

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77552; File No. SR-NASDAQ-2016-053)

April 7, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 7015(g)(1) and 7034

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 April 6, 2016, The NASDAQ Stock Market LLC (“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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Access Services fees at Rule 7015(g)(1) to reduce the fee assessed for MITCH Wave Ports located at Mahwah, NJ. The Exchange is also proposing to amend Rule 7034 to: (i) reduce monthly fees assessed for NYSE Equities market data connectivity; and (ii) make technical changes to the description of market data connectivity options under the rule. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 1, 2016.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the substance of this filing is identical to the substance of SR-NASDAQ-2016-047, which was filed March 29, 2016, and withdrawn on April 6, 2016. This filing replaced SR-NASDAQ-2016-047, thus, the fee changes were effective upon filing but have been operative since April 1, 2016.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to reduce certain fees under Rules 7015 and 7034, and to make technical changes to the description of market data connectivity options under Rule 7034.

Rule 7015 Changes

The Exchange is proposing to reduce the fee assessed for MITCH Wave Port at Mahwah, NJ monthly subscriptions. The Exchange provides Multi-cast ITCH ("MITCH") Wave Ports to clients co-located at other third-party data centers, including the New York Stock Exchange's ("NYSE") data center located in Mahwah, NJ, through which the Exchange's TotalView ITCH market data is distributed after delivery to those data centers via a wireless network.

The wirelessly-delivered TotalView ITCH market data arrives at Exchange-owned cabinets located at these third-party data centers, to which the co-location clients may cross-

connect to the MITCH Wave Ports in those data centers to receive TotalView ITCH.⁴ The wireless network that the Exchange uses to connect its data center with third-party data centers is provided and maintained by third-party vendors.

The Exchange incurs costs in leasing towers and equipment to connect to third-party data centers, such as Mahwah, NJ, through its third party vendors and the Exchange recoups these costs through the fees it assesses. The Exchange has recently reduced such vendor cost for connectivity to Mahwah, NJ by switching to an alternative vendor that assesses the Exchange a lower fee for such connectivity and is accordingly proposing to reduce the monthly charge assessed to subscribers for a MITCH Wave Port at Mahwah, NJ from \$12,500 per month to \$10,000 per month.

Rule 7034 Changes

The Exchange is proposing to amend Rule 7034 to: (i) reduce monthly fees assessed for NYSE Equities market data connectivity; and (ii) make technical changes to the description of market data connectivity options under the rule. Rule 7034 provides the charges assessed by the Exchange for co-location services. Rule 7034(b) provides the various connectivity options for co-location services. The Exchange offers multicast Market Data feeds that are delivered to the Exchange's data center located in Carteret, NJ via a wireless network.⁵ The Exchange offers connectivity to data feeds provided by NYSE, BATS (including Direct Edge), and CME, which are delivered wirelessly by third party vendors from those market's [sic] data centers to the

⁴ Subscription to MITCH Wave Ports is entirely optional. Co-location clients that opt to subscribe to MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in Rules 7019, 7023, and 7026.

⁵ Subscription to the connectivity options under Rule 7034(b) is entirely optional. To receive a particular data feed, a participant must subscribe to the connectivity under Rule 7034(b) and also have a subscription to the data feed with the applicable exchange.

Exchange's Carteret, NJ data center. Specifically, the NYSE Equities data feeds under Rule 7034(b) are wirelessly delivered to Carteret, NJ from NYSE's Mahwah, NJ data center, the BATS and Direct Edge data feeds are wirelessly delivered to Carteret, NJ from BATS's Secaucus, NJ data center, and the CME data feeds are wirelessly delivered to Carteret, NJ from CME's Aurora, IL data center.

The first change the Exchange proposes is to reduce the recurring monthly fee assessed for connectivity to NYSE Equities data feeds, which are transmitted from the Mahwah, NJ data center to the Exchange's data center in Carteret, NJ. As discussed above, the Exchange recently reduced its vendor costs by switching to an alternative vendor that assesses the Exchange a lower fee for such connectivity. Because of the reduced vendor costs realized for connectivity to Mahwah, NJ, the Exchange is able to reduce the charges assessed for services that require wireless connectivity to Mahwah, NJ.

