

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 059

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to modify the package of complimentary services provided to certain Eligible Switches and to modify the definition of an Eligible Switch.

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 * Senior Counsel Listing and Governance

E-mail * Nikolai.Utochkin@Nasdaq.com

Telephone * (202) 329-2787 Fax


Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 10/02/2024 (Title *)

By John Zecca EVP and Chief Legal Officer
(Name *)

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



Date: 2024.10.02
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-NASDAQ-2024-059 19b-4.docx

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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SR-NASDAQ-2024-059 Exhibit 1.docx

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 Advanced 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 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

Add Remove View

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

SR-NASDAQ-2024-059 Exhibit 5.docx

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

Add Remove View

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 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to modify the package of complimentary services provided to certain Eligible Switches and to modify the definition of an Eligible Switch.

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 (the “Board”). 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
Senior Counsel Listing and Governance
Nasdaq, Inc.
(202) 329-2787

¹ 15 U.S.C. 78s(b)(1).

² 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 Listing Rule IM-5900-7 to Eligible New Listings³ and Eligible Switches⁴ newly listing on Nasdaq (collectively, “Eligible Companies”).⁵ 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, environmental, social and governance services, and may include market advisory tools such as stock surveillance (collectively the “Service Package”).⁶ Based on Nasdaq’s experience with the program and given the competitive landscape, Nasdaq is

³ IM-5900-7 defines an Eligible New Listing as “a Company listing on the Global or Global Select Market in connection with: (i) an initial public offering in the United States, including American Depository Receipts (other than a Company listed under IM-5101-2), (ii) upon emerging from bankruptcy, (iii) in connection with a spin-off or carve-out from another Company, (iv) in connection with a Direct Listing as defined in IM-5315-1 (including the listing of American Depository Receipts), or (v) in conjunction with a business combination that satisfies the conditions in IM-5101-2(b).”

⁴ IM-5900-7 defines an Eligible Switch as “a Company: (i) (other than a Company listed under IM-5101-2) switching its listing from the New York Stock Exchange to the Global or Global Select Markets, or (ii) that has switched its listing from the New York Stock Exchange and listed on Nasdaq under IM-5101-2 after the Company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.”

⁵ IM-5900-7A describes the Service Package available to companies that listed before March 12, 2021, the effective date of SR-Nasdaq-2021-002. See Securities Exchange Act Release No. 91318 (March 12, 2021), 86 FR 14774 (March 18, 2021) (modifying the package of complimentary services provided to eligible companies and memorializing as IM-5900-7A the services offered to eligible companies that listed before the effective date of the change).

⁶ In addition, all companies listed on Nasdaq receive other standard services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

filing this proposed rule change to modify the manner in which Market Advisory Tools are offered to Eligible Switches that have a market capitalization of \$750 million or more, as described below. Nasdaq is also proposing to modify the definition of an Eligible Switch to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange. Similarly, Nasdaq is proposing to modify the definition of an Eligible Switch to also include a company that switched its listing from another national securities exchange and listed on Nasdaq under Listing Rule IM-5101-2 after the company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in Listing Rule IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.⁷

Currently, an Eligible Switch that has a market capitalization of \$750 million or more but less than \$5 billion receives the following complimentary services for four years: Market Analytic Tools for three users, the Core ESG Software Solution, ESG Education & Sector Benchmarking Services, and the choice of one Market Advisory Tool.⁸ For these companies, instead of the choice of one of the three Market Advisory Tools (e.g., Stock Surveillance, Global Targeting, or an Annual Perception Study) for

⁷ The definition of an Eligible Switch already includes such a company that was previously listed on the New York Stock Exchange.

⁸ The total retail value of these services is up to approximately \$220,200 per year. The company also receives one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. In addition, one-time development fees of approximately \$6,000 to establish the services in the first year is waived. See Listing Rule IM-5900-7(d)(2).

four years,⁹ Nasdaq proposes to provide all such companies with one Annual Perception Study during the four-year period. These companies will continue to have the choice of the remaining two Market Advisory Tools (i.e., Stock Surveillance or Global Targeting) for four years.

