

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81870; File No. SR-NASDAQ-2017-105]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Rule 7030 That Apply to Use of the Nasdaq Testing Facility

October 12, 2017.

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 October 2, 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 transaction fees at Rule 7030 that apply to use of the Nasdaq Testing Facility ("NTF").

The text of the proposed rule change is available on the Exchange's Web site 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 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 proposes to amend the fees that it assesses for use of the NTF.<sup>3</sup> The NTF provides users 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 the Exchange. For example, users may test upcoming Exchange releases and product enhancements, as well as test software prior to implementation.

The Exchange assesses certain fees under Rule 7030 for use of the NTF. In pertinent part, Rule 7030(d)(1) states that the Exchange assesses a fee of \$285 per hour for "Active Connection" testing using current Exchange access protocols during the normal operating hours and \$333 per hour for such testing after hours.<sup>4</sup> The Exchange does not currently assess a fee for "Idle Connections."<sup>5</sup>

For purposes of the foregoing fees, an "Active Connection" is one that "commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of the disconnection or the commencement of an Idle Connection."<sup>6</sup> An "Idle Connection" is a connection that "commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection."<sup>7</sup> A "Period of Inactivity" is an "uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions."<sup>8</sup>

The Exchange proposes to modify Rule 7030 in several respects. First, the Exchange proposes to decrease and simplify the fees it charges to users<sup>9</sup> for their active use of the NTF. Specifically, the Exchange proposes to eliminate the \$333 hourly rate that it presently

charges users for Active Connection testing outside of normal operating hours of the NTF such that the Exchange will charge users \$285 per hour for Active Connection testing in all instances.

Second, the Exchange proposes to clarify the definition of a Period of Inactivity as well as establish a new fee for users to the extent that they experience one or more Periods of Inactivity while they are connected to the NTF in a given day. Specifically, the Exchange proposes to define a Period of Inactivity as any uninterrupted period of time that occurs while a user is connected to the NTF and when the NTF is neither receiving from nor sending to the user any transactions. The proposal states that each Period of Inactivity will be billable at the Active Connection rate after the first 10 minutes thereof and up to a cumulative amount of 60 minutes per user, per day. This means that: (i) The first 10 minutes of each Period of Inactivity will be free; (ii) each Period of Inactivity in excess of 10 minutes will be billable at the rate of \$285 per hour; (iii) a user that experiences either a single Period of Inactivity of less than 60 billable minutes in a day or multiple Periods of Inactivity of less than 60 billable minutes in a day, cumulatively, will incur a fee for such Inactivity on a pro rata basis; and (iv) a user that experiences either a single Period of Inactivity in excess of 60 billable minutes in a day or multiple Periods of Inactivity in excess of 60 billable minutes in a day, cumulatively, will only incur a fee for the first 60 billable minutes of Inactivity.

Third, the Exchange proposes to eliminate the term "Idle Connection" insofar as no clear distinction exists between that term and a "Period of Inactivity." That is, the Exchange believes it would be difficult for users to discern when an Idle Connection exists, which is free under the existing Rule, and when a Period of Activity commences, which would be billable. The Exchange proposes to simplify the fee schedule by collapsing these concepts into the single term "Period of Inactivity" and billing for Periods of Activity as described above.

Finally, the Exchange proposes to modify Rule 7030 to clarify that the connectivity provided under the Rule also applies, not only to NASDAQ OMX BX, Inc. (now, Nasdaq BX, Inc.) and NASDAQ OMX PHLX LLC (now, Nasdaq PHLX, LLC), but also to Nasdaq ISE LLC, Nasdaq MRX LLC, and Nasdaq GEMX LLC. This purpose of this proposal is to clarify that a client can use the connectivity to the NTF it

<sup>3</sup> See <https://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility> for a description of the NTF.

<sup>4</sup> See Rule 7030(d)(1)(A).

<sup>5</sup> See *id.*

<sup>6</sup> Rule 7030(d)(2)(A).

<sup>7</sup> Rule 7030(d)(2)(B).

<sup>8</sup> Rule 7030(d)(2)(C). The length of the Period of Inactivity is such period of time between 10 minutes and 60 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF. See *id.*

<sup>9</sup> The existing Rule refers alternatively to those that utilize the NTF as "subscribers" or "users." For purposes of clarity, the Exchange proposes to modify the Rule to use the term "user" exclusively.

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

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

establishes under the Rule to perform tests with respect to all of the Nasdaq, Inc. exchanges, and in doing so, it will be billed only once.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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.

The Exchange's proposal to eliminate its \$330 hourly "after-hours" Active Connection rate is equitable and is not unfairly discriminatory in that it will apply to all NTF users equally. This proposal is also reasonable because the Exchange no longer incurs additional costs or requires additional resources, as it once did, to permit its users to utilize the NTF outside of normal operating hours. Moreover, the act of simplifying the NTF fee schedule so that it involves only a single hourly rate will render the schedule easier for the Exchange to administer and easier for users to understand.

