

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to modify the treatment of direct listings including Level 2 American Depository Receipts under IM-5900-7

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Nikolai Last Name \* Utochkin

Title \* Counsel - Listing and Governance

E-mail \* Nikolai.Utochkin@nasdaq.com

Telephone \* (301) 978-8029 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 05/16/2019 Global Chief Legal and Policy Officer

By Edward S. Knight

(Name \*)

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify the treatment of direct listings including Level 2 American Depositary Receipts (ADRs) under IM-5900-7, specify that an Eligible New Listing includes Level 3 ADRs, update the values of certain services, modify the market advisory tools provided under IM-5900-7 to certain new listings, and make certain other clarifying changes.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Nikolai Utochkin  
Counsel – Listing and Governance  
Nasdaq, Inc.  
(301) 978-8029

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

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

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

a. 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").<sup>3</sup> 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").<sup>4</sup>

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<sup>3</sup> 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); Exchange Act Release No. 82791 (February 28, 2018), 83 FR 9354 (March 5, 2018)(SR-NASDAQ-2018-15); Exchange Act Release No. 82976 (March 30, 2018), 83 FR 14683 (April 5, 2018)(SR-NASDAQ-2018-23).

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

### Direct Listing

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. Nasdaq previously adopted requirements under IM-5315-1 applicable to such companies listing on the Nasdaq Global Select Market<sup>5</sup> and now proposes to include in the definition of an “Eligible New Listing” that receives complimentary services under IM-5900-7 a company listing in connection with a direct listing. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to direct listings.<sup>6</sup>

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<sup>5</sup> Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019).

<sup>6</sup> Section 907.00 of the NYSE Listed Company Manual provides that for the purposes of this Section 907.00, the term “Eligible New Listing” means “any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering...” See Exchange Act Release No. 68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR-NYSE-2012-44); As subsequently amended Section 907.00 of the NYSE Listed Company Manual now provides that “the term “Eligible New Listing” means (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).”

### American Depositary Receipts

U.S. investors often hold equity securities of foreign issuers in the form of ADRs. An ADR is a security that represents an ownership interest in a specified number of foreign securities that have been placed with a depositary financial institution by the issuer or holders of such securities. An ADR is in essence a substitute trading mechanism for foreign securities allowing the issuer or holder to transfer title to the underlying foreign securities by delivery of the ADR. The depositary is typically a U.S. bank or trust company, and it usually appoints a custodian to hold the deposited securities in the home market of the foreign issuer.<sup>7</sup> The custodian is often a bank, and may be a subsidiary or branch of the depositary or a third-party institution with which the depositary has a contractual custodian relationship.

In order to list ADRs, Nasdaq requires that such ADRs be sponsored. A sponsored ADR facility is typically established jointly by an issuer and a depositary. The foreign issuer of the deposited securities typically enters into a deposit agreement with the depositary. For a sponsored ADR, both the depositary and the foreign company sign the F-6 registration statement under the Securities Act of 1933. The deposit agreement sets out the rights and responsibilities of the issuer and the depositary, and the ADR holders as third party beneficiaries. Each ADR holder becomes a party to such agreement through its holding of the ADR.

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<sup>7</sup> ADRs have many characteristics of a domestic equity security but also provide U.S. investors with several attributes that are absent in direct ownership of foreign securities. The depositary (or the custodian) monitors the declaration of dividends, collects them and converts them to U.S. dollars for distribution. In addition, the clearance and settlement process for ADRs generally is the same as for other domestic securities that are traded in the U.S. markets. Thus, investors can own an interest in securities of foreign issuers while holding securities that trade, clear and settle within automated U.S. systems and within U.S. timeframes.

