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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70851; File No. SR-NASDAQ-2013-137)

November 13, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees under Rule 7030(d) for Use of the Carteret NASDAQ Testing Facility Test Environment

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 November 8, 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, 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

NASDAQ proposes to establish fees under Rule 7030(d) for use of the NASDAQ Testing Facility (“NTF”) test environment located in Carteret, New Jersey, which will provide a virtual trading environment for testing. NASDAQ will begin assessing the fees on or about November 11, 2013; however, the installation fee will be waived for subscriptions ordered through March 31, 2014.

The text of the proposed rule change is below. Proposed new language is italicized.

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7030. Other Services

(a) - (c) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(d) Nasdaq Testing Facility

Nasdaq operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise noted, reference to the “Nasdaq Testing Facility” or “NTF” applies to both environments.

(1) The following fees are assessed for access to the Nasdaq Testing Facility:

(A) Subscribers that conduct tests of the computer-to-computer interface (CTCI) and the Financial Information Exchange (FIX) interface to ACT and ACES access protocols through the Nasdaq Testing Facility (NTF) shall pay the following charges:

\$285/hour	For Active Connection testing during the normal operating hours of the NTF;
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No Charge	For Idle Connection testing;
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\$333/hour	For Active Connection testing at all times other than the normal operating hours of the NTF.
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(B) Subscribers that conduct tests of all Nasdaq access protocol connections not included in paragraph (A) above or of market data vendor feeds through the Nasdaq Testing Facility shall pay \$300 per port, per month.

(C) Subscribers to the Nasdaq Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. Subscribers

shall also pay a one-time installation fee of \$1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.

(2) - (6) 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Rule 7030(d) to establish fees for connection to a test environment. Specifically, NASDAQ proposes a one-time, per hand-off installation fee and a per hand-off monthly fee assessed for direct connectivity to the NASDAQ Testing Facility³ test environment located in Carteret, New Jersey ("Carteret"), which is also the location of NASDAQ's primary trading System.⁴ The NTF provides subscribers 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 NASDAQ. For example, the NTF

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

⁴ As defined by Rule 4751(a). NASDAQ's System is mirrored at other locations as well.

provides subscribers a virtual System environment for testing upcoming NASDAQ releases and product enhancements, as well as testing firm software prior to implementation.

The NTF is currently housed solely in NASDAQ's Ashburn, Virginia facility ("Ashburn"). In addition to housing the NTF, Ashburn is also a NASDAQ disaster recovery facility and, as such, some member firms connect to Ashburn for disaster recovery purposes in addition to trading system testing. NASDAQ currently assesses fees on members for physical connectivity to Ashburn.⁵ In addition, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn. The relatively large distance to [sic] between the Ashburn Testing Facility and the majority of NASDAQ OMX firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do [sic] not connect to Ashburn for NTF connectivity. In an effort to improve the utility of the NTF, NASDAQ is developing a test environment located in Carteret that will provide the same functionality as the trading testing functionality of Ashburn, yet more closely approximate the live trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades NASDAQ is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.⁶ NASDAQ will ultimately sunset the trading testing functionality at Ashburn, yet retain post trade reporting and ACES functionality at that location.⁷

⁵ NASDAQ assesses fees for direct connection to Ashburn and fees for co-location connectivity. See Rules 7051 and 7034(b), respectively.

⁶ Member firms currently use their connectivity to the Ashburn test environment for both testing and disaster recovery purposes.

⁷ NASDAQ is not upgrading the hardware used for post trade reporting and ACES testing

NASDAQ notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn if the sole purpose for connecting to Ashburn is for trading testing. Such member firms may use an existing connection to Carteret to access the NTF through the use of a dedicated switch port and cross connect within the facility. NASDAQ is proposing to assess a fee for connection to the test environment within the Carteret facility. Specifically, NASDAQ proposes assessing a \$1,000 per hand-off, per month fee assessed for connectivity to the Carteret test environment for either 1Gb or 10Gb, and a one-time per hand-off installation fee of \$1,000, which will cover NASDAQ's costs incurred in setting up a subscriber in the Carteret facility. NASDAQ is proposing to waive the installation fee through March 31, 2014, after which NASDAQ will begin phasing out trading testing at the Ashburn test environment.

NASDAQ is also making a minor clarifying change to the rule in light of the operation of dual NTF test environments.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular. NASDAQ believes that proposal is with Section 6(b)(4) of the Act¹⁰ 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. The new fees are equitably allocated

at this time, but may do so in the future. As noted, the new hardware implemented in the Carteret test environment is part of the larger technology upgrade to the System's hardware also located in Carteret.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ 15 U.S.C. 78f(b)(4).

because all member firms receive connectivity to the Carteret test environment for the same fee. NASDAQ believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live trading environment for participants, including matching the capacity of each participant's live environment switch port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. NASDAQ believes that charging a uniform fee rather than mirroring the fees for the live trading environment¹¹ will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment. NASDAQ also believes that waiver of the installation fee for all installations ordered prior to March 31, 2014 is an equitable allocation as it is available to all member firms during the time frame; thus any member firm may avail itself of the free period if it so chooses.

The new fees are reasonable because they are designed to cover the costs NASDAQ has incurred in developing and offering the new test environment. The proposed fee should allow the Exchange to recoup these costs and make a profit, while providing member firms with a superior test environment that more closely mirrors that of the live trading environment on NASDAQ. NASDAQ believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Carteret participants use hardware identical to what they use in the live trading environment, hence furthering the goal of

¹¹ Members are assessed a monthly fees of \$5,000 for 10 Gb and \$1,000 for 1 Gb direct connectivity to NASDAQ. See Rule 7051.

creating a test environment that closely mirrors the live trading environment. Waiver of the installation fee for a limited period is reasonable because NASDAQ believes such a waiver will attract new users to the test environment, thus ensuring a certain minimum level of monthly revenue to support the facility initially.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹² in that it is designed to promote just and equitable principles of trade, 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 is not designed to permit unfair discrimination between customer [sic], issuers, brokers and dealers. NASDAQ does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to NASDAQ may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. NASDAQ does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all member firms that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, member firms are able to subscribe to Carteret without regard to the cost of their switch port capacity election. NASDAQ believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live test environment, as discussed above. Providing a more useful and accurate test environment will serve to improve live trading on NASDAQ and the

¹² 15 U.S.C. 78f(b)(5).

national market system by permitting member firms the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. Last, NASDAQ does not believe that waiver of the installation fee is unfairly discriminatory as it is uniformly applied for a limited time, during which any member firm may subscribe.

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. Because the new test environment more closely approximates the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment.

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,¹³ and paragraph (f)(2)¹⁴ 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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2013-137 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-2013-137. 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 the filing will also 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 available publicly. All submissions should refer

to File Number SR-NASDAQ-2013-137 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

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¹⁵ 17 CFR 200.30-3(a)(12).