

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69211; File No. SR-NASDAQ-2013-050)

March 22, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Assess a Fee for use of FIX and OUCH Trading Ports for Testing

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 March 18, 2013 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 proposes to establish fees under Rules 7015(b) and (g) for use of FIX Trading Ports and OUCH Trading Ports, respectively, that are used for testing. NASDAQ will begin assessing the proposed fee on April 1, 2013.

The text of the proposed rule change is below. Proposed new language is italicized.

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7015. Access Services

The following charges are assessed by Nasdaq for connectivity to systems operated by NASDAQ, including the Nasdaq Market Center, the FINRA/NASDAQ Trade Reporting Facility, and FINRA’s OTCBB Service. The following fees are not applicable to the NASDAQ Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(b) Financial Information Exchange (FIX)

Ports	Price
FIX Trading Port	\$500/port/month*
FIX Port for Services Other than Trading	\$500/port/month
<u>FIX Trading Port for Testing</u>	<u>\$300/port/month</u>

Nasdaq will assess the following fee for each
FIX Trading Port assigned to an MPID that is
in test mode in excess of one.

(c) - (f) No change.

(g) Other Port Fees

Remote Multi-cast ITCH Wave Ports

Description	Installation Fee	Recurring Monthly Fee
MITCH Wave Port at Secaucus, NJ	\$2,500	\$7,500
MITCH Wave Port at Weehawken, NJ	\$2,500	\$7,500
MITCH Wave Port at Newark, NJ	\$2,500	\$7,500

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- \$500 per month for each port pair,* other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.

- An additional \$200 per month for each port used for entering orders or quotes over the Internet.
- An additional \$600 per month for each port used for market data delivery over the Internet.
- \$300 per port, per month for each OUCH Port assigned to an MPID that is in test mode in excess of one.

(h) No change.

* Eligible for 25% discount under the Qualified Market Maker Program during a pilot period expiring on April 30, 2013.

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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, 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 Rules 7015(b) and (g) to establish fees for the member firm use of FIX Trading Ports and OUCH Ports, respectively, maintained in test mode. A FIX Trading Port and an OUCH Port are both connections to the NASDAQ trading system (collectively, “Trading Ports”). Currently, a member firm may elect to designate a subscribed Trading Port as either in “production mode” or in “test mode.” A Trading Port that is in production mode allows a member firm to send orders for execution on the Exchange system in

the normal course. When a member firm changes a Trading Port's status to test mode, NASDAQ will not allow normal order activity to occur through the port but rather it limits all order activity to test ticker symbols. The purpose of test mode is to permit a member firm to test its connection to the trading system to ensure that its messages are received accurately by the Exchange and that there are no issues with its own systems.³ Member firms are assessed a monthly fee of \$500 per port for each Trading Port subscribed in production mode.⁴ Member firms are not currently assessed a fee for a Trading Port that is in test mode.

NASDAQ has audited the use of Trading Ports in test mode and found that a substantial number are not used for testing, but rather remain idle. NASDAQ incurs costs associated with maintaining such ports, including costs incurred maintaining servers and their physical location, monitoring order activity, and other support. Accordingly, NASDAQ is proposing to allow a member firm to designate for each of its MPIDs a single Trading Port in test mode at any given time at no cost, and will assess a member firm a fee of \$300 per port/per month for each additional Trading Port assigned to an MPID that is in test mode.⁵ NASDAQ is proposing to assess the fee beginning April 1, 2013.

NASDAQ is proposing to allow member firms to either cancel Trading Ports in test mode

³ NASDAQ also provides member firms with access to a dedicated test environment that closely approximates the production environment and on which they may test their automated systems that integrate with NASDAQ. Subscribers typically use this test environment to test upcoming NASDAQ releases and product enhancements, as well as test software prior to implementation. See Rule 7030(d).

⁴ Rules 7015(b) and (g).