Currently, an Eligible Switch that has a market capitalization of \$5 billion or more receives the following complimentary services for four years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Media Monitoring/Social Listening, Market Analytic Tools for four users, the Advanced ESG Software Solution, ESG Education & Sector Benchmarking Service, \$60,000 per year of ESG Advisory Services, and the choice of two Market Advisory Tools.¹⁰ For these companies, instead of the choice of two of the three Market Advisory Tools (e.g., Stock Surveillance, Global Targeting, or Annual Perception Study) for four years, Nasdaq proposes to provide all such companies with one Annual Perception Study during the four-year period and with both of the remaining Market Advisory Tools (i.e., Stock Surveillance and Global Targeting) for four years.

Nasdaq believes that these changes will increase the value of the Service Package to these companies because the perception study will be provided in addition to the Stock Surveillance and/or Global Targeting, whereas currently some companies may choose

⁹ Once the Company elects a service it cannot subsequently change to a different alternative, including in a subsequent year. See Listing Rule Listing Rule IM-5900-7(e).

¹⁰ The total retail value of these services is up to approximately \$373,700 per year. The company also receive one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. In addition, one-time development fees of approximately \$26,500 to establish the services in the first year is waived. See Listing Rule IM-5900-7(d)(3).

services that have higher value without benefiting from the perception study.¹¹ Nasdaq also believes these changes will streamline the offering of services to Eligible Switches because Eligible Switches with a market capitalization of \$750 million or more, generally, would benefit from a perception study that leverages extensive capital markets relationships and benchmark data amplifying the company's efforts to elevate their story, enhance stakeholder engagement, identify risk and attract new capital. Accordingly, Nasdaq believes these changes will make the package more attractive to the affected companies.

Finally, Nasdaq proposes to modify the definition of an Eligible Switch to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange. Similarly, Nasdaq proposes to modify the definition of an Eligible Switch to include a company that switched its listing from another national securities exchange and listed on Nasdaq under Listing Rule IM-5101-2 after the company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in Listing Rule IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.¹² Nasdaq believes that given the

¹¹ Stock Surveillance, Global Targeting, and Annual Perception Study have a retail value of approximately \$56,500, \$48,000, and \$45,000 per year, respectively. In describing the value of the services in the rule text, Nasdaq presumed that a company would use stock surveillance and global targeting, where there is the choice of two services; and that a company would use the Stock Surveillance, where there is the choice of one service.

¹² Listing Rule IM-5101-2 imposes additional listing requirements on a company whose business plan is to complete an initial public offering ("IPO") and engage in a merger or acquisition with one or more unidentified companies within a specific period of time ("Acquisition Companies"). An Acquisition Company does not have an operating business and tends to trade infrequently and in a tight range until the company completes an acquisition. Therefore, these Acquisition

competitive landscape and the increasing number of listing venues, these issuers will likely bring greater future value to Nasdaq than will other issuers by switching to its market.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with this provision because it is not designed to permit unfair discrimination between issuers. Nasdaq also believes that the proposed rule change is consistent with the provisions of Sections 6(b)(4)¹⁵ and 6(b)(8),¹⁶ in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and

Companies do not generally need shareholder communication services, market analytic tools or market advisory tools and, upon listing (whether as an IPO or when switching from another market), these Acquisition Companies do not receive complimentary services from Nasdaq under Listing Rule IM-5900-7. However, a company completing a business combination with a Nasdaq-listed Acquisition Company is eligible to receive services under Listing Rule IM-5900-7 when it lists on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in Listing Rule IM-5101-2(b). At this point, the Acquisition Company transitions to being an operating company and has a similar need as other companies for shareholder communication services, market analytic tools and market advisory tools.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(4).

