



8011-01p  
SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70036; File No. SR-NASDAQ-2013-097)

July 25, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer a New Dedicated OUCH Port Infrastructure Connectivity Option and Adopt Related Fees

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 July 23, 2013 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 and II 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 offer a new Dedicated OUCH Port Infrastructure connectivity option and adopt related fees under Rule 7015(g). The Exchange will implement the new service in October 2013, and will provide public notice thereof at least five days prior to the implementation date. NASDAQ will accept subscriptions to the service immediately; however, it will not assess the monthly subscription fee until the service is offered in October 2013.

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

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

NASDAQ will begin assessing the installation fee immediately, but waive the fee for all subscriptions received by August 15, 2013.<sup>3</sup>

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

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### **7015. Access Services**

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA's OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

**(a) – (f)** No change.

**(g)** Other Port Fees

Remote Multi-cast ITCH Wave Ports

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<b>Description</b>	<b>Installation Fee</b>	<b>Recurring Monthly Fee</b>
MITCH Wave Port at	\$2,500	\$7,500

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<sup>3</sup> The Exchange notes that the planned implementation timeframe is designed to provide it with adequate time to purchase and install new hardware, and to program and test the system.

Secaucus, NJ

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MITCH Wave Port at \$2,500 \$7,500

Weehawken, NJ

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MITCH Wave Port at \$2,500 \$7,500

Newark, NJ

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The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- \$500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.
- An additional \$200 per month for each port used for entering orders or quotes over the Internet.
- An additional \$600 per month for each port used for market data delivery over the Internet.

#### Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of \$5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of \$5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription. NASDAQ is waiving the \$5,000 installation fee for all subscriptions received through August 15, 2013.

(h) No change.

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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 offer a new connectivity option, and adopt related installation and subscription fees, which will provide member firms with remote access to dedicated server hardware for OUCH port connectivity<sup>4</sup> to the NASDAQ System. Currently, NASDAQ distributes a member firm's OUCH ports among shared servers in order to facilitate all member firms' connectivity to NASDAQ. These servers act as switches, channeling the message traffic member firms send through their ports to the System. NASDAQ is proposing to provide individual member firms with access to a dedicated OUCH port server from NASDAQ. This service is optional and is available to all NASDAQ member firms.

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<sup>4</sup> An "OUCH port" is a connectivity port designated to accept only OUCH protocol messaging. See <http://www.nasdaqtrader.com/Trader.aspx?id=OUCH> for a description of the OUCH protocol. Ports are available to member firms for the purpose of transacting on the Exchange system. Unlike other protocols, the OUCH protocol only provides a method for subscribers to send orders and receive status updates on those orders (see, e.g. <http://www.nasdaqtrader.com/Trader.aspx?id=RASH>).

NASDAQ is proposing to offer the service for a one-time installation fee of \$5,000 per subscription and a monthly subscription fee of \$5,000. The monthly subscription fee is in addition to the standard per port fee assessed a member firm for the OUCH ports assigned to the Dedicated OUCH subscription<sup>5</sup> and any other connectivity costs currently assessed member firms.<sup>6</sup> The proposed fees are associated with the additional capital expenditures (hardware) and operating expenditures (personnel) associated with offering, supporting and maintaining this service. NASDAQ notes that the dedicated server assigned to a member firm for each subscription is limited to a maximum of 30 OUCH ports. As a consequence, a member firm with an excess of 30 OUCH ports that it would like assigned to dedicated infrastructure must have more than one Dedicated OUCH subscription.<sup>7</sup> NASDAQ is proposing to assess the monthly subscription fee beginning with the rollout of the service in October 2013. NASDAQ is proposing to assess the installation fee effective immediately, but waive the fee for subscriptions received by August 15, 2013.

NASDAQ notes that member firms will not have physical access to their dedicated server within the NASDAQ data center and thus cannot make any modifications to the server. All port servers (including servers used for this service) are owned and operated by NASDAQ. NASDAQ will assign the same type of server to Dedicated OUCH subscribers as is provided to existing OUCH port users on shared servers.

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<sup>5</sup> The OUCH ports assigned to the service may be currently subscribed ports, newly-subscribed, or a combination thereof.

<sup>6</sup> All the fees a member firm is currently assessed will continue, unaffected by a subscription to the Dedicated OUCH service.

<sup>7</sup> In such a case, a member firm may assign its OUCH ports to its multiple dedicated servers in any ratio it wishes, so long as no one server has more than 30 OUCH ports assigned to it.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act<sup>9</sup> in particular, in that the proposal 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. The Exchange notes that the servers under the proposed new service are owned and operated by the Exchange. A subscribing member firm will not have the ability to modify the infrastructure in any way. In addition, the proposed dedicated infrastructure will not change the process by which order message traffic reaches the System. Rather, it merely provides certainty to a subscribing member firm that its OUCH ports are not on shared infrastructure.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>10</sup> 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 the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange determined that the proposed fees are reasonable based on market demand as well as the costs associated with purchasing hardware (capital expenditures) and supporting

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

and maintaining the infrastructure (operating expenditures) for this Dedicated OUCH connectivity option for member firms. To the extent such costs are covered, the proposed fees may provide NASDAQ with a profit. Member firms are not obligated to subscribe to this service and may continue to access the NASDAQ System through shared servers at no additional cost. As such, the Exchange believes that if a member firm determines that the installation and subscription fees are not cost-efficient for its needs or does [sic] not provide sufficient value to the firm, it may elect not to subscribe to the service and continue to access the System, unchanged. NASDAQ notes that member firms may subscribe to OUCH ports at any time, in addition to or in replacement of, existing means of accessing NASDAQ. NASDAQ also believes that waiver of the installation fee is reasonable as it promotes member firms' subscription to the connectivity option, thus providing NASDAQ with a successful launch of the new service option while also promoting a wider use of the connectivity among member firms that might not be initially realized without the waiver.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because member firms that voluntarily elect to subscribe to this service will be charged the same fees. Furthermore, this service is optional and is available to all NASDAQ member firms. With Dedicated OUCH, member firms can develop a tailored trading solution by controlling their message traffic in order to optimize their trading strategies. In this regard, some member firms may find little benefit in having [sic] dedicated server, and may continue their use of the shared servers, unchanged. The Exchange has no plans to eliminate shared servers and require subscription to the dedicated infrastructure. NASDAQ also believes that the waiver of the installation fee is equitable and not unfairly discriminatory because it is offered to all member firms and it is applied equally to all member firms that subscribe by a date certain.

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

NASDAQ 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. NASDAQ notes that the connectivity option is wholly optional and therefore member firms are not compelled to subscribe. Moreover, NASDAQ believes that the proposed rule change is pro-competitive as it adds an additional connectivity option available to NASDAQ members.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange proposes to offer a waiver of the installation fee for those who subscribe to this new connectivity option by August 15, 2013. NASDAQ's waiver of the installation fee will benefit those who purchase this new connectivity option by August 15, 2013, and will allow NASDAQ to begin without delay the process of purchasing hardware and installation so that subscribers may use the service beginning with its commencement in October 2013. The proposed rule change presents no novel issues, and waiver of the operative delay provides benefits to NASDAQ and member firms subscribing to the service. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2013-097 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-2013-097. 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 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-2013-097, 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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