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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-102308; File No. SR-NASDAQ-2024-059)

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

January 29, 2025

I. Introduction

On October 17, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the definition of companies that are eligible for complimentary services when switching their listing to the Exchange and to modify the package of complimentary services available to such eligible companies. The proposed rule change was published for comment in the Federal Register on November 5, 2024.³ On December 18, 2024, the Commission designated a longer period for the Commission to take action on the proposed rule change.⁴ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101483 (October 30, 2024), 89 FR 87914 (“Notice”). The Commission has received no comments on the proposed rule change.

⁴ See Securities Exchange Act Release No. 101965, 89 FR 105160 (December 26, 2024).

II. Description of the Proposed Rule Change

Nasdaq offers complimentary services under Listing Rule IM-5900-7 to Eligible New Listings⁵ and Eligible Switches⁶ newly listing on Nasdaq's Global or Global Select Market.⁷ Nasdaq states that the complimentary service program offers valuable services to newly listing companies, is designed to help ease the transition of becoming a public company or switching markets, and makes listing on Nasdaq more attractive to these companies.⁸ 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").⁹

Currently, an Eligible Switch that has a market capitalization of \$750 million or more but less than \$5 billion receives certain complimentary services for four years, including the choice of one of the following Market Advisory Tools: Stock Surveillance, Global Targeting, or an Annual Perception Study.¹⁰ Instead of providing for the choice of one of the three Market

⁵ Listing Rule IM-5900-7(a)(1) 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 Depository 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 Depository Receipts), or (v) in conjunction with a business combination that satisfies the conditions in IM-5101-2(b)."

⁶ Current Listing Rule IM-5900-7(a)(2) 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." See *infra* notes 17-19 and accompanying text for discussion of the proposed changes to the definition of "Eligible Switch."

⁷ See Listing Rule IM-5900-7 (describing the complimentary services available to certain companies that listed on or after March 12, 2021, the effective date of SR-NASDAQ-2021-002). See also Securities Exchange Act Release No. 91318 (March 12, 2021), 86 FR 14774 (March 18, 2021) (SR-NASDAQ-2021-002) ("2021 Order") (modifying the package of complimentary services offered to eligible companies that listed on or after March 12, 2021); Securities Exchange Act Release No. 98367 (September 12, 2023), 88 FR 64016 (September 18, 2023) (SR-NASDAQ-2023-017) ("2023 Order") (modifying the package of complimentary services offered to eligible companies that listed on or after September 12, 2023).

⁸ See Notice, *supra* note 3, at 87915.

⁹ Nasdaq states that, in addition, all companies listed on Nasdaq receive other standard services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk. See *id.* at 87915 n.6.

¹⁰ See Listing Rule IM-5900-7(d)(2). See also Listing Rule 7(b) for a description of "Market Advisory Tools" and, specifically, the "Stock Surveillance," "Global Targeting," and "Annual Perception Study" tools.

Advisory Tools for four years,¹¹ Nasdaq 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 that lists on or after the effective date of this proposed rule change 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.¹² 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.¹³

Currently, an Eligible Switch that has a market capitalization of \$5 billion or more receives as part of its Service Package the choice of two Market Advisory Tools for four years.¹⁴ Nasdaq proposes to modify Listing Rule IM-5900-7(d)(3)(A) to provide an Eligible Switch that has a market capitalization of \$5 billion or more that lists on or after the effective date of this proposed rule change with one Annual Perception Study during the four-year period and both of the remaining Market Advisory Tools (i.e., Stock Surveillance and Global Targeting) for four years.¹⁵ Nasdaq also proposes to modify Listing Rule IM-5900-7(d)(3) to reflect that an Eligible

Nasdaq represents that 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, the one-time development fees of approximately \$6,000 to establish the services in the first year is waived. See Notice, supra note 3, at 87915 n.8; Listing Rule IM-5900-7(d)(2).

¹¹ Once the company elects a service it cannot subsequently change to a different alternative, including in a subsequent year. See Listing Rule IM-5900-7(e); Notice, supra note 3, at 87915 n.9.

¹² See Notice, supra note 3, at 87915.

