

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80487; File No. SR-NASDAQ-2017-037)

April 19, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees at Rule 7030(d)(3)

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 April 10, 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 amend the Exchange’s fees at Rule 7030(d)(3) to limit the time that the waiver of fees provided by the rule are available and to change how the current limitation under Rule 7030(d)(3)(C) is triggered.

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 Exchange initially filed the proposed pricing changes on April 3, 2017 (SR-NASDAQ-2017-036). On April 10, 2017, the Exchange withdrew that filing and submitted this filing.

The purpose of the proposed rule change is to amend the Exchange’s fees at Rule 7030(d)(3) to limit all of the waiver of fees provided by the rules and to change how the current limitation under Rule 7030(d)(3)(C) is triggered. Rule 7030(d) provides fees for use of the Nasdaq Testing Facility (“NTF”). The NTF provides subscribers with a virtual Nasdaq System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with Nasdaq. For example, the NTF provides subscribers a virtual System environment for testing upcoming Nasdaq releases and product enhancements, as well as testing firm software prior to implementation.

The Exchange assesses certain fees under the rule for use of the NTF. Subscribers that conduct tests of the computer-to-computer interface and the Financial Information Exchange interface to ACT and ACES access protocols through the NTF are assessed a fee of \$285/hour for Active Connection testing during the normal operating hours of the NTF. Subscribers are also assessed \$333/hour for Active Connection testing at all times other than the normal operating hours of the NTF. Subscribers are not assessed a fee for Idle Connection testing. Moreover, subscribers that conduct tests of all Nasdaq access protocol connections not described above, or of market data vendor feeds through the NTF, are assessed \$300 per port, per month.

Last, subscribers to the NTF located in Carteret, New Jersey are assessed a fee of \$1,000 per hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. Subscribers are also assessed a one-time installation fee of \$1,000 per handoff.

Under Rule 7030(d)(3), the Exchange provides three exemptions from the testing fees described above. First, a subscriber is not assessed a fee for testing new or enhanced services and/or software provided by Nasdaq.³ Second, a subscriber is not assessed a fee for testing modifications to software and/or services initiated by Nasdaq in response to a contingency.⁴ Third, a subscriber is not assessed a fee for testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.⁵

The Exchange is proposing to limit the duration of all exemptions from the fees provided under Rule 7030(d)(3). First, the Exchange is proposing to segregate testing of new services provided by Nasdaq from enhanced services provided by Nasdaq. As noted above, such services are currently not subject to limitation on the exemption from testing fees. As discussed below, the Exchange is proposing to allow testing at no cost for new services for 60 calendar days from the subscriber's notification to Nasdaq⁶ of its commencement of testing, which will be incorporated into Rule 7030(d)(C). The Exchange is proposing to allow free testing of enhanced

³ See Rule 7030(d)(3)(A).

⁴ See Rule 7030(d)(3)(B).

⁵ See Rule 7030(d)(3)(C).

⁶ The Exchange will require subscribers to provide notice to the Exchange via email to NTFbilling@nasdaq.com. Without such notice, normal fees under the rule would apply.

services and/or software provided by Nasdaq for 30 calendar days from the subscriber's notification to Nasdaq⁷ of its commencement of testing.

Second, the Exchange is proposing to limit the free period for testing of modifications to software and/or services initiated by Nasdaq in response to a contingency to 30 calendar days from the subscriber's notification to Nasdaq that it is commencing testing. The Exchange believes that 30 calendar days is a reasonable time for a subscriber to fully test modifications to software and/or services initiated by Nasdaq in response to a contingency because such changes are less impactful to subscribers as compared to a wholly-new service, or one that is wholly-new to that subscriber. Like the proposed 60 calendar day period allowed for testing a service that a member has not used previously and the proposed 30 calendar day period for enhanced services and/or software, the Exchange is proposing to begin the 30 calendar period upon the subscriber's notification to Nasdaq⁸ of its commencement of testing.

Last, the Exchange is proposing to change what triggers the limitation under Rule 7030(d)(3)(C) and increase the free period from 30 to 60 calendar days. Currently under Rule 7030(d)(3)(C), testing by a subscriber of a Nasdaq service that the subscriber has not used previously is provided at no cost, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service. The Exchange is proposing to harmonize the trigger of the free period with that of the other proposed free periods by amending the rule to reflect that initiation of the period will begin upon the subscriber's notification to Nasdaq⁹ of its commencement of testing instead of the actual initiation thereof. As noted above, the Exchange is also incorporating testing of new services provided by Nasdaq under current Rule

⁷ Id.