Market participants describe sponsored facilities in terms of three categories, based on the extent to which the issuer of the deposited securities has accessed the U.S. securities market. A “Level 1 facility” is an ADR facility the ADRs of which trade in the U.S. over-the-counter market and the foreign issuer is not required to register with or report to the Commission under Section 12 or 15 of the Exchange Act. “Level 2” refers to ADRs that are listed on a U.S. stock exchange by a foreign issuer that becomes subject to certain SEC reporting requirements,<sup>8</sup> but the foreign issuer has not sold ADRs in the United States in order to raise capital or effect an acquisition. “Level 3” denotes ADRs that are listed on a U.S. stock exchange where the foreign issuer has sold ADRs in the United States in a registered public offering. A foreign issuer can apply to list Level 2 or Level 3 ADRs on any of Nasdaq’s market tiers.

Nasdaq proposes to include Level 2 ADRs in the definition of an “Eligible New Listing” that receives complimentary services under IM-5900-7 when the ADRs are listed in connection with a direct listing under IM-5315-1(c). Nasdaq also proposes to specify that an Eligible New Listing includes Level 3 ADRs by stating that the rule reference in IM-5900-7 to listing “in connection with [the company’s] initial public offering” means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company’s home market. Such companies would receive the same services under IM-5900-7, with the same value, as any other Eligible New Listing. This change is consistent with the approach approved by the

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<sup>8</sup> Following their listing on Nasdaq, such companies will also be required to register and file annual reports under the Exchange Act with the Commission.

Commission in the rules of NYSE, which provides similar services to companies listing ADRs in connection with initial public offering or through a direct listing.<sup>9</sup>

#### Other Changes

As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization of \$750 million or more currently receive a choice of market advisory tools, including a monthly ownership analytics and event driven targeting tool, as described in IM-5900-7(a)(iii). Nasdaq has determined to discontinue providing this tool because over time Nasdaq observed that it receives minimal interest from Nasdaq customers, in particular because there is considerable overlap in services with the stock surveillance tool.<sup>10</sup> Accordingly, Nasdaq proposes to remove the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM-5900-7(a) and to renumber the remaining market advisory tools accordingly.<sup>11</sup>

Nasdaq also proposes to update the values of the services contained in IM-5900-7 to their current values. Depending on a company's market capitalization and whether it is

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<sup>9</sup> See footnote 6 above. Section 907.00 of the NYSE Listed Company Manual provides that "an "equity security" means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts." See Exchange Act Release No. 68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR-NYSE-2012-44).

<sup>10</sup> Currently no company receives the monthly ownership analytics and event driven targeting service from Nasdaq.

<sup>11</sup> The revised package of services will maintain the same approximate retail value as the one currently provided because Nasdaq presumed that a company would use stock surveillance, which has an approximate retail value of \$56,500 as revised (\$56,000 previously), and global targeting, which has an approximate retail value of \$44,000 rather than the monthly ownership analytics and event driven targeting, which has an approximate retail value of \$48,000, because there is considerable overlap between the latter and the stock surveillance service.



an Eligible New Listing or an Eligible Switch, the total revised value of the services provided ranges from \$151,000 to \$828,000, and one-time development fees of approximately \$5,000 are waived.<sup>12</sup>

The proposed rule change will be operative for new listings on or after the effectiveness of this rule filing. Companies that list before that date will continue to receive services as described in the current rule.

Finally, Nasdaq also proposes to make non-substantive changes to update the introductory note in IM-5900-7 and to include the specific operative date of the proposed rule change to ease understanding of the rule.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies, including ADRs and direct listings, 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.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange

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<sup>12</sup> The exact values are set forth in proposed IM-5900-7. Under the current rule the stated value of the services provided ranges from \$150,000 to \$824,000, 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 as revised (\$56,000 previously), and global targeting, which has an approximate retail value of \$44,000. Companies could, of course, select different combinations of the three services offered, but these other combinations would have lower total approximate retail values. See Exchange Act Release No. 78392 (July 22, 2016), 81 FR 49705, 49706 n.10 (July 28, 2016) (Notice of Filing for SR-NASDAQ-2016-098).

<sup>13</sup> 15 U.S.C. 78f(b).

Act,<sup>14</sup> 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. Nasdaq also believes that the proposed rule change is consistent with the provisions Sections 6(b)(4),<sup>15</sup> 6(b)(5),<sup>16</sup> and 6(b)(8),<sup>17</sup> 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 Exchange Act.

