

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73815; File No. SR-NASDAQ-2014-121)

December 11, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ Rule 7021 Fees

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 December 5, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 the Substance of the Proposed Rule Change

NASDAQ is proposing to modify fees assessed under NASDAQ Rule 7021 for the NasdaqTrader.com Trading and Compliance Data Package (“Data Package”). While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2015.

The text of the proposed rule change is available at [nasdaq.cchwallstreet.com](http://nasdaq.cchwallstreet.com) at NASDAQ’s principal office, 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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

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

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

proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

NASDAQ is proposing to amend Rule 7021 to increase the fee assessed for subscription to the Data Package and eliminate a little-used report.<sup>3</sup> The Data Package allows member firms to obtain information regarding their own historical quoting and trading activity on NASDAQ. The Data Package also provides member firms with information concerning their compliance with NASDAQ and FINRA rules. When NASDAQ last increased the fees for the Data Package in February 2012,<sup>4</sup> the service provided subscribers the following reports: Monthly Compliance Report Cards, which outline a firm's own compliance with various FINRA rules; Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates, order activity, and detailed trade reporting information. Additionally, NASDAQ offered subscribers the ability to receive the detailed trade report (Equity Trade Journal) via a secure FTP dissemination as an option. These reports, which continue to be offered as part of Data Package, are based on the subscribing member firm's historical trade information taken from NASDAQ and the FINRA/NASDAQ Trade Reporting Facility.

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<sup>3</sup> The Data Package is also commonly referred to as the Report Center.

<sup>4</sup> See Securities Exchange Act Release No. 66078 (January 3, 2012), 77 FR 1125 (January 9, 2012) (SR-NASDAQ-2011-173).

NASDAQ has continued to enhance what is offered in the Data Package to make it a more useful tool to member firms.<sup>5</sup> In this regard, NASDAQ now provides the following new historical reports, which do not count toward the 25 and 100 monthly report limits under the rule when accessed: Execution Invoice Detail, which provides a member firm with enhanced detail of its executions; Month to Date Invoice Summary, which provides a member firm with a summary of its trading at any point in the month; Excessive Messaging Invoice Detail, which informs a member firm of whether its order activity at any point in a month will qualify for the Excess Order Fee under Rule 7018(m); Investor Support Program Invoice Detail, which informs a member firm of whether its order activity at any point in the month will qualify for the Investor Support Program under Rule 7014; and Qualified Market Maker Invoice Detail, which informs a member firm of whether its order activity at any point in the month will qualify for the Qualified Market Maker Program under Rule 7014. In addition, NASDAQ has enhanced the service with the following new reports, which do count toward the 25 and 100 monthly report limits under the rule when accessed: NASDAQ Order Execution and Routing, which provides a detailed daily summary of a member firm's executions on NASDAQ and those routed to other markets; Market Recap, which provides a daily snapshot in a timeline format of all market events occurring during the day, such as trading halts and limit up/limit down pauses; QView<sup>6</sup> Historical Reports, which provide both daily and monthly summaries of trading based on volume, routing strategy, and order type; and Real-Time Registered Market Maker Report, which provides a market maker with a real-time assessment of whether it is meeting its market making obligations in the

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<sup>5</sup> See <http://www.nasdaqtrader.com/trader.aspx?id=reportcenter>.

<sup>6</sup> QView provides a member firm with the ability to track its order flow on NASDAQ, and view both real-time data and download reports of such order flow. See Rule 7058. Data Package offers QView historical data, but not real-time reports of order flow.

securities for which it is a market maker. NASDAQ is also proposing to eliminate the Monthly Compliance Report Card report from the service. NASDAQ notes that the report is not used significantly by subscribers to the service. In addition to having very little demand, the Monthly Compliance Report Card is similar to reports offered by FINRA at no cost.<sup>7</sup> NASDAQ currently offers two monthly Data Package subscriptions: a basic subscription of \$175 providing up to 25 reports per month; and a premium subscription of \$225 providing up to 100 reports per month. As noted above, NASDAQ last increased the fee for Data Package in February 2012,<sup>8</sup> and since then has enhanced the service with several new reports noted above. NASDAQ is proposing to increase the monthly fee assessed for up to 100 reports from \$225 to \$250 to cover the costs associated with enhancing and offering the service, and to ensure that the service continues to provide NASDAQ with a profit. In addition to increasing the fee assessed for the 100 report subscription, NASDAQ is proposing to eliminate the basic level subscription. As described above, NASDAQ has substantially increased the number of reports available to subscribers, including those that count against the monthly report limits of the two fee tiers. As a consequence, NASDAQ has observed that the lower tier provides an inadequate number of reports to be useful to most subscribers. Accordingly, NASDAQ is proposing to eliminate the lower tier.

