

*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-2011-127 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-127. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2011-127 and should be submitted on or before October 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-23721 Filed 9-15-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65324; File No. SR-NASDAQ-2011-122]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Describe Complimentary Services That Are Offered to Certain New Listings on NASDAQ's Global and Global Select Markets**

September 12, 2011.

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 August 30, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "NASDAQ Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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 Substance of the Proposed Rule Change**

NASDAQ proposes to add rule text explaining services offered by NASDAQ to certain newly listing companies. NASDAQ will implement the proposed rule upon approval.

The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com>, at NASDAQ's principal office, on the Commission's Web site at <http://www.sec.gov>, 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, 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

The NASDAQ Exchange is a subsidiary of The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). Another subsidiary of NASDAQ OMX is NASDAQ OMX Group Corporate Solutions, Inc. ("Corporate Solutions").<sup>3</sup> Corporate Solutions offers products and programs to private and public companies, including companies listed on the NASDAQ Exchange and various European exchanges owned by NASDAQ OMX, designed to enhance transparency, mitigate risk, maximize efficiency and facilitate better corporate governance.

The NASDAQ Exchange intends to offer Corporate Solutions' services to certain newly listing companies. Specifically, NASDAQ will offer these services to companies listing on the 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").<sup>4</sup> In addition, NASDAQ will offer products to companies that switch their listing from the New York Stock Exchange (NYSE) to the Global or Global Select Markets ("Eligible Switches").

Eligible New Listings and Eligible Switches with a market capitalization of up to \$500 million would receive services for two years from the date of listing. These companies would receive the following services, which have a total retail value of approximately

<sup>3</sup> NASDAQ believes that Corporate Solutions is not a "facility" of the NASDAQ Exchange. 15 U.S.C. 78c(a)(2). The Act defines "facility" to include an exchange's "premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." Corporate Solutions is a distinct entity that is separate from the NASDAQ Exchange and engages in a discrete line of business that is not "for the purpose of effecting or reporting a transaction" on an exchange. While this proposal is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the NASDAQ Exchange, NASDAQ does not believe it is required to file Corporate Solutions' price schedule or changes that do not relate to services offered in connection with a listing on the NASDAQ Exchange.

<sup>4</sup> A company transferring from the OTCBB or Pink Sheets or from the Capital Market will not be eligible to receive these services.

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

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

\$94,000 per year.<sup>5</sup> In addition, one-time development fees of approximately \$4,000 to establish the services in the first year will be waived.

#### Governance Services

*Board Tools:* Companies will receive use of Directors Desk, a comprehensive solution designed to improve board communications and effectiveness while relieving corporate executives of the paperwork and time involved in keeping boards informed, for up to 10 users. This product has an approximate retail value of \$20,000 per year.

*Whistleblower Hotline:* Companies will receive a financial reporting hotline that provides employees and others with a fully-automated, safe and secure means of reporting incidents and concerns. This product has an approximate retail value of \$3,500 per year.

#### Communications Services

*Investor Relations Web site:* Companies will receive a Web site with all the necessary content and features to communicate with investors, offering easy access to up-to-date information. Included on this Web site will be a corporate governance library containing documents such as the Board committees' charters and the company's code of ethics. These products have a retail value of approximately \$16,000 per year.

*Press Releases:* Companies will be provided \$15,000 worth of distribution services for earnings or other press releases, including photographs, and filing of EDGAR and XBRL reports. The actual number of press releases will vary based on their length and the regional distribution network chosen by the company.

#### Intelligence Services

*Market Analytic Tools:* Companies will receive a market analytic tool, which integrates corporate shareholder communications, capital market information, investor contact management, and board-level reporting into a unified, easy-to-use, workflow environment for up to four users. This tool also provides information about research and earnings estimates on the company and helps companies identify potential purchasers of their stock using quantitative targeting and qualitative insights. This product has an

approximate retail value of \$39,000 per year.

Eligible New Listings and Eligible Switches with a market capitalization of \$500 million or more would receive the services described above and the additional services set forth below. Eligible Switches with a market capitalization of \$500 million or more would receive these services for four years from the date of listing. Eligible New Listings with a market capitalization of \$500 million or more would receive these services for two years from the date of listing. NASDAQ proposes to offer Eligible Switches with a market capitalization of \$500 million or more four years of services, as opposed to two years of services for other Eligible Switches and Eligible New Listings, because NASDAQ believes that these companies receive comparable services from the NYSE, which they would forgo by switching their listing. The total retail value of the services offered to these companies is approximately \$169,000 per year. In addition, one-time development fees of approximately \$4,000 to establish the products in the first year will be waived.

#### Governance Services

*Board Tools:* Companies will receive an additional five licenses for Directors Desk, with a retail value of approximately \$10,000 per year.

#### Communications Services

*Press Releases:* Companies will receive an additional \$5,000 worth of distribution services.

