

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73132; File No. SR-NASDAQ-2014-092)

September 17, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees for Optional Wireless Connectivity for Co-located Clients

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 September 4, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend fees assessed clients for wireless connectivity that enables clients to receive data from the New York Stock Exchange (“NYSE”) and NASDAQ. Specifically, NASDAQ proposes to amend fees assessed for wireless connectivity for co-located clients in NASDAQ’s Carteret data center to receive NYSE, and NYSE ARCA multi-cast market data feeds. It also proposes to amend fees assessed for remote multi-cast ITCH (“MITCH”) Wave Ports for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data will be distributed after delivery to those data centers via wireless network. While the proposed changes to the rules pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on October 1, 2014. The text of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at the Exchange'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, the Exchange 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 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 fees assessed under NASDAQ Rule 7034 for the delivery of third-party market data to co-located clients in NASDAQ's Carteret data center clients via a wireless network using millimeter wave or microwave technology. NASDAQ is also proposing to amend fees assessed under NASDAQ Rule 7015 for remote Multi-cast ITCH Wave Ports for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data will be distributed after delivery to those data centers via wireless network.

Changes to NYSE Wireless Connectivity

NASDAQ offers optional wireless connectivity to clients who had requested such connectivity for other markets' data. NASDAQ uses network vendors to supply wireless

connectivity from the Carteret, NJ data center to the data centers of other exchanges.³ The vendor installs, tests and maintains the necessary communication equipment for this wireless network between the data centers. The wireless connectivity is an optional alternative to fiber optic network connectivity, providing lower latency because the wireless signals travel a straight, unimpeded line and because light waves travel faster through air than through glass (fiber optics). Because wireless transmission of such data requires an unimpeded line of sight between Carteret and the data center of the market to which it is connecting, NASDAQ and its vendors incur costs associated with maintaining hardware and leasing towers on which its microwave dishes and the associated hardware are mounted, which generally increase as distance between data centers increase.⁴

NASDAQ originally planned to create wireless connections to a data center in Newark used by NYSE as a SFTI Network Point of Presence, which is approximately 15 miles from NASDAQ's Carteret data center. In 2013, NYSE began to allow wireless vendors and telco vendors to connect directly to its data center in Mahwah, NJ,⁵ which is approximately 40 miles from Carteret. Because the wireless data feeds are designed to offer high-speed and low latency,⁶ NASDAQ determined to direct its wireless vendors to connect to the Mahwah data

³ NASDAQ OMX acts as re-distributor of these third-party market data feeds, capturing the data at the originating data centers and transporting the data to the Carteret data center.

⁴ Because direct line of sight between Carteret and the data centers of other exchanges is not possible, NASDAQ's vendors leases as many towers and associated equipment as needed to ensure an unbroken line of sight between individual towers, repeating the signal until it arrives at its destination.

⁵ See <http://www1.nyse.com/press/1337855269042.html>.

⁶ Wireless connectivity is an optional alternative to higher latency fiber optic network connectivity.

center instead of the Newark SFTI Point of Presence. As a consequence, NASDAQ is proposing to increase the fees assessed under Rules 7015(d) [sic] and 7034(b) relating to connectivity to data received wirelessly to and from Mahwah, which will help offset greater costs incurred in leasing towers, and purchasing and maintaining wireless equipment to cover the increased distance as well as the higher costs to house equipment and connections within the Mahwah data center.

Wireless Connectivity in Carteret

Under Rule 7034(b), clients are assessed a \$2,500 installation fee (a non-recurring charge) and a monthly recurring charge (“MRC”) that varies depending upon the feed. The MRC for the NYSE multi-cast equities data feed, which includes NYSE ArcaBook Highspeed and NYSE OpenBook (Aggregated or Ultra), is \$10,000; the MRC for BATS Multicast PITCH, which includes BZX and BYX, is \$7,500; and the MRC for Direct Edge Depth of Book multi-cast feed, which includes EDGA and EDGX, is \$7,500. The rates are higher for the NYSE feeds because the two feeds are larger, and take up more bandwidth than the BATS and Direct Edge feeds.

