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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90955; File No. SR-NASDAQ-2021-002]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify and Expand the Package of Complimentary Services Provided to Eligible Companies and Update the Values of Certain Complimentary Services

January 19, 2021.

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 January 8, 2021, 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 and expand the package of complimentary services provided to eligible companies and update the values of certain complimentary.

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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 in the United States, including American Depositary Receipts (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, in connection with a direct listing as defined in IM-5315-1 (including the listing of American Depositary Receipts), 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, or that have switched its listing from the NYSE 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 (“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

³ See Listing Rule IM-5900-7. Companies switching from a national securities exchange other than the NYSE are not eligible to receive complimentary services under IM-5900-7.

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

Currently, Nasdaq provides complimentary services from the Service Package to the Eligible New Listings based on the following tiers:

Eligible New Listing Tier 1: An Eligible New Listing that has a market capitalization less than \$750 million will receive the following complimentary services for two years:

Whistleblower Hotline, Investor Relations Website, \$15,000 per year of Disclosure Services, Audio Webcasting and Market Analytic Tools for two users. The total retail value of these services is reflected in the existing rule as approximately \$75,500 per year. In addition, one-time development fees of approximately \$5,000 to establish the services in the first year will be waived.⁵

Eligible New Listing Tier 2: An Eligible New Listing that has a market capitalization of \$750 million or more but less than \$5 billion will receive the following complimentary services for two years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Market Analytic Tools for two users and the choice of one Market Advisory Tool. The total retail value of these services is reflected in the existing rule as up to approximately \$137,000 per year. In addition, one-time development fees of approximately \$5,000 to establish the services in the first year will be waived.⁶

Eligible New Listing Tier 3: An Eligible New Listing that has a market capitalization of \$5 billion or more will receive the following complimentary services for two years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Market Analytic Tools for two users and the choice of two Market Advisory Tools. The total retail value of these services is reflected in the existing rule as up to

⁵ Listing Rule IM-5900-7(c)(1). In this proposed rule change, Nasdaq proposes to update the value of certain of the services and the approximate retail value of the package offered to each of the tiers of services.

⁶ Listing Rule IM-5900-7(c)(2).

approximately \$181,000 per year. In addition, one-time development fees of approximately \$5,000 to establish the services in the first year will be waived.⁷

Nasdaq also provides certain complimentary services from the Service Package to the Eligible Switches based on the following tiers:

Eligible Switch Tier 1: An Eligible Switch that has a market capitalization less than \$750 million will receive the following complimentary services for two years: Whistleblower Hotline, Investor Relations Website, \$15,000 per year of Disclosure Services, Audio Webcasting and Market Analytic Tools for two users. The total retail value of these services is reflected in the existing rule as approximately \$75,500 per year. In addition, one-time development fees of approximately \$5,000 to establish the services in the first year will be waived.⁸

Eligible Switch Tier 2: An Eligible Switch that has a market capitalization of \$750 million or more but less than \$5 billion will receive the following complimentary services for four years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Market Analytic Tools for three users and the choice of one Market Advisory Tool. The total retail value of these services is reflected in the existing rule as up to approximately \$150,000 per year. In addition, one-time development fees of approximately \$5,000 to establish the services in the first year will be waived.⁹

Eligible Switch Tier 3: An Eligible Switch that has a market capitalization of \$5 billion or more will receive the following complimentary services for four years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Market Analytic Tools for four users and the choice of two Market Advisory Tools. The total retail value of these services is reflected in the existing rule as up to approximately

⁷ Listing Rule IM-5900-7(c)(3).

⁸ Listing Rule IM-5900-7(d)(1).

⁹ Listing Rule IM-5900-7(d)(2).

\$207,000 per year. In addition, one-time development fees of approximately \$5,000 to establish the services in the first year will be waived.¹⁰

Based on Nasdaq's experience with offering the Service Package to the Eligible New Listings and Eligible Switches, as well as in response to changes in the competitive landscape, Nasdaq proposes to simplify the structure of the Service Package by eliminating Tier 3 for Eligible New Listings, extending the complimentary services period for the Eligible New Listings from two to three years and including Media Monitoring/Social Listening service, Virtual Event service, and certain ESG services, as described in more detail below, in the complimentary service package for Eligible New Listings and Eligible Switches.