Lastly, NASDAQ is proposing to rename the service as the NASDAQ Report Center. NASDAQ notes that the service is commonly referred to as the Report Center, and changing the name to reflect the commonly-used name will avoid any market participant confusion caused by

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<sup>7</sup> FINRA offers Equity Report Cards, which allow firms to track their compliance with equity trading rules related to OATS, best execution, market order timeliness, trade reporting, Reg NMS Trade Throughs, and the NASDAQ Market Center. See <http://www.finra.org/Industry/Compliance/ReportCenter/P015063>.

<sup>8</sup> Supra note 4.

the two names. Moreover, NASDAQ believes that the proposed new name is more reflective of the nature of the service.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed increase to the fee assessed under the rule is reasonable because it will allow NASDAQ to realign the fees assessed for the service with the costs it incurs in offering and enhancing it, while also ensuring that NASDAQ continues to realize a profit. The Exchange notes that it has substantially enhanced the service since the last time the fee was increased. Moreover, eliminating the lower tier is reasonable because NASDAQ has observed that the 25 report limit is too low for most member firms given the expansion of reports available to them through the service. As a consequence, the lower tier has

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

limited applicability, yet represents a cost to NASDAQ in monitoring and administering the fee in relation to a subscriber's usage.

NASDAQ believes that the increased fee and elimination of the lower fee tier is an equitable allocation because the increased fee will apply to all subscribers uniformly. NASDAQ notes that under the proposed changes member firms currently subscribing to the lower tier will experience a greater fee increase than those currently subscribing to the higher tier. NASDAQ believes elimination of the lower tier is equitable because the limited number of member firms that subscribe to the lower tier will receive the benefit of a substantially increased monthly report limit.

The Exchange believes that the proposed changes are not unfairly discriminatory because they now apply a uniform fee per subscription, thus eliminating a distinction made in the fee assessed based on the number of reports available per month. The Exchange notes that some member firms may incur a disproportionate increase in fees as compared to others under the proposed change as a result of the elimination of the lower tier subscription. The Exchange does not believe that this change is unfairly discriminatory because it eliminates a distinction in the fee assessed based on the number of reports, which is of declining applicability and use, and provides all member firms with the same level of service at the same cost. As noted, NASDAQ incurs costs in monitoring a subscribing member firm's report limit and in administering the fee. Consequently, reducing the number of fee tiers will reduce NASDAQ's costs, thereby allowing NASDAQ to keep the fee lower than it would otherwise be. In addition, NASDAQ does not believe that elimination of the Monthly Compliance Report Card reports from the service is unfairly discriminatory. As noted, the report is used very little by subscribing member firms and any member firm that seeks similar information may obtain similar reports from FINRA at no

cost.

Lastly, NASDAQ believes that the proposed name change will avoid any market participant confusion due to the name of the service used in the rule and the commonly-used name. NASDAQ notes that the proposed change does not affect what is offered by the service in any way.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>11</sup> NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must carefully balance the fees it assesses with the costs incurred to remain competitive with other exchanges. To the extent NASDAQ's fees are too high or another exchange's products and services provide greater value, NASDAQ will likely lose subscriber revenue. As such, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, NASDAQ last increased the Data Package fees in February 2012 and NASDAQ is now realigning the fee assessed for the subscription to the service with the costs it incurs in offering it. Such costs include adding enhancements to the service to make it more useful to subscribers. Moreover, increasing the fees also allows NASDAQ to continue to derive a profit from the service, which will allow NASDAQ to continue to offer the service in the long term. Moreover, NASDAQ believes that the fee increase does not impose a burden on competition because the service is optional and member firms may develop their own alternatives to the service or

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

acquire similar functionality through third parties. For these reasons, NASDAQ does not believe that the proposed changes will impose any unnecessary burden on competition.

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

Written comments were neither solicited nor received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>12</sup> and paragraph (f)<sup>13</sup> of Rule 19b-4, thereunder. 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.

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-2014-121 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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)



All submissions should refer to File Number SR-NASDAQ-2014-121. 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 Commission will post all comments on the Commission's Internet website (<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 such filing also will be available for inspection and copying at the principal offices 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-2014-121, 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>14</sup>

Kevin M. O' Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).