¹⁶ 15 U.S.C. 78f(8).

that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq faces competition in the market for listing services,¹⁷ and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. All similarly situated companies are eligible for the same package of services. Nasdaq believes that the proposed changes to the manner in which Market Advisory Tools are offered to Eligible Switches that have a market capitalization of \$750 million or more will help eligible companies leverage extensive capital markets relationships and benchmark data amplifying the company's efforts to elevate their story, enhance stakeholder engagement, identify risk and attract new capital. While the proposed changes will affect services that will be available only to Eligible Switches with a market capitalization of \$750 million, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different Market Advisory Tools, and that those issuers will likely bring greater future value to Nasdaq than will other issuers by switching to its market.¹⁸

Nasdaq believes that the proposal to modify the definition of an Eligible Switch to include companies (including companies listed under Listing Rule IM-5101-2) switching

¹⁷ The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/271214.htm.

¹⁸ See Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 at 79265 (December 21, 2011).

their listing to the Nasdaq Global or Global Select Market not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange is designed 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 does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposal is, in part, designed to enhance competition with other national securities exchanges. Nasdaq believes that given the competitive landscape and the increasing number of listing venues, these issuers will likely bring greater future value to Nasdaq than will other issuers by switching to its market.

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.¹⁹

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 Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. The proposed rule changes reflect that competition, but do not impose any

¹⁹ 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)).

burden on the competition with other exchanges. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders.

Further, all similarly situated companies are eligible for the same package of services. While the proposed changes will affect services that will be available only to Eligible Switches with a market capitalization of \$750 million, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different Market Advisory Tools, and that those issuers will likely bring greater future value to Nasdaq by switching to its market than would other issuers.

Nasdaq also believes that the proposal to modify the definition of an Eligible Switch to include companies switching their listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange will eliminate a potential existing burden on competition between companies listed on different exchanges, in that it will treat exchange-listed companies in a uniform manner, regardless of which national securities exchange they are currently listed on. Further, this change is designed to increase competition with other national securities exchanges.

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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

Not applicable.

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-2024-059)

October __, 2024

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 2024, 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 package of complimentary services provided to certain Eligible Switches and to modify the definition of an Eligible Switch.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Listing Rule IM-5900-7 to Eligible New Listings³ and Eligible Switches⁴ newly listing on Nasdaq (collectively, “Eligible Companies”).⁵ 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

³ IM-5900-7 defines an Eligible New Listing as “a Company listing on the Global or Global Select Market in connection with: (i) an initial public offering in the United States, including American Depository Receipts (other than a Company listed under IM-5101-2), (ii) upon emerging from bankruptcy, (iii) in connection with a spin-off or carve-out from another Company, (iv) in connection with a Direct Listing as defined in IM-5315-1 (including the listing of American Depository Receipts), or (v) in conjunction with a business combination that satisfies the conditions in IM-5101-2(b).”

⁴ IM-5900-7 defines an Eligible Switch as “a Company: (i) (other than a Company listed under IM-5101-2) switching its listing from the New York Stock Exchange to the Global or Global Select Markets, or (ii) that has switched its listing from the New York Stock Exchange and listed on Nasdaq under IM-5101-2 after the Company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.”

⁵ IM-5900-7A describes the Service Package available to companies that listed before March 12, 2021, the effective date of SR-Nasdaq-2021-002. See Securities Exchange Act Release No. 91318 (March 12, 2021), 86 FR 14774 (March 18, 2021) (modifying the package of complimentary services provided to eligible companies and memorializing as IM-5900-7A the services offered to eligible companies that listed before the effective date of the change).

these companies. The services offered include a whistleblower hotline, investor relations website, disclosure services for earnings or other press releases, webcasting, market analytic tools, environmental, social and governance services, and may include market advisory tools such as stock surveillance (collectively the “Service Package”).⁶ Based on Nasdaq’s experience with the program and given the competitive landscape, Nasdaq is filing this proposed rule change to modify the manner in which Market Advisory Tools are offered to Eligible Switches that have a market capitalization of \$750 million or more, as described below. Nasdaq is also proposing to modify the definition of an Eligible Switch to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange. Similarly, Nasdaq is proposing to modify the definition of an Eligible Switch to also include a company that switched its listing from another national securities exchange and listed on Nasdaq under Listing Rule IM-5101-2 after the company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in Listing Rule IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.⁷

Currently, an Eligible Switch that has a market capitalization of \$750 million or more but less than \$5 billion receives the following complimentary services for four

⁶ In addition, all companies listed on Nasdaq receive other standard services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk.

