

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72811; File No. SR-NASDAQ-2014-079)

August 11, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ Rule 7051 Fees Relating to Pricing for Direct Circuit Connections

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 August 1, 2014, 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 Substance of the Proposed Rule Change

NASDAQ is proposing to modify NASDAQ Rule 7051 to establish direct connectivity and installation fees for a 1Gb Ultra connection option.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com at NASDAQ’s principal office, 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, 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend NASDAQ Rule 7051 entitled “Direct Connectivity to Nasdaq” to clarify the Exchange’s direct connectivity services. Currently, the Exchange offers two direct connectivity options for customers who are not co-located at the Exchange's datacenter, a 10Gb circuit connection and a 1Gb circuit connection.³ Separate installation and ongoing monthly fees apply to each option. For 1Gb connectivity, the Exchange assesses an installation fee of \$1,000 and ongoing monthly fees of \$1,000. For 10Gb connectivity, the Exchange charges an installation fee of \$1,000 and ongoing monthly fees of \$5,000.

In order to keep pace with changes in technology, the Exchange now proposes to provide a 1Gb “Ultra” fiber connection offering, which uses new lower latency switches.⁴ A switch is a type of network hardware that acts as the “gatekeeper” for all clients’ orders sent to the system (“System”)⁵ at the NASDAQ facility and orders them in sequence for entry into the System for execution. Each of NASDAQ’s current connection offerings use different switches, but the switches are of uniform type within each offering (*i.e.*, all 1G connectivity options currently use the same switches). As a consequence, all client subscribers to a particular connectivity option receive the same latency in terms of the capabilities of their switches.

³ See Securities Exchange Act Release No. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-077).

⁴ The term “latency” for the purposes of this rule filing means a measure of the time it takes for an order to enter into a switch and then exit for entry into the System.

⁵ As defined in NASDAQ Rule 4751(a).

The 1Gb Ultra offering will use a low latency switch, which provides faster processing of orders sent to it in comparison to the current 1G switch in use for Exchange connectivity. As a consequence, direct connect clients needing only 1Gb of bandwidth, but that seek faster processing of those orders as they enter NASDAQ's exchange facility now have the option to subscribe to a faster and more efficient connection to the Exchange.

The Exchange proposes an ongoing monthly subscription fee of \$1,500 for a 1Gb Ultra connection plus a one-time installation fee of \$1,500. NASDAQ believes that the pricing reflects the hardware and other infrastructure and maintenance costs to NASDAQ associated with offering technology that is at the forefront of the industry. The \$1,500 installation fee for the 1Gb Ultra product exceeds the \$1,000 installation fee for the existing 1Gb product due to the added complexity of installing the Ultra product. In order to achieve lower latency, the Ultra product requires not only the installation of a fiber telecommunications line but it also requires the additional installation of sophisticated switching equipment.

The new low latency service will be completely optional. Potential customers will make a determination based on whether they perceive a sufficient value in adopting the new service. This new low latency service decreases the time individual orders are processed and market data is transmitted by these new switches. The Exchange's proposal provides the client the option for faster switch processing, which is highly valued among some market participants. NASDAQ notes that other markets have adopted low-latency connectivity options for their users. For example, the International Securities Exchange LLC ("ISE") offers a 10Gb low latency Ethernet

connectivity option to its users, which provides a “higher speed network to access [ISE’s] Optimise trading system.”⁶

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that this proposal is consistent with Section 6(b)(4) of the Act in that it is an equitable allocation of fees and is consistent with Section 6(b)(5) of the Act because the proposal is not unfairly discriminatory because it offers a completely optional new direct connectivity choice to customers who are not co-located at the Exchange’s datacenter and all client subscribers that opt for this particular connectivity option and associated fee will receive the same latency in terms of the capabilities of their switches. Also, the proposal is consistent with an equitable allocation of fees and is not unfairly discriminatory because the Exchange operates in a highly competitive market in which exchanges offer various connectivity services as a means to facilitate the trading activities of customers. Accordingly, fees charged for direct connectivity services are constrained by the fees charged for the various alternative connectivity options, including co-location, direct connectivity, and connecting via a third party vendor

⁶ See Securities Exchange Act Release No. 66525 (March 7, 2012), 77 FR 14847 (March 13, 2012) (SR-ISE-2012-09).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4) and (5).

(extranet or ISV), as well as fees charged by other exchanges, taking into consideration the different costs associated with these service types. It should be noted, however, that the costs associated with direct connect clients are primarily fixed costs that include the costs of installing and maintaining the network and direct connections (including the switch and cabling). Accordingly, the Exchange establishes a range of direct connect fees with the goal of covering these same fixed costs and covering marginal costs, such as the cost of electricity and data center space for the equipment, labor costs associated with the installation and of the equipment and cabling, as well as for entitling the clients to the various services and feeds carried by these connections. The proposed optional new low latency direct connectivity choice simply provides one more way in which a customer can choose to connect.

If a particular exchange charges excessive fees for direct connectivity services, affected members will opt to terminate their direct connectivity arrangements with that exchange, and pursue a range of alternative trading strategies not dependent upon the exchange's direct connectivity services. Accordingly, the exchange charging excessive fees would stand to lose not only direct connectivity revenues and any other revenues associated with the customer's operations. Moreover, all of the Exchange's fees for these services are equitably allocated consistent with Section 6(b)(4) of the Act and consistent with Section 6(b)(5) of the Act are non-discriminatory in that all direct connect clients are offered the same service and there is no differentiation among them with regard to the fees charged for such services.

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

The Exchange 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.⁹ As discussed above, the Exchange believes that the proposed fees for direct connectivity services are comparable to the fees charged for the same service provided to co-locations customers. Additionally, such costs are constrained by the robust competition for order flow among exchanges and non-exchange markets, because direct connectivity exists to advance that competition, and excessive fees for direct connectivity services would serve to impair an exchange's ability to compete for order flow rather than burdening competition. Therefore, the Exchange believes that the proposed rule change enhances, rather than burdens, competition.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 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-2014-079 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-079. 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, N.W., 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 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-2014-079, 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).