The Exchange's proposal to assess a new fee for inactive use of the NTF is equitable and is not unfairly discriminatory in that it will apply to all NTF users and will vary only depending upon the nature and extent of their activity while connected to the NTF. The proposal is reasonable, moreover, as a means of reducing the extent to which inactive users consume the limited bandwidth of the NTF at any given time. The Exchange intends for the fee to provide a disincentive for users to remain connected while inactive. That said, the Exchange proposes to refrain from charging users a fee for their first 10 minutes of inactivity because it believes that it would be an unnecessary and excessive act to penalize users that become momentarily inactive between periods of activity on the NTF or that fail to disconnect from the NTF the instant that they cease any activity. Likewise, the Exchange proposes to cap the fees it charges for Periods of Inactivity because it does not wish to penalize excessively those users that wish or need to maintain their connections to the NTF, even when they are inactive, so that they can resume active testing quickly. The Exchange believes that its proposal to cap this fee

at 60 minutes of billable inactive time represents a reasonable balance between its desire to promote active use of the NTF and the practical needs of its users to maintain inactive connections to the NTF in certain circumstances.

Lastly, the proposals to eliminate references to the term "Idle Connection" and to amend the term "Period of Inactivity" are reasonable and not unfairly discriminatory in that these changes will clarify and simplify the fee schedule that applies to all NTF users.

## 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. Testing is a matter of regulatory hygiene, not of competition.

In this instance, the Exchange does not believe that its proposal to eliminate the \$330 hourly "after hours" fee for use of the NTF will impose any burden insofar as it is merely reducing the rates it charges its users for use of the NTF outside of normal operating hours.

Likewise, the Exchange does not believe that its proposal to establish a fee for Periods of Inactive Use will impose any unnecessary or inappropriate burden on competition because it designed the proposal, not to raise revenue for the Exchange, but rather to act as a modest and targeted disincentive for users to remain inactive while they are connected to the NTF. The design of the fee permits users to avoid the fee by disconnecting from or resuming activity on the NTF within 10 minutes of the commencement of a Period of Inactivity. It also caps the fee at 60 minutes of cumulative daily billable inactivity so that users that choose to or inadvertently do remain inactive for long periods of time will not incur unreasonable or excessive fees as a result of doing so.

## 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>12</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-105 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-2017-105. This file number should be included on the subject line if email 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 Web site (<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 Web site 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

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

available publicly. All submissions should refer to File Number SR–NASDAQ–2017–105, and should be submitted on or before November 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81860; File No. SR–Phlx–2017–78]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Decrease the Qualification Criteria of a Credit Tier and Make Related Changes

October 12, 2017.

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 October 2, 2017, NASDAQ PHLX LLC (“Phlx” 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 decrease the level of Consolidated Volume required to qualify for a \$0.0031 per share executed credit and make related changes.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqphlx.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 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s transaction fees at Section VIII (NASDAQ PSX Fees) of the NASDAQ PHLX LLC Pricing Schedule to decrease the level of Consolidated Volume required to qualify for a \$0.0031 per share executed credit and make related changes. Currently, the Exchange provides credits ranging from \$0.0023 to \$0.0031 per share executed to member organizations for displayed quotes and orders that provide liquidity through the PSX System. The top two credit tiers are the following: (1) A credit of \$0.0031 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.3% or more of Consolidated Volume during the month; and (2) a credit of \$0.0029 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month. The Exchange is proposing to decrease the level of monthly Consolidated Volume required of a member organization to qualify for the \$0.0031 per share executed credit from 0.3% to 0.25%, which is the level required to currently qualify for the \$0.0029 per share executed credit tier. As a consequence, the Exchange is also proposing to eliminate the \$0.0029 per share executed credit tier.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</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.

The Exchange believes that the \$0.0031 per share executed credit provided to a member organization for

displayed quotes and orders is reasonable because it will remain unchanged, and it is competitive with the fees of other exchanges. For example, The Nasdaq Stock Market provides its members with credits up to \$0.00305 per share executed for displayed quotes and orders.<sup>5</sup> Elimination of the \$0.0029 per share executed credit provided to a member organization for displayed quotes and orders is reasonable because the criteria currently required to receive the \$0.0029 per share executed credit will be the same as the criteria required to receive the \$0.0031 per share executed credit. Thus, member organizations that currently qualify for \$0.0029 per share executed credit will qualify for the higher credit under the proposed change.

The Exchange believes that decreasing the level of Consolidated Volume during the month required to qualify for the \$0.0031 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange is using the reduced Consolidated Volume requirement to provide incentive to member organizations to participate on the Exchange. The Exchange has observed that the current qualification criteria for the \$0.0031 per share executed credit and the qualification requirement of the \$0.0029 per share executed credit have not provided adequate incentive. The Exchange believes that creating a single credit tier that combines the higher credit with the lower Consolidated Volume requirement will be more effective at increasing participation on the Exchange. The proposed change will apply to all member organizations, any of which may provide the level of Consolidated Volume required to qualify for the credit.

#### 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

<sup>13</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> See Nasdaq Rule 7018(a).