#### Intelligence Services

*Market Surveillance Tools:* Companies will receive a stock surveillance package, under which an analyst will, on a daily basis, utilize a mosaic of public, subscription and issuer-based data sources to monitor the daily movement and settlement activity of the company's stock, provide alerts on significant increases in trading volume and block trading activity, and offer color to any unusual change in stock price. This product has an approximate retail value of \$60,000 per year. To fully utilize this service, companies will have to subscribe to, and separately pay for, certain third party information, which is not included.<sup>6</sup>

All NASDAQ-listed companies, including companies on the Capital Market and newly listing companies that do not satisfy the requirements

described above, also benefit from other services provided by the NASDAQ Exchange. For example, these companies receive access to the NASDAQ Market Intelligence Desk and NASDAQ Online. The Market Intelligence Desk consists of a team of market professionals that serves as a single source of up-to-the-minute market intelligence, trading analysis, and real-time information to all listed companies. NASDAQ Online provides similar information that allows all listed companies to follow their stock's trading, competitors, and market activity through an online interface.<sup>7</sup>

The NASDAQ Exchange believes that offering governance, communications and intelligence services to newly public companies will help them fulfill their responsibilities as public companies. However, no company is required to use these services as a condition of listing. In addition, the NASDAQ Exchange believes that it is appropriate to offer companies switching from the NYSE a package of services because the NYSE offers comparable services, which these companies would forgo by switching their listing.<sup>8</sup> At the end of the package term, companies may choose to renew these services or discontinue them. If a company chooses to discontinue the services, there would be no effect on the company's continued listing on the NASDAQ Exchange. The NASDAQ Exchange represents that the existence of this program will not adversely affect the funding available for the NASDAQ Exchange's regulatory responsibilities.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with 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 NASDAQ operates or controls and is designed to prevent unfair discrimination between customers, issuers, brokers, or dealers.

<sup>7</sup> NASDAQ first described NASDAQ Online and the Market Intelligence Desk in connection with 1997 and 2001 fee changes, respectively. See *Securities Exchange Act* Release No. 39613 (February 2, 1998), 63 FR 6789 (February 10, 1998) (SR-NASD-97-83) and *Securities Exchange Act* Release No. 45206 (December 28, 2001), 67 FR 621 (January 4, 2002) (SR-NASD-2001-76).

<sup>8</sup> *Securities Exchange Act* Release No. 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (SR-NYSE-2011-20).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) [sic].

<sup>5</sup> Retail values are based on Corporate Solutions' current price list. If a company does not fully use the services offered in a year, unused services do not carry forward into future years and cannot be used to offset the costs of other services or listing fees.

<sup>6</sup> For example, companies would have to purchase position reports from the Depository Trust Corporation.

All companies receive some services from NASDAQ, such as NASDAQ Online and the Market Intelligence Desk. NASDAQ believes that offering additional services only to companies listing on the Global and Global Select Markets, and not to companies listing on the Capital Market, reflects the higher demand for these services by the larger companies typically listed on the Global and Global Select markets. NASDAQ also believes that offering different services based on a company's market capitalization is appropriate given that larger companies generally will need more and different governance, communication and intelligence services. The distinction based on market capitalization is clear and transparent. Further, NASDAQ believes that offering services to Eligible New Listings, and not to companies already listed on NASDAQ, is appropriate given that the services offered will help ease the transition of becoming a public company and will help the Eligible New Listings fulfill their new responsibilities as public companies. Based on the above, NASDAQ believes that these distinctions help assure that the services are equitably allocated among issuers as required by Section 6(b)(4) of the Act and do not unfairly discriminate among issuers as required by Section 6(b)(5) of the Act.

NASDAQ proposes to offer services only to companies switching from the NYSE, and not from other exchanges or unlisted markets, or to companies already listed on NASDAQ, because these companies receive comparable services from the NYSE, which they would forgo by switching their listing to NASDAQ. NASDAQ also proposes to offer Eligible Switches with a market capitalization of \$500 million or more four years of services, as opposed to two years of services for other Eligible Switches, because the NYSE generally offers these companies more services. As such, NASDAQ believes that these distinctions are not unfairly discriminatory as between issuers.

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

The NASDAQ Exchange 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. All similarly situated companies are eligible for the same package of services. However, no company is required to use the services as a condition of listing. Moreover, the number of companies eligible for these free services (*i.e.*,

companies newly listing on NASDAQ) will be very small in comparison to the total number of companies that comprise the target market for the services (*i.e.*, all public companies or, in the case of press release services, all public, private and non-profit companies), so that there can be no competitively meaningful foreclosure of similar services offered by third parties if the proposed rule is approved.

