of the available seats. As such, Nasdaq believes that while the interactive webcasts may cost less than Directors Desk, the expected increase in utilization by companies could make this substitution more valuable to companies. Nasdaq also proposes to change its offer for market analytic tools from four users to two users. First, the price stated for four users is significantly below the current retail price of that offering, and companies could not renew the service for four users at that stated price. Nasdaq also has observed that many companies contracted for four users of the market analytic tools just because

they were available, and not because they were actually needed by the company, and these companies may not be interested in continuing to pay for those users at the retail price when the package expires.

Nasdaq also proposes to update the retail values for individual components and the total package in the rule text. These prices have changed since the original adoption of the rule based on enhancements to the services and as a result of the competitive environment in which NASDAQ OMX Corporate Solutions operates.

The cumulative effect of these changes would reduce the stated annual value of the package from approximately \$94,000 to approximately \$70,000 for companies with a market capitalization of up to \$750 million and from approximately \$169,000 to approximately \$125,000 for companies with a market capitalization of \$750 million or more.⁶ The stated annual value of the package available to Eligible New Listings and Eligible Switches with a market capitalization between \$500 million and \$750 million would change from approximately \$169,000 to approximately \$70,000.

Finally, since adopting this program, companies have needed time after the listing date to complete the contracting process and training for the service, and therefore were unable to start using them until after their listing date. To address these situations, Nasdaq proposes to remove the language in IM-5900-7 that now states the complimentary period starts from the date of listing and add new paragraph (d) to describe the start of the complimentary period. Under the proposed rule, the complimentary period generally will begin on the listing date. However, if a company first uses a service within 30 days after the listing date, Nasdaq will use the date the company first uses that particular service as the start of the complimentary period, in order to

⁶ The prior value for each package is the amount currently reflected in the rule text. The value of the proposed package is based on retail prices as of May 2014.

help insure that eligible companies receive the full intended benefit.⁷ If the company does not actually start using a service within 30 days of its listing, the starting date of the period during which the complimentary services could be used would begin on the date of listing.⁸

Nasdaq will implement the proposed rule upon approval. However, companies near a listing or switch may have relied upon the services described in the current rule in making their decision. As such, Nasdaq will allow any company that applies before July 31, 2014, and lists before September 30, 2014, to elect to receive services under the terms of the rule as in effect before this amendment.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and Sections 6(b)(4), 6(b)(5), and 6(b)(8), 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 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. In the Prior Filing, the Commission determined that existing IM-5900-7 is consistent with these

⁷ The Commission notes that the proposed rule states that “if an Eligible New Listing or Eligible Switch begins to use a particular service provided under [IM-5900-7] within 30 days after the date of listing, the complimentary period for that service will begin on the date of first use” and “in all other cases, the period for each complimentary service shall commence on the listing date.” See proposed IM-5900-07(d).

⁸ The proposed rule change would also modify the rule to consistently call the elements of the offering “services” instead of interchangeably using “products” and “services”.

⁹ 15 U.S.C. 78f.

provisions of the Act.¹⁰ The proposed rule change, which modifies the packages available to companies and provides some additional flexibility for companies to choose the starting date for the complimentary services available under IM-5900-7, does not change that conclusion.

Nasdaq faces competition in the market for listing services,¹¹ and it competes, in part, by offering valuable services to companies, including services that ease the companies' transition to being public or listed on a new exchange. Nasdaq believes that the changes to the package, including the proposed substitution of webcasts for board portal tools, and the increased flexibility surrounding the start date of services will result in a more enticing package for potential new listings, even though the individual value of the services offered may be less, and therefore will enhance competition among listing exchanges. Nasdaq also does not believe that any of these changes impose an additional burden not necessary or appropriate in furtherance of the purposes of the Act on the competition between NASDAQ OMX Corporate Solutions and other service providers.

The change to the services in the packages is not designed to permit unfair discrimination. All listed companies receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk and Nasdaq has justified why providing services to Eligible New Listings and Eligible Switches is not unfairly discriminatory in the Prior Filing. The proposed rule change would slightly reduce the value of the additional services provided to larger Eligible New Listings and Eligible Switches and therefore would reduce any discrimination between larger and smaller companies.

¹⁰ Exchange Act Release No. 65963, 76 FR at 79267.

¹¹ 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.

Nasdaq also believes that the proposed change to allow Additional Services to Eligible New Listings and Eligible Switches with a market capitalization of \$750 million or more, instead of \$500 million or more, is not designed to permit unfair discrimination between issuers. In the Prior Filing, Nasdaq noted that it offers more services to larger companies because they need more and different governance, communication and intelligence services and because attracting these larger companies will likely bring greater future value to Nasdaq. The proposed change from \$500 million to \$750 million reflects Nasdaq's conclusion, based on its experience with the program, that this higher threshold is appropriate to differentiate the companies that will most benefit from the Additional Services and provide the most future value to Nasdaq. As such, Nasdaq does not believe that this change unfairly discriminates between issuers. In addition, the proposed change to reduce the free services available to larger Eligible Switches from four years to three years reduces an existing difference between Eligible Switches and other Eligible New Listings, and therefore also does not unfairly discriminate between issuers.

Allowing companies up to 30 days after their listing to start using the services is a reflection of Nasdaq's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their listing. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thereby enabling companies to receive the full intended benefit. This change also more closely aligns Nasdaq's treatment of these companies with other customers of NASDAQ OMX Corporate Solutions, who do not receive or pay for services until they are contracted. As such, the proposed change does not permit unfair discrimination or impose a burden on competition.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As described in the statutory basis section, above, the proposed rule change responds to competitive pressures in the market for listings. Nasdaq believes that the changes to the package and the increased flexibility surrounding the start date of services will result in a more enticing package for potential new listings, even though the individual value of the services offered may be less, and therefore will enhance competition among listing exchanges.

In addition, the proposed rule change will result in fewer companies receiving the Additional Services and shorten the period for which some companies receive services, which may have the result of enhancing competition with other listing venues and with other service providers.

Nasdaq does not believe that allowing companies up to an additional 30 days to begin their complimentary period will cause any burden on competition. This change would only confer a short period prior to using services for companies that have already determined where to list and which services to use. In fact, a competing service provider could continue to offer its services during that 30 day period, which would enhance competition among service providers.

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 Act, as amended.

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

Written comments were neither solicited nor 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-058 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-2014-058. 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 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-2014-058 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).