

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82976; File No. SR-NASDAQ-2018-023]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Disclosure Services Offered To Certain New Listings

March 30, 2018.

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 March 20, 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 the disclosure services provided under IM-5900-7 to certain new listings. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative for new listings on or after April 23, 2018.

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.

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, 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, and may include market advisory tools such as stock surveillance (collectively the “Service Package”).⁴

As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization less than \$750 million currently receive a \$15,000 annual stipend for disclosure services; Eligible New Listings and Eligible Switches with a market capitalization of \$750 million or more currently receive a \$20,000 annual stipend for disclosure services. These stipends can be used “for disclosure services for earnings or other press releases, including photographs, and filing of EDGAR and XBRL reports.” Customers have indicated that the annual stipend makes it difficult for them to know what specifically they will receive and also to compare the

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).

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

Nasdaq Service Package with similar offerings from competitors. Based on this feedback, Nasdaq proposes to modify the disclosure services offered so that instead of an annual stipend to spend on any disclosure services, companies instead will receive a predetermined package of disclosure services for earnings or other press releases and the filing of related regulatory reports.⁵ The revised package of services will maintain the same approximate retail value as the amount of the stipend currently provided. All companies in the same market capitalization tier will be eligible for the same package of services.

The proposed rule change will be operative for new listings on or after April 23, 2018. Companies that list before that date will continue to receive services as described in the current rule.

Nasdaq also proposes to make non-substantive changes to the rule text to specify that the 2016 package is no longer the current package of for companies listing on or after April 23, 2018, and to clarify which package is provided to a company with exactly \$750 million market capitalization.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and Sections 6(b)(4),⁷ 6(b)(5),⁸ and 6(b)(8),⁹ 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.

Nasdaq faces competition in the market for listing services,¹⁰ and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer

⁵ Regulatory reports include XBRL and EDGAR filings and could also include filings with non-U.S. regulators or banking regulators.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(4).

⁸ 15 U.S.C. 78f(5).

⁹ 15 U.S.C. 78f(8).

¹⁰ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. In addition, while under the proposed change a package of disclosure services will be offered instead of a stipend, the types of services and the approximate retail value of the services offered will not change. Accordingly, Nasdaq does not believe this update has an effect on the allocation of fees nor does it permit unfair discrimination and the proposed rule change is consistent with the requirements of Section 6(b)(4) and (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.¹¹

Further, the disclosure services offered in the Services Package reflect 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, based on customer feedback, Nasdaq believes that the revised rule will be more transparent to customers and better enable customers to compare offerings from various exchanges. Nasdaq also believes that this enhanced transparency will promote just and equitable principles of trade as required by Section 6(b)(5) of the Act.

Finally, Nasdaq notes that the proposed non-substantive changes to the rule text to specify that the 2016 package is no longer the current package for companies listing on or after April 23, 2018, and to clarify which package is provided to a company with exactly \$750 million market capitalization are consistent with Section 6(b)(5) of the Act because they 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

¹¹ 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)).

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 the proposed rule change will make the rule text more transparent to customers and better enable customers to compare offerings from various exchanges, which reflects that competition, but does not impose any burden on the competition with other exchanges.

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 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) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

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:

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-023 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-2018-023. 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 (<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-2018-023, and should be submitted on or before April 26, 2018.

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

Eduardo Aleman,
Assistant Secretary.

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¹⁴ 17 CFR 200.30-3(a)(12).