

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66078; File No. SR-NASDAQ-2011-173]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for the Trading and Compliance Data Package

January 3, 2012.

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 December 23, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”), filed with the Securities and Exchange Commission (“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

NASDAQ is proposing to modify the fees for trading and compliance reports available to member firms via *NasdaqTrader.com* Trading and Compliance Data Package under NASDAQ Rule 7021.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

##### 7021. *NasdaqTrader.com* Trading and Compliance Data Package Fee

The charge to be paid by a Nasdaq Member for each entitled user receiving Nasdaq Trading and Compliance Data Package via *NasdaqTrader.com* is [\$130]*\$175* per month (monthly maximum of 25 Historical Research Reports) or [\$160]*\$225* per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

(a)–(c) No Change

Nasdaq may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

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#### II. Self-Regulatory Organization’s Statement of the Purpose of, and the 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

NASDAQ is proposing to modify the fees for trading and compliance reports available to member firms via *NasdaqTrader.com* Trading and Compliance Data Package under NASDAQ Rule 7021 (“Data Package”). [sic] Data Package allows member firms to obtain information regarding their own historical quoting and trading activity on NASDAQ. Data Package also provides member firms with information concerning their compliance with NASDAQ and FINRA rules. In this regard, member firms that subscribe to the Data Package can obtain the following reports: (1) Monthly Compliance Report Cards, which outline firm’s own compliance with various FINRA rules; (2) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (3) Historical Research Reports, which provide a variety of historical trading data such as a market maker’s quote updates, order activity, and detailed trade reporting information. Additionally, subscribers can elect to receive the detailed trade report (Equity Trade Journal) via a secure FTP dissemination option. These reports offered by NASDAQ are based on the subscribing member’s historical trade information taken from NASDAQ and the FINRA/NASDAQ Trade Reporting Facility, thus providing firms with a comprehensive compliance picture.

Use of this service is voluntary and member firms have the option of subscribing to whichever level they choose. The Data Package is offered in two levels: the “basic” level, which has a fee of \$130 per month, allows access to a maximum of 25 Historical Research

Reports per month; and the “premium” level, which has a fee of \$160 per month, allows access to a maximum of 100 Historical Research Reports per month. These fees have not increased since June 2006,<sup>3</sup> notwithstanding that NASDAQ subsequently developed and implemented enhancements to the service.<sup>4</sup>

In order to help cover the costs associated with the maintenance of the Data Package service, as well as the cost of implementing enhancements to the service, NASDAQ proposes to increase the “basic” level subscription fee from \$130 to \$175 per month, and increase the “premium” level subscription fee from \$160 to \$225 per month. NASDAQ anticipates that the proposed fees may provide NASDAQ with a profit, in addition to covering costs discussed above.

###### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, because 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 that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. NASDAQ believes that the proposed fees are reasonable because NASDAQ has made several enhancements to the service since it last increased fees assessed for the service in June 2006. As a consequence of adding these enhancements, the value of the service has incrementally increased over time and NASDAQ believes that it is appropriate to now raise the fees to better align them with the increased value of the service. In addition, NASDAQ believes that the proposed fees will cover the costs associated with responding to customer requests, configuring NASDAQ’s systems,

<sup>3</sup> Securities Exchange Act Release No. 54002 (June 16, 2006), 71 FR 36143 (June 23, 2006) (SR-NASD-2006-072) (increasing each of the fees by \$30 per month); see also Securities Exchange Act Release No. 54260 (August 1, 2006), 71 FR 45084 (August 8, 2006) (SR-NASDAQ-2006-024).

<sup>4</sup> Since 2006, the Data Package has been updated to include necessary enhancements based on new market structure rules, as well as new fields added to the Equity Trade Journal based on new functionality offered by the FINRA/NASDAQ Trade Reporting Facility. These enhancements, in conjunction with three new compliance reports, have added significant value to the Data Package. In addition, the “front-end” of the service has been redesigned to simplify report requests and increase usability.

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

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

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

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

programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit. NASDAQ also believes that the fees are equitably allocated, since use of the Data Package service is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users and the level of service subscribed.

#### *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.

#### *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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>8</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 necessary or appropriate in the public interest, for the protection of investors, or 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-2011-173 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-173. 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 on official business days between the hours of 10 a.m. and 3 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-2011-173, and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

**[Docket No. AB 979 (Sub-No. 2X)]**

### **Connecticut Southern Railroad, Inc.— Abandonment Exemption—in Hartford County, CT**

Connecticut Southern Railroad, Inc. (CSO) has filed a verified notice of exemption under 49 CFR part 1152

subpart F—*Exempt Abandonments* to abandon 2.4 miles of rail line extending between milepost 2.0 and milepost 4.4 on its Suffield Subdivision in Hartford County, Conn. The line traverses United States Postal Service Zip Codes 06078 and 06080.

CSO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 19, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CSO's

<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).