⁷ The definition of an Eligible Switch already includes such a company that was previously listed on the New York Stock Exchange.

years: Market Analytic Tools for three users, the Core ESG Software Solution, ESG Education & Sector Benchmarking Services, and the choice of one Market Advisory Tool.⁸ For these companies, instead of the choice of one of the three Market Advisory Tools (e.g., Stock Surveillance, Global Targeting, or an Annual Perception Study) for four years,⁹ Nasdaq proposes to provide all such companies with one Annual Perception Study during the four-year period. These companies will continue to have the choice of the remaining two Market Advisory Tools (i.e., Stock Surveillance or Global Targeting) for four years.

Currently, an Eligible Switch that has a market capitalization of \$5 billion or more receives the following complimentary services for four years: Whistleblower Hotline, Investor Relations Website, \$20,000 per year of Disclosure Services, Audio Webcasting, Media Monitoring/Social Listening, Market Analytic Tools for four users, the Advanced ESG Software Solution, ESG Education & Sector Benchmarking Service, \$60,000 per year of ESG Advisory Services, and the choice of two Market Advisory Tools.¹⁰ For these companies, instead of the choice of two of the three Market Advisory Tools (e.g., Stock Surveillance, Global Targeting, or Annual Perception Study) for four years, Nasdaq proposes to provide all such companies with one Annual Perception Study during

⁸ The total retail value of these services is up to approximately \$220,200 per year. The company also receives one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. In addition, one-time development fees of approximately \$6,000 to establish the services in the first year is waived. See Listing Rule IM-5900-7(d)(2).

⁹ Once the Company elects a service it cannot subsequently change to a different alternative, including in a subsequent year. See Listing Rule Listing Rule IM-5900-7(e).

¹⁰ The total retail value of these services is up to approximately \$373,700 per year. The company also receive one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. In addition, one-time development fees of approximately \$26,500 to establish the services in the first year is waived. See Listing Rule IM-5900-7(d)(3).

the four-year period and with both of the remaining Market Advisory Tools (i.e., Stock Surveillance and Global Targeting) for four years.

Nasdaq believes that these changes will increase the value of the Service Package to these companies because the perception study will be provided in addition to the Stock Surveillance and/or Global Targeting, whereas currently some companies may choose services that have higher value without benefiting from the perception study.¹¹ Nasdaq also believes these changes will streamline the offering of services to Eligible Switches because Eligible Switches with a market capitalization of \$750 million or more, generally, would benefit from a perception study that leverages extensive capital markets relationships and benchmark data amplifying the company's efforts to elevate their story, enhance stakeholder engagement, identify risk and attract new capital. Accordingly, Nasdaq believes these changes will make the package more attractive to the affected companies.

Finally, Nasdaq proposes to modify the definition of an Eligible Switch to include a company (other than a company listed under Listing Rule IM-5101-2) switching its listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange. Similarly, Nasdaq proposes to modify the definition of an Eligible Switch to include a company that switched its listing from another national securities exchange and listed on Nasdaq under Listing Rule IM-5101-2 after the company publicly announced that it entered into a

¹¹ Stock Surveillance, Global Targeting, and Annual Perception Study have a retail value of approximately \$56,500, \$48,000, and \$45,000 per year, respectively. In describing the value of the services in the rule text, Nasdaq presumed that a company would use stock surveillance and global targeting, where there is the choice of two services; and that a company would use the Stock Surveillance, where there is the choice of one service.

