

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81798; File No. SR-NASDAQ-2017-097)

October 2, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Connectivity Fees at Rule 7051

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 September 18, 2017, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7051, which sets forth the schedule of fees that the Exchange charges to its clients for connecting directly to the Exchange's data centers and/or receiving third party market data feeds and other non-Exchange services from the Exchange via circuits provided by third party telecommunications providers.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2017.

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.

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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 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 Exchange proposes to amend Rule 7051, which sets forth the schedule of fees that the Exchange charges to its clients for connecting directly to the Exchange's data centers and/or receiving third party market data feeds and other non-Exchange services from the Exchange via circuits provided by third party telecommunications providers.

Subscribers may use the connectivity provided under Rule 7051 to link them to the Exchange for order entry and to receive proprietary data feeds, to receive public quote feeds from Securities Information Processors, and to connect to facilities of FINRA, such as the FINRA/Nasdaq TRF. The Exchange provides various direct connectivity options based on the capacity of the connection. A subscriber generally determines the capacity of the connection it needs based on the number of data services it wishes to receive and its estimated usage for trading and trade reporting purposes.

For direct connectivity to Nasdaq, Rule 7051(a) provides for 1 GB, 1 GB Ultra, and 10 GB Ultra hand-offs. The installation fee for all such connections is \$1,500 and the monthly fee is \$7,500 for 10 GB connections and \$2,500 for both 1 GB and 1 GB Ultra hand-offs. The

Exchange also charges a \$925 fee to customers that choose to install a cable router in its data center and a monthly fee of \$150 for customers that choose to install equipment in the Exchange's data center to support the connectivity.

For direct connectivity to third party services, Rule 7051(b) provides for 1GB Ultra and 10 GB Ultra hand-offs. The installation fee for both 10 GB Ultra and 1 GB Ultra direct connections is \$1,500. Meanwhile, the monthly fee is \$5,000 for 10 GB Ultra connections and \$2,000 for 1 GB Ultra hand-offs. For 1 GB Ultra or 10 GB Ultra connections for UTP only, the installation fee and monthly fee is waived for the first two connections and thereafter the installation fee is \$100 and the monthly fee is also \$100. Again, the Exchange charges a \$925 fee to customers that choose to install a cable router in its data center for purposes of receiving these third party services and a monthly fee of \$150 for customers that choose to install equipment in the Exchange's data center to support the connectivity.

In order to reflect the changing nature of the Exchange's ecosystem and of the connection technologies it employs, the Exchange proposes to clarify Rule 7051 in several respects.

First, the Exchange proposes to list separately those fees it charges for certain connectivity that it presently includes under the general heading of Direct Connectivity, pursuant to Rule 7051(a). Specifically, the Exchange proposes to break out the fees it charges to clients that connect directly to the Exchange through a "Point of Presence" or "POP" from the fees it charges to clients that connect through a direct circuit connection. In contrast to a traditional direct circuit connection, in which a client uses an external telecommunications provider's circuit to connect directly to the Exchange's primary data center in Carteret, New Jersey, a "POP" connection is one in which a client directly connects to the Exchange at one of its satellite data

centers located elsewhere. Each such POP, in turn, has a fully redundant connection to the Exchange's primary data center.

The Exchange proposes to list POP connectivity fees separately from traditional direct circuit connectivity fees because it wishes to highlight POP connectivity as a distinct connection option, particularly as it contemplates expanding the numbers and locations of its POPs in the future.

To effect the foregoing change, the Exchange proposes to add a new subsection (c) to Rule 7051 entitled "Point of Presence Connectivity." Under proposed Rule 7051(c), the installation and monthly fees that the Exchange proposes to charge expressly for POP connectivity would not be new fees and they would differ only in name, and not in amount, from those fees that clients presently pay under Rule 7051(a) for the same connectivity. The new subsection would provide for clients to choose between 10 GB Ultra and 1 GB Ultra bandwidth hand-offs for connections to POPs. However, the proposed subsection (c) will not include charges for installing optional cable routers or cabinet space rentals insofar as clients may not install routers in or rent cabinet space directly from the Exchange at the POPs. Likewise, proposed subsection (c) will not include fees for regular 1 GB hand-offs insofar such hand-offs are not available for connections to POPs.

In addition to the above, the Exchange proposes to update the headings of Rule 7051(a) and (b) so that they more accurately reflect the nature of the services to which they apply. Because Rule 7051(a) and (b) list the fees that the Exchange charges customers for installing and maintaining direct telecommunications "circuit" connectivity with the Exchange, the Exchange proposes to change the heading of subsection (a) from "Direct Connectivity to Nasdaq" to

“Direct Circuit Connection to Nasdaq” and the heading of subsection (b) from “Direct Connectivity to Third Party Services” to “Direct Circuit Connection to Third Party Services.”

Lastly, the Exchange proposes to amend Rule 7051 to state that the connectivity provided under the Rule also applies to connectivity to the markets of The NASDAQ Stock Market LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Nasdaq ISE LLC, Nasdaq MRX LLC, and Nasdaq GEMX LLC. This purpose of this proposal is to specify that a client can use the connections it establishes and maintains under the Rule to connect, not only to the Exchange, but also to any or all of its sister Exchanges, and in doing so, it will be billed only once. Certain of the Exchange’s other Rules already include similar language, including Rules 7030 and 7034. The Exchange wishes now to add such language to Rule 7051.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to separately list its fees for POP connectivity is reasonable as a means of clearly distinguishing POP connectivity from traditional direct circuit connectivity as set forth in Rule 7051(a). The proposal will not assess any new or different fees to customers that connect to the Exchange through POPs. Instead, the proposal will merely re-characterize the fees that clients presently pay under Rule 7051(a) as relating specifically to POP connectivity. The Exchange also believes that this proposal is an equitable allocation and is not

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4) and (5).

unfairly discriminatory because it will apply all similarly situated clients that connect through POPs.

The Exchange believes that its proposal to modify the headings of subsections (a) and (b) of Rule 7051 is also reasonable because it clarifies that the fees in these subsections pertain specifically to connections to the Exchange that involve circuits provided by external telecommunications providers. Again, this proposal is an equitable allocation and is not unfairly discriminatory in that it will apply to all clients that use such direct circuits to connect to the Exchange.

Lastly, the Exchange believes that its proposal is reasonable and nondiscriminatory to clarify that each of the connection options and fees set forth in Rule 7051 generally provide for connectivity to The NASDAQ Stock Market LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Nasdaq ISE LLC, Nasdaq MRX LLC, and Nasdaq GEMX LLC. The Exchange does not restrict its clients from utilizing their direct connections to it to also access its sister exchanges, and it does not charge its clients more than once to do so. Although certain of the Exchange's other connectivity Rules already make these points clear (e.g., Rules 7030 and 7034), Rule 7051 does not do so. The Exchange therefore believes its proposal to clarify Rule 7051 is warranted.

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. The proposal merely clarifies the Exchange's existing services and associated fees and the Exchange does not anticipate that such clarifications will have any impact on competition whatsoever.

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.<sup>5</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.

### 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-2017-097 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-2017-097. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 the 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-2017-097, 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>6</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).