Nasdaq faces competition in the market for listing services,<sup>18</sup> 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. As noted in

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(4).

<sup>16</sup> 15 U.S.C. 78f(5).

<sup>17</sup> 15 U.S.C. 78f(8).

<sup>18</sup> 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](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

the Service Package filings, Nasdaq 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.<sup>19</sup>

Nasdaq also believes it is reasonable, and not unfairly discriminatory, to offer complimentary services to a foreign company listing Level 2 ADRs or a domestic company listing in connection with a direct listing under IM-5315-1. Such companies are similar to other Eligible New Listings, such as initial public offerings of domestic companies, and will have increased need to focus on identifying and communicating with its shareholders because they are listing on a national securities exchange in the U.S. for the first time. Like the other Eligible New Listings that receive complimentary services under the existing rule, these companies are transitioning to the traditional U.S. public company model and the complimentary services provided will help ease that transition.<sup>20</sup> In addition, these companies will be purchasing many of these services for the first time, and offering complimentary services will provide Nasdaq Corporate Solutions and third-party service providers the opportunity to demonstrate the value of its services and forge a relationship with the company at a time when it is choosing its service providers. For these reasons, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer the services to a foreign company listing Level 2 ADRs or a domestic company listing in connection with a direct listing under IM-5315-1. To the

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<sup>19</sup> Exchange Act Release No. 65963, 76 FR at 79265.

<sup>20</sup> Although companies listing Level 2 ADRs may have prior experience being a public company in their home country, they, nonetheless, will be transitioning to the traditional public company model in the United States. Following their listing on Nasdaq, such companies will also be required to register and file annual reports under the Exchange Act with the Commission.

contrary, this proposed change will eliminate a distinction between companies listing common stock or ADRs through a direct listing and companies listing through an IPO.

Nasdaq believes that the proposed change to specify that the rule reference in IM-5900-7 to listing “in connection with [the company’s] initial public offering” means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company’s home market is consistent with Section 6(b)(5) of the Exchange Act because it will provide transparency in the rules and address an ambiguity by specifying that listing of Level 3 ADRs on Nasdaq is considered an initial public offering notwithstanding that the issuer of ADRs may already be a public company in their home country.

As described above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization of \$750 million or more currently receive a choice of market advisory tools, including a monthly ownership analytics and event driven targeting tool, as described in IM-5900-7(a)(iii). Based on Nasdaq’s experience with offering this service, Nasdaq has determined to discontinue providing this tool because over time Nasdaq observed that this tool receives minimal interest from Nasdaq customers, in particular because the stock surveillance tool and the monthly ownership analytics and event driven targeting tool have considerable overlap between these services. Nasdaq believes that the removal of the monthly ownership analytics and event driven targeting tool is not unfairly discriminatory because all similarly situated companies are eligible for the same package of services. Moreover, no company currently uses this service.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act<sup>21</sup> that updating the values of the services within the rule is necessary,<sup>22</sup> 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 monthly ownership analytics and event driven targeting tool, which will be removed as 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 introductory note in IM-5900-7 and to include the specific operative date of the proposed rule change 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.<sup>23</sup>

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<sup>21</sup> 15 U.S.C. 78s(b).

<sup>22</sup> 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.")

<sup>23</sup> 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)).

4. 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 Exchange Act. As noted 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. Rather, Nasdaq believes the proposed changes will result in more potential listings being eligible to receive the package and therefore will enhance competition for new listings of ADRs and companies listing in connection with a direct listing under IM-5315-1. Finally, the clarification that listing of Level 3 ADRs on Nasdaq is considered an initial public offering in the United States will not impose any burden on competition because it will provide transparency in the rules and eliminate an ambiguity. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to companies listing ADRs in connection with initial public offering.<sup>24</sup>

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.

5. 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.

