

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80088; File No. SR-NASDAQ-2017-017)

February 22, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Port-Related Fees at Rules 7015 and 7016(b) to Eliminate Prorated Billing

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 9, 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 the Exchange's port-related fees at Rules 7015 and 7016(b) to eliminate prorated billing.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 change³ is to harmonize the billing practices for subscription to Nasdaq ports and other services provided under Rules 7015⁴ and 7016(b)⁵ with those of the Nasdaq’s Options Market (“NOM”) by no longer applying a prorated fee for subscriptions that are effective other than the first of any given month.⁶ The Exchange does not prorate NOM connectivity subscriptions; thus, Options Participants⁷ are assessed a full month’s fee for a connectivity subscription if they direct the Exchange to make the subscribed connectivity live on any day of the month, including the last day thereof. The Exchange notes that the NASDAQ PHLX does not prorate port connectivity under both [sic] its equity and options rules.⁸

³ The Exchange initially filed the proposed pricing changes on February 1, 2017 (SR-NASDAQ-2017-009). On February 9, 2017, the Exchange withdrew that filing and submitted this filing.

⁴ Rule 7015 is titled “Ports and other Services” and provides the options for connecting to the Nasdaq equity market together with the fees associated with such connectivity.

⁵ Rule 7016(b) concerns the fees assessed for Pre-trade Risk Management service ports. Pre-trade Risk Management provides Members with the ability to set a wide range of parameters for orders to facilitate pre-trade protection for FIX, Rash, OUCH and FLITE ports.

⁶ See NOM Rules Chapter XV, Section 3(b).

⁷ As defined by NOM Rules Chapter I, Section 1(a)(40).

⁸ See Securities Exchange Act Release No. 78665 (August 24, 2016), 81 FR 59693 (August 30, 2016) (SR-PHLX-2016-85) (eliminating prorated billing as applied to PSX ports under Access Services Fees).

Currently, connectivity on Nasdaq's equity market under Rules 7015 and 7016(b) is prorated based on the day that it is activated, with the Nasdaq Member⁹ only fee liable for the remaining days of the partial month. The Exchange has found that prorating billing has resulted in complexity and increased costs associated with the billing process. As a consequence, the Exchange is harmonizing the billing process with that of the Exchange's Options market and is not permitting prorated billing effective February 1, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 elimination of prorated fees under Rules 7015 and 7016(b) is reasonable because it will reduce complexity and costs associated with the billing process, and will harmonize it with the process applied to Options Participants. As noted above, Members are currently able to choose when they want a new connectivity subscription to become effective and thus make the determination of when they wish to become fee liable. Members will continue to choose when they become fee liable under the proposed change, but now the Exchange will assess the full month's fee regardless of when the port is subscribed. Thus, Members must weigh whether subscription to a service covered by the rules for less than a full month is worth the full monthly fee.

⁹ As defined by Rule 0120(i).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that elimination of prorated fees under Rules 7015 and 7016(b) is an equitable allocation and is not unfairly discriminatory because it will apply to all new subscribers to the port-related services under Rules 7015 and 7016(b), who are free to choose the date on which their subscription becomes active and thus fee liable. Moreover, the Exchange believes the proposed change is an equitable allocation and is not unfairly discriminatory because it will harmonize the billing process with that of NOM. Thus, the Exchange will apply the same process to both its Options Participants and Equities Members.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, although eliminating prorated fees for subscriptions under the rules may result in an increase in fees for new subscriptions to the extent a Member determines to subscribe to a service under Rules 7015 or 7016(b) on a day other than the first day of a given month, the Exchange notes that it is doing so to both simplify the process and harmonize it with the process applied to the Exchange's Options Participants. Moreover, Members may choose the day on

which such services become effective and may therefore choose the first day of a month, which would result in no fee increase. Last, the proposed change does not impose a burden on competition because the Exchange's services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.¹²

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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-017 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-2017-017. 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; 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-2017-017 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

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).