binding agreement for a business combination and that subsequently satisfies the conditions in Listing Rule IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.¹² Nasdaq believes that given the competitive landscape and the increasing number of listing venues, these issuers will likely bring greater future value to Nasdaq than will other issuers by switching to its market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with this provision because it is not designed to permit unfair discrimination between issuers. Nasdaq also believes that the proposed rule change is consistent with

¹² Listing Rule IM-5101-2 imposes additional listing requirements on a company whose business plan is to complete an initial public offering (“IPO”) and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (“Acquisition Companies”). An Acquisition Company does not have an operating business and tends to trade infrequently and in a tight range until the company completes an acquisition. Therefore, these Acquisition Companies do not generally need shareholder communication services, market analytic tools or market advisory tools and, upon listing (whether as an IPO or when switching from another market), these Acquisition Companies do not receive complimentary services from Nasdaq under Listing Rule IM-5900-7. However, a company completing a business combination with a Nasdaq-listed Acquisition Company is eligible to receive services under Listing Rule IM-5900-7 when it lists on the Nasdaq Global or Global Select Market in conjunction with a business combination that satisfies the conditions in Listing Rule IM-5101-2(b). At this point, the Acquisition Company transitions to being an operating company and has a similar need as other companies for shareholder communication services, market analytic tools and market advisory tools.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

the provisions of Sections 6(b)(4)¹⁵ and 6(b)(8),¹⁶ in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq faces competition in the market for listing services,¹⁷ and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. All similarly situated companies are eligible for the same package of services. Nasdaq believes that the proposed changes to the manner in which Market Advisory Tools are offered to Eligible Switches that have a market capitalization of \$750 million or more will help eligible companies leverage extensive capital markets relationships and benchmark data amplifying the company's efforts to elevate their story, enhance stakeholder engagement, identify risk and attract new capital. While the proposed changes will affect services that will be available only to Eligible Switches with a market capitalization of \$750 million, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different Market Advisory Tools, and that those

¹⁵ 15 U.S.C. 78f(4).

¹⁶ 15 U.S.C. 78f(8).

¹⁷ The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at http://www.justice.gov/atr/public/press_releases/2011/271214.htm.

issuers will likely bring greater future value to Nasdaq than will other issuers by switching to its market.¹⁸

Nasdaq believes that the proposal to modify the definition of an Eligible Switch to include companies (including companies listed under Listing Rule IM-5101-2) switching their listing to the Nasdaq Global or Global Select Market not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange is designed 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 does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposal is, in part, designed to enhance competition with other national securities exchanges. Nasdaq believes that given the competitive landscape and the increasing number of listing venues, these issuers will likely bring greater future value to Nasdaq than will other issuers by switching to its market.

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.¹⁹

¹⁸ See Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 at 79265 (December 21, 2011).

¹⁹ 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)).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Nasdaq faces competition in the market for listing services, 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. The proposed rule changes reflect that competition, but do not impose any burden on the competition with other exchanges. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders.

Further, all similarly situated companies are eligible for the same package of services. While the proposed changes will affect services that will be available only to Eligible Switches with a market capitalization of \$750 million, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different Market Advisory Tools, and that those issuers will likely bring greater future value to Nasdaq by switching to its market than would other issuers.

Nasdaq also believes that the proposal to modify the definition of an Eligible Switch to include companies switching their listing not only from the New York Stock Exchange, as currently provided by Listing Rule IM-5900-7(a)(2), but also from any other national securities exchange will eliminate a potential existing burden on competition between companies listed on different exchanges, in that it will treat exchange-listed companies in a uniform manner, regardless of which national securities

exchange they are currently listed on. Further, this change is designed to increase competition with other national securities exchanges.

Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-059 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-2024-059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-059 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

THE NASDAQ STOCK MARKET LLC RULES

* * * * *

IM-5900-7. Services Offered to Certain Newly Listing Companies (listing on or after March 12, 2021)

(a) 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 the following types of Companies:

(1) No change.

