100), as modified by Amendment No. 6 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Brent J. Fields,

Secretary.

[FR Doc. 2016–17824 Filed 7–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78392; File No. SR–NASDAQ–2016–098]

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

July 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2016, 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 complimentary services offered to certain new listings.

The text of the proposed rule change is available on the Exchange's Web site 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 to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (''Eligible New Listings'') and to companies that switch their listing from the New York Stock Exchange (''NYSE'') to the Nasdaq Global or Global Select Markets (''Eligible Switches'' and, together with Eligible New Listings, ''Eligible Companies'').[3] Nasdaq believes that this program offers valuable services to newly listing companies, designed to help ease the transition of becoming a public company or switching markets, makes listing on Nasdaq more attractive to these companies, and also provides Nasdaq Corporate Solutions[4] the opportunity to demonstrate the value of its services and forge a relationship with the company. Eligible Companies receive a whistleblower hotline, investor relations Web site, press release distribution services, interactive webcasting, and market analytic tools, and may receive a market surveillance service.[5] Based on Nasdaq's experience with the program and competitive changes,[6] Nasdaq proposes to modify its offering as described below.

First, Nasdaq currently offers Eligible Companies that have a market capitalization of $750 million or more a stock surveillance tool, through which an analyst attempts to determine who is buying and selling the company's stock. While any public company can use this offering, which is designed to enhance the company's investor relations activity, it may not be an appropriate fit for some companies, such as those that are closely held or otherwise have low liquidity or low volume. Other companies may prioritize different investor relations tools over stock surveillance. These companies therefore are more likely to derive value from a different market advisory service offered by Nasdaq Corporate Solutions. Accordingly, in order to make the package more attractive to these companies, Nasdaq proposes to allow companies eligible for this service to choose from the existing stock surveillance offering or, instead, to choose other alternatives, which are also designed to help companies identify current owners, potential buyers or sellers of their stock, or otherwise enhance their investor relations efforts. Specifically, instead of the existing offering, companies would be allowed to choose: (i) A global targeting package, where an investor targeting specialist will help focus the company's investor relations efforts on appropriate investors, tailor messaging to those investors' interests and measure the company's impact on their holdings; (ii) monthly ownership analytics and event driven targeting, which provide a monthly shareholder analysis and tracking report, which an analyst will help interpret during a monthly call, and a shareholder targeting plan around one event each year, such as a roadshow or investor conference;[7] or (iii) an annual perception study designed to identify how the company is perceived by key stakeholders and provide the company with actionable recommendations for enhancing its perception in the market. These alternative market advisory services are similar in that they all assist a company's investor relations efforts by providing information about current or potential investors to the company, but are designed to be valuable to companies based on their needs at differing times. The approximate retail value of the proposed new services ranges from $35,000 to $46,000 per year, as compared to the approximate retail

[58] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122) (adopting IM–5900–7) (the ''Original Filing''); Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR–NASDAQ–2014–058) (adopting changes to IM–5900–7). These adopting releases are collectively referred to as the ''Prior Filings.''

[4] In November 2015, the name of NASDAQ OMX Corporate Solutions was changed to Nasdaq Corporate Solutions to reflect the rebranding of the holding company from NASDAQ OMX to Nasdaq, Inc. This change is reflected in the amended rule language.

[5] Only Eligible Companies with a market capitalization of $750 million or more receive the market surveillance service. This service is being renamed in this filing ''stock surveillance'' to better reflect its purpose.

[6] *See* Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36) (modifying the services offered by NYSE to certain companies). *See also* Exchange Act Release No. 77401 (March 17, 2016), 81 FR 15585 (March 23, 2016) (SR–NYSEMKT–2016–12) (adopting a rule allowing NYSE MKT to offer certain newly listed companies services).