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<sup>24</sup> See footnote 9 above.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>25</sup> of the Exchange Act and Rule 19b-4(f)(6) thereunder<sup>26</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposed rule change includes in the definition of an “Eligible New Listing” that receives complimentary services under IM-5900-7 a foreign company listing a Level 2 ADR and a domestic company listing in connection with a direct listing under IM-5315-1. These changes do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition because the rule change eliminates a distinction between companies listing ADRs or common stock through a direct listing and other similar Eligible New Listings that are currently eligible to receive the Service Package. The proposed change to specify that the rule reference in IM-5900-7 to listing “in connection with [the company’s] initial public offering” means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company’s home market, similarly does not

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(6).

significantly affect the protection of investors or the public interest and does not impose any significant burden on competition because this change merely provides transparency in the rules and eliminates an ambiguity. These changes are consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to companies listing ADRs or through a direct listing.<sup>27</sup>

The proposed rule change removes the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM-5900-7(a) and renumbers the remaining market advisory tools accordingly. These changes do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition because they merely eliminate the service that is not used by any listed company.

Finally, the proposed rule change updates the values of services provided under IM-5900-7 and makes non-substantive changes to update the introductory note in IM-5900-7. These changes do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition because these changes enhance transparency of the services Nasdaq provides without making any substantive change.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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<sup>27</sup> See footnote 6 above.



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 Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that companies listing ADRs or common stock through a direct listing during such 30-day period could receive the Service Package; the accurate values of the complimentary services can immediately be reflected in Nasdaq's rules; specifying that companies listing Level 3 ADRs on Nasdaq are considered to be listing in connection with an initial public offering in the United States can immediately be reflected in Nasdaq's rules; and so that Nasdaq can immediately remove the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM-5900-7(a).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2019-040)

May \_\_, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Complementary Services Offered by the Exchange Under Rule IM-5900-7

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 May 16, 2019, 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, II, and III, 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 treatment of direct listings including Level 2 American Depositary Receipts (ADRs) under IM-5900-7, specify that an Eligible New Listing includes Level 3 ADRs, update the values of certain services, modify the market advisory tools provided under IM-5900-7 to certain new listings, and make certain other clarifying changes.

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

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

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").<sup>3</sup> Nasdaq believes that the

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<sup>3</sup> 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),

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”).<sup>4</sup>

### Direct Listing

Nasdaq recognizes that some companies that have sold common equity securities in private placements, which have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, may wish to list those securities to allow existing shareholders to sell their shares. Nasdaq previously adopted requirements under IM-5315-1 applicable to such companies listing on the Nasdaq Global Select Market<sup>5</sup> and now proposes to include in the definition of an “Eligible New Listing” that receives complimentary services under IM-5900-7 a company listing in connection with a direct listing. This change is consistent

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81 FR 85663 (November 28, 2016) (SR-NASDAQ-2016-106); Exchange Act Release No. 82791 (February 28, 2018), 83 FR 9354 (March 5, 2018)(SR-NASDAQ-2018-15); Exchange Act Release No. 82976 (March 30, 2018), 83 FR 14683 (April 5, 2018)(SR-NASDAQ-2018-23).

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

<sup>5</sup> Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019).

with the approach approved by the Commission in the rules of NYSE, which provides similar services to direct listings.<sup>6</sup>

#### American Depository Receipts

U.S. investors often hold equity securities of foreign issuers in the form of ADRs. An ADR is a security that represents an ownership interest in a specified number of foreign securities that have been placed with a depository financial institution by the issuer or holders of such securities. An ADR is in essence a substitute trading mechanism for foreign securities allowing the issuer or holder to transfer title to the underlying foreign securities by delivery of the ADR. The depository is typically a U.S. bank or trust company, and it usually appoints a custodian to hold the deposited securities in the home market of the foreign issuer.<sup>7</sup> The custodian is often a bank, and may be a subsidiary or

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<sup>6</sup> Section 907.00 of the NYSE Listed Company Manual provides that for the purposes of this Section 907.00, the term “Eligible New Listing” means “any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering...” See Exchange Act Release No. 68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR-NYSE-2012-44); As subsequently amended Section 907.00 of the NYSE Listed Company Manual now provides that “the term “Eligible New Listing” means (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).”

