

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 71200; File No. SR-NASDAQ-2013-157)

December 30, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Existing Fees in NASDAQ Rule 7034

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 16, 2013, 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 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 is proposing changes to modify the existing fees that clients co-located in NASDAQ’s Carteret data center pay for cabinet space, connectivity, and additional services as set forth in NASDAQ Rule 7034. NASDAQ intends to make these fees effective on January 2, 2014.

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, at the Commission’s Public Reference Room, and at the Commission’s website at <http://sec.gov>.

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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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing five modifications to the current fee schedule for colocation offerings set forth in NASDAQ Rule 7034.

1. NASDAQ is proposing to modify Rule 7034(a) to reduce cabinet fees for all cabinet users. Specifically, NASDAQ is proposing to reduce from \$7,000 to \$4,500 the fee for installing a new Super High Density Cabinet. Additionally, NASDAQ is proposing to reduce the ongoing monthly fees for all cabinets: Super High Density from \$13,000 to \$8,000; High Density from \$7,000 to \$4,500; Medium High Density from \$6,000 to \$3,500; Medium Density from \$5,000 to \$2,500; Low Density from \$4,000 to \$2,000; and Half Cabinets from \$3,000 to \$2,000. These changes largely cement a temporary fee reduction that NASDAQ offered at various times in 2013. The language describing the temporary fee reduction is being deleted from the Exchange rulebook.<sup>3</sup>

2. NASDAQ is modifying Rule 7034(a) to clarify that the Multi-Firm Cabinets Fee is assessed for each firm that occupies space in a cabinet other than the firm that contracts with NASDAQ Technology Services for that cabinet. This language is intended to better reflect the

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<sup>3</sup> See, e.g., Exchange Act Release No. 69887 (June 29, 2013), 78 FR 40527 (July 5, 2013).

original intent of the Multi-Firm Cabinets fee and represents no change in NASDAQ's billing practice.

3. NASDAQ is increasing by \$50 four connectivity fees set forth in Rule 7034(b): the Category 6 Cable Patch, the DS-3 Connection, and the Fiber fee (each from \$300 to \$350), and also the POTS Line fee (from \$0 to \$50). These are previously filed offerings that users request to connect to various telecommunications providers or other colocation cabinets.

4. NASDAQ is increasing the Ongoing Monthly Fee for four forms of connectivity to NASDAQ currently set forth in Rule 7034(b). Specifically, NASDAQ is increasing from \$15,000 to \$20,000 the monthly fee for the 40Gb Fiber connection to NASDAQ; from \$5,000 to \$10,000 the monthly fee for the 10Gb Fiber connection to NASDAQ; from \$1,000 to \$2,500 the monthly fee for the 1Gb Fiber connection to NASDAQ; and from \$1,000 to \$2,500 the monthly fee for the 1Gb Copper connection to NASDAQ.

5. Finally, NASDAQ is reducing from \$7,000 to \$4,500 the installation fee for the Super High Density Cabinet Kit set forth in Rule 7034(d). A user installing a new Super High Density Cabinet pays this "Kit" fee for various necessary cabinet accessories, in addition to the \$4,500 installation fee set forth in Rule 7034(a) which covers the labor and materials costs for the actual cabinet installation service.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and with Sections 6(b)(4), (b)(5) and (b)(8) of the Act,<sup>5</sup> in particular, 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,

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

<sup>5</sup> 15 U.S.C. 78f(b)(4), (5) and (8).

and 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.

The Exchange believes that the proposed fees changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members.

The fees are fair and equitable whether considered in total or individually. First, NASDAQ is proposing a major fee reduction for all colocation users by reducing ongoing monthly fees for all cabinets and the fees for installing new Super High Density Cabinets (both the standard installation fee set forth in subsection (a) and the "Kit" fee set forth in subsection (d)). These fee reduction [sic] range from 35 to 50 percent, and they will benefit each cabinet user for each month in the future. These fee reductions are offset in part by minor increases of \$50 per month for four connectivity fees set forth in Rule 7034(b) (the Category 6 Cable Patch, the DS-3 Connection, and the Fiber fee (from \$300 to \$350), and also the POTS Line fee from

\$0 to \$50) and also to the Ongoing Monthly Fee for three forms on connectivity set forth in Rule 7034(b) (the 40Gb Fiber connection, the 10Gb Fiber connection, the 1Gb Fiber connection; and the 1Gb Copper connection to NASDAQ).

Moreover, the Exchange believes the proposed fees [sic] changes are reasonable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well expenses involved in maintaining and managing the colocation facilities. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing customers the ability to reduce latency in a well-maintained and operated environment. The Exchange believes that the proposed fees are reasonable in that they reflect the costs and the benefit of the lower latency to clients.

The Exchange also believes that the proposed fees are consistent with Section 6(b)(5) of the Act in that the fees are equitably allocated and non-discriminatory. All Exchange members that voluntarily select various service options will be charged the same amount for the same services. As is true of all co-location services, all co-located clients have the option to select any cabinet or connectivity option, and there is no differentiation among customers with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all co-located clients, irrespective of the locations of their cabinets within the data center.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is consistent with these requirements inasmuch as it makes available to market participants, at a reasonable fee and on a non-discriminatory basis, access to low latency means of trading.

Finally, for the reasons stated below in Section 4 of Form 19b-4, the proposed fees [sic] changes are consistent with Section 6(b)(8) of the Act in that they do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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. To the contrary, as discussed above, the Exchange believes that fees for co-location services are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services would serve to impair an exchange's ability to compete for order flow rather than burdening competition. In fact, NASDAQ believes that the proposal reflects the positive effects of robust competition but for which NASDAQ would no incentive to reduce fees for any colocation offerings.

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) of the Act<sup>6</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>7</sup> At any time within 60 days of the filing of the

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

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.

#### 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-2013-157 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-2013-157. 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

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<sup>7</sup> 17 CFR 240.19b-4(f).

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 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2013-157 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>8</sup>

Elizabeth M. Murphy  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).