[7] To fully utilize this service, the company will also have to subscribe to, and separately pay for, certain third party information, such as position reports from the Depositary Trust Corporation.

value of $51,000 of the existing stock surveillance tool.[8]

Second, Nasdaq proposes to create a new tier of services for Eligible Companies with a market capitalization of $5 billion or more. As noted in the Prior 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.[9] The listing of these companies also attracts the most attention and therefore enhances Nasdaq's image as a listing venue to the benefit of Nasdaq and all other Nasdaq-listed companies. Based on Nasdaq's experience, Nasdaq has concluded that companies with a market capitalization of $5 billion or more have more complex investor relations functions and frequently have more shareholders and a greater change in their shareholdings, and therefore can benefit from, and are more likely to purchase at the end of the complimentary period, investor targeting or perception studies in addition to surveillance services. As such, Nasdaq proposes to offer these companies the choice of a second market advisory tool.[10]

Third, Nasdaq has determined to enhance the value of the package offered to Eligible Switches. NYSE recently modified the ongoing services it offers its listed companies, claiming to increase the value of those services.[11] As a result, while most companies pay substantially lower listing fees on Nasdaq, some companies considering whether to switch to Nasdaq nonetheless will need a greater incentive to forego the services offered by NYSE, which are now valued higher by NYSE. Accordingly, Nasdaq proposes to increase the number of users of the market analytic tool to three users for Eligible Switches with a market capitalization of $750 million or more but less than $5 billion and to four users for Eligible Switches with a market capitalization of $5 billion or more.[12] In addition, Nasdaq proposes to increase the term of the complimentary services from three to four years for any Eligible Switch with a market capitalization of $750 million or greater. This restores some features and the term of complimentary services that was previously in effect for such companies.[13]

The proposed rule change would also update the values and descriptions of the services offered as follows. The approximate retail value of the investor relations Web site would be updated from $15,000 to $16,000, the market analytic tool for two users from $30,000 to $29,000, and the stock surveillance tool from $50,000 to $51,000.[14] In addition, the proposed rule change will eliminate rounding in the total retail value of the services offered each category of Eligible Company. The description of the market analytic tool would be changed to reflect the addition of mobile access to the users of that service and to add the value of that offering for three and four users ($40,000 and $51,000, respectively). The ''Interactive Webcasting'' service would be renamed ''Audio Webcasting'' to reflect better the voice-only nature of the service, which is delivered through a platform branded with the company's name and logo that allows real-time questions from the audience. The four audio webcasts also would be described as a ''package'' to reflect better the basis for approximate retail value provided.[15] In addition, Nasdaq proposes to rename the current ''Press Release'' service to ''Disclosure Services,'' to better reflect the availability of EDGAR and XBRL services, and to specify that these services are provided as an annual stipend usable with Nasdaq Corporate Solutions.[16] Nasdaq also proposes to delete the reference to factors affecting the number of press releases available because the revised rule would explicitly state that it is an annual stipend and would emphasize disclosure services generally rather than just press releases.

Where a company has a choice among different complimentary services under the revised rule, it must make its selection when it first begins to use a complimentary service. A company will not be permitted to subsequently change to a different complimentary service offered in the package. Of course the company can discontinue using a service at any time without penalty and can also elect to purchase from Nasdaq Corporate Solutions a service alternative that was previously declined or a comparable service from another competitor.

Nasdaq will implement this rule filing upon approval. Any company receiving services under the terms of the Prior Filings on the date of approval may elect to receive services under the revised terms in this proposed rule filing (even if those services were not available at the time the company listed on Nasdaq). If a company elects to receive services under the proposed rules, 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 revised package will be calculated from the company's original listing date. In this manner, the rule will be applied prospectively, from approval.

Finally, the proposed rule change would modify the introductory note to IM–5900–7 to reference the historical changes to the program and explain the impact of the revisions to companies that are already listed. The rule would also be reorganized to enhance its readability and usability.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[17] in general, and sections 6(b)(4), 6(b)(5), and 6(b)(8), in particular, 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

[8] Nasdaq also proposes to update the description of the stock surveillance tool to clarify that it is a single, dedicated analyst who provides that service, as opposed to the team approach used for the proposed alternative market advisory tools, and to note that the analyst attempts to identify institutional buyers and sellers in the company's stock.

[9] Exchange Act Release No. 65963, 76 FR at 79265.

[10] In describing the value of the services in the rule text, Nasdaq presumed that a company would use stock surveillance, which has an approximate retail value of $51,000, and global targeting, which has an approximate retail value of $40,000. A company using the stock surveillance tool would be unlikely also to use the monthly ownership analytics and event driven targeting because there is considerable overlap between these services. Companies could, of course, select different combinations of the four offered services that do not overlap, but these other combinations would have lower total approximate retail values.

[11] Exchange Act Release No. 76127, *supra.*

[12] This service has a retail value of approximately $29,000 per year for two users, $40,000 for three users, and $51,000 for four users.