<sup>7</sup> ADRs have many characteristics of a domestic equity security but also provide U.S. investors with several attributes that are absent in direct ownership of foreign securities. The depository (or the custodian) monitors the declaration of dividends, collects them and converts them to U.S. dollars for distribution. In addition, the clearance and settlement process for ADRs generally is the same as for other domestic securities that are traded in the U.S. markets. Thus, investors can own an

branch of the depository or a third-party institution with which the depository has a contractual custodian relationship.

In order to list ADRs, Nasdaq requires that such ADRs be sponsored. A sponsored ADR facility is typically established jointly by an issuer and a depository. The foreign issuer of the deposited securities typically enters into a deposit agreement with the depository. For a sponsored ADR, both the depository and the foreign company sign the F-6 registration statement under the Securities Act of 1933. The deposit agreement sets out the rights and responsibilities of the issuer and the depository, and the ADR holders as third party beneficiaries. Each ADR holder becomes a party to such agreement through its holding of the ADR.

Market participants describe sponsored facilities in terms of three categories, based on the extent to which the issuer of the deposited securities has accessed the U.S. securities market. A “Level 1 facility” is an ADR facility the ADRs of which trade in the U.S. over-the-counter market and the foreign issuer is not required to register with or report to the Commission under Section 12 or 15 of the Exchange Act. “Level 2” refers to ADRs that are listed on a U.S. stock exchange by a foreign issuer that becomes subject to certain SEC reporting requirements,<sup>8</sup> but the foreign issuer has not sold ADRs in the United States in order to raise capital or effect an acquisition. “Level 3” denotes ADRs that are listed on a U.S. stock exchange where the foreign issuer has sold ADRs in the

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interest in securities of foreign issuers while holding securities that trade, clear and settle within automated U.S. systems and within U.S. timeframes.

<sup>8</sup> Following their listing on Nasdaq, such companies will also be required to register and file annual reports under the Exchange Act with the Commission.

United States in a registered public offering. A foreign issuer can apply to list Level 2 or Level 3 ADRs on any of Nasdaq's market tiers.

Nasdaq proposes to include Level 2 ADRs in the definition of an "Eligible New Listing" that receives complimentary services under IM-5900-7 when the ADRs are listed in connection with a direct listing under IM-5315-1(c). Nasdaq also proposes to specify that an Eligible New Listing includes Level 3 ADRs by stating that the rule reference in IM-5900-7 to listing "in connection with [the company's] initial public offering" means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company's home market. Such companies would receive the same services under IM-5900-7, with the same value, as any other Eligible New Listing. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to companies listing ADRs in connection with initial public offering or through a direct listing.<sup>9</sup>

#### Other Changes

As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization of \$750 million or more currently receive a choice of market advisory tools, including a monthly ownership analytics and event driven targeting tool, as described in IM-5900-7(a)(iii). Nasdaq has determined to discontinue providing this tool because over time Nasdaq observed that it receives minimal interest from Nasdaq

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<sup>9</sup> See footnote 6 above. Section 907.00 of the NYSE Listed Company Manual provides that "an "equity security" means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts." See Exchange Act Release No. 68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR-NYSE-2012-44).



customers, in particular because there is considerable overlap in services with the stock surveillance tool.<sup>10</sup> Accordingly, Nasdaq proposes to remove the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM-5900-7(a) and to renumber the remaining market advisory tools accordingly.<sup>11</sup>

Nasdaq also proposes to update the values of the services contained in IM-5900-7 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 ranges from \$151,000 to \$828,000, and one-time development fees of approximately \$5,000 are waived.<sup>12</sup>

The proposed rule change will be operative for new listings on or after the effectiveness of this rule filing. Companies that list before that date will continue to receive services as described in the current rule.

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<sup>10</sup> Currently no company receives the monthly ownership analytics and event driven targeting service from Nasdaq.

