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August 11, 2015.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75661; File No. SR-NASDAQ-2015-094]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Rule 7051 Fees Relating to Pricing for Direct Circuit Connections

August 11, 2015.

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 August 5, 2015, 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 amend Rule 7051 to extend the waiver of installation fees assessed for Direct Circuit Connection to NASDAQ, and to waive ongoing monthly fees for direct connectivity to the Chicago, IL data center, for a limited time.

The text of the proposed rule change is available at <http://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 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 7051 entitled “Direct Connectivity to Nasdaq” to extend the waiver of installation fees for Direct Circuit Connection to Nasdaq (10Gb), Direct Circuit Connection to Nasdaq (supports up to 1Gb), and Direct Circuit Connection to Nasdaq (1Gb Ultra). The Exchange is also proposing to waive the related ongoing monthly fees assessed for these direct connectivity options to the Exchange’s new Chicago, IL data center.<sup>3</sup> The Direct Circuit Connection options under Rule 7051 provide market participants with three optional means by which they may connect to NASDAQ.<sup>4</sup> The three Direct Circuit Connections are differentiated by the total capacity of the fiber connection (represented in Gigabytes or “Gb”) and the type of switch used. A switch is a type of network hardware that acts as the “gatekeeper” for all clients’ orders sent to the System<sup>5</sup> and orders them in sequence for entry into the System for execution. The 1Gb “Ultra” fiber connection offering uses lower latency<sup>6</sup> switches than the 1Gb fiber connection offering.<sup>7</sup>

The Exchange assesses separate installation and ongoing monthly fees for subscription to each option. For 1Gb connectivity, the Exchange assesses an installation fee of \$1,500 and ongoing monthly fees of \$2,500. For 10Gb connectivity, the Exchange charges an installation fee of \$1,500 and ongoing monthly fees of \$7,500. For 1Gb Ultra, the Exchange charges an installation fee of \$1,500 and ongoing monthly fees of \$2,500.

<sup>3</sup> Direct connectivity is offered through data centers in Carteret, NJ, Secaucus, NJ, Ashburn, VA, and Chicago, IL.

<sup>4</sup> The Exchange notes that there are several additional means by which market participants may connect to the Exchange, such as through the colocation facility or third parties.

<sup>5</sup> As defined in Rule 4701(a).

<sup>6</sup> The term “latency” for the purposes of this rule filing means a measure of the time it takes for an order to enter into a switch and then exit for entry into the System.

<sup>7</sup> Each of NASDAQ’s connection offerings use different switches, but the switches are of uniform type within each offering (i.e., all 1G connectivity options currently use the same switches). As a consequence, all client subscribers to a particular connectivity option receive the same latency in terms of the capabilities of their switches.

NASDAQ is relocating its Disaster Recovery (“DR”) location for the U.S. equities and options markets from Ashburn, VA to its new Chicago, IL data center beginning in August 2015 with completion of the move expected on November 9, 2015. NASDAQ has invested and installed new equipment in this data center for client connectivity and for the infrastructure of Exchange systems. NASDAQ has chosen Chicago as the location of its new DR data center as many other exchanges are using this same location for a DR or primary location and, as a result, many of our market participants have a presence or connection at this location, thus making it easier and less expensive for many market participants to connect to NASDAQ’s DR location. In anticipation of the move and to facilitate transfer of connectivity from Ashburn, VA to Chicago, IL, the Exchange waived the installation fees for the months of April through July, 2015, for all three connectivity options so that both new subscriptions and customers transferring from one connectivity option to another during that time would not be assessed the installation fee.<sup>8</sup> The Exchange notes that the waiver allows members to move from one offering to another, or to move the location of their connectivity from one direct connectivity access point to another, with no penalty in the form of an installation fee. The Exchange is proposing to extend the waiver through November 9, 2015. To further facilitate use of the upgraded facility, the Exchange is also proposing to waive ongoing monthly fees for all three Direct Circuit Connectivity options for connectivity to the Chicago, IL data center. Waiver of the ongoing monthly fees will provide incentive to market participants to move their DR connectivity to Chicago, IL and test this connectivity prior to completion of the transfer of the DR functionality, and will also allow market participants that wish to connect to the Chicago, IL data center to do so smoothly with no penalty in the form of overlapping monthly direct connectivity fees.

##### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation

<sup>8</sup> See Securities Exchange Act Release No. 74680 (April 8, 2015), 80 FR 20035 (April 14, 2015) (SR-NASDAQ-2015-029).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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

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 designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that extending the waiver of Direct Circuit Connectivity installation fees is reasonable because it will continue to enable market participants to move from one direct connectivity offering to another, or to move the location of their connectivity from one direct connectivity access point to another, with no penalty in the form of an installation fee. Similarly, the Exchange believes that the time-limited waiver of ongoing monthly fees for connectivity to the Chicago, IL data center is reasonable because the Exchange is moving its DR location from Ashburn, VA to Chicago, IL, which is expected to be completed on November 9, 2015. As such, to continue DR connectivity, market participants must subscribe to new Direct Circuit Connectivity to the Chicago, IL data center and test such connectivity prior to cancellation of their existing Ashburn, VA direct connectivity subscription. The Exchange believes that the proposed fee waivers are equitable and do not unfairly discriminate because they are of limited duration and designed to apply to market participants that wish to utilize the new direct connectivity location and/or are affected by the Exchange's determination to move trading and DR functionality from the Ashburn, VA data center. Moreover, the Exchange notes that the installation fee waiver applies to all three Direct Circuit Connectivity options, and therefore it believes that extension of the waiver is equitable and does not unfairly discriminate. Waiver of the installation fee will allow any market participant that wishes to move from their [sic] existing Direct Circuit Connectivity data center to the new Chicago, IL data center with no penalty. Waiver of the ongoing monthly fees for connectivity to Chicago, IL enables market participants to test the DR

functionality in Chicago while still being connected to the Ashburn, VA location with no penalty in the form of overlapping monthly direct connectivity fees.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>11</sup> The Exchange believes that the proposed fee waivers are pro-competitive because they facilitate use of a new, upgraded data center, which will improve market resiliency and provide additional connectivity options to market participants. To the extent that the new data center makes NASDAQ more attractive to market participants over other exchanges and trading venues, it may provide incentive to such marketplaces to improve and add to their data centers, to the benefit of all market participants.

#### *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<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</sup> 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: (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:

<sup>11</sup> 15 U.S.C. 78f(b)(8).

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

<sup>13</sup> 17 CFR 240.19b-4(f).

#### *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-2015-094 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-2015-094. 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 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-2015-094, and should be submitted on or before September 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**  
Secretary.

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<sup>14</sup> 17 CFR 200.30-3(a)(12).