

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69006 ; File No. SR-NASDAQ-2013-034)

February 28, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pricing Clarification

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 February 21, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 clarify the billing of port fees in Chapter XV, entitled “Options Pricing,” which governs pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to clarify the manner in which the Exchange assesses certain port fees which are noted in Chapter XV, Section 3 entitled "NASDAQ Options Market – Access Services." Specifically, the Exchange assesses a fee of \$550 per port, per month for the following port fees: Order Entry Ports,<sup>3</sup> CTI Ports,<sup>4</sup> OTTO Ports,<sup>5</sup>

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<sup>3</sup> The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. NOM Participants access the Exchange's network through order entry ports. A NOM Participant may have more than one order entry port.

<sup>4</sup> CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: system event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

<sup>5</sup> OTTO provides a method for subscribers to send orders and receive status updates on those orders. OTTO accepts limit orders from system subscribers, and if there

ITTO Ports,<sup>6</sup> BONO Ports,<sup>7</sup> Order Entry DROP Ports,<sup>8</sup> OTTO Drop Ports<sup>9</sup> and SQF Ports.<sup>10</sup> Each NOM Participant is assigned a Market Participant Identifier or “mnemonic”<sup>11</sup> and in some cases, certain Participants request multiple mnemonics for purposes of accounting for trading activity. The Exchange bills per port and in the case of Participants that hold multiple mnemonics the Exchange bills for each port assigned to

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is a matching order, the orders will execute. Non-matching orders are added to the limit order book, a database of available limit orders, where they are matched in price-time priority.

<sup>6</sup> 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).

<sup>7</sup> BONO<sup>SM</sup> 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 to 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).

<sup>8</sup> The DROP interface provides real time information regarding orders sent to NOM and executions that occurred on NOM. The DROP interface is not a trading interface and does not accept order messages.

<sup>9</sup> The OTTO DROP data feed provides real-time information regarding orders entered through OTTO and the execution of those orders. The OTTO DROP data feed is not a trading interface and does not accept order messages.

<sup>10</sup> SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Participant to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (*i.e.*, open for trading, trading, halted or closed). Auction notifications and execution reports are also available.

<sup>11</sup> A mnemonic is a unique identifier consisting of a four character alpha code.

that Participant, taking into account the total number of ports by mnemonic. For example, if a Participant, ABC, with two mnemonics, EFGH and IJKL, requested 3 ports under the EFGH mnemonic and four ports under the IJKL mnemonic, the Participant would be billed for a total of 7 ports per month. All billing is captured at the Participant level.

The Exchange has consistently billed ports in this manner. For purposes of clarity, the Exchange proposes to add the words “per mnemonic” to Chapter XV, Section 3(b). Participants may choose to have multiple mnemonics for the convenience of conducting their business, however only one mnemonic is required to conduct business on NOM. Participants that desire to have multiple mnemonics and utilize various ports under multiple mnemonics are and will continue to be billed for each port that is assigned to that Participant. Each Participant may select the manner in which they choose to designate their ports for billing by mnemonic. The ports are differentiated by the mnemonic and port number.

The Exchange does not believe that there is confusion among market participants regarding port billing. The Exchange proposes this clarification to make clear that the term “per port” includes multiple mnemonics for each Participant.

## 2. Statutory Basis

NASDAQ believes that its proposal to amend Chapter XV of the Rules to specify that each mnemonic’s ports will be billed is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular. The

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

Exchange's proposal to clarify its pricing is intended to provide greater clarity to market participants with respect to the application of port fees in Chapter XV, Section 3. The Exchange believes the addition of the reference to mnemonics will provide additional transparency to Chapter XV, Section 3(b) of the Exchange's Rules.

The Exchange does not believe that there is confusion among market participants with respect to port billing, but rather that the addition of the words "per mnemonic" to Chapter XV, Section 3(b) would serve to provide transparency and guidance to the benefit of all market participants. The Exchange believes that the proposal is consistent with Section 6(b)(5) 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, by clarifying the manner in which ports are billed.

The Exchange is not amending the manner in which it applies pricing for ports today. This proposal merely codifies the manner in which the Exchange assesses ports today.

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

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely clarifying its port billing to specify that "per port" includes all ports assigned to a particular Participant regardless of whether they are broken down by mnemonic. The Exchange believes that this clarification will provide greater transparency to market participants. The Exchange does not believe that this amendment creates intramarket competition among Participants as it is applied uniformly to all

Participants. The Exchange believes that clarifying port billing provides market participants clear guidance.

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

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)(ii) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</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: (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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

#### 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-2013-034 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-2013-034. 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 NASDAQ. 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-2013-034, 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).