

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78050; File No. SR-NASDAQ-2016-081)

June 13, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the Limited WebLink ACT or Nasdaq Workstation Post Trade Fee Tier under Rule 7015(e)

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 June 3, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7015(e) to eliminate the limited WebLink ACT or Nasdaq Workstation Post Trade (“Post Trade”) fee tier. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on June 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.

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

The purpose of the proposed rule change is to amend the Exchange's access services fees at Rule 7015(e) to eliminate the limited Post Trade fee tier. WebLink ACT³ and Nasdaq Workstation⁴ provide connectivity to the FINRA/NASDAQ TRF ("TRF"). Under Rule 7015(e), the Exchange provides members with the Post Trade service, which is a front-end interface with the TRF for trade reporting and historical trade reporting research.

Currently, the Exchange provides two subscription tiers: (1) a full functionality subscription for a monthly fee of \$525; and (2) a subscription limited to an average of 20 transactions⁵ per day each month for a monthly fee of \$275. In light of decreased subscribership and increased fixed costs associated with offering Post Trade, the

³ WebLink ACT is a browser-based application that electronically facilitates trade reporting and clearing functions for trades reported to the FINRA/Nasdaq Trade Reporting Facility.

⁴ The Nasdaq Workstation provides, among other things, a web-based interface with Nasdaq's trade reporting system, ACT.

⁵ For purposes of the service, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

Exchange is proposing to eliminate the limited subscription fee tier. The Exchange will continue to offer the full functionality subscription fee tier.⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that applying the full Post Trade fee tier to all subscribers, including current limited tier subscribers, is reasonable because, as described below, the per-subscriber costs associated with providing the limited subscription tier have increased significantly. Nasdaq incurs the same fixed costs in offering Post Trade, regardless of the number of transactions reported. These fixed costs have increased while the overall number of subscribers to Post Trade has declined due to consolidation among members and stagnant growth in the industry overall.

Furthermore, the Exchange incurs additional expense in monitoring the number of individual subscriber transaction reports and calculating a daily average per month for subscribers to the limited Post Trade offering to ensure that their usage is consistent with the 20 transaction per day limitation. Coupled with decreased subscribership to the

⁶ Current subscribers to the limited subscription will be automatically subscribed to the full subscription effective June 1, 2016, unless their subscription is cancelled prior to that date.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

limited tier in comparison to the full functionality tier,⁹ the relative cost of offering the limited Post Trade subscription has increased significantly in relation to the full functionality subscription tier.

Instead of increasing all Post Trade fees, the Exchange has determined to offer only the unlimited subscription, but with no increase to that fee. Therefore, current subscribers to the limited Post Trade fee tier will have to either subscribe to the full functionality tier at the higher fee or choose an alternative means to report their transactions to the TRF, of which there are several. For example, a subscriber may develop its own in-house system to replicate the Post Trade functionality, or alternatively use a third party order management system to provide similar functionality.

The Exchange believes that applying the full Post Trade fee tier to all subscribers, including current limited tier subscribers, is an equitable allocation and is not unfairly discriminatory because current subscribers to the limited offering will have reasonable alternatives, which include subscribing to the full functionality Post Trade offering at a higher fee but with an unlimited number of transaction reports during a month, developing their own internal system, or using a third party order management system.

As noted above, the Exchange has observed a reduction in the number of subscribers to Post Trade, which has led to a smaller pool of subscribers among which it can spread the fixed costs associated with offering the service. With respect to the limited subscription tier, the costs have increased significantly due to the small number of subscribers in contrast to the full functionality subscription tier.

⁹ The Exchange notes that less than ten percent of subscribers to Post Trade choose the limited fee tier.

Thus, the Exchange must either increase the limited functionality fee significantly to a point that it is near the fee of the full functionality offering, or eliminate the limited service altogether. As explained, offering the limited Post Trade offering is costlier to the Exchange because it must track the average number of transactions used by a subscriber during the month to ensure that it is within the limits required by the rule. Consequently, the Exchange is proposing to eliminate the option that is costlier to the Exchange, while keeping the fee of the remaining full functionality Post Trade subscription tier the same.

The Exchange also notes that, although current subscribers to a limited Post Trade subscription will pay more under the full functionality subscription, they will receive an unlimited number of transaction reports per month in return. Thus, all subscribers to the service will receive the same functionality for the same price, and the Exchange will have the same cost per subscriber in offering the service.

Last, the Exchange notes that the service is voluntary and members will continue to have the option to subscribe to the full functionality fee tier or choose an alternative. For these reasons, the Exchange believes that the proposed elimination of the limited offering fee is an equitable allocation and is not unfairly discriminatory.

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.

In such an environment, the Exchange must carefully assess the potential impact that increasing a fee for a service may have on the overall number of subscribers, balanced against the need to cover the costs associated with offering the service and also deriving a profit therefrom. As noted above, this service is completely voluntary and market participants have connectivity options for reporting to the TRF other than the Exchange. Thus, market participants are able to readily choose a third party offering if the Exchange's does not satisfy their needs or perform the functionality in-house, rendering the degree to which fee changes to this service may impose any burden on competition to be extremely limited.

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.¹⁰

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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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. Please include File Number SR-NASDAQ-2016-081 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-2016-081. 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 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-2016-081, 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.¹¹

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).