¹³ See id.

¹⁴ See Listing Rule IM-5900-7(d)(3). Nasdaq represents that 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, the one-time development fees of approximately \$26,500 to establish the services in the first year is waived. See Notice, supra note 3, at 87915 n.10; Listing Rule IM-5900(7)(d)(3)(A).

¹⁵ See Notice, supra note 3, at 87915. Specifically, Nasdaq proposes to add new Listing Rule IM-5900-7(d)(3)(B) and move existing Listing Rule IM-5900-7(d)(3)(B) to Listing Rule IM-5900-7(d)(3)(C), with modifications.

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.¹⁶

Finally, Nasdaq proposes to modify the definition of an “Eligible Switch” in Listing Rule IM-5900-7(a)(2) to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing on or after the effective date of this proposed rule change to the Global or Global Select Market not only from the New York Stock Exchange (“NYSE”), as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange.¹⁷ Similarly, Nasdaq proposes to modify this definition so that a company that has switched its listing from any national securities exchange on or after the effective date of this proposed rule change 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 will be an Eligible Switch and will be entitled to a Service Package, as described above.¹⁸ This is an expansion from the current definition of “Eligible Switch,” which only includes companies that have switched their listings from NYSE.¹⁹

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

¹⁹ See Securities Exchange Act Release No. 90729 (December 18, 2020), 85 FR 84434 (December 28, 2020) (SR-NASDAQ-2020-060) (adding a definition of Eligible Switch that includes any company that (i) switched its listing from NYSE to list on Nasdaq under IM-5101-2 after the company publicly announced that it entered into a binding agreement for a business combination; and (ii) subsequently satisfies the conditions in IM-5101-2(b) and lists on the Nasdaq Global or Global Select Markets, by meeting all listing requirements of one of these market tiers, in conjunction with that business combination).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act.²⁰ In particular, the Commission finds that the proposed rule change is consistent with sections 6(b)(4) and (5) of the Act,²¹ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with section 6(b)(8) of the Act,²² in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nasdaq is responding to competitive pressures in the market for listings in making this proposal. Nasdaq states that it faces competition in the market for listing services, and competes, in part, by offering valuable services to companies, including complimentary services.²³ According to Nasdaq, the modified complimentary service packages will increase the value of such packages to the companies affected by this proposal because one Annual Perception Study will be provided in addition to four years of Stock Surveillance and/or Global Targeting, whereas currently some companies may choose the higher-valued four years of Stock Surveillance and/or Global Targeting without benefiting from any Annual Perception Study.²⁴ Nasdaq also states these changes will streamline the offering of services to new Eligible Switches and that new

²⁰ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² 15 U.S.C. 78f(b)(8).

²³ See Notice, supra note 3, at 87916. Nasdaq also states that all similarly situated companies are eligible for the same package of services. See id.

²⁴ See id. at 87915-16. Nasdaq represents that Stock Surveillance, Global Targeting, and Annual Perception Study have a retail value of approximately \$56,500, \$48,000, and \$45,000 per year, respectively. Nasdaq states that, in describing the value of the services in the rule text, it 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. See id. at 87916 n.11.

Eligible Switches with a market capitalization of \$750 million or more, generally, would benefit from an Annual Perception Study that leverages extensive capital markets relationships and benchmark data, amplifying the companies' efforts to elevate their story, enhance stakeholder engagement, identify risk, and attract new capital.²⁵

The Commission finds that it is consistent with the Act to modify the packages of complimentary services offered to Eligible Switches with a market capitalization of \$750 million or more that list on or after the effective date of this proposed rule change as described herein. As Nasdaq states, the proposed modifications relate to how Market Advisory Tools are provided and would likely increase the value of complimentary services packages to the companies affected by this proposal.²⁶ The Commission finds that this is reasonable and consistent with section 6(b)(5) of the Act.²⁷ In addition, the Commission finds that the proposed rule change reflects the current competitive environment for exchange listings among national securities exchanges and is consistent with section 6(b)(8) of the Act.²⁸

As stated in the Commission's previous order approving Listing Rule IM-5900-7, section 6(b)(5) of the Act²⁹ does not require that all issuers be treated the same; rather, the Act requires that the rules of an exchange not unfairly discriminate between issuers.³⁰ The Commission has previously found that it is reasonable for Nasdaq to provide different services to tiers based on market capitalization since larger capitalized companies generally will need and use more

²⁵ See id. at 87916.

