

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71198; File No. SR-NASDAQ-2013-161)

December 30, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees Assessed for Connectivity to the Exchange under Rule 7015, and to Eliminate Fees Assessed Under Rules 7033 and 7059

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 December 20, 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 amend fees assessed for connectivity to the Exchange under Rule 7015, and to eliminate fees assessed under Rules 7033 and 7059. NASDAQ is also making two minor technical changes to Rule 7015(g). NASDAQ will implement the fee change effective January 2, 2014.

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

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7015. Access Services

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a) No change.

(b) Financial Information Exchange (FIX)

Ports	Price
FIX Trading Port	\$550[500]/port/month
FIX Port for Services Other than Trading	\$500/port/month

(c) No change.

(d) New Nasdaq Workstation

Nasdaq Workstation Trader	\$575[475] per user per month (including: <u>data entitlement package; the Trade Reporting File Upload service, which allows subscribing members to upload multiple trade reports in batches to Automated Confirmation Transaction Service ("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</u>)
Nasdaq Workstation Post Trade	See Rule 7015(e)

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

CTCI fee	\$575/month
WebLink ACT or Nasdaq Workstation Post Trade	<p>\$<u>525</u>[425.00]/month (full functionality) or \$<u>275</u>[225.00]/month (up to an average of twenty transactions per day each month) (For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.)</p> <p><u>A subscription includes: the Trade Reporting File Upload service, which allows subscribing 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.</u></p>
ACT Workstation	\$525/logon/month

(f) No change.

(g) Other Port Fees

Remote Multi-cast ITCH Wave Ports

Description	Installation Fee	Recurring Monthly Fee
MITCH Wave Port at Secaucus, NJ	\$2,500	\$7,500

MITCH Wave Port at Weehawken, NJ	\$2,500	\$7,500
MITCH Wave Port at Newark, NJ	\$2,500	\$7,500

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- \$550[500] per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1,000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH, and TCP ITCH data feed pairs, for which the fee is \$750 per month.
- An additional \$200 per month for each port used for entering orders or quotes over the Internet.
- An additional \$600 per month for each port used for market data delivery over the Internet.

Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription will not be implemented until the first quarter of 2014. The Exchange will provide public notice thereof at least five days prior to the implementation date.

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of \$5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of \$5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription.

[NASDAQ is waiving the \$5,000 installation fee for all subscriptions received through August 15, 2013.]

(h) No change.

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7033. Reserved[Trade Reporting File Upload

The Trade Reporting File Upload service allows subscribing members to upload multiple trade reports in batches to the Automated Confirmation Transaction (ACT) service via the Nasdaq Workstation or WeblinkACT 2.0.

The Trade Reporting File Upload service is available to members for a fee of \$25 per user, per month.]

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7059. Reserved[ACT Reject Scan

ACT Reject Scan service provides a subscribing member with a list of all of its rejected Automated Confirmation Transaction Service (ACT) trade entries and a copy of each rejected trade report form submitted to ACT.

ACT Reject Scan service is available to members at no cost beginning October 1, 2012 and for a fee of \$75 per user, per month beginning November 1, 2012.]

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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

The purpose of the proposed rule change is to amend certain fees under Rule 7015 relating to Access Services and eliminate stand-alone fees assessed for services provided under Rules 7033 and 7059, which have been offered as add-on services to a Nasdaq Workstation (“Workstation”) or Weblink ACT (“Weblink”) subscription but now will be included in all Workstation and Weblink subscriptions.

The Exchange is proposing to amend Rules 7015(d) and (e) to increase fees assessed for subscription to the Workstation and Weblink to reflect the addition of the Trade Reporting File Upload and ACT Reject Scan services, which are currently offered as add-on services to a Workstation or Weblink subscription and will now be offered with every such subscription. The Trade Reporting File Upload service allows a member to upload multiple trade reports in batches to the Automated Confirmation Transaction (“ACT”) service via a Workstation or Weblink. The ACT Reject Scan service provides a subscriber with a list of all of its rejected ACT trade entries and a copy of each rejected trade report form submitted to ACT.

Currently, the Exchange assesses a fee of \$25 per user, per month for subscription to the Trade Reporting File Upload service under Rule 7033, and a fee of \$75 per user, per month for subscription to the ACT Reject Scan service under Rule 7059. NASDAQ is proposing to increase the fee for subscription to the Workstation under Rule 7015(d) from \$475 to \$575 per user, per month, and increase the fee for subscription to Weblink from \$425 to \$525 per user, per month for full functionality and from \$225 to \$275 per user, per month for a transaction-limited subscription. As a consequence of including Trade Reporting File Upload and ACT Reject Scan services with every Workstation and Weblink subscription, NASDAQ is eliminating the separate

rule text describing these services found under Rule 7033 and 7059, respectively, and including the descriptive text from those rules under Rules 7015(d) and (e). The Exchange notes that it last increased fees for subscription to the Workstation in August 2006,³ raising the fee from \$435 to \$475 per user, per month, and last increased fees for subscription to Weblink ACT in January 2012,⁴ raising the fee from \$375 to \$425 per user, per month for full functionality and \$200 to \$225 per user, per month for a transaction-limited subscription.