<sup>11</sup> The revised package of services will maintain the same approximate retail value as the one currently provided because Nasdaq presumed that a company would use stock surveillance, which has an approximate retail value of \$56,500 as revised (\$56,000 previously), and global targeting, which has an approximate retail value of \$44,000 rather than the monthly ownership analytics and event driven targeting, which has an approximate retail value of \$48,000, because there is considerable overlap between the latter and the stock surveillance service.

<sup>12</sup> The exact values are set forth in proposed IM-5900-7. Under the current rule the stated value of the services provided ranges from \$150,000 to \$824,000, 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 as revised (\$56,000 previously), and global targeting, which has an approximate retail value of \$44,000. Companies could, of course, select different combinations of the three services offered, but these other combinations would have lower total approximate retail values. See Exchange Act Release No. 78392 (July 22, 2016), 81 FR 49705, 49706 n.10 (July 28, 2016) (Notice of Filing for SR-NASDAQ-2016-098).

Finally, Nasdaq also proposes to make non-substantive changes to update the introductory note in IM-5900-7 and to include the specific operative date of the proposed rule change to ease understanding of the rule.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies, including ADRs and direct listings, 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.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>14</sup> 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. Nasdaq also believes that the proposed rule change is consistent with the provisions Sections 6(b)(4),<sup>15</sup> 6(b)(5),<sup>16</sup> and 6(b)(8),<sup>17</sup> 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

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(4).

<sup>16</sup> 15 U.S.C. 78f(5).

<sup>17</sup> 15 U.S.C. 78f(8).

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 Exchange Act.

Nasdaq faces competition in the market for listing services,<sup>18</sup> 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. As noted in the Service Package filings, Nasdaq 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.<sup>19</sup>

Nasdaq also believes it is reasonable, and not unfairly discriminatory, to offer complimentary services to a foreign company listing Level 2 ADRs or a domestic company listing in connection with a direct listing under IM-5315-1. Such companies are similar to other Eligible New Listings, such as initial public offerings of domestic companies, and will have increased need to focus on identifying and communicating with its shareholders because they are listing on a national securities exchange in the U.S. for the first time. Like the other Eligible New Listings that receive complimentary services

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<sup>18</sup> 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](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

<sup>19</sup> Exchange Act Release No. 65963, 76 FR at 79265.

under the existing rule, these companies are transitioning to the traditional U.S. public company model and the complimentary services provided will help ease that transition.<sup>20</sup> In addition, these companies will be purchasing many of these services for the first time, and offering complimentary services will provide Nasdaq Corporate Solutions and third-party service providers the opportunity to demonstrate the value of its services and forge a relationship with the company at a time when it is choosing its service providers. For these reasons, Nasdaq believes it is not an inequitable allocation of fees nor unfairly discriminatory to offer the services to a foreign company listing Level 2 ADRs or a domestic company listing in connection with a direct listing under IM-5315-1. To the contrary, this proposed change will eliminate a distinction between companies listing common stock or ADRs through a direct listing and companies listing through an IPO.

Nasdaq believes that the proposed change to specify that the rule reference in IM-5900-7 to listing “in connection with [the company’s] initial public offering” means the initial public offering in the United States, including ADRs, rather than the initial public offering of the underlying foreign securities in the company’s home market is consistent with Section 6(b)(5) of the Exchange Act because it will provide transparency in the rules and address an ambiguity by specifying that listing of Level 3 ADRs on Nasdaq is considered an initial public offering notwithstanding that the issuer of ADRs may already be a public company in their home country.

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<sup>20</sup> Although companies listing Level 2 ADRs may have prior experience being a public company in their home country, they, nonetheless, will be transitioning to the traditional public company model in the United States. Following their listing on Nasdaq, such companies will also be required to register and file annual reports under the Exchange Act with the Commission.

