

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80380; File No. SR-NASDAQ-2017-030)

April 5, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce Fees for Certain Connectivity under Rule 7015(g)(1) and Rule 7034(b)

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 March 28, 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 the Substance of the Proposed Rule Change

The Exchange proposes to assess reduced monthly fees for microwave or millimeter wave ports under Rule 7015(g)(1) and wireless market data connectivity under Rule 7034(b), based on the total number of subscriptions to such wireless connectivity under those rules. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 3, 2017.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing to assess reduced monthly fees for microwave or millimeter wave ports under Rules 7015(g)(1) and 7034(b), based on the total number of subscriptions to ports under Rule 7015(g)(1) and colocation connectivity to market data feeds under Rule 7034(b).

Under Rule 7015(g)(1), the Exchange provides Multi-cast ITCH (“MITCH”) Wave Ports to clients co-located at other third-party data centers, including the New York Stock Exchange’s (“NYSE”) data center located in Mahwah, NJ, through which the Exchange’s TotalView ITCH market data is distributed after delivery to those data centers via a wireless network. Rule 7034(b) provides the various connectivity options for co-location services. The Exchange offers multicast Market Data feeds that are delivered to the Exchange’s data center located in Carteret, NJ via a wireless network.³ The Exchange offers connectivity to data feeds provided by NYSE, BATS (including Direct Edge), and CME, which are delivered wirelessly by third party vendors

³ Subscription to the connectivity options under Rule 7034(b) is entirely optional. To receive a particular data feed, a participant must subscribe to the connectivity under Rule 7034(b) and also have a subscription to the data feed with the applicable exchange.

from those market's data centers to the Exchange's Carteret, NJ data center. Specifically, the NYSE Equities data feeds under Rule 7034(b) are wirelessly delivered to Carteret, NJ from NYSE's Mahwah, NJ data center, the BATS and Direct Edge data feeds are wirelessly delivered to Carteret, NJ from BATS's Secaucus, NJ data center, and the CME data feeds are wirelessly delivered to Carteret, NJ from CME's Aurora, IL data center.

The Exchange is proposing to provide discounts to the current monthly fees for microwave or millimeter wave connectivity under Rules 7015(g)(1) and 7034(b) based on the total number of billable subscriptions under those rules.⁴ The fees under Rules 7015(g)(1) and 7034(b) differ based on the costs incurred by the Exchange in providing the connectivity, including vendor costs that generally increase with the distance between the origin and destination of the wireless signal. To keep the discounts in line with the different fees assessed for the connectivity under Rules 7015(g)(1) and 7034(b), the Exchange is proposing to apply a percentage-based reduction on the fees assessed in lieu of a fixed amount. Specifically, the Exchange is proposing to provide subscribers with three to five microwave or millimeter wave wireless subscriptions under Rule 7015(g)(1) and/or Rule 7034(b) a 5% discount on all such subscriptions; subscribers with six to ten microwave or millimeter wave wireless subscriptions under Rule 7015(g)(1) and/or Rule 7034(b) would receive a 10% discount on all such subscriptions; subscribers with eleven to fourteen microwave or millimeter wave wireless subscriptions under Rule 7015(g)(1) and/or Rule 7034(b) would receive a 15% discount on all

⁴ The Exchange is proposing to add footnotes to Rules 7015(g)(1) and 7034(b) describing the proposed discounts. As described above, Rule 7015(g)(1) provides wireless connectivity to clients co-located at other third-party data centers and Rule 7034(b) provides wireless colocation connectivity options to clients at the Exchange's colocation facility. Any of the options under these rules may be subscribed to by a client of the Exchange, and the Exchange is using the term "subscriber" to refer to any such client subscribing to one or more of the options under Rules 7015(g)(1) and/or 7034(b).

such subscriptions; and subscribers with fifteen or more microwave or millimeter wave wireless subscriptions under Rule 7015(g)(1) and/or Rule 7034(b) would receive a 20% discount on all such subscriptions.

The Exchange notes that the proposed reduction in fees will reward the greatest users of its wireless connectivity under Rule 7015(g)(1) and/or Rule 7034(b), although the Exchange does not believe that the proposed change will result in a fee assessed that is less than the cost of offering the connectivity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 the proposed fee reductions are reasonable because they are less than the fees currently assessed for the connectivity under Rule 7015(g)(1) and Rule 7034(b), while continuing to allow the Exchange to cover the costs associated with offering the connectivity. The Exchange believes that the proposed fee reductions are an equitable allocation and are not unfairly discriminatory because the reduction to each fee is based on applying a percentage, which will account for the varying expense of each connectivity option under Rule 7015(g)(1) and Rule 7034(b). For example, a subscriber that has three subscriptions total under Rule 7015(g)(1) and/or Rule 7034(b) in a given month, with one MITCH Wave Port at Mahwah, NJ at \$10,000 per month, one MITCH Wave Port at Weehawken, NJ at \$7,500 per month and

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

one Wireless Connectivity to NYSE Equities (Arca Integrated) at \$10,000 per month, would realize a reduction of \$500 ($\$10,000 - (\$10,000 \times .05)$) to its MITCH Wave Port at Mahwah, NJ subscription and a reduction of \$375 ($\$7,500 - (\$7,500 \times .05)$) to its MITCH Wave Port at Weehawken, NJ subscription, and a reduction of 500 ($\$10,000 - (\$10,000 \times .05)$) to its Wireless Connectivity to NYSE Equities (Arca Integrated). Thus, the levels of the proposed fee reductions are related to the fee assessed for the connectivity offered, which ensures that subscribers receive a fee reduction consistent with the amount of its fee burden. In contrast, offering a flat rebate would benefit some subscribers (i.e., those with a greater number of lower cost subscriptions) over other subscribers (i.e., those with higher cost subscriptions) for whom the flat fee would be less meaningful. The Exchange believes that the proposed tiers are an equitable allocation and are not unfairly discriminatory because the number of subscriptions required to qualify for each tier generally increases linearly between each tier. The Exchange chose the number of subscriptions required, and the percentage of the fee discounts, based on its analysis of the level of subscribership under Rule 7015(g)(1) and Rule 7034(b) and its desire to provide meaningful discounts to its fees to promote greater connectivity thereunder, balanced against the Exchange's need to cover costs for such connectivity.

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. 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 most competitors are not required to file their fees with regulators, they are free to quickly and easily modify their fees and discount policies for each subscriber. Subscribers also have a good amount of wireless connectivity vendors to choose from for these services and can switch between providers quite easily.

In this instance, the proposed changes to the charges assessed for microwave or millimeter wave ports under Rule 7015(g)(1) and wireless market data connectivity under Rule 7034(b) do not impose a burden on competition because the Exchange's connectivity services are completely voluntary and subject to extensive competition from other exchanges and from connectivity vendors. The proposed reduction to the monthly fees assessed for microwave or millimeter wave wireless connectivity under Rules 7015(g)(1) and 7034(b) does not place a burden on competition, but rather may promote competition as it will reduce costs for subscribers to the connectivity provided under those rules. As a consequence, competitor exchanges and other market venues may choose to offer similar reductions in fees, to the benefit of all market participants. Ultimately, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose wireless subscriptions, and the revenue derived therefrom, 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.⁷

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.

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 No. SR-NASDAQ-2017-030 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 No. SR-NASDAQ-2017-030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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, D.C. 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 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 No. SR-NASDAQ-2017-030, 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.⁸

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Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).