NASDAQ is also amending fees under Rules 7015(b) and (g), which relate to trading port connectivity. Specifically, NASDAQ is proposing to increase the fee assessed under Rule 7015(b) for Financial Information Exchange (“FIX”) trading ports. FIX trading ports allow member firms to enter, modify and cancel orders in the NASDAQ System and receive Drop reports of executions. NASDAQ is proposing to increase the fee assessed for a FIX trading port from \$500 to \$550 per port, per month. NASDAQ is also proposing to increase the fee assessed for trading port pairs under Rule 7015(g), other than Multicast ITCH, TotalView-ITCH, and TCP ITCH port pairs.⁵ Currently, the Exchange assesses a fee of \$500 per month, per port pair and NASDAQ is proposing to increase the fee to \$550 per month, per port pair. NASDAQ notes that it last increased both of the trading port fees under Rules 7015(b) and (g) in August 2009, raising the fees from \$400 to \$500 per port (or port pair), per month.⁶

³ See Securities Exchange Act Release No. 54500 (September 25, 2006), 71 FR 58026 (October 2, 2006) (SR-NASDAQ-2006-025).

⁴ See Securities Exchange Act Release No. 66288 (February 1, 2012), 77 FR 6164 (February 7, 2012) (SR-NASDAQ-2012-017).

⁵ The \$500 port pair fee under Rule 7015(g) provides subscription to an OUCH, RASH, or Drop port pair.

⁶ See Securities Exchange Act Release No. 60546 (August 20, 2009), 74 FR 43184 (August 26, 2009) (SR-NASDAQ-2009-058).

The Exchange is also proposing to make a technical correction to the trading port rule text under Rule 7015(g) and to delete text from Rule 7015(g), which relates to a time-limited waiver of the Dedicated OUCH Port Infrastructure installation fees that has since expired.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ in particular, because 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 that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed increases to the Workstation and Weblink fees are reasonable because they reflect the added value that subscribing members receive from the inclusion of the Trade Reporting File Upload and ACT Reject Scan services in every subscription. NASDAQ notes that the combined value of the two services under the current rule is \$100 per user, per month and NASDAQ is proposing to increase the fees for the Workstation and unlimited Weblink subscription by an equal amount. NASDAQ believes the lower increase in the transaction-limited Weblink fee of \$50 per user, per month is reasonable and not unfairly discriminatory because those subscribers will likewise have limited use of the Trade Reporting File Upload and ACT Reject Scan services. NASDAQ notes that an existing subscriber to the Workstation or unrestricted Weblink that also subscribes to the Trade Reporting File Upload and ACT Reject Scan add on services will see no increase in the fees assessed for the services received, and subscribers to the transaction-limited Weblink service that also subscribe to the Trade Reporting File Upload and ACT Reject Scan

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

services will see a decrease in the total fees assessed for the add-on services. In contrast, current subscribers to the Workstation or Weblink that subscribe to no add-on services or a single add-on service will experience a fee increase. NASDAQ believes that it is reasonable and not unfairly discriminatory to increase fees for such subscribers to the Workstation and Weblink because the subscribers are receiving additional services valued in the amount of the fee increase and, consequently will derive benefit from the addition of the enhancements. NASDAQ notes that Workstation and Weblink subscribers that determine that the enhancements do not provide benefit to support the additional cost of the subscriptions may alternatively subscribe to third party front end systems or develop front end applications of their own.

NASDAQ believes that the proposal to increase fees for trading ports under Rules 7015(b) and (g) is reasonable [sic] not unfairly discriminatory because the fee increases will realign the cost of administering and enhancing the connectivity options offered by the services with the revenue generated by the fee, which have diverged since the fees were last increased in August 2009.⁹ In particular, NASDAQ believes that the proposed fees will cover the costs associated with responding to customer requests, configuring NASDAQ's systems, programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit. Moreover, NASDAQ believes that the proposed changes to Rules 7015(b) and (g) constitute equitable allocations of fees because, under each individual rule, all member firms would be charged the same fee and receive the same number of access ports. As such, NASDAQ believes that the proposed increase in port fees under Rules 7015(b) and (g) are both equitably allocated and reasonable.

⁹ Supra note 6.

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. The increased Workstation and Weblink fees are reflective of the addition of the Trade Reporting File Upload and ACT Reject Scan services and the benefit member firms receive from these enhancements. As noted, the proposed increase in fees for subscription to trading ports will realign the cost of administering and enhancing the service with the revenue generated by the fees, which have diverged since the fees were last increased in August 2009.¹⁰ The Exchange must, from time to time, increase fees as general costs associated with offering services increase. The burden of covering these increased costs is most appropriately born by the users of the service. NASDAQ notes that, if the proposed port fees are set too high, given the competitive nature of the market for execution and routing services, market participants could simply opt to connect with market centers other than the Exchange to access liquidity available on NASDAQ by directing order flow to the other market centers that are required to route to NASDAQ if it has posted the best available price.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,¹¹ and paragraph (f)¹² of Rule 19b-4, thereunder.

¹⁰ Id.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)

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.

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-2013-161 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-2013-161. 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-2013-161, 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.¹³

Elizabeth M. Murphy
Secretary

¹³ 17 CFR 200.30-3(a)(12).