

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94226; File No. SR-NASDAQ-2022-012)

February 11, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 115 of the Fee Schedule

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 January 31, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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 the Exchange’s pricing schedule at Equity 7, Section 115, as described further below.

The text of the proposed rule change is detailed below: proposed new language is italicized and proposed deletions are in brackets.

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**The Nasdaq Stock Market Rules**

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**Equity Rules**

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

<sup>2</sup> 17 CFR 240.19b-4.

## Equity 7 Pricing Schedule

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### Section 115. Ports and Services†

The charges under this section are assessed by Nasdaq for connectivity to services and the following systems operated by Nasdaq or FINRA: the Nasdaq Market Center, FINRA Trade Reporting and Compliance Engine (TRACE), the FINRA/Nasdaq Trade Reporting Facility, and the FINRA OTC Reporting Facility (ORF). The following fees are not applicable to The Nasdaq Options Market LLC. For related options fees for Ports and other Services refer to Options 7, Section 3 of the Options Rules.

(a) – (d) No change.

(e) Specialized Services Related to FINRA/Nasdaq Trade Reporting Facility

WebLink ACT or Nasdaq Workstation Post Trade	[5]625[.00]/month A subscription includes: the Trade Reporting File Upload service, which allows members to upload multiple trade reports in batches to ACT; and the ACT Reject Scan service, which provides a list of all of a member's rejected ACT trade entries and a copy of each rejected trade report form submitted to ACT.  [\$225 per month for the ACT Trade History service which provides searchable access to a member's trades that are older than six months dating back to 2009.]
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ACT Workstation	<p>[\$]625/logon/month</p> <p>[\$225 per month for the ACT Trade History service which provides searchable access to a member's trades that are older than six months dating back to 2009.]</p>
Nasdaq WorkX	<p>[\$]625/logon/month</p> <p>[\$225 per month for the ACT Trade History service which provides searchable access to a member's trades that are older than one year dating back five years.] For customers using both Act Workstation and Nasdaq WorkX, fees for Nasdaq WorkX will be waived for the first month of service.</p>

(f) – (j) No change.

† Fees, other than the specialized service fees in Section 115(e), are assessed in full month increments under this section, and thus are not prorated.

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- (b) Not applicable.
- (c) Not applicable.

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 schedule of fees, at Equity 7, Section 115(e). In April 2021, the Exchange enhanced its connectivity, surveillance and risk management services by launching three re-platformed products including Nasdaq WorkX™ (“WorkX”).<sup>3</sup> These changes were filed by the Exchange on April 20, 2021 and published in the Federal Register on May 7, 2021.<sup>4</sup> The Exchange noted in the filing that as it rolled out the enhanced products, the fees for the re-platformed products would be the same as the fees for the corresponding non-re-platformed products. After the first month of service on WorkX, a member firm is expected to fully migrate to the new product and is charged for any fees incurred for using the new products thereafter. To date, the Exchange continues to assist its members in migrating from Workstation to WorkX.

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<sup>3</sup> WorkX is a re-platformed version of Workstation that simplifies compliance with regulatory responsibilities and enhances the user experience with improved workflow, system performance, and data visualization. WorkX also upgrades trade reporting and monitoring with a modern user interface using cloud-based technology.

<sup>4</sup> See Securities Exchange Act Release No. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ-2021-025).

The Exchange proposes to increase its existing fees for ACT Workstation (“Workstation”),<sup>5</sup> WebLink ACT or Nasdaq Workstation Post Trade (“WebLink”)<sup>6</sup>, and WorkX from \$525 to \$625. These fees solely apply to the FINRA/Nasdaq Trade Reporting Facility (TRF) related services.

The Exchange also proposes to eliminate the ACT Trade History service fee of \$225 for each of these existing products. The ACT Trade History service provides searchable access to a member’s trades.<sup>7</sup> The Exchange believes it is important for users to freely perform unlimited scans and queries of their trade history to effectively perform their regulatory responsibilities without being hampered by the separate ACT Trade History charge.<sup>8</sup>

Additionally, the Exchange proposes to prorate the cost of the first and last month of a user’s subscription to the WebLink, Workstation and WorkX products.

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<sup>5</sup> Workstation is a web-based application that electronically facilitates trade reporting and clearing functions for trades reported to the FINRA/Nasdaq TRF. Workstation services include trade entry, trade scan, and uploads for bulk trade entry to support FINRA/Nasdaq TRF participant trade reporting in accordance with Financial Industry Regulatory Authority (“FINRA”) rules.

<sup>6</sup> Workstation and WebLink are identical applications that perform the same functions. For historical reasons, they each have separate entries on the Exchange’s fee schedule. WebLink, the same as Workstation, is a web-based application that electronically facilitates trade reporting and clearing functions for trades reported to the FINRA/Nasdaq TRF.

<sup>7</sup> WebLink and Workstation provide searchable access to a member’s trades that are older than six months dating back to 2009. WorkX provides searchable access to a member's trades that are older than one year dating back five years.

<sup>8</sup> In its capacity as a Business Member of the FINRA/Nasdaq TRF, Nasdaq also plans to separately eliminate the \$0.50 per query fee that is charged for querying reported transactions in the FINRA/Nasdaq TRF using Workstation, WebLink and WorkX. The change was proposed in FINRA-2022-002, which was filed on January 31, 2022.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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's proposal is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRF and its related front-end products are subjected to significant competitive forces in the market for trade reporting and regulatory compliance services that constrain the Exchange's pricing determinations for Workstation, WebLinks and WorkX. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The competitive nature of this market is evidenced by the FINRA/NYSE TRF, to which firms may report their trade instead of the FINRA/Nasdaq TRF, and which offers a similar front-end trade reporting and regulatory compliance service to trade report, clear and monitor compliance for activity on its facility. Firms may choose to trade report with the FINRA/NYSE TRF based on the features and functionality of the TRF or based on the features and functionality of the regulatory reporting and compliance front-end services offered for the FINRA/NYSE TRF. Within this competitive environment, customers can freely select the FINRA/NYSE trade reporting facility and its trade reporting and compliance front-end services in response to changes in the Exchange's pricing schedule.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

### The Proposal is Reasonable

The Exchange believes that the proposal to raise fees for Workstation, WebLinks and WorkX is reasonable because of the competitive forces described above. Moreover, the Exchange has not adjusted its fees for these products since 2016.

Additionally, the Exchange believes that it is reasonable to remove the ACT Trade History data charge from WebLink, Workstation and WorkX because removal of this fee streamlines the cost to one base fee with no add-on search charges and will allow users to freely perform unlimited query searches of their trade history. As discussed above, these searches assist users in performing their regulatory responsibilities. Additionally, the proposed fee increase of \$100 for using Weblink, Workstation or WorkX is less than half of the current ACT Trade History fee. Therefore, users who utilize the trade history feature may incur decreased fees. For example, a user who is subscribed to one log-on for WorkX and utilizes the ACT Trade History search feature currently pays \$750/month. Under the proposed fee changes, the subscriber will pay \$625/month. Although some users will incur a decrease in fees as a result of the proposed changes, there are some users whose fees may increase. For example, a user who is subscribed to one log-on for WorkX and does not utilize the ACT Trade History search feature currently pays \$525/month. Under the proposed fee changes, the subscriber will pay \$625/month with no additional charge for the use of the ACT Trade History. Because users who choose to utilize the optional ACT Trade History function have historically incurred a higher fee than those who have not utilized the function, the impact of the proposed change will be different for those users. The Exchange believes that the difference in impact resulting from the proposed changes is reasonable and not unfairly discriminatory because all users will be able to use ACT Trade History without a separate fee and those who have not used ACT Trade History in the past

may decide to start using the service. Moreover, the Exchange notes that users who are dissatisfied with the proposal (e.g., if they experience an overall increase) are free to utilize the FINRA/NYSE TRF and its related front-end service.

Additionally, the Exchange believes that it is reasonable to prorate the fees for the first and last month of a user's subscription to Workstation, Weblink and WorkX. For example, the Exchange believes that it is reasonable to charge a user who unsubscribes to any of the three products on December 2 or subscribes on December 30 only for the days that they are actually subscribed to the products.

#### The Proposal is an Equitable Allocation of Fees

Nasdaq believes that the proposed rule change will allocate fees fairly among the users of WebLink, Workstation and WorkX.

The Exchange believes that it protects investors and is an equitable allocation to eliminate its existing \$225 ACT Trade History fee. As discussed above, removal of the fee eliminates any impediment for users to freely utilize the search functions to monitor and satisfy their regulatory responsibilities. Moreover, the Exchange believes that prorating the fees for the first and final month of a user's subscription will ensure that the fees are equitable to a user's utilization of the products.

Lastly, although all users of Workstation, WebLink and WorkX products will incur an increased monthly fee for use of the products, some users who utilize the optional ACT Trade History function will receive a decrease in their overall fees. The Exchange believes it is equitable for some users to incur an increased fee and for other users to receive a decrease because users who choose to utilize the ACT Trade History function have historically incurred a higher fee than those who have not utilized the function. Therefore, the impact of the proposed



change will affect users differently than users who have not historically utilized the function. The Exchange believes that the difference in impact resulting from the proposed changes is equitable because all users will be able to use ACT Trade History without a separate fee and those who have not used ACT Trade History in the past may decide to start using the service. Moreover, the Exchange notes that users who are dissatisfied with the proposal (e.g., if they experience an overall increase) are free to utilize the FINRA/NYSE TRF and its related front-end service.

#### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. All users of WebLink, Workstation and WorkX will be required to pay the proposed increased subscription fee and the proposed fees will apply to all users in the same manner. As discussed above, although some users will incur a decrease in fees as a result of the proposed changes, there are some users whose fees may increase. Users who have historically chosen to not incur the additional cost of the ACT Trade History will pay a modestly higher proportionate amount. The Exchange does not believe that this disparity among users is unfairly discriminatory because users who choose to utilize the optional ACT Trade History function have historically incurred a higher fee than those who have not utilized the function. Therefore, the impact of the proposed change will be different for those users. The Exchange believes that the difference in impact resulting from the proposed changes is not unfairly discriminatory because all users will be able to use ACT Trade History without a separate fee and those who have not used ACT Trade History in the past may decide to start using the service. Additionally, all users, to the extent that they already subscribe to ACT Trade History will benefit from the proposed removal of the ACT

Trade History fee and all users will benefit from the proration of the first and last month of their subscription.

Moreover, the Exchange notes that users who are dissatisfied with the proposal (e.g., if they experience an overall increase) are free to utilize the FINRA/NYSE TRF and its related front-end service.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage. All users of WebLink, Workstation and WorkX will be required to pay the proposed increase fee for a subscription to any of the three products and will receive a proration for the first and last month of their subscription. To the extent that members were not utilizing any of the three products, the proposed fee change will not place them at a competitive disadvantage. The Exchange notes that its members are not required to subscribe to the products if they believe that the cost of the subscriptions is not attractive.

The proposed elimination of the ACT Trade History fee for WebLink, Workstation and WorkX will have minimal competitive effect insofar as some users that utilize the ACT Trade History service may receive a decrease in their overall subscription to the products. As discussed above, although some users will incur a decrease in fees and others will incur a fee increase because of the proposed changes, the Exchange does not believe that this difference will result in a competitive disadvantage to any users because the proposed rule change will allow all users of WebLink, Workstation and WorkX to freely use the tool at no additional cost.

Firms also have the option of reporting their trades on the FINRA/NYSE TRF and utilizing its trade reporting and regulatory compliance service products if they are dissatisfied with the Exchange's fee proposal.

#### Intermarket Competition

The Exchange believes that its proposed modifications to its fee schedule will not impose any burden on competition because the increased fees, proration and removal of ACT Trade History charges simplifies the subscription rates for these products and ensures that the Exchange is able to continue to provide the best products that benefit member firms. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor the FINRA/NYSE TRF if they are dissatisfied with the fee change or deem the FINRA/NYSE TRF and its related front-end products to be more favorable. The proposed fee changes to WebLink, Workstation and WorkX are reflective of this competition.

#### 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>11</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-012 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-2022-012. 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2022-012 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>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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