SECURITIES AND EXCHANGE COMMISSION
[Release No. 34–78806; File No. SR–
NASDAQ–2016–098]

Self-Regulatory Organizations; The
Nasdaq Stock Market LLC; Order
Approving Proposed Rule Change To
Modify the Complimentary Services
Offered to Certain New Listings

September 9, 2016.

I. Introduction

On July 11, 2016, The Nasdaq Stock
Market LLC (“Nasdex” or “Exchange”) filed
with the Securities and Exchange
Commission (“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 complimentary
services offered to certain new listings.
The proposed rule change was
published for comment in the Federal
Register on July 28, 2016.3 No comment
letters were received in response to the
Notice. This order approves the
proposed rule change.

II. Description of the Proposed Rule
Change

The Exchange offers 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” and, with Eligible New
Listings, “Eligible Companies”).4

According to the Exchange, this
program offers valuable services to
newly listing companies designed to
help ease the transition of becoming a
public company or switching markets,
makes listing on Nasdaq more attractive
to these companies, and provides
Nasdaq Corporate Solutions the
opportunity to demonstrate the value
of its services and forge a relationship
with the company.5 Currently, Eligible
Companies receive a whistleblower
hotline, investor relations Web site,
press release distribution services,
interactive webcasting, and market
analytic tools, and may receive a market
surveillance service.6 As discussed in
more detail below, the Exchange
proposed to modify its current offerings
to Eligible Companies.

The Exchange currently offers Eligible
Companies that have a market
capitalization of $750 million or more
a stock surveillance tool, through which
an analyst attempts to determine who
is buying and selling the company’s
stock.7 While any public company can
use this offering, the Exchange stated in
its proposal that it may not be an
appropriate fit for some companies,
such as those that are closely held or
otherwise have low liquidity or low
volume, which may prioritize different
investor relations tools over stock
surveillance.8 Therefore, the Exchange
proposed to allow companies eligible
for this service to choose from the
existing stock surveillance offering or
other alternatives, which Nasdaq stated
are also designed to help companies
identify current owners, potential
buyers or sellers of their stock, or
otherwise enhance their investor
relations efforts.9 Specifically, Eligible
Companies that have a market
capitalization of $750 million or more
would be allowed to choose the existing
stock surveillance offering or from
among the following alternatives: (i) A
global targeting package, where an
investor targeting specialist will help
focus the company’s investor relations
efforts on appropriate investors, tailor
messaging to those investors’ interests
and measure the company’s impact on
their holdings; (ii) monthly ownership
analytics and event driven targeting,
which provide a monthly shareholder
analysis and tracking report, which an
analyst will help interpret during a
monthly call, and a shareholder
targeting plan around one event each
year, such as a roadshow or investor
conference; or (iii) an annual perception
study designed to identify how the
company is perceived by key
stakeholders and provide the company
with actionable recommendations for
enhancing its perception in the
market.10 The approximate retail value
of the proposed new services ranges
from $35,000 to $46,000 per year, as
compared to the approximate retail
value of $51,000 for the existing stock
surveillance tool.11

The Exchange also proposed to create
a new tier of services for Eligible
Companies with a market capitalization
of $5 billion or more. As noted in the
Original Approval Order and the 2014
Approval Order, the Exchange believes
that it is appropriate to offer different
services based on a company’s market
capitalization given that larger
companies generally will need more and
different governance, communication,
and intelligence services.12 According
to the Exchange, companies with a
market capitalization of $5 billion or
more can benefit from, and are more
likely to purchase at the end of the
complimentary period, investor
targeting or perception studies in
addition to surveillance services
because they have more complex
investor relations functions and
frequently have more shareholders and
a greater change in their
shareholdings.13 As such, the Exchange
proposed to offer these companies, with
a market capitalization of $5 billion or
more, the choice of a second market
advisory tool.