⁵ The proposed fees are specific to the type of Trading Port. Therefore for purposes of calculating the proposed fee, only an existing FIX Port in test mode assigned to a particular MPID would count as a free Trading Port in test mode under Rule 7015(b). Likewise, only an existing OUCH Port in test mode assigned to a particular MPID would count as a free Trading Port in test mode under Rule 7015(g). FIX ports not used for trading do not have a test mode, and therefore NASDAQ is not proposing any test mode fee for such ports.

or put such ports into production at any time up to close of business April 30, 2013 without incurring the proposed fee. This will allow member firms to adjust to the new fee and encourage them to either place idle test mode ports into production or cancel them. Any Trading Ports a member firm has assigned to an MPID that are in test mode in excess of one on May 1, 2013 will be assessed the full \$300 per port monthly fee for the month of April, and each month thereafter unless canceled or placed into production. A member firm that subscribes a new Trading Port with an initial status of test mode for an MPID with an existing Trading Port in test mode will not be assessed the test mode fee for that additional Trading Port if it is placed into production mode in the same calendar month. Any Trading Port that is not exempted from the proposed fee and whose status is changed from test mode to production mode during any month will be assessed the proposed \$300 fee, prorated for the days of the month that the port was in test mode, and assessed the applicable Trading Port fee of \$500 for the days of the month that the port is in production mode.⁶ If a port that is in production mode is changed to test mode, the member firm will be assessed the full month's fee for production mode, even if there are no other Trading Ports assigned to the MPID in Test Mode. If an existing Trading Port in test mode is canceled by a member firm at any point in a given month, the firm will be assessed the full test mode fee for that month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and with Section 6(b)(4)⁸ of the Act, in particular. The Exchange believes it is consistent with Section 6(b)(4) of the Act because it provides for the equitable allocation of

⁶ Pursuant to Rules 7015(b) or (g).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed fee is based on the cost to NASDAQ of developing and maintaining multiple port connections to the Exchange, which are not used in the production environment and are designated as in test mode. As noted, NASDAQ invests time and capital in initiating, monitoring and maintaining port connections to its system. Currently, NASDAQ does not have a means to recoup its investment and costs associated with providing member firms with Trading Ports that are in test mode and NASDAQ believes that the proposed fee is reasonable because the fee is intended to cover the Exchange's costs incurred in maintaining test mode ports and is less than what is charged for a Trading Port in production mode. The proposed fee may also allow NASDAQ to make a profit to the extent the costs associated with developing and maintaining Trading Ports in test mode are covered. Moreover, the Exchange believes that the proposed fee does not discriminate unfairly as it will promote efficiency in the market by incentivizing member firms to either place into production idle ports or cancel them. As a consequence, only a member firm that is inefficient in its use of Trading Ports in test mode will be assessed the fee. The Exchange believes the proposed fee is equitably allocated because all Exchange member firms that voluntarily elect to subscribe to Trading Ports, yet maintain them in test mode, will be charged the [sic] equally on a per-port basis. NASDAQ notes that a member firm is afforded a single Trading Port in test mode for each of its MPIDs at any given time at no cost, and therefore may avoid the proposed fee altogether to the extent it is able to bring efficiency to its testing operations and port utilization. Moreover, NASDAQ believes that providing a free test mode Trading Port for each of a member firm's MPIDs is an equitable allocation because it avoids penalizing member firms that may

have multiple MPIDs for different lines of business, and as such would only be afforded a single free Trading Port in test mode for all lines of business.

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. The proposed fee merely allows NASDAQ to recapture the costs associated with maintaining member ports that are in test mode, and may provide NASDAQ with a profit to the extent its costs are covered. The fee is applied uniformly, so that only a member firm that is unable to use its Trading Ports in test mode efficiently will pay more than a similarly situated member firm, and a member firm may avoid any burden if it is efficient in such use. In this way, the proposed fee will promote efficient use of Trading Ports for testing. Any burden arising from the fee is necessary in the interest of promoting a more efficient market.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other charge imposed by NASDAQ.

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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission should institute proceedings to determine whether the proposed rule change 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-2013-050 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-2013-050. 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 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-2013-050 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).