

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81133; File No. SR-NASDAQ-2017-065)

July 12, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Trading Rights Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 29, 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 trading rights fee at Rule 7001(a) to increase the fee from \$1,000 per month to \$1,250 per month, as described further below. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on July 1, 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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to increase its monthly trading rights fee under Rule 7001(a). The trading rights fee is assessed on all Nasdaq members and helps defray the cost of regulating the Nasdaq market. The Exchange last increased the fee in 2012,<sup>3</sup> increasing the fee from \$500 per month to \$1,000 per month, while the cost of regulation has increased since that time. In proposing the change, the Exchange is more closely aligning the fee assessed with the benefit provided by allowing members to trade on a well-regulated market, the cost of which is incurred by the Exchange in the systems and people that support oversight of the market. Nasdaq believes that even with the fee increase, the cost of Nasdaq membership will continue to be generally lower than the cost of membership in other SROs.<sup>4</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 66905 (May 2, 2012), 77 FR 27105 (May 8, 2012) (SR-NASDAQ-2012-056).

<sup>4</sup> For example, the Exchange believes that the New York Stock Exchange ("NYSE") Trading License Fee is analogous to membership fees of NASDAQ as they both provide access to the trading facilities of their respective exchanges. In this regard, NYSE assesses an annual fee of \$50,000 for the first license held by a member organization. See [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf). By contrast, NASDAQ would assess the proposed a [sic] monthly trading rights fee of \$1,250 (\$15,000 annually), together with an annual membership fee of \$3,000, and a monthly market participant identifier fee of \$550 per MPID (\$6,600 annually). See Rule 7001.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> 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.

Nasdaq believes that the fee change is reasonable because the increased fee continues to be less than the analogous fees of other markets. For example, the Exchange's membership fees will continue to remain substantially lower than the analogous fees assessed by the New York Stock Exchange for membership, which assesses an annual fee of \$50,000 for the first license held by a member organization. The Exchange believes that the proposed fee increase is an equitable allocation and is not unfairly discriminatory because the Exchange must adjust fees from time to time so that it can continue to cover costs and to make a profit on the products and services it offers. The proposed increased fee will apply to all members and it will allow the Exchange to cover the costs of providing its members with a well-regulated market. These costs include investing in the systems and people that support oversight of the market

### 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

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

favorable. In such an environment, the Exchange must carefully consider any increases to its fees, balancing its desire to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges, while also considering its need to cover the costs associated with providing a well-regulated market. Because competitors are free to modify their own fees in response, and because members are not compelled to be members of the Exchange and may trade on numerous other exchanges and other alternative trading systems, Nasdaq believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes to the trading rights fee does [sic] not impose a burden on competition because membership in, and use of, the Exchange is wholly voluntary and the Exchange is subject to significant competition from other exchanges and other trading venues. If the proposed fee increase is unattractive to members, it is likely that the Exchange will lose membership and market share as a result. Moreover, the Exchange must increase fees to cover the costs associated with maintaining and enhancing its regulatory programs to ensure that the Exchange remains a well-regulated trading venue. Thus, to the extent that the fee does represent a burden on competition, such burden is necessary to further purposes of the Act. 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.<sup>7</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-065 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-2017-065. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-065 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.<sup>8</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).