

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74524; File No. SR-NASDAQ-2015-021)

March 18, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees Assessed under NASDAQ Rule 7016(a)

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 March 6, 2015, 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 Substance of the Proposed Rule Change

NASDAQ is proposing to amend fees assessed under NASDAQ Rule 7016(a) for NASDAQ’s Risk Management Service. The Exchange will implement the proposed changes on March 6, 2015.

The text of the proposed rule change is available at <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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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's Risk Management Service provides clearing brokers with a view of their correspondents' trading activity, notification when pre-set trading limits have been exceeded and the ability to prevent certain trades from locking in and clearing when the pre-set limits have been exceeded. When NASDAQ separated from NASD (now FINRA) in 2006, the Exchange reduced the per side per trade monitored fee assessed for the Risk Management Service from \$0.035 to \$0.025 and also reduced the total monthly fee cap from \$10,000 to \$7,500 per month.³ The Exchange noted that it was reducing the charges for risk management services to remain competitive with charges of other providers of similar services. NASDAQ has not increased the fees for the service since reducing the fees in 2006.

Effective November 17, 2014, FINRA migrated the OTC Reporting Facility ("ORF") from the NASDAQ OMX ACT technology platform to its own newly-developed platform, and required members with trade reporting obligations under its rules in OTC equity securities and reportable restricted equity securities to migrate to the new platform by that date.⁴ As a consequence of the migration, NASDAQ's Risk Management Service no longer receives information and alerts concerning ORF reported transactions by clearing brokers'

³ Securities Exchange Act Release No. 55131 (January 19, 2007), 72 FR 3891 (January 26, 2007) (SR-NASDAQ-2006-066).

⁴ See <http://www.finra.org/Industry/Compliance/MarketTransparency/ORF/Notices/P580334>.

correspondents, thereby resulting in a significant decrease in the number of trades covered by the service and a number of subscription cancellations.

Currently, NASDAQ assesses a fee on clearing firms that use the Risk Management Service of \$17.25 per month for each correspondent executing broker monitored by NASDAQ, and a per side per trade monitored fee of \$0.025. The total amount of Risk Management Service fees per-month for an individual clearing firm is currently capped at \$7,500 per correspondent executing broker. NASDAQ is proposing to increase the per side per trade monitored fee to \$0.030 and add a minimum “floor” fee of \$500 per month, per correspondent executing broker applied to clearing brokers with less than 17,000 total monthly trades and that fall below 50 correspondents monitored by NASDAQ during the month, which would be assessed in lieu of the per side per trade monitored fee.

NASDAQ is also removing language from the rule text that relates to the effective date of the fee, which has since passed.

2. Statutory Basis

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

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4) and (5).

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 per-transaction fee is reasonable because it has experienced a significant decrease in the number of trades covered by the service and cancellations of subscriptions to the service coincident with the migration of the ORF, as discussed above. The costs NASDAQ incurs in supporting the service have increased since 2006, and have not changed since the significant decreases in trades covered by the service and the loss of subscribers to the service. Consequently, the costs incurred by NASDAQ, and any profit received from subscribers to the service, must be supported by the remaining subscribers in the form of a fee increase. Similarly, the Exchange believes that applying a minimum monthly fee of \$500 in lieu of the per side per trade monitored fee is reasonable because NASDAQ incurs certain fixed costs in offering the service to clearing brokers, regardless of the number of transactions monitored. Although subscribers that use the service minimally will experience a fee increase under the proposed alternative \$500 per month fee floor, NASDAQ has determined that providing the service to clearing brokers that have less than 17,000 trades and 50 total correspondents is the point at which the costs of providing the service are not sufficiently covered by the per side per trade monitored fee.

NASDAQ believes that the proposed increase to the per-transaction fee is equitably allocated because all clearing brokers that exceed the alternative floor fee thresholds will be assessed the same fee rate. Likewise, the Exchange believes that the alternative floor fee is equitably allocated because it applies equally to all clearing brokers that do not utilize the service

sufficiently to cover the costs incurred by NASDAQ in offering the service under the per-transaction fee. As noted above, NASDAQ has determined that the alternative floor fee is the minimum fee NASDAQ can charge to cover the costs of offering the service to a subscriber. Consequently, such clearing brokers would otherwise receive a subsidy for using the service, whereas other subscribers to the service would not. Accordingly, the alternative floor fee is not only allocated equitably among subscribers that have minimal usage of the service, but it is also allocated equitably among all subscribers to the service.

Lastly, the Exchange believes that the proposed increase to the per side per trade monitored fee does not discriminate unfairly because it is applied to all subscribers that exceed the new minimum activity threshold, which is directly based on their usage of the service. The Exchange believes that applying the alternative floor fee to certain subscribers that do not exceed the minimum activity threshold does not discriminate unfairly because the fees provided by such a subscriber under the per side per trade monitored fee do not currently support the costs incurred by NASDAQ in offering the service to the subscribers. Consequently, applying an alternative minimum fee will ensure that such costs are covered by each subscriber, with no subscriber being assessed less than the cost of providing the service.

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.⁷ 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, or rebate opportunities available at other venues to be more favorable. In such an

⁷ 15 U.S.C. 78f(b)(8).

environment, NASDAQ 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, NASDAQ believes that the degree to which fee changes in general, and changes to fees for non-mandatory services particularly, in this market may impose any burden on competition is extremely limited. In this instance, the increases to the fees assessed for subscription to NASDAQ's Risk Management Service arise from a need to cover the increase of costs in offering the service since 2006, and the loss of a significant number trades covered by the service and a reduction in subscribers due to recent changes to the ORF. Because of the reduced number of trades and subscribers, the costs of the service must be supported by those subscribers that remain. To the extent that the fee increases are too high, subscribers may cancel their subscriptions and develop their own risk management tools that replicate the Risk Management Service or use third party risk management tools. As such, NASDAQ does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets, and to the extent the fees are deemed too high, the changes may represent an opportunity for other market venues or third parties to provide competitive services.

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)(ii) of the Act⁸. 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-2015-021 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-2015-021. 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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2015-021, 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.⁹

Brent J. Fields
Secretary

⁹ 17 CFR 200.30-3(a)(12).