²⁶ See id. at 87915-16.

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b)(8).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ See Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262, 79266 (December 21, 2011) (approving SR-NASDAQ-2011-122) ("2011 Approval Order"). The Commission concluded in the 2011 Approval Order that "Nasdaq has provided a sufficient basis for its different treatment of Eligible Switches and that this portion of Nasdaq's proposal meets the requirements of the Act in that it reflects competition between exchanges, with Nasdaq offering discounts for transfers of listings from a competing exchange." Id. See also 2023 Order, supra note 7; 2021 Order, supra note 7; Securities Exchange Act Release No. 79366 (November 21, 2016), 81 FR 85663, 85665 (November 28, 2016) (approving SR-NASDAQ-2016-106) ("2016 Approval Order").

services.³¹ In addition, describing the services available to listing companies and their associated values, as well as the length of time companies are entitled to receive such services, in the Exchange's rules will ensure that individual listed companies are not given specially negotiated packages or services to list or remain listed that would raise unfair discrimination issues under section 6(b)(5) of the Act.³² The Commission also previously found that the package of complimentary services offered to Eligible Switches is equitably allocated among issuers consistent with section 6(b)(4) of the Act and that describing the values of the services adds greater transparency to the Exchange's rules and to the fees applicable to such rules.³³ Further, Nasdaq states it is not 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 than will other issuers with lower market capitalizations by switching to its market.³⁴ Based on the foregoing, the Commission finds that the proposal to modify the packages of complimentary services offered to Eligible Switches with a market capitalization of \$750 million or more that list on or after the effective date of this proposed rule change does not unfairly discriminate among issuers and therefore is consistent with section 6(b)(5) of the Act.³⁵ For similar reasons, the Commission finds that, with the proposed changes to the provision of Market Advisory Tools, the packages of complimentary services are equitably allocated among issuers consistent with section 6(b)(4) of the Act.³⁶

The Commission also finds that it is consistent with the Act for Nasdaq to modify the definition of an Eligible Switch in Listing Rule IM-5900-7(a)(2) to include companies switching

³¹ See 2011 Approval Order, supra note 30, at 79266.

³² See also 2016 Approval Order, supra note 30, at 85665; 2011 Approval Order, supra note 30, at 79266.

³³ See 2016 Approval Order, supra note 30, at 85665; 2011 Approval Order, supra note 30, at 79266.

³⁴ See Notice, supra note 3, at 87916.

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78f(b)(4).

their listing not only from the NYSE, as currently provided, but also from any other national securities exchange. In Nasdaq's 2011 proposal to limit Eligible Switches only to companies switching their listing from the NYSE, Nasdaq stated that those listings would bring greater future value to Nasdaq.³⁷ In the instant filing, Nasdaq states that expanding the definition of Eligible Switch to including listings from any national securities exchange is designed to increase competition with other national securities exchanges.³⁸ The Commission finds that this aspect of the proposed change also does not unfairly discriminate among issuers and reflects the current competitive environment for exchange listings among national securities exchanges and is therefore consistent with sections 6(b)(5) and 6(b)(8) of the Act.³⁹ For similar reasons, the Commission finds that expanding the definition of "Eligible Switch" as proposed would allow complimentary services packages to remain equitably allocated among issuers consistent with section 6(b)(4) of the Act.⁴⁰

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,⁴¹ that the proposed rule change (SR-NASDAQ-2024-059) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Sherry R. Haywood,

Assistant Secretary.

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³⁷ See 2011 Approval Order, *supra* note 30, at 79265.

³⁸ See Notice, *supra* note 3, at 87917.

³⁹ 15 U.S.C. 78f(b)(5) and (8).

⁴⁰ 15 U.S.C. 78f(b)(4).

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 17 CFR 200.30-3(a)(12).