[13] Prior to July 2014, Nasdaq offered market analytic tools for four users to all Eligible Companies. In addition, Nasdaq offered Eligible Switches (but not other companies) with a market capitalization of $500 million or more four years of complimentary services. The 2014 changes, as well as the changes proposed in this filing to restore some of those services, reflects the competition among exchanges for listings. Securities Exchange Act Release No. 72669, 79 FR at 44235.

[14] The Commission has previously held that such updates are required by the Act. Exchange Act Release No. 72669, 79 FR at 44236.

[15] Four separately purchased webcasts would cost more than four purchased together as a package. The approximate retail value provided is, and always has been, based on the purchase of such a package.

[16] These are changes to reflect the way the service has always been offered.

[17] 15 U.S.C. 78f.

designed to permit unfair discrimination between issuers, and in that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In the Prior Filings, the Commission determined that existing IM–5900–7 is consistent with these provisions of the Act.[18] Nothing proposed herein changes that conclusion. Nasdaq faces competition in the market for listing services,[19] and competes, in part, by offering valuable services to companies, including services that ease the companies' transition to being public or listed on a new exchange. Under the proposed changes, these services would be available for a small number of all public companies [20] and would remain available only for a short period of two to four years, as in the Original Filing.

Under the existing rule, Nasdaq offers companies with a market capitalization of $750 million or more a stock surveillance service and Nasdaq has justified why providing this service to such companies is not unfairly discriminatory in the Prior Filings. Nasdaq proposes to allow these companies to continue to receive this service or, at their election, to choose a different market advisory service with a lower retail value, but which may be more meaningful to the company. The addition of this flexibility does not change Nasdaq's fees nor how those fees are allocated among issuers and other persons using Nasdaq's facilities, and it does not unfairly discriminate against any issuer, because any issuer currently eligible to receive the higher value stock surveillance service would only receive a lower value service if the issuer voluntarily determines that the other service is more valuable to it based on its circumstances. Nasdaq believes that by allowing companies the ability to choose an appropriate market advisory tool, instead of offering just stock surveillance, the package will be more enticing. Therefore, this change will enhance competition among listing exchanges, rather than impose any burden on that competition. In addition, by providing companies the ability to choose a more meaningful market advisory tool, Nasdaq believes that these companies will have a better experience with the applicable tool; as a result, the companies are more likely to continue to use their chosen service. The ability to choose could create additional users of the service class and enhance competition among service providers.

Nasdaq also proposes to allow Eligible Companies with a market capitalization of $5 billion or more to receive an additional market advisory service. As noted above, Nasdaq has concluded that companies with a market capitalization of $5 billion or more have more complex investor relations functions and frequently have more shareholders and face greater changes in their shareholdings. These companies therefore can benefit from additional market advisory services and are more likely to purchase additional services at the end of the complimentary period. There is also enhanced competition for listing of these larger companies and offering them an additional market advisory service reflects that competition and the greater fees they generally pay. Nasdaq believes that this enhanced need, the increased likelihood that the company will purchase the service at the end of the complimentary period, the increased competition for these listings, and the greater fees generally paid by these companies form an equitable and reasonable basis to distinguish these issuers; as a result, Nasdaq does not believe that this change unfairly discriminates between issuers. Nasdaq also believes that by allowing certain companies the ability to choose an additional market advisory tool, the package will be more enticing and therefore will enhance competition among listing exchanges, rather than impose any burden on that competition. In addition, by providing companies the ability to use an additional market advisory tool, Nasdaq believes that these companies are more likely to continue to use their chosen service on an ongoing basis when the complimentary period is over. This ability to choose could create additional users of the service class and enhance competition among service providers.

Nasdaq previously offered market analytic tools for four users to all Eligible Companies but reduced that to two users based on Nasdaq's experience with company use of the service.[21] Upon further consideration, Nasdaq believes that allowing a third user of its market analytics tools to Eligible Switches with a market capitalization of $750 million or more and a fourth user for Eligible Switches with a market capitalization of $5 billion or more better addresses Nasdaq's prior experience and is appropriate and not unfairly discriminatory. Larger companies often have more complex investor relations functions and therefore can benefit from additional market analytic user seats. Offering these companies additional user seats based on their size and needs therefore enables Nasdaq to compete better for listings, which is a nondiscriminatory reason to distinguish among issuers. In addition, Nasdaq believes that it is appropriate to distinguish Eligible Switches from other Eligible New Listings because Eligible Switches generally have larger investor relations teams already in place and therefore can benefit from the additional user seats. On the other hand, many Eligible New Listings work with investment banks and other firms that provide ongoing support for a period after their listing while the company's investor relations programs mature, and these companies therefore have less need for the additional user seats. In addition, Eligible Switches forego services paid for by their former exchange and larger companies forego more services.[22] Therefore, Nasdaq believes that it is equitable and not unfairly discriminatory to offer these additional user seats only to Eligible Switches and not to Eligible New Listings and to base the number of additional seats on the Eligible Switches' size.

