

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74823; File No. SR-NASDAQ-2015-046)

April 28, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Collection of Exchange 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 April 27, 2015, 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 and II below, which Items have been prepared by NASDAQ. 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 proposes to amend Exchange Rule 7007, which is currently reserved, and entitle it “Collection of Exchange Fees and Other Claims” and require each Nasdaq member, and all applicants for registration as such, to provide a clearing account number for an account at the National Securities Clearing Corporation (“NSCC”) for purposes of permitting the Exchange to debit certain fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange.

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

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

<sup>2</sup> 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. 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 Rule 7007 to require NASDAQ members, and all applicants for registration as such, to provide a clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to certain 7000 series rules<sup>3</sup> and the 8000<sup>4</sup> series rules which are due and owing to NASDAQ. The Exchange would entitle Rule 7007 "Collection of Exchange Fees and Other Claims."

Currently, the Exchange requires all Options Participants to provide such an NSCC account number.<sup>5</sup> The Exchange believes that the proposed debiting process for NASDAQ

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<sup>3</sup> The 7000 series rules in the NASDAQ Rulebook list charges for membership, services and equipment. Only the Rules which require payment to the Exchange would be subject to direct debit. By way of example, Rule 7003, Registration and Processing Fees, fees are collected by FINRA.

<sup>4</sup> The 8000 series rules in the NASDAQ Rulebook list sanctions associated with disciplinary actions. Any disciplinary fines or sanctions collected pursuant to the 8000 series shall be subject to direct debit to the extent described within this rule change. See also note 6 for exceptions to debits.

<sup>5</sup> See Chapter XV, Section 1 in the NASDAQ Rules.

members that conduct an equities business would create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.<sup>6</sup> Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange by NASDAQ members conducting an equities business, as it does today for Options Participants on the NASDAQ Options Market LLC (“NOM”).<sup>7</sup> Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process would prevent NASDAQ member accounts from becoming overdue.

The Exchange proposes to require NASDAQ equity members and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit any undisputed or final fees, fines, charges and/or monetary sanctions or other monies due and owing to the Exchange or other charges related to the 7000 series rules, as specified below, and the 8000 series rules. Specifically, the following 7000 series Rules will be subject to proposed Rule 7007: 7001 (Membership Fees), 7014 (Market Quality Incentive Programs: Investor Support Program), 7015 (Access Services), 7016 (Nasdaq Risk Management), 7018 (Nasdaq Market Center Order Execution and Routing), 7021 (NasdaqTrader.com Trading and Compliance Data Package Fee), 7024 (Clearly Erroneous Module), 7027 (Aggregation of Activity of Affiliated Members), 7029 (Installation, Removal or Relocation), 7030 (Other Services), 7034 (Co-Location Services), 7038 (Step-Outs and Sales Fees Transfers), 7041 (Nasdaq Regulation Reconnaissance Service), 7042 (Non-Tape Riskless Submissions), 7043 (Inclusion of

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<sup>6</sup> The Exchange will not debit accounts for fees that are unusually large or for special circumstances, unless such debiting is requested by the NASDAQ member.

<sup>7</sup> See NOM Rules at Chapter XV, Section 1. NOM Participants are subject to the same process for direct debit as specified herein.

Transaction Fees in Clearing Reports Submitted to ACT), 7049 (Nasdaq InterACT), 7051 (Direct Connectivity to Nasdaq), 7055 (Short Sale Monitor), 7058 (QView), 7060 (Equity Trade Journal for Clearing Firms) and 7061 (Limit Locator).

The Exchange would send a monthly invoice<sup>8</sup> to each NASDAQ equity member on approximately the 3<sup>th</sup> – 10<sup>th</sup> business day of the following month.<sup>9</sup> The Exchange would also send a file to NSCC each month on approximately the 23<sup>rd</sup> of the following month to initiate the debit of the appropriate amount stated on the NASDAQ member's invoice for the prior month. Because the NASDAQ member would receive an invoice well before any monies are debited (normally within two weeks), the NASDAQ member would have adequate time to contact the staff with any questions concerning its invoice. If a NASDAQ member disagrees with the invoice, the Exchange would not commence the debit until the dispute is resolved. Specifically, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15<sup>th</sup> of the month, or the following business day if the 15<sup>th</sup> is not a business day, and the amount in dispute is at least \$10,000 or greater.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing members account. In the instance where the NASDAQ member clears through an Exchange clearing member, the estimated transaction fees owed to the

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<sup>8</sup> The monthly invoice will indicate that the amount on the invoice will be debited from the designated NSCC account. Each month, the Exchange will send a file to the NASDAQ member's clearing firm which will indicate the amounts to be debited from each member. If a NASDAQ member is "self-clearing", no such file would be sent as the member would receive the invoice, as noted above, which would indicate the amount to be debited.

<sup>9</sup> NASDAQ members may receive invoices either electronically, by mail or by both methods.

Exchange are typically debited by the clearing member on a daily basis in order to ensure adequate funds have been escrowed. The Exchange would debit any monies owed including undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owed to the Exchange.<sup>10</sup> The Exchange believes that the debit process would eliminate the risk of unpaid invoices because of the large amounts of capital held at NSCC by NASDAQ equity members.

The Exchange proposes this rule change become operative on July 1, 2015. On August 24, 2015, the Exchange will debit July 2015 billing pursuant to the process described in this rule change.<sup>11</sup> The Exchange will notify NASDAQ equity members of this rule change in an Equity Trader Alert to provide its members ample time to provide the Exchange with the information necessary for the direct debit and prepare for the change to the collection process. NASDAQ members' primary NSCC account number will be utilized unless the NASDAQ member contacts the Exchange prior to July 1, 2015 with an alternate NSCC account number.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is

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<sup>10</sup> This includes, among other things, fines and sanctions which result from disciplinary proceedings or actions taken pursuant to the 8000 series of NASDAQ Rules. With respect to disciplinary proceedings, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the NASDAQ member's invoice prior to the actual NSCC debit.

<sup>11</sup> The initial debit will include all outstanding fees through August 2015.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 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 by providing NASDAQ equity members with an efficient process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies dues and owing to the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is reasonable because it would ease the NASDAQ equity member's administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all NASDAQ members who owe monies to the Exchange.

The Exchange believes that its proposal to debit NSCC accounts is equitable and not unfairly discriminatory because it will apply to all NASDAQ members in a uniform manner. Today, the debit process is applied to all NOM Participants.<sup>14</sup>

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

NASDAQ does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With this proposal, the proposed debit process would apply uniformly to all NASDAQ members as it does today with all Options Participants.

Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange for NASDAQ members conducting an equities business, as it does today for NOM Participants. Collection matters divert staff resources away from the Exchange's regulatory and business

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<sup>14</sup> See note 7.

purposes. In addition, the debiting process would prevent NASDAQ member accounts from becoming overdue.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

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.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

#### 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-2015-046 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-2015-046. 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-2015-046, 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>17</sup>

Brent J. Fields  
Secretary

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