

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73705; File No. SR-NASDAQ-2014-118)

December 1, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ Rule 7001(c)

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 November 26, 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

The Exchange proposes to modify NASDAQ Rule 7001(c) concerning market maker participant identifier³ (“MPID”) fees. The Exchange proposes to implement the proposed rule change on December 1, 2014.

The text of the proposed rule change is available at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ When applied to a market maker, sometimes referred to as a “maker participant identifier.”

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 the fees assessed under Rule 7001(c) for MPIDs.

MPIDs are special numerical identifiers assigned to certain broker-dealers to identify the firms' transaction and quoting activity. NASDAQ administers the assignment of MPIDs, which may be requested by a broker-dealer for use on NASDAQ systems, reporting to Financial Industry Regulatory Authority ("FINRA"), or a combination of the two. NASDAQ member firms are provided with a Primary MPID upon gaining NASDAQ membership, but may also request additional MPIDs. These additional MPIDs are called Supplemental MPIDs and may be used by member firms to separate orders or quotes entered into the NASDAQ system for affiliates, segregated business units or trading desks, or sponsored access firms. Member firms also may use Supplemental MPIDs exclusively for reporting information to facilities of the FINRA, such as the FINRA/NASDAQ Trade Reporting Facility.

Under Rule 7001(c), NASDAQ provides a Primary MPID at no cost, and Supplemental MPIDs for a fee of \$1,000 per month, per additional identifier. The Exchange also provides Supplemental MPIDs at no cost if they are used exclusively for reporting information to facilities of FINRA. The Exchange has not modified the fees assessed for MPIDs since adopting Rule 7001(c) in July 2010.⁴ NASDAQ is proposing to eliminate the distinction between Primary and

⁴ See Securities Exchange Act Release No. 62564 (July 23, 2010), 75 FR 44830 (July 29, 2010) (SR-NASDAQ-2010-089).

Supplemental MPIDs and assess a fee of \$500 per month, per identifier. As is currently the case, NASDAQ will not assess a fee for MPIDs used exclusively for reporting to the facilities of FINRA. A consequence of the proposed change is that some member firms will experience an overall fee increase. Specifically, a member firm that currently has only one MPID (a “Primary MPID” under the current rule) would now have to pay \$500 per month for the MPID under the proposed change, whereas that member firm pays nothing under the current rule. A member firm that has two MPIDs currently, none of which are [sic] used exclusively for reporting to the facilities of FINRA, would experience no change in the total monthly fee assessed for its MPIDs.⁵ A member firm that has three or more MPIDs, none of which are [sic] used exclusively for reporting to the facilities of FINRA, would experience a fee reduction. The Exchange notes that its membership fees will continue to remain lower than the analogous fees assessed by the New York Stock Exchange for membership.⁶

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular,

⁵ Such a member firm currently receives the Primary MPID at no cost and the Supplemental MPID at \$1,000 per month. Under the proposed change, such a member firm would pay \$500 per month for each of the MPIDs, totaling \$1,000 per month.

⁶ The Exchange believes that the New York Stock Exchange (“NYSE”) Trading License Fee is analogous to membership fees of NASDAQ as they both provide access to the trading facilities of their respective exchanges. In this regard, NYSE assesses an annual fee of \$40,000 for the first two licenses held by a member organization, and \$25,000 for each additional license. See https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. By contrast, NASDAQ would assess the proposed monthly fee of \$500 per MPID, an annual membership fee of \$3,000, and a trading rights fee of \$1,000 per month (\$12,000 annually). See NASDAQ Rule 7001(a).

⁷ 15 U.S.C. 78f.

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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed simplification and uniform application of the fee assessed for MPIDs is an equitable allocation of a reasonable fee because it removes a distinction from the rule based on the number of MPIDs held and allocates a lower per MPID fee based strictly on the number of MPIDs subscribed. Although the proposed rule change reduces the per MPID fee assessed, it will result in a higher fee for some member firms that subscribe only to a Primary MPID currently. The Exchange believes that applying the proposed fee to all MPIDs subscribed that are used for Exchange trading activity allocates the fee more precisely with the benefit received. NASDAQ notes that it incurs the same cost in administering all MPIDs, including what is currently known as a Primary MPID. The Exchange believes that the proposed fee is reasonable because it lowers the fee to a level that more closely aligns the costs NASDAQ incurs in administering an individual MPID with the fee received. NASDAQ currently provides a Primary MPID at no cost, while Supplemental MPIDs not used exclusively for reporting to the facilities of FINRA are assessed a fee. NASDAQ had adopted the Supplemental MPID fees in an effort to help cover the costs of administering MPIDs and to also bring efficiency to their use by member firms.⁹ When it adopted the Supplemental MPID fees, NASDAQ noted that it had observed that many member firms subscribed to multiple MPIDs through which very little

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ Supra note 4.

activity occurred.¹⁰ NASDAQ notes that the current fee structure has had the desired effect. Accordingly, NASDAQ now believes that reducing the per MPID fee, yet applying it to all MPIDs, is reasonable as it better aligns the fees assessed for MPIDs with the costs incurred by NASDAQ while also retaining an incentive to use MPIDs efficiently. NASDAQ anticipates that the proposed change will result in an overall increase in income received from MPID subscription fees. The Exchange believes that it is reasonable to adjust fees from time to time so that it can continue to make a profit on the products and services it offers. Ensuring that its products and services provide the Exchange with a profit allows it continue to offer and enhance such products and services, such as MPIDs. As noted above, the Exchange believes it is more equitable to allocate the fees on a per MPID basis because it better aligns the fees assessed with the costs incurred in offering MPIDs.

NASDAQ also believes that the proposed rule change is not designed to permit unfair discrimination between member firms because the proposed fee will be assessed based on the number of MPIDs subscribed. The Exchange notes that all member firms will be assessed a fee for what is now considered a Primary MPID. As a consequence, member firms that currently subscribe only to a Primary MPID and have no Supplemental MPIDs or only Supplemental MPIDs used exclusively for reporting to the facilities of FINRA, will experience a fee increase. Other member firms, however, will either see no increase in fee [sic] or experience a fee reduction under the proposed change. NASDAQ believes that the proposed change is not unfairly discriminatory because all subscribing member firms will be assessed a fee for what is currently known as a Primary MPID. As noted above, all member firms derive benefit from each

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Id.

MPID used in transacting on NASDAQ, and NASDAQ is adjusting the fee to ensure that each subscribing member firm pays for the benefit received.

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.¹¹ NASDAQ does not believe that the proposed rule change places an unnecessary burden on competition because it more equitably applies the fee among subscribers.

Specifically, the proposed change ties the fee directly to the number of MPIDs subscribed and eliminates the free Primary MPID. NASDAQ notes that, although all member firms will have to pay a fee for what is currently known as a Primary MPID and some member firms will experience a fee increase as a result of the proposed change, such a change is appropriate because it more closely aligns the subscription fee assessed for an MPID with the cost incurred by NASDAQ in administering it and ensures that offering the service is profitable to the Exchange. As discussed above, NASDAQ's membership fees remain lower than the analogous fees of the NYSE, and membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will experience a decline in membership and/or order flow as a result.

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.

¹¹ 15 U.S.C. 78f(b)(8).

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,¹² and paragraph (f)¹³ 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. Please include File Number SR-NASDAQ-2014-118 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-2014-118. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)

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-2014-118, 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.¹⁴

Kevin M. O' Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).