Currently, the Exchange assesses a recurring monthly fee of \$12,500 for connectivity to NYSE Equities Arca Integrated feed and the for the NYSE Equities Open Book feed. As a consequence of the reduced vendor costs, the Exchange is proposing to reduce the charge it assesses as a recurring monthly fee for each of these services from \$12,500 to \$10,000.

The second change the Exchange proposes is to make technical corrections to the rule text under Rule 7034(b) concerning NYSE Equities Open Book connectivity and BATS Multicast PITCH connectivity. NYSE recently combined Open Book data with NYSE BBO, NYSE Trades, and NYSE Order Imbalances data to form the "NYSE Integrated" data feed,⁶ which the Exchange began to offer on November 16, 2015. Accordingly, the Exchange is [sic] updated the rule text under Rule 7034(b) to accurately reflect this change.

⁶ See Securities Exchange Act Release No. 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR-NYSE-2015-57).

The Exchange is also correcting rule text concerning BATS Multicast PITCH connectivity that was inadvertently introduced when the rule text was adopted.⁷ Specifically, the Exchange is correcting the spelling of “Multicast” in the rule and is correcting the name of the BATS BZX exchange, which is currently spelled “BZY.”⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the

⁷ See Securities Exchange Act Release No. 73562 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-119)

⁸ For a description of Bats Global Markets, Inc.’s exchanges, see <http://www.batstrading.com/about/>.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹¹ Likewise, in NetCoalition v. Securities and Exchange Commission¹² (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹³ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁴

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁵

¹¹ See Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

¹² NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹³ See NetCoalition, at 534.

¹⁴ Id. at 537.

¹⁵ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

Fee Reductions

The Exchange believes that proposed reduction in the monthly recurring fees assessed under Rules 7015 and 7034(b) are [sic] reasonable because they [sic] will allow the Exchange to align the fees assessed for the connectivity more closely with the costs incurred by the Exchange in offering the connectivity. As discussed above, the Exchange realized a reduction in its vendor costs. Vendors supply wireless connectivity from the Exchange's data center to the data centers of other markets. Vendor costs are not the only costs to the Exchange in offering such connectivity; however, the reduced vendor cost for wirelessly connecting to Mahwah, NJ has allowed the Exchange to reduce the monthly fee assessed for connectivity to Mahwah, NJ by \$2,500.

The Exchange notes that the proposed reduced monthly recurring fees are also reasonable because they are in-line with other fees assessed for similar connectivity, with differences in cost being reflective of the differences in the relative cost of offering the services. For example, the proposed reduced fees assessed under Rule 7034(b) for connectivity to the NYSE Equities feeds, although higher as reflection of the increased costs the Exchange incurs in offering the connectivity, are consistent with BATS Multicast PITCH BZX and BYX data feed connectivity under Rule 7034(b), which has a monthly recurring fee of \$7,500. With respect to the costs incurred, the Exchange notes that the distance, and hence the wireless network equipment required, is greater between Mahwah, NJ and Carteret, NJ in contrast to the distance between Secaucus, NJ and Carteret, NJ, which is reflected in the fees that vendors charge the Exchange for such connectivity.

The Exchange believes that the proposed reduced fees are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated co-location clients that voluntarily select these service options. The Exchange also notes that co-

location clients will continue to have other connectivity options to receive the underlying data feeds, including fiber optic connectivity.

Fee Clarifications

The Exchange believes that the proposed clarifying changes to Rule 7034(b) serve to protect investors and the public interest because they remove misspelled and inaccurate rule text, which will serve to avoid investor confusion, and will not alter what is currently provided under the rule.

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. In terms of inter-market competition, the Exchange 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the charges assessed co-location clients for wireless connectivity do not impose a burden on competition because the Exchange is reducing the monthly fees assessed for such connectivity as a reflection of the Exchange's reduced vendor costs. Such a proposal is reflective of healthy competition among markets and may promote

other exchanges to likewise reduce their costs and/or reduce the fees that they assess for similar connectivity.

Although the Exchange does not believe that the proposed changes will be unattractive to market participants, if they were it is likely that the Exchange will lose subscribers as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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. Please include File Number SR-NASDAQ-2016-053 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-2016-053. 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-2016-053, 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).