

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98582; File No. SR-NASDAQ-2023-038)

September 28, 2023

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

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 September 22, 2023, The Nasdaq Stock Market LLC (the “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 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 clarify the migration timeline and billing related to the Exchange’s enhanced connectivity, surveillance and risk management services under Equity 7, Section 115 (Ports and Services).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq is filing this proposal to clarify the migration timeline and billing related to the Exchange’s enhanced connectivity, surveillance and risk management services. In April 2021, Nasdaq launched three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management.³ These changes were filed by Nasdaq on April 20, 2021 and published in the Federal Register on May 7, 2021.⁴ The Exchange noted in the Proposal that as it rolls out the enhanced products, the fees for the re-platformed products would be the same as the fees for the corresponding legacy products. Additionally, the Exchange noted that after the first month of service on each of the re-platformed products, a customer will be expected to fully migrate to the enhanced product and will be charged for any fees incurred for using the new products thereafter. On January 31, 2022, the Exchange increased the fees for the enhanced products and continued to offer the waiver for the first month of service.⁵

Although the Exchange expected to fully migrate customers within one month from initiating migration, the process has taken longer due to the Exchange having to make additional system updates that were needed to support the enhanced products. As a result, the Exchange

³ The corresponding non-re-platformed products are (1) ACT Workstation; (2) Nasdaq InterACT; and (3) Nasdaq Risk Management, respectively (collectively, “legacy products”).

⁴ See Securities Exchange Act Release No. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ-2021-025) (“Proposal”).

⁵ See Securities Exchange Act Release No. 91744 (Jan. 31, 2022), 87 FR 9096 (Feb. 17, 2022) (NASDAQ-2022-012).

continues to assist its customers in migrating to the enhanced products. To date, customers continue to utilize the legacy products and have not fully migrated over to the enhanced products.⁶ To date, the Exchange has only charged customers for their use of the legacy products even if the customer has access to both the legacy and enhanced products. Due to the Exchange's delay in facilitating the full migration, customers will not be charged for utilizing the enhanced products until the full migration process is completed. The Exchange is now at a point where it can facilitate customer migration to the enhanced products.

Customers will be expected to complete the migration process for all enhanced products by November 30, 2023. For customers using both the legacy and re-platformed products, fees for the re-platformed product will be waived for December 2023. The Exchange will announce the migration deadline of November 30, 2023 in an Equity Trader Alert at least 30 days in advance of the deadline. Any customer who continue to utilize the legacy products after the migration deadline (i.e., December 1, 2023 or thereafter) will be charged for both the legacy and enhanced products until the Exchange retires the legacy products. If a customer elects to solely use a legacy product after November 30, the customer may use the product until the Exchange retires the product. If a customer elects to switch to the re-platformed product after November 30, the customer will have one month to fully migrate to the enhanced product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is

⁶ Most customers have begun migrating to Nasdaq WorkX and Real-Time Stats, and the Exchange intends to start migrating customers to Post-Trade Risk Management in the upcoming weeks.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, 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.

The Exchange also believes that it is just and equitable, and in the interests of the public and investors, for the Exchange to provide a deadline of November 30, 2023 for customers to migrate to Nasdaq WorkX, Real-Time Stats and Post-Trade Risk Management, and to clarify customer billing during the migration period. The Exchange is not proposing with this filing any changes to the re-platformed product fees or legacy product fees. The Exchange believes that requiring customers to migrate by November 30, 2023, is reasonable because customers have had the opportunity to engage in months of testing prior to migration and the Exchange's system is fully prepared to accommodate full migration of all customers.

The Exchange also believes that it is reasonable to provide one-month migration period to customers who choose to migrate after the November 30. One month was the duration that the Exchange initially intended for migration, and system updates have eliminated any future migration delays. The Exchange believes that the public and investors will benefit from providing a clear deadline for migrating to the re-platformed products and will also benefit from clarifying billing during the transition period, which will help limit any potential confusion in the future.

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. As explained above, the purpose of this proposal is to provide a deadline for customers to fully migrate to the re-platformed products and to clarify customer billing during the migration period. The

Exchange does not expect the migration deadline to place any burden on competition. Customers will have the option of requesting to continue to utilize the legacy products after the migration deadline and will be charged for both the legacy and enhanced products until the Exchange retires the legacy products. The migration deadline and billing during the transition period will impact all market participants equally.

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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ of the Act normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii).¹³ The Commission believes

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 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 has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as the proposal raises no new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

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. 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 email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-038 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.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to file number SR-NASDAQ-2023-038. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NASDAQ-2023-038 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).