To improve transparency and ease the application of the rules, Nasdaq proposes to adopt Listing Rule IM 5900-7A to describe the current Service Package, applicable to eligible companies that list before the effective date of this proposed rule change. Listing Rule IM 5900-7 is intended to be substantively identical to Listing Rule IM 5900-7A, except as modified by this proposal (the "New Service Package"). Accordingly, Listing Rule IM 5900-7 will describe the service package for eligible companies listing on or after the effective date of this SR-NASDAQ-2021-002, whereas Listing Rule IM 5900-7A will describe the service package for eligible companies that listed before the effective date of this SR-NASDAQ-2021-002. To that end, Nasdaq proposes to update the title of Listing Rule IM-5700-7.

Under the proposal, the New Service Package will include the Media Monitoring/Social Listening service. This service tracks coverage of company mentions, news and events across online and social media and has a retail value of approximately \$12,000 per year. The New Service Package will also include a Virtual Event service. Through this service a company will receive access to a virtual event platform for one investor or capital market day presentation event. A company is eligible to receive this service once in the period during which the

¹⁰ Listing Rule IM-5900-7(d)(3).

company is eligible to receive services from the New Service Package. This service has a retail value of approximately \$20,400.

Given the increased attention from shareholders and other stakeholders to Environmental, Social and Governance (ESG) disclosure, Nasdaq proposes to offer Eligible Switches and Eligible New Listings an ESG Core service. Through this service, companies will receive access to a software solution that will simplify the gathering, tracking, approving, managing and disclosing of ESG data, including the most universal and useful ESG metrics to provide insight into the sustainability performance of the company. This service has a retail value of approximately \$20,000 per year. In addition, one-time development fees of approximately \$1,000 to establish the product in the first year will be waived.¹¹

Nasdaq also proposes to offer Eligible New Listings and Eligible Switches that have a market capitalization of \$750 million or more an ESG Education & Sector Benchmarking Services, whereby companies will receive access to ESG education, insight and sector benchmarks to help them understand the ESG landscape. The education provided will include insight into capital invested in ESG strategies, overview of ESG frameworks, insight into ESG rating providers and other ESG information. The sector benchmarks will provide transparency into aggregated ESG disclosure practices for the company's specified sector. This service has a retail value of approximately \$30,000 per year.

As such, under the proposal, Eligible New Listings and Eligible Switches that have a market capitalization less than \$750 million will be eligible to receive the ESG Core Service. Eligible New Listings and Eligible Switches that have a market capitalization of \$750 million or

¹¹ The Service Package currently provides that one-time development fees of approximately \$5,000 to establish the services in the first year will be waived for Eligible New Listings and Eligible Switches. With the additional waiver of one-time development fees of approximately \$1,000, the New Service Package provides that one-time development fees of approximately \$6,000 will be waived.

more will be eligible to receive the ESG Core Service and the ESG Education & Sector Benchmarking Service.

The Exchange believes that offering the Media Monitoring/Social Listening service, the Virtual Event service, and the ESG services, as described above, to newly public companies will help them fulfill their responsibilities as public companies and provide information important for communicating with their investors. However, no company is required to use these services as a condition of listing. As is the case with other complimentary services, 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 affect on the company's continued listing on the Exchange.

Finally, Nasdaq proposes to update the values of the services contained in Listing Rules IM-5900-7, IM-5900-8, and proposed IM-5900-7A 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 in the New Service Package ranges from \$238,200 to \$1,118,000, and one-time development fees of approximately \$6,000 are waived.¹²

Nasdaq notes that no other company will be required to pay higher fees as a result of the proposed amendments and represents that providing this service will have no impact on the resources available for its regulatory programs.

¹² The exact values are set forth in proposed IM-5900-7, IM-5900-8 and IM-5900-7A. Under the current rule the stated value of the services provided ranges from \$151,000 to \$828,000, and one-time development fees of approximately \$5,000 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 \$56,500, and global targeting, which has an approximate retail value of \$48,000 as revised (\$44,000 previously). Companies could, of course, select different combinations of the three services offered, but these other combinations would have lower total approximate retail values.