⁸ Id.

⁹ Id.

7030(d)(3)(A) into Rule 7030(d)(3)(C). The Exchange notes that all new services provided by Nasdaq are, by definition, new to a subscriber. Thus, current Rule 7030(d)(3)(A) is unclear at what point a new service provided by Nasdaq is no longer “new.” Accordingly, the Exchange is instead treating every service that is new to the subscriber equally under the rule. Although the Exchange believes that testing of a new service may be completed within 30 calendar days, the Exchange is increasing the fee waiver period to 60 calendar days. The Exchange believes that, given the complexity of the markets and the need to ensure that systems function as intended prior to implementation, 60 calendar days is a reasonable time during which a member can adequately test a service that is new to them.

The Exchange is also proposing to delete text concerning a limited time waiver of fees, which has since expired.

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 the proposed change is reasonable because it will apply the current fees under Rule 7030(d), which have previously been determined to be reasonable, after a certain time has passed. As described above, the fees under Rule 7030(d) are currently waived for an indefinite time under Rules 7030(d)(3)(A) and (B). The proposed change will apply the fees under Rule 7030(d) once the applicable new fee waiver period has expired.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed change is equitably allocated and not unfairly discriminatory to subscribers because the proposal removes a distinction that is currently made in the rules that provides subscribers unlimited testing opportunities at no cost in perpetuity, which benefits subscribers that are slow to test changes over those that test timely. Specifically, the Exchange incurs expense in offering the NTF, which is covered by the fees that it assesses for the use thereof. Users of the NTF that are inefficient in their testing represent an inordinate cost based on their use as compared to users of the NTF that test efficiently because inefficient users typically use the NTF significantly more over a longer period of time, which in turn leads to increased costs to the Exchange in offering the platform free of charge indefinitely. These costs are ultimately borne by all users of the NTF in the fees that are assessed by the Exchange for use thereof. Instead of proposing an increase to the fees, the Exchange is instead proposing to apply discipline to the use of the NTF by limiting the fee waiver period for new services to 60 calendar days from the subscriber's notification to Nasdaq of its commencement of the testing of a service that has not been used by the subscriber previously, and limiting the fee waiver period to 30 calendar days from the subscriber's notification to Nasdaq of its commencement of the testing of enhanced or modified services and/or software provided by Nasdaq. Thus, all subscribers may take the steps necessary to test changes and new software and services within the proposed fair length of time or test such changes for a fee pursuant to the fee schedule to the extent the subscriber is unable to complete such testing during the free waiver period. The Exchange has determined that 30 calendar days is a fair length of time for subscribers to test enhanced services and/or software, as well as modifications to software and/or services, as it is consistent with the current limited waiver provided under Rule 7030(d)(3)(C). The Exchange believes that providing 60 calendar days following a subscriber's notification to Nasdaq of its commencement

of the testing of a service that has not been used by the subscriber previously as compared to 30 calendar days for all other types of testing under Rule 7030(d)(3) is an equitable allocation and not unfairly discriminatory because enhancements and modifications to existing services or software are less impactful to subscribers as compared to a wholly-new service, or one that is wholly-new to that subscriber. Last, amending the trigger of the free period for testing of a Nasdaq service that the subscriber has not used previously from the date of commencement of testing to the date that the subscriber notified Nasdaq that it has commenced testing will make the application of the waiver consistent with the proposed waivers provided under proposed Rules 7030(d)(3)(A) and (B), and will more accurately reflect the method that Nasdaq currently uses.

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

In this instance, the proposed changes to the waiver of charges assessed under Rule 7030(d) for use of the NTF do not impose a burden on competition because the Exchange is changing the length of time within which a subscriber may test a service at no cost. The Exchange is providing reasonable timeframes during which a subscriber may test at no cost, after which the subscriber may continue to test but for a fee as provided by the rule. Thus, a subscriber will have adequate time to test at no cost and use of the NTF beyond the allocated free testing periods is completely voluntary. The proposed limitation of the fee waiver will bring discipline to the use of the NTF while also providing ample time for subscribers to use the NTF for testing services and software pursuant to Rule 7030(d)(3). In this regard, to the extent a subscriber does not complete the testing exempted under proposed new Rules 7030(d)(3)(A) through (C), the subscriber may continue to test the changes, but will be assessed the fees for use of the NTF under the rule. 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.

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-037 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-2017-037. 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-2017-037, 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

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).