Specifically, there are approximately 23,000 public companies in the United States, including 5,800 companies that are listed on a U.S. exchange. By contrast, only 34 companies in 2009, 77 companies in 2010, and 62 companies through June 30, 2011 would have qualified for free services as Eligible New Listings by virtue of listing in connection with an IPO or a spin-off or a carve out from another company had the proposed rule been in effect.<sup>11</sup> Likewise, only 10 companies in 2009, three companies in 2010, and no companies through June 30, 2011 would have qualified for free services as Eligible Switches had the proposed rule been in effect in those years. So even assuming significant growth in Eligible New Listings and Eligible Switches in future years, the historical experience suggests that no more than approximately 3% of listed companies and well less than 1% of public companies generally would be eligible for complimentary services under the proposed rule in any year. Even if all eligible companies accepted the services and did not purchase comparable services from third party vendors—which NASDAQ believes is unlikely—these levels are far below what would be required for any competitive concern to arise.<sup>12</sup>

Finally, since multiple third party vendors of these services exist, making for a highly competitive market, and since companies can freely move among these vendors, NASDAQ OMX Corporate Solutions would have no ability to lock-in these customers, much less charge them supra-competitively high prices, after the free period has ended. As such, the marketplace will

<sup>11</sup> NASDAQ has not historically tracked the number of companies listing upon emerging from bankruptcy but believes that number to be fewer than five companies since 2009.

<sup>12</sup> See, e.g., *Gonzalez v. Insignares*, 1985-2 Trade Cas. (CCH) ¶ 66,701 (N.D. Ga. 1985) (summary judgment for defendant when 40% of the market was foreclosed); *Kuck v. Bensen*, 647 F. Supp. 743 (D. Me. 1986) (dismissal of complaint when 37% of market volume was foreclosed); *Bepco, Inc. v. Allied-Signal, Inc.*, 106 F. Supp. 2d 814 (M.D.N.C. 2000) (summary judgment for defendant, in part because foreclosure rates of 18.5% and 21.5% are "far short" of substantial).

continue to be serviced by multiple vendors and remain highly competitive.

#### *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 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 (<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-2011-122 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-122. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2011-122 and should be submitted on or before October 7, 2011.

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

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-23793 Filed 9-15-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65313; File No. SR-FINRA-2011-043]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 0160 (Definitions in FINRA By-Laws)

September 12, 2011.

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 August 31, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. 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

FINRA is proposing to amend FINRA Rule 0160 (Definitions in FINRA By-

Laws). The proposed rule change would transfer certain defined terms from NASD Rule 0120 (Definitions) to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the consolidated FINRA rulebook. The proposed rule change also would eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, at the Commission's Public Reference Room, and at the Commission's Web site at <http://www.sec.gov>.

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

In its filing with the Commission, FINRA 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. FINRA 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 Background

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>3</sup> the proposed rule change would amend FINRA Rule 0160 (Definitions in FINRA By-Laws). FINRA Rule 0160 provides that a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning. NASD Rule 0120 (Definitions)

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

sets forth additional defined terms that apply generally throughout the rules unless the context otherwise requires. Certain rules throughout the FINRA rulebook include defined terms that apply specifically for the purposes of a particular rule.

As further described below, the proposed rule change would transfer certain defined terms from NASD Rule 0120 to FINRA Rule 0160, subject to certain amendments, as well as add new defined terms to reflect the conventions of the Consolidated FINRA Rulebook.<sup>4</sup> The proposed rule change also would eliminate as unnecessary or duplicative certain definitions contained in NASD Rule 0120. Upon Commission approval and implementation by FINRA of the proposed rule change, NASD Rule 0120 will be eliminated from the current FINRA rulebook.<sup>5</sup>

FINRA notes that NYSE Rules 1 through 12 (with the exception of NYSE Rules 2A, 2B and 11)<sup>6</sup> set forth defined terms generally applicable throughout the NYSE rules. NYSE Rule 11 provides that unless the context requires otherwise, the terms defined in NYSE rules shall, for all purposes of the NYSE rules, have the meanings therein specified. FINRA will address NYSE Rules 1 ("The Exchange"), 2 ("Member," "Membership," "Member Firm," etc.), 3 ("Security"), 4 ("Stock"), 5 ("Bond"), 6 ("Floor"), 8 ("Delivery"), 9 ("Branch Office Manager"), 11 (Effect of Definitions) and 12 ("Business Day") as part of a separate phase of the rulebook consolidation process.

###### Defined Terms Transferring Without Substantive Change to FINRA Rule 0160

The proposed rule change would transfer the following defined terms

<sup>4</sup> FINRA Rule 0160 would be reorganized so that the defined terms are arranged alphabetically, as amended.

<sup>5</sup> Notwithstanding the proposed transfer of certain defined terms from NASD Rule 0120 to FINRA Rule 0160 in the Consolidated FINRA Rulebook, the defined terms in FINRA Rule 0160 would continue to apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook, as applicable. See also Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-021), discussing "Rules of General Applicability."

<sup>6</sup> As part of the process of developing a Consolidated FINRA Rulebook, FINRA repealed NYSE Rule 2B (No Affiliation between Exchange and any Member Organization) (see Securities Exchange Act Release No. 61473 (February 2, 2010), 75 FR 6422 (February 9, 2010) (Order Approving File No. SR-FINRA-2009-087). FINRA will address NYSE Rule 2A (Jurisdiction) as part of a separate rule proposal. Also, FINRA is proposing to delete NYSE Rule 10 ("Registered Representative") as part of the proposed changes to the consolidated FINRA rules addressing registration requirements. See *Regulatory Notice* 09-70 (December 2009).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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