As described above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. As part of the Service Package, Eligible New Listings and Eligible Switches with a market capitalization of \$750 million or more currently receive a choice of market advisory tools, including a monthly ownership analytics and event driven targeting tool, as described in IM-5900-7(a)(iii). Based on Nasdaq's experience with offering this service, Nasdaq has determined to discontinue providing this tool because over time Nasdaq observed that this tool receives minimal interest from Nasdaq customers, in particular because the stock surveillance tool and the monthly ownership analytics and event driven targeting tool have considerable overlap between these services. Nasdaq believes that the removal of the monthly ownership analytics and event driven targeting tool is not unfairly discriminatory because all similarly situated companies are eligible for the same package of services. Moreover, no company currently uses this service.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act<sup>21</sup> that updating the values of the services within the rule is necessary,<sup>22</sup> 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 monthly ownership analytics and event driven targeting tool, which will be removed as described above. Further, this update will enhance the transparency of

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<sup>21</sup> 15 U.S.C. 78s(b).

<sup>22</sup> 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.")

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 introductory note in IM-5900-7 and to include the specific operative date of the proposed rule change 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.<sup>23</sup>

**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 Exchange Act. As noted 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. Rather, Nasdaq believes the proposed changes will result in more potential listings being eligible to receive the package and therefore will enhance competition for new listings of ADRs and companies listing in connection with a direct listing under IM-5315-1. Finally, the clarification that listing of Level 3 ADRs on

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<sup>23</sup> 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)).

Nasdaq is considered an initial public offering in the United States will not impose any burden on competition because it will provide transparency in the rules and eliminate an ambiguity. This change is consistent with the approach approved by the Commission in the rules of NYSE, which provides similar services to companies listing ADRs in connection with initial public offering.<sup>24</sup>

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

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)(iii) of the Act<sup>25</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>26</sup>

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<sup>24</sup> See footnote 9 above.

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2019-040 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-2019-040. 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

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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.



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 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; 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 Number SR-NASDAQ-2019-040 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.<sup>27</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market Rules**

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**IM-5900-7. Services Offered to Certain Newly Listing Companies**

INTRODUCTORY NOTE: Nasdaq offers certain newly listing companies complimentary services to help them satisfy their obligations as public companies related to governance and communications, and to provide intelligence about their securities. These services are offered to companies listing on the Global or Global Select Market in connection with their initial public offering in the United States, including American Depository 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 under IM-5315-1 (including the listing of American Depository Receipts), or in conjunction with a business combination that satisfies the conditions in IM-5101-2(b) ("Eligible New Listings"). They are also offered to companies (other than a company listed under IM-5101-2) switching their listing from the New York Stock Exchange to the Global or Global Select Markets ("Eligible Switches").

Nasdaq initially adopted a rule providing Eligible New Listings and Eligible Switches with services effective December 15, 2011 (the "Original Service Package"). The Original Service Package is described in the rule text available at <http://nasdaq.cchwallstreet.com/Nasdaq/pdf/nasdaq-filings/2011/SR-Nasdaq-2011-122.pdf>.

Nasdaq modified the service package effective for new listings after July 24, 2014 (the "2014 Service Package"). If, however, a Company submitted its Nasdaq listing application before July 31, 2014, and listed before September 30, 2014, then the Company was still eligible to receive the Original Service Package. The 2014 Service Package is described in the rule text available at <http://nasdaq.cchwallstreet.com/Nasdaq/pdf/nasdaq-filings/2014/SR-Nasdaq-2014-058.pdf>.

Nasdaq also modified the service package effective for new listings after September 9, 2016 (the "2016 Service Package"). Any Company receiving services under the Original Service Package or the 2014 Service Package on September 9, 2016, the approval date of the 2016 Service Package, was allowed to continue to receive services under the terms of the Original Service Package or the 2014 Service Package, as applicable, or elect to receive services under the 2016 Service Package (even if those services were not available at the time the company listed on Nasdaq). If a Company elected to receive the 2016 Service Package, 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. The length of time that services are available to the Company under the 2016 Service Package will be calculated from the Company's original listing date. For example, if an Eligible Switch listed on July 22, 2015, when its market capitalization was \$4 billion, that Company would receive services for four years from date of its listing (or until July 22, 2019), as provided in paragraph (c)(2) of the 2016 Service Package, instead of for three years, as provided in paragraph (c) of the 2014 Service Package. The 2016 Service Package is described in the rule text available at <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2016/SRNASDAQ-2016-098.pdf>.