(2) An “Eligible Switch,” which is a Company: (i) (other than a Company listed under IM-5101-2) switching its listing from the New York Stock Exchange to the Global or Global Select Markets, (ii) (other than a Company listed under IM-5101-2) switching its listing from another national securities exchange on or after {insert the date of the Commission’s approval of SR-NASDAQ-2024-059}, to the Global or Global Select Markets. [or] (iii) that has switched its listing from the New York Stock Exchange and listed on Nasdaq under IM-5101-2 after the Company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination, or (iv) that has switched its listing from another national securities exchange on or after {insert the date of the Commission’s approval of SR-NASDAQ-2024-059}, and listed on Nasdaq under IM-5101-2 after the Company publicly announced that it entered into a binding agreement for a business combination and that subsequently satisfies the conditions in IM-5101-2(b) and lists on the Global or Global Select Market in conjunction with that business combination.

(b) – (c) No change.

(d) Eligible Switches

(1) No change.

(2)(A) An Eligible Switch that lists on or after {insert the date of the Commission’s approval of SR-NASDAQ-2024-059}, and 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, Media Monitoring/Social Listening, Market Analytic Tools for three users, the Core ESG Software Solution, ESG Education & Sector Benchmarking Services, and the choice of Stock Surveillance or Global

Targeting[one Market Advisory Tool]. The total retail value of these services is up to approximately \$220,200 per year. The Company will also receive one Virtual Event and one Annual Perception Study during the four-year period, which ha[s]ve a retail value of approximately \$11,700, and \$45,000, respectively. In addition, one-time development fees of approximately \$6,000 to establish the services in the first year will be waived.

(B) Notwithstanding the provisions of paragraph (A) above, an Eligible Switch that listed before {insert the date of the Commission’s approval of SR-NASDAQ-2024-059}, and had a market capitalization of \$750 million or more but less than \$5 billion is not eligible for the one Annual Perception Study during the four-year period but received, upon listing, the choice of Stock Surveillance, Global Targeting or Annual Perception Study.

(3)(A)An Eligible Switch that lists on or after [September 12, 2023]{insert the date of the Commission’s approval of SR-NASDAQ-2024-059}, and 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, Media Monitoring/Social Listening, Market Analytic Tools for four users, the Advanced ESG Software Solution, ESG Education & Sector Benchmarking Service, \$60,000 per year of ESG Advisory Services, Stock Surveillance and Global Targeting[the choice of two Market Advisory Tools]. The total retail value of these services is up to approximately \$373,700 per year. The Company will also receive one Virtual Event and one Annual Perception Study during the four-year period, which ha[s]ve a retail value of approximately \$11,700, and \$45,000, respectively. In addition, one-time development fees of approximately \$26,500 to establish the services in the first year will be waived.

(B) Notwithstanding the provisions of paragraph (A) above, an Eligible Switch that listed after September 12, 2023 but before {insert the date of the Commission’s approval of SR-NASDAQ-2024-059}, and had a market capitalization of \$5 billion or more is not eligible for the one Annual Perception Study during the four-year period but received, upon listing, the choice of two of the following three services: Stock Surveillance, Global Targeting or Annual Perception Study.

([B]C) Notwithstanding the provisions of paragraphs (A) and (B) above, an Eligible Switch that listed before September 12, 2023 and had a market capitalization of \$5 billion or more is not eligible to receive the Advanced ESG Service or ESG Advisory Services, but instead receives the Core ESG Software Solution for four years. The total retail value of these services is up to approximately \$281,200 per year. The Company will also receive one Virtual Event during the four-year period, which has a retail value of approximately \$11,700. The Company is not eligible for the one Annual Perception Study during the four-year period but received, upon listing, the choice of two of the following three services: Stock Surveillance, Global Targeting or Annual Perception Study.

(e) – (f) No change.

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