Recently, NYSE announced that it is phasing out its ArcaBook High Speed data feed,⁷ leaving the Arca Integrated data feed, which is a low-latency alternative to ArcaBook High Speed data,⁸ as the primary and popular data feed for Arca. Arca Integrated data feed has greater data bandwidth requirements than the ArcaBook High Speed data feed and, as a consequence, NASDAQ can no longer offer both the NYSE and Arca feeds through a single

⁷ See <http://www.nyxdata.com/nyxdata/default.aspx?tabid=993&id=2338>.

⁸ NYSE describes the Arca Integrated feed as a real time data feed that provides a “unified view of events, in sequence as they appear on the NYSE Arca matching engine.” See <http://www.nyxdata.com/page/1084>.

wireless connection. Accordingly, NASDAQ is proposing to offer separately NYSE Open Book⁹ and Arca Integrated data feeds.

NASDAQ is also proposing to increase the fee assessed for wireless connectivity to the NYSE and Arca feeds. As noted above, NASDAQ currently assesses a one-time installation fee of \$2,500, and an MRC of \$10,000 for wireless connectivity to the NYSE and Arca data feeds under Rule 7034(d) [sic]. NASDAQ is proposing to assess an installation fee of \$5,000 and a monthly subscription fee of \$12,500. NASDAQ notes that the proposed new fees are greater than the fee currently assessed for the Open Book Ultra and ArcaBook High Speed data feeds due to the greater bandwidth requirements and increased costs associated with connectivity to the Mahwah data center.

Remote Multi-cast ITCH (MITCH) Wave Ports

NASDAQ is also proposing to increase the fees currently assessed for MITCH Wave Ports for clients connecting to the NYSE Mahwah data center. NASDAQ currently assesses an installation charge for the remote port, at each of the data center locations, of \$2,500 for installation, and \$7,500 as an MRC.¹⁰ Each of the data centers that a client may subscribe to is approximately the same distance from the Carteret data center, including NYSE's Newark STFI Point of Presence. As discussed above, NASDAQ will be providing a direct connection to NYSE's data center in Mahwah, which is significantly farther from Carteret. NASDAQ incurs higher costs for housing its equipment at Mahwah, including higher fees for power, cabinets and connections. Moreover and as noted above, the Exchange and its vendors incur higher costs in

⁹ The Exchange notes that NYSE has renamed its Ultrabook data feed.

¹⁰ Clients opting to pay for the remote MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in NASDAQ Rules 7019, 7023, and 7026.

leasing towers and equipment to connect Carteret to Mahwah. As a consequence, NASDAQ is proposing to increase the one-time installation charge to \$5,000, and the MRC to \$12,500.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and with Sections 6(b)(4) and (b)(5) of the Act,¹² 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, 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 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

Moreover, the Exchange believes the proposed increased fees are reasonable because they are based on the Exchange's increased costs incurred in connecting to Mahwah. As discussed, the greater distance between Carteret and Mahwah results in greater costs incurred by the Exchange and its vendors, and the Exchange is assessed higher charges for housing its equipment at Mahwah as compared to Newark. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing clients the ability to reduce latency in the transmission of data by connecting directly to NYSE's data center wirelessly.

The Exchange believes the proposed increased fees are equitably allocated in that all clients that voluntarily select connect to, and receive data from, NYSE through these services are charged the same amount for the same services. Although the proposed fees are higher than the fees charged for connectivity to other exchanges' data centers, they are reflective of the increased costs associated with connecting to the Mahwah data center. Accordingly, the increased fees are allocated equitably on those that receive the benefit of the connectivity.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to promote just and equitable principles of trade 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 clients, issuers, brokers, or dealers. The proposal is consistent with these requirements because it provides an optional connectivity, which promotes low-latency transfer of data to market participants. As is true of all co-location services, all co-

located clients have the option to select this voluntary connectivity option, and there is no differentiation among clients with regard to the fees charged for the wireless connectivity to, and wirelessly-received data from Mahwah.

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, this proposal will promote competition for distribution of market data by offering an optional direct connection to the NYSE data center, which will improve the latency of the connection currently available through NYSE's STFI Point of Presence in Newark. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, 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, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2014-092 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-2014-092. 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 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-2014-092, 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).