Nasdaq again modified the service package for new listings on or after April 23, 2018 and on or after the effective date of SR-NASDAQ-2019-040. [ and the current service package is described in paragraphs (a) - (e) below.] The only changes in [this] these modifications [was] were to the Disclosure Services offered in the package, which was previously an annual stipend of either \$15,000 or \$20,000 for use by the Company on Disclosure Services and to the Market Advisory Tools to remove Monthly Ownership Analytics and Event Driven Targeting as one of the offered services. The current service package is described in paragraphs (a) - (e) below.

(a) The services offered to certain newly listing Companies, which are offered through Nasdaq Corporate Solutions, LLC, an affiliate of Nasdaq, or a third-party provider selected by Nasdaq, are the following, as more specifically set forth in paragraphs (b) and (c) below:

**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 service has an approximate retail value of \$4,000 per year.

**Investor Relations Website:** Companies will receive a website with all the necessary content and features to communicate with investors, offering easy access to up-to-date information. Included on this website will be a corporate governance library containing documents such as the Board committees' charters and the Company's code of ethics. These services have a retail value of approximately \$17,000 per year.

**Disclosure Services:** Companies will be provided disclosure services for earnings or other press releases, and the filing of related regulatory reports, with an approximate annual retail value in the amount listed below.

**Audio Webcasting:** Companies will receive a package of four audio webcasts. These services have a retail value of approximately \$7,000 per year.

**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 including mobile device access. 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 service has an approximate retail value of \$[32,000]32,500 per year for two users, \$[45,000]45,500 for three users, and \$[58,000]58,500 for four users.

**Market Advisory Tools:** Certain Companies will receive a choice from the following services.

(i) **Stock Surveillance:** a stock surveillance package, under which a dedicated 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, offer color to any unusual change in stock price, and identify institutional buying and selling of the Company's shares. To fully utilize this service, Companies will have to subscribe to, and separately pay for, certain third party information, which is not included. This service has an approximate retail value of \$[56,000]56,500 per year.

(ii) **Global Targeting:** Investor targeting specialists will help focus the Company's investor relations efforts on appropriate investors, tailor messaging to their interests and measure the Company's impact on their holdings. The analyst team will help develop a detailed plan aligning the targeting efforts with the Company's long-term ownership strategy. Analysis includes addressable risks and opportunities by region and investor type, and recommendations for where to focus time. This service has a retail value of approximately \$44,000 per year.

(iii) **Monthly Ownership Analytics and Event Driven Targeting:** Companies will receive a monthly shareholder analysis and tracking report highlighting the monthly movement and settlement of the Company's stock and providing insight around institutional shareholder activity. Companies will also receive a monthly call with an Advisory Analyst to interpret the results. To

assist in focusing their efforts effectively, Companies will receive shareholder targeting around one event each year, such as a roadshow or investor conference. To fully utilize this service, Companies will have to subscribe to, and separately pay for, certain third party information, which is not included. This service has a retail value of approximately \$48,000 per year.]

[(iv)](iii) **Annual Perception Study:** Companies will receive an annual perception study designed to identify how the Company is perceived by key stakeholders. Detailed interviews with the institutional investment community will be conducted, featuring quantitative and qualitative questions targeted to the Company's needs. The responses will be analyzed and the Company will be provided with actionable recommendations for enhancing perception in the market and guidance to implement these changes. This service has a retail value of approximately \$[38,000]38,500 per year.

**(b) Eligible New Listings**

- (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 approximately \$[75,000]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.
- (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 up to approximately \$[136,000]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.
- (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 up to approximately \$[180,000]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.

## (c) Eligible Switches

(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 approximately \$~~75,000~~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.

(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 up to approximately \$~~149,000~~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.

(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 up to approximately \$~~206,000~~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.

(d) - (e) No change.

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