The proposed change to reinstate the four-year term of services provided to Eligible Switches with a market capitalization of $750 million or more restores the term of complimentary services that was in effect for these companies prior to the 2014 changes.[23] This change reflects Nasdaq's ongoing assessment of the competitive market for listings and does not place any unnecessary burden on that competition.

The adjustments proposed to reflect changes in the fair market values of the services offered do not meaningfully affect the allocation of Nasdaq's fees and

[18] Exchange Act Release No. 65963, 76 FR at 79267; Exchange Act Release No. 72669, 79 FR at 44234.

[19] 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.*

[20] For example, in 2014 there were 309 total IPOs in the U.S. and Nasdaq listed 189 of them; 147 qualified for services under IM–5900–7. In 2015, there were 196 total IPOs in the U.S. and Nasdaq listed 143 of them; 98 qualified for services under IM–5900–7. Two exchange switches qualified for services under IM–5900–7 in 2014 and five qualified in 2015. In contrast, according to FactSet, there are approximately 13,000 public companies in the U.S. on June 29, 2016, including more than 5,000 listed on exchanges.

[21] Securities Exchange Act Release No. 72669, *supra.*

[22] While NYSE bases its service tiers for currently listed companies on shares outstanding, as described in the Prior Filings, Nasdaq believes that companies with higher market capitalizations also generally will have more shares outstanding.

[23] Exchange Act Release No. 65963, 76 FR 79262.

therefore also do not impact the Commission's prior conclusions. These changes, in fact, were found to be necessary by the Commission in the Prior Filings.[24] Similarly, the changes to rename certain services to better reflect the service offered, refer to Nasdaq Corporate Solutions and reorganize the rule are clarifying changes, which have no impact on fees and how they are allocated or on competition.

Nasdaq believes that it is not unfairly discriminatory to offer the revised service package only to currently listed companies that are receiving services at the time of the proposal's approval, and not to other currently listed companies. Companies receiving complimentary services are still in the process of sampling Nasdaq Corporate Solutions' offering and both the companies and Nasdaq Corporate Solutions will benefit from the ability of the company to utilize the revised services. Moreover, because Nasdaq Corporate Solutions continues to provide the complimentary services to these companies, extending their term and providing additional seats and advisory services is a seamless process. On the other hand, companies that are not currently receiving complimentary services from Nasdaq Corporate Solutions will have either entered into binding contractual agreements with Nasdaq Corporate Solutions and other providers for the specific services they require or determined that they do not wish to purchase the services. Extending the benefits of the revised rule to such companies would cause them to have duplicative services to what they have already contracted or provide them with the option for a service that they have already concluded they do not want. Accordingly, providing the benefit of the changes only to those companies receiving services when the proposed rule change is approved is not unfairly discriminatory.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As described in the statutory basis section, above, the proposed rule change responds to competitive pressures in the market for listings. Nasdaq believes the proposed changes will result in a more enticing package for potential listings and therefore will enhance competition among listing exchanges. The proposed changes to allow companies the ability to choose a more meaningful market advisory tool will provide companies a better experience with these tools, the proposed change to allow certain companies to receive two market advisory tools will expose eligible companies to additional service options. As a result, Nasdaq believes that when the complimentary period ends these companies are more likely to continue to use the Nasdaq Corporate Solutions service or a competing service, whereas otherwise they may not be exposed to the value of these services and therefore may not purchase any. This will create additional users of the service class and enhance competition among service providers. In addition, other service providers 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 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–098 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–098. 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 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 Web site 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–2016–098 and should be submitted on or before August 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Brent J. Fields,

Secretary.

[FR Doc. 2016–17822 Filed 7–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

[24] Exchange Act Release No. 72669, 79 FR at 44236.

[25] 17 CFR 200.30–3(a)(12).