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 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 previously created different tiers of services based on a market capitalization. Nasdaq believes that it is appropriate to offer different services based on a company's market capitalization given that larger

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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.

companies generally will need more and different governance, communication and intelligence services.¹⁸

Nasdaq believes offering the ESG Core service and the ESG Education & Sector Benchmarking service which, in part, provide access to ESG education and promote disclosure of ESG data, including the most universal and useful ESG metrics to provide insight into the sustainability performance of companies promotes just and equitable principles of trade and protects investors and the public interest by allowing Nasdaq listed companies to enhance ESG disclosure relevant to shareholders investment decisions. Nasdaq believes that by making this service available more companies will seek to enhance their ESG disclosure to achieve these benefits. However, no company is required to use this service.

Nasdaq believes that offering different ESG services based on a company's market capitalization is not unfairly discriminatory because larger companies generally will need more and different ESG services. The distinction based on market capitalization is also clear and transparent.

Nasdaq believes that it is appropriate to eliminate the third tier for Eligible New Listings that have a market capitalization of \$5 billion or more because it simplifies the structure of the New Service Package by removing one level of discrimination among the Eligible New Listings.¹⁹ Nasdaq believes that the removal this tier is not unfairly discriminatory because all similarly situated companies are eligible for the same package of services.

Similarly, Nasdaq believes that offering Media Monitoring/Social Listening service and Virtual Event service, as described above, to newly public companies promotes just and equitable principles of trade and protects investors and the public interest by helping Eligible New Listings and Eligible Switches fulfill their responsibilities as public companies through enhanced stakeholder engagement. However, no company is required to use this service.

¹⁸ Exchange Act Release No. 65963, 76 FR at 79265.

¹⁹ Nasdaq does not propose changes to the tier structure for Eligible Switches.

Nasdaq believes that it is appropriate to offer complimentary services for a longer period to Eligible New Listings that list after approval of this proposal than the period for which such services are provided to companies already listed on Nasdaq. The purpose of the proposal is to attract future listings and this competitive purpose would not be served by providing the complimentary services for an extended period to companies that are already listed.

In addition, the Exchange expects that companies that consider listing on Nasdaq after the proposal is approved will take the enhanced offering into account when choosing their listing market and budgeting for their needs that are met by the complimentary services, whereas existing listed companies will have made their market choice and undertaken their financial planning on the basis of the current services offering and will not in any way be harmed by the proposed change. Based on the above, the Exchange believes that, upon approval of this proposal, the complimentary services will be equitably allocated among issuers as required by Section 6(b)(4) of the Act and the proposal does not unfairly discriminate among issuers as required by Section 6(b)(5) of the Act.

As a result of extending the complimentary services period for the Eligible New Listings from two to three years, an Eligible New Listing that has a market capitalization less than \$750 million will receive the complimentary services for three years, whereas an Eligible Switch that has a market capitalization less than \$750 million will continue to receive the complimentary services for two years. Nasdaq believes that this distinction is not unfairly discriminatory because an Eligible Switch that has a market capitalization less than \$750 million, generally, already received certain complimentary services while listed on the NYSE. In addition, the NYSE recently extended the period for the complimentary services provided to eligible new listings and eligible transfer companies from 24 months to 48 months.²⁰ As stated above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering

²⁰ Exchange Act Release No. 90466 (November 20, 2020), 85 FR 76129 (November 27, 2020) (SR-NYSE-2020-94).

valuable services to companies. Accordingly Nasdaq believes that it is reasonable to enhance complimentary services to attract Eligible New Listings as part of this competition.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act²¹ that updating the values of the services within the rule is necessary,²² 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, except for the additional services described above. 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 Exchange Act.

Finally, Nasdaq notes that the proposed change to update the title in IM-5900-7 is consistent with Section 6(b)(5) of the Exchange Act because it will clarify the rule without making any substantive change.

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.²³

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

²¹ 15 U.S.C. 78s(b).

²² 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 Exchange 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.")

²³ 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)).

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. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-002 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-2021-002. 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. 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-2021-002 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

J. Matthew DeLesDernier,
Assistant Secretary.

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²⁴ 17 CFR 200.30-3(a)(12).