

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67511; File No. SR-NASDAQ-2012-086)

July 26, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Access to BONO and ITTO Ports

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 July 24, 2012, 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 Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, Sec. 3 entitled “NASDAQ Options Market - Access Services,” related to fees assessed by NASDAQ for connectivity to the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 3, 2012.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is set forth below. Proposed new text is underlined and deleted text is in brackets.

* * * * *

Chapter XV Options Pricing

NASDAQ Options Market Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV.

* * * * *

Sec. 3 NASDAQ Options Market - Access Services

The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market:

(a) TradeInfo

- Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of \$95 per user per month.

(b) Port Fees, per port per month, as follows:

Order Entry Port Fee	\$500.00
CTI Port Fee	\$500.00
OTTO Port Fee	\$500.00
ITTO Port Fee ¹	\$500.00
BONO Port Fee ¹	\$500.00
Order Entry DROP Port Fee	\$500.00
OTTO DROP Port Fee	\$500.00
SQF Port Fee	\$250.00

¹ ITTO and BONO Port fees will be assessed to non-NOM Participants and NOM Participants.

* * * * *

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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, the Exchange included statements concerning the purpose of and basis for 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend Chapter XV, Sec. 3(b) to assess fees for the Best of NASDAQ Options (“BONOSM”)³ and NASDAQ ITCH to Trade Options (“ITTO”)⁴ ports to non-NOM Participants and NOM Participants for purposes of receiving the BONO and ITTO data feeds.⁵

³ BONOSM is a data feed that provides the NOM Best Bid and Offer (“NOM NBBO”) and last sale information for trades executed on NOM. The NOM NBBO and last sale information are identical to the information that NOM sends the Options Price Regulatory Authority (“OPRA”) and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047. See Chapter VI, Section 1 at subsection (a)(3)(B).

⁴ ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules Chapter VI, Section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to “build” their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. See Chapter VI, Section 1 at subsection (a)(3)(A).

⁵ The BONO and ITTO data feeds are described in Chapter XV, Section 4. The Exchange assesses monthly fees for firms that are distributors of BONO and ITTO market data. A “distributor” of NASDAQ options market data is any entity that receives a feed or data file of NASDAQ data directly from NASDAQ or indirectly through another entity and then distributes the data either internally (within that entity) or externally (outside that entity). The Exchange assesses fees for BONO and ITTO data on a per-user basis. These

When the Exchange filed to adopt pricing for the BONO and ITTO data feeds, the Exchange noted in its filing that "...NASDAQ has made a voluntary decision to make this market data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ has chosen to make the noted data available to improve market quality, to attract order flow, and to increase transparency; and will continue to make the data available until such time as NASDAQ changes its rule." Further, "NASDAQ believes that its ITTO and BONO^(SM) which includes the NOM NBBO and last sale information for trades executed on NOM in BONO,^(SM) are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS."⁶

The Exchange currently assesses fees to NOM Participants for connectivity to various types of ports,⁷ among them the BONO and ITTO ports. The fees for these ports are currently

fees are separate from port fees. These fees vary based on whether they are for Professional users or Non-Professional users. The term "Non-Professional" shall have the same meaning as in NASDAQ Rule 7011(b)(2). Rule 7011(b)(2) defines a "Non-Professional" as a natural person who is neither: (A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. A Professional user is any user that is not a non-Professional. For BONO data, the per-user fee is \$5 per Professional user; and \$1 per non-Professional user. For ITTO data, the per-user fee is \$10 per Professional user; and \$1 per Non-Professional user.

⁶ See Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR-NASDAQ-2011-075).

⁷ The Exchange assesses fees for a CTI Port, OTTO Port, ITTO Port, BONO Port, Order Entry DROP Port, OTTO DROP Port and SQF Port in Section 3(b) of Chapter XV of the Options Rules. Non-NOM Participants only have access to the BONO and ITTO ports.

assessed only to NOM Participants.⁸ The BONO and ITTO ports are necessary in order for subscribers to BONO and ITTO to receive those data feeds. Today, non-NOM Participants are not assessed fees for BONO and ITTO ports that they are utilizing to receive data.⁹ The Exchange proposes to assess fees for BONO and ITTO ports to non-NOM Participants as well as NOM Participants.

Similar to the BONO and ITTO data feeds in Sec. 4 of Chapter XV, NASDAQ will issue an invoice to non-NOM Participants for BONO and ITTO ports fees on behalf of the NASDAQ OMX Global Data Products group.¹⁰ The Exchange proposes to include a footnote within Sec. 3(b) of Chapter XV to specify that ITTO and BONO port fees will be assessed to non-NOM Participants and NOM Participants.

2. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using any facility or system which NASDAQ operates or controls.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the

⁸ NOM Participants are assessed a \$500 per port per month fee to obtain a BONO or ITTO port.

⁹ NOM Participants and non-NOM Participants are assessed fees today for the BONO and ITTO data. Only NOM Participants are assessed port fees today.

¹⁰ Today, the BONO and ITTO market data distributor fees are invoiced by The NASDAQ Stock Market LLC. NOM will continue to invoice and collect fees for all ports specified in Sec. 3(b) of Chapter XV including BONO and ITTO ports for NOM Participants.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. NASDAQ has made a voluntary decision to make the BONO and ITTO market data available. NASDAQ has chosen to make the noted data available to improve market quality, to attract order flow, and to increase transparency; and will continue to make the data available until such time as NASDAQ changes its rules. In order to obtain the data, all subscribers require a BONO and/or ITTO port.

The Exchange believes that assessing non-NOM Participants port fees for BONO and ITTO ports in addition to NOM Participants is reasonable, equitable and not unfairly discriminatory because all subscribers to the data would be assessed the same rate to obtain a port. Today, non-NOM Participants are not assessed BONO and ITTO port fees and NOM Participants pay a \$500 per port per month fee. This proposal would uniformly assess all subscribers a \$500 per port per month fee..

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. There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a by-product of the execution service. The fees assessed by the Exchange must remain competitive with fees assessed by other venues and therefore must continue to be reasonable and equitably allocated to those subscribers that desire to subscribe to services at the Exchange rather than competing venues.

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

No written comments were either solicited or 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.¹³ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-086 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2012-086. 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 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 publicly available. All submissions should refer

to File Number SR-NASDAQ-2012-086 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).