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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-73789; File No. SR-NASDAQ-2014-120]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ Rule 7049 Fees December 8, 2014.

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 December 3, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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

NASDAQ is proposing to modify fees assessed under NASDAQ Rule 7049 for the NASDAQ InterACT surveillance tool. While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2015.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com at NASDAQ’s principal office, 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, NASDAQ 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Rule 7049 to increase the fee and related fee cap for subscription to the NASDAQ InterACT service. InterACT is a real-time compliance tool accessed through an existing Nasdaq Workstation or Weblink ACT 3.0 user account, which assists a member firm with supervision of its trade activity reported to the FINRA/NASDAQ Trade Reporting Facility, and with its supervision of trade throughs to help in complying with Rule 611 of Regulation NMS.³ The Exchange currently assesses a fee of \$300 per month, per user, for the first three users, and \$100 per month, per user, for each additional user, with a maximum fee of \$1,500 per month, per member firm. The Exchange began offering the service in 2009⁴ and has not increased fees since its adoption, notwithstanding that the Exchange's costs in offering and supporting the service have increased. Accordingly, NASDAQ is proposing to increase the fee assessed for the service to \$400 per month, per user, with an increased fee cap of \$2,400 per month, per member firm. The Exchange is also proposing to eliminate the reduced fee rate of \$100 per user, per month assessed for the fourth through ninth subscriptions.⁵ The Exchange notes that offering the discounted fee for the fourth through ninth user subscriptions was designed to encourage member firms to purchase more subscriptions, thus ensuring broad

³ 17 CFR 242.611.

⁴ Securities Exchange Act Release No. 59786 (April 17, 2009), 74 FR 18769 (April 24, 2009) (SR-NASDAQ-2009-033).

⁵ Subscriptions beyond the ninth are provided at no cost because the subscribing member firm has met the \$1,500 monthly fee cap.

use of the service and, ultimately, NASDAQ's ability to offer the service long-term. NASDAQ believes that the reduced fee has had the desired effect and, accordingly, is assessing the same fee for all subscriptions through the sixth, at which point member firms will have reached the new fee cap. Lastly, upon launch of InterACT in May 2009, NASDAQ offered the service at no cost for sixty days. Accordingly, NASDAQ is proposing to delete text from the rule that concerns the expired free period.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. This proposal is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

NASDAQ believes that the proposed increases to the fee and fee cap are reasonable because they will allow NASDAQ to realign the fee assessed for the service with the costs it incurs in offering it, while also ensuring that the service continues to provide NASDAQ with a profit. Eliminating the reduced fee for the fourth through ninth subscriptions is reasonable because NASDAQ believes that it has served its purpose by attracting an adequate number of subscribers to the service to ensure its viability. As a consequence, NASDAQ believes that such incentive pricing is no longer needed.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

NASDAQ believes that the increased fees and elimination of incentive pricing is an equitable allocation because NASDAQ is assessing the fee increase uniformly among subscribers up to the fee cap, which is also increased. NASDAQ notes that it incurs the same costs in offering a subscription, regardless of the number of member subscriptions. As such, increasing the fee and applying it uniformly to all subscriptions without any distinction based on the number of subscriptions a member firm has, up to the increased fee cap, better aligns the fees paid with the costs incurred by NASDAQ in offering the service.

The Exchange believes that the proposed changes are not unfairly discriminatory because they now apply a uniform fee per subscription, thus eliminating a distinction made in the fee assessed based on the number of subscriptions held. The Exchange notes that some member firms may incur a disproportionate increase in fees as compared to others under the proposed change as a result of the elimination of the incentive pricing provided for the fourth through ninth subscriptions and increase in the fee cap. Under the proposed change, a member firm that has four to six subscriptions will experience a greater per subscription fee increase than a member firm with three or fewer subscriptions, whereas subscriptions in excess of six under the proposed change exceed the new fee cap and are therefore offered at no cost. The Exchange does not believe that the changes are unfairly discriminatory because they eliminate a distinction in the fee assessed based on NASDAQ's desire to ensure wide acceptance of the service, and better align the fee assessed for a subscription with the costs that NASDAQ incurs in providing it. NASDAQ notes that it is retaining the fee cap, albeit at a higher level, which will ensure that no member firm pays more than \$2,400 per month.

Lastly, the proposed elimination of the rule text concerning the expired free period is designed to clarify the rule text and avoid any potential confusion among market participants that may arise if the language were to remain.

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

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.⁸ NASDAQ 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, NASDAQ must carefully balance the fees it assesses with the costs incurred to remain competitive with other exchanges. To the extent NASDAQ's fees are too high or another exchange's products and services provide greater value, NASDAQ will likely lose subscriber revenue. As such, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, NASDAQ is proposing to increase the fees for a service for the first time since it was offered in 2009 to realign the fee assessed for the subscription to the service with the costs it incurs in offering it, and to ensure that the service provides NASDAQ with a profit. Moreover, the Exchange does not believe that the fee increase imposes an unnecessary burden on competition because the service is optional and member firms may develop their own alternatives to the service or purchase similar functionality from third parties. Accordingly, NASDAQ does not believe that the proposed changes will impose any unnecessary burden on competition.

⁸ 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,⁹ and paragraph (f)¹⁰ of Rule 19b-4, thereunder. 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2014-120 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)

All submissions should refer to File Number SR-NASDAQ-2014-120. 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 such filing also will be available for inspection and copying at the principal offices 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-2014-120, 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.¹¹

Kevin M. O'Neill,
Deputy Secretary.

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¹¹ 17 CFR 200.30-3(a)(12).