The Exchange also proposed to
modify the complimentary services
offered to Eligible Switches. In
particular, the Exchange proposed to
increase the number of users of the
market analytic tool to three users
for Eligible Switches with a market
capitalization of $750 million or more
but less than $5 billion and to four users
for Eligible Switches with a market
capitalization of $5 billion or more.14 In
addition, Nasdaq proposed to increase
the term of the complimentary services
from three years to four years for any
Eligible Switch with a market
capitalization of $750 million or
greater.15

5 See Notice, supra note 3, at 49705.
6 See Nasdaq Rule IM–5900–7(b)–(c). Only Eligible Companies with a market capitalization of $750 million or more receive the market surveillance service. The Exchange proposed to rename this service as “stock surveillance” to better reflect its purpose.
7 See Nasdaq Rule IM–5900–7(c).
8 See Notice, supra note 3, at 49705.
9 See id.
10 See proposed Rule IM–5900–7(a) under section being renamed “Market Advisory Tools.”
11 See Notice, supra note 3, at 49705. The Exchange also proposed to update the description of the stock surveillance tool to clarify that it is a single, dedicated analyst who provides that service, as opposed to the team approach used for the proposed alternative market advisory tools, and to note that the analyst attempts to identify institutional buyers and sellers in the company’s stock.
12 See Notice, supra note 3, at 49706. See also Original Approval Order, supra note 4, at 79265.
13 See Notice, supra note 3, at 49706.
14 See proposed Rule IM–5900–7(c)(2)(i)–(ii). This service has a retail value of approximately $29,000 per year for two users, $40,000 for three users, and $51,000 for four users. See Notice, supra note 3, at 49706.
15 See proposed Rule IM–5900–7(c)(2)(i)–(ii). The Exchange noted that this proposal would restore some features and the term of complimentary

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The Exchange also proposed to revise the values and descriptions of the complimentary services offered.\textsuperscript{16} In addition, the Exchange proposed to amend the description of the market analytic tool to reflect the addition of mobile access to the users of that service and to add the value of that offering for three and four users ($40,000 and $51,000, respectively).\textsuperscript{17} In its filing, the Exchange also proposed to rename the “Interactive Webcasting” service “Audio Webcasting” to reflect the voice-only nature of the service, which is delivered through a platform branded with the company’s name and logo that allows real-time questions from the audience, and to describe the four audio webcasts as a “package” to reflect the basis for the approximate retail value provided.\textsuperscript{18} In addition, the Exchange proposed to rename the current “Press Release” service to “Disclosure Services” to better reflect the availability of EDGAR and XBRL services, and to specify that these services are provided as an annual stipend usuable with Nasdaq Corporate Solutions.\textsuperscript{19} The Exchange also proposed to delete the reference to factors affecting the number of press releases available because the revised rule would explicitly state that an annual stipend is provided and would emphasize disclosure services generally rather than just press releases.\textsuperscript{20}

The Exchange stated that if a company has a choice among different complimentary services under the proposed rule, the company must make its selection when it first begins to use a complimentary service and will not be permitted to subsequently change to a different complimentary service offered in the package.\textsuperscript{21} The Exchange noted in its proposal that a company can discontinue using a service at any time without penalty and can also elect to purchase from Nasdaq Corporate Solutions a service alternative that was previously declined or a comparable service from another competitor.\textsuperscript{22}

The Exchange noted that any company receiving services under the terms of the Original Approval Order or the 2014 Approval Order on the date this proposal is approved may elect to receive services under the revised terms in this proposal. If a company elects to receive services under this proposal, the services that the company is eligible to receive will be determined based on its status and market capitalization at the time of its original listing and the length of time that services are available to the company under the revised package will be calculated from the company’s original listing date.\textsuperscript{23}

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.\textsuperscript{24} Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)\textsuperscript{25} and 6(b)(5) of the Act\textsuperscript{26} in particular, in that the proposed rule 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(h) of the Act\textsuperscript{27} in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to revise the products and services it offers to companies. According to Nasdaq, the stock surveillance tool that certain Eligible Companies receive may not be an appropriate fit for some of these companies, such as those that are closely held or otherwise have low liquidity or low volume.\textsuperscript{28} Accordingly, these companies may derive more value from the other market advisory services, as described above, that Nasdaq is now going to be offering as a choice, in addition to the stock surveillance tool, to Eligible Companies with a market capitalization of $750 million or more.

The Commission also believes that it is consistent with the Act for the Exchange to create a new tier of services for Eligible Companies with a market capitalization of $5 billion or more and to offer varying services to different categories of issuers since larger capitalized companies generally will need and use more services.\textsuperscript{29} The Exchange represents that companies with a market capitalization of $5 billion or more have more complex investor relations functions and therefore can benefit from additional market advisory services and are more likely to purchase additional services at the end of the complimentary period.\textsuperscript{30} In addition, the Exchange’s proposal would provide Eligible Switches additional user seats for the market analytic tool than those provided to similarly capitalized Eligible New Listings. In making this distinction, the Exchange has stated that Eligible Switches are more likely to benefit from additional market analytic user seats than Eligible New Listings because these companies generally have larger investor relations teams already in place, whereas Eligible New Listings receive support from investment banks and others for a period of time after listing as their investor relations programs mature and therefore have, in the Exchange’s view, less need for additional user seats.\textsuperscript{31} Moreover, Nasdaq stated in its proposal that Eligible Switches will, in its view, forego more services paid for by their former exchange and that larger Eligible Switches will forego even more services. In support of this, Nasdaq notes that NYSE recently modified its services offered to listed companies so that they are now valued higher so that some companies will need a greater incentive

\textsuperscript{16} See Original Approval Order, supra note 4, at 79266 (finding 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 services). See also supra note 3, at 49706. The Commission notes that, as stated in the 2014 Approval Order, all listed companies receive some services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk. See 2014 Approval Order, supra note 4, at 44235.

\textsuperscript{17} See Notice, supra note 3, at 49707. As noted by the Exchange in its prior filing, it offers more services to larger companies because these companies need more and different governance, communications, and intelligence services. See Original Approval Order, supra note 4, at 79265.

\textsuperscript{18} See Notice, supra note 3, at 49707. The Commission notes that, in a prior filing, Nasdaq reduced its market analytic tools to all Eligible Companies from four users to two users based on Nasdaq’s experience with company use of the service.
to forgo the services offered by NYSE and switch to Nasdaq. Based on the above, the Commission believes that the Exchange has provided a sufficient basis for providing additional services to certain Eligible New Listings and Eligible Switches, as well as varying services to these different categories of listings, and that these changes do not unfairly discriminate among issuers and reflect the competitive environment for exchange listings for transfers from a competing exchange.

Further, the Commission believes that it is consistent with the Act for the Exchange to reinstate the four year term for services provided to Eligible Switches with a market capitalization of $750 million or more. According to the Exchange, this change reflects Nasdaq’s ongoing assessment of the competitive market for listings. Specifically, the Exchange has represented that it faces competition in the market for listing services and that it competes in part by offering valuable services to listed companies. The Exchange states that the proposed changes will result in a more enticing package for potential listings and therefore will enhance competition among listing exchanges. Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.

Finally, the Commission believes that it is reasonable, and in fact required by Section 19(b)(6) of the Exchange Act, that Nasdaq amend IM–5000–7 to update the rule text to reflect the actual retail values of the services offered, which have changed since the original adoption of the rule. The Commission also believes it is reasonable for the Exchange to make certain non-substantive changes, as described above, to the names and descriptions of certain services provided. This provides greater transparency to Nasdaq’s rules and the fees applicable to companies listing on the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2016–098), be, and hereby is, approved.

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

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 7.46 Relating to the Tick Size Pilot Program

September 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that, on August 25, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend Rule 7.46 to (1) describe system functionality requirements necessary to implement the Plan and (2) clarify the operation of certain exceptions to the Trade-at Prohibition on Pilot Securities in the third test group. The proposed rule change is available on the Exchange’s Web site at www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 7.46 to (1) describe system functionality requirements necessary to implement the Plan and (2) clarify the operation of certain exceptions to the Trade-at Prohibition on Pilot Securities in the third test group (“Test Group Three”).

The Plan is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes to amend Rule 7.46, which has been adopted on a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled to begin on October 3, 2016.

34 See 2014 Approval Order, supra note 4, at 44235.
35 See Notice, supra note 3, at 49707. The Commission notes that the Original Approval Order found four years of services for Eligible Switches consistent with the Act. As noted above, Nasdaq had reduced services to Eligible Switches from four to three years in 2014 and is now proposing to change back to four years of services for these transfers for competitive reasons. See id. at 49706 & n.13. See also supra note 32 and accompanying text.
36 See Notice, supra note 3, at 49707 & n.13.
38 We would expect Nasdaq, consistent with Section 19(b) of the 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.