

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69028; File No. SR-NASDAQ-2013-035)

March 4, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Assess a Fee for the Limit Locator Service

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 February 21, 2013, 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 the Substance of the Proposed Rule Change

NASDAQ proposes to assess a fee for the Limit Locator service under Rule 7061.

NASDAQ will begin assessing the proposed fee on April 8, 2013.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

7061. Limit Locator

Limit Locator is a tool to assist a member firm in monitoring its trades reported into the FINRA/NASDAQ TRF for compliance with the requirements of the National Market System Plan to Address Extraordinary Market Volatility. The service provides a subscribing member firm with an overview of its trades reported at, or outside of, a designated Limit Up/Limit Down

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

pricing band. The service will provide a total count of the subscribing member firm's trades in each category as well as present this information graphically, on a rolling month basis. A subscribing member firm is able to create custom e-mails alerts to notify users when a trade is reported at, or outside of, a Limit Up/Limit Down pricing band. Limit Locator is accessed through the NASDAQ Workstation or Weblink ACT 2.0 and is offered for a fee of \$750 per month/per MPID beginning April 8, 2013[at no cost at this time].

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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 those 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 parts 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 proposing to amend Rule 7061 to establish fees for the Limit Locator service. Limit Locator is an add on tool to the NASDAQ Workstation and Weblink ACT 2.0 that assists a member firm that is a FINRA/NASDAQ TRF ("TRF") participant in monitoring its trades reported into the TRF for compliance with the requirements of the National Market System Plan to Address Extraordinary Market Volatility (the "Plan").³ The Plan provides a limit

³ On April 5, 2011, the Exchange, together with other self-regulatory organizations, filed with the Commission a national market system plan to adopt a market-wide limit up /

up / limit down mechanism designed to prevent trades in NMS securities from occurring outside of specified price bands. Limit Locator assists member firms in complying with the Plan by tracking trades reported to the TRF that occur at, or outside of, the limit up / limit down bands and providing notice thereof.⁴

NASDAQ implemented Limit Locator on February 4, 2013⁵ at no cost so that member firms could become familiar with the service using the test securities of the Plan.⁶ Phase I of the Plan will be implemented on April 8, 2013 and will apply the limit up / limit down bands only to Tier 1 NMS Stocks, which are defined as all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and a list of exchange-traded products. Accordingly, NASDAQ is proposing to offer the service for a monthly fee of \$750 per member MPID concurrent with the Phase I implementation.⁷ Each person with a NASDAQ Workstation or Weblink ACT 2.0 log in will be able to access the alerts for a subscribed Limit Locator MPID. The proposed fee is based on the cost to NASDAQ of developing and maintaining the service, and on the value provided to

limit down system to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks, like that which was experienced on May 6, 2010. Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631). The Plan was approved by the Commission on May 31, 2012. Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

⁴ The Commission notes that every member firm has obligations under the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up / limit down and trading pause requirements. Use of Limit Locator may assist a member firm in complying with these requirements, but use of Limit Locator alone does not satisfy a member firm's obligation under the plan. See Securities Exchange Act Release No. 68841 (February 6, 2013), 78 FR 9966 (February 12, 2013)(SR-NASDAQ-2013-020) footnote 4.

⁵ Securities Exchange Act Release No. 68841 (February 6, 2013), 78 FR 9966 (February 12, 2013)(SR-NASDAQ-2013-020).

⁶ Beginning on February 4, 2013, the Securities Information Processors began transmitting limit up / limit down data in select securities to allow participants to develop and test their systems in preparation for the implementation of the Plan.

⁷ NASDAQ will prorate the first month's fee given that it is a partial month.

the subscribing member firm, which receives a useful tool with which to monitor its trades reported to the TRF for compliance with the requirements of the Plan. The proposed fee will also allow NASDAQ to make a profit to the extent the costs associated with developing and maintaining the service are covered. The proposed service is entirely voluntary and member firms are free to develop similar systems of their own or purchase third party solutions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and with Sections [sic] 6(b)(4) of the Act,⁹ 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.

The Exchange operates in a highly competitive market in which third parties and member firms themselves are able to develop and provide information similar to that of Limit Locator. The service uses a subscribing member firm's data, and as such, the member firm may elect to capture it and perform the same analysis provided by Limit Locator, or seek a solution from a third party. NASDAQ has invested time and capital in developing the service and has determined that the proposed fee is reasonable. Accordingly, to the extent that a member firm believes that the fee is excessive or unreasonable it need not subscribe to the service, and may alternatively capture and analyze the data on its own or through a third party provider. Moreover, the Exchange believes the proposed fees are reasonable because they are based on the Exchange's costs to cover the development and maintenance of the service. The proposed fee will allow the Exchange to recoup these costs and make a profit, while providing member firms the ability to better comply with the requirements of the Plan. The Exchange believes the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

proposed fee is equitably allocated because all Exchange member firms that voluntarily select this service will be charged the same amount for the same service. As noted, subscription to the service is entirely voluntary and available to all Exchange member firms that are FINRA/NASDAQ TRF participants.

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

NASDAQ 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, as amended. To the contrary, this proposal will promote competition among member firms, since it provides a compliance solution to member firms that may not have the financial wherewithal to develop such a system on their own. Moreover, by promoting compliance with the Plan, the service will also promote a more efficient and orderly market in which buyers and sellers can compete amongst each other without inadvertently running afoul of the restrictions of the Plan.¹⁰

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ NASDAQ 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

¹⁰ See supra note 4.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2013-035 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-035. 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 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-2013-035, 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).