

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70560; File No. NASDAQ-2013-124)

September 30, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to SQF Port Fees

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 19, 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 amend the manner in which the Exchange assesses SQF Port fees which are located 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.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 1, 2013.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 Exchange proposes to amend the manner in which SQF Ports are assessed to NOM Participants. 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. NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

Today, Chapter XV, Section 3 entitled “NASDAQ Options Market – Access Services” states that the Exchange assesses a fee of \$550 per port, per month, per mnemonic for the following port fees: Order Entry Ports,³ CTI Ports,⁴ OTTO Ports,⁵

³ 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

ITTO Ports,⁶ BONO Ports,⁷ Order Entry DROP Ports,⁸ OTTO Drop Ports⁹ and SQF Ports. Each NOM Participant is assigned a Market Participant Identifier or

more than one order entry port.

⁴ 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.

⁵ 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 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.

⁶ 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).

⁷ BONOSM 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).

⁸ 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.

⁹ The OTTO DROP data feed provides real-time information regarding orders entered through OTTO and the execution of those orders. The OTTO DROP data

“mnemonic”¹⁰ and in some cases, certain NOM Participants request multiple mnemonics for purposes of accounting for trading activity. These mnemonics identify users at a particular NOM Participant. Today, the Exchange bills its port fees based on the number of mnemonics configured for each port. By way of example, if a NOM Participant, ABC, requested 2 ports from the Exchange and further requested that each port be configured to be accessed by 4 mnemonics or in some cases account numbers,¹¹ the NOM Participant would be billed for 8 ports at the rate of \$550 per port for that month. All billing is captured at the Participant level. NOM Participants may choose to have multiple mnemonics or in some case multiple account numbers for the convenience of conducting their business, however only one mnemonic and one account number is required to conduct business on NOM.

The Exchange proposes to amend the manner in which it assesses the SQF Port Fee. The Exchange would continue to assess a \$550 SQF Port Fee but would instead assess that fee on a per port, per month basis. In other words, the Exchange would bill simply based on the number of ports requested by the NOM Participant and would not consider the number of users, account numbers or mnemonics assigned to each SQF Port. In the above example, the Exchange would bill a total of 2 ports for that month. The Exchange is seeking to encourage NOM Market Makers to make markets on NOM.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions

feed is not a trading interface and does not accept order messages.

¹⁰ A mnemonic is a unique identifier consisting of a four character alpha code.

¹¹ Account numbers are assigned by the Exchange and associated with particular NOM Participants.

of Section 6 of the Act,¹² in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹³ 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 assessing a \$550 SQF Port Fee per port, instead of per port, per mnemonic by month, is reasonable because the Exchange desires to incentivize more NOM Market Makers to engage in market marking activities on NOM. The Exchange believes that amending the methodology by which it assesses SQF Port fees will result in lower costs to NOM Market Makers because the Exchange would not assess fees by mnemonic or account number at a particular NOM Participant and this would allow NOM Participants to request the number of ports necessary for their market making business at a firm level regardless of factors. If a NOM Participant does not have more than one user per port (mnemonic) the NOM Participant would continue to be assessed the same SQF Port fee and would not be impacted by this proposal. In addition, current NOM Market Makers may realize a reduction of SQF Port costs.

The Exchange believes that assessing a \$550 SQF Port Fee per port, instead of per port, per mnemonic by month, is equitable and not unfairly discriminatory because unlike the Order Entry Port, CTI Port, OTTO Port, ITTO Port, BONO Port, Order Entry DROP Port and OTTO Drop Port, the SQF Port is utilized particularly by NOM Market Makers in connection with their market making activities. Unlike other NOM Participants, NOM

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

Market Makers add value to the market through continuous quoting¹⁴ and a commitment of capital. The Exchange has traditionally assessed NOM Market Makers lower transaction fees as compared to other NOM Participants because NOM Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings.¹⁵ Also, because of the volume of message traffic required to quote upwards of 300,000 individual puts and calls, NOM Market Makers that utilize SQF Ports require more technology infrastructure and more ports than NOM Participants that are not engaged in market making. In addition, as previously stated, if a NOM Market Maker has only one mnemonic or account number, per port, the proposal would not yield a cost savings as that NOM Participant is effectively assessed a per port rate today, however that NOM Participant would have the opportunity to obtain other SQF Ports at a lower cost than is offered today. The Exchange believes that it is equitable and not unfairly discriminatory to assess all NOM Market Makers on a firm level rather than by the number of users (mnemonic) on each port and allow Market Makers to segregate their business in a manner that is conducive to their business needs.

¹⁴ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

¹⁵ See Chapter VII, Section 5.

The Exchange would continue to assess other port fees, other than the SQF Port, by the number of users (mnemonics) per port. This is the manner in which typically most data is billed. The Exchange is interested in billing NOM Market Makers at the firm level in order to provide them the means to lower costs and incentivize them to make markets on the Exchange which in turn benefits all other market participants through tighter markets and order interaction.

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's proposal seeks to provide NOM Market Makers a cost savings where a particular NOM Participant may have multiple mnemonics and account numbers associated with an SQF Port due to the manner in which they account for their trading activity and operate their technology. The Exchange does not believe that providing certain NOM Market Makers the opportunity to obtain quote information as a lower cost creates an undue burden on competition because NOM Market Makers have obligations to the market unlike other NOM Participants. Unlike other NOM Participants, NOM Market Makers add value to the market through continuous quoting¹⁶ and a commitment of capital. In addition, other market participants benefit from the tighter markets and order interaction which NOM Market Makers bring to NOM. The proposal would provide all NOM Market Makers with the opportunity to lower costs while also obtaining and utilizing the appropriate number of SQF Ports to conduct their business.

¹⁶ See supra note 14.

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)(ii) of the Act.¹⁷ 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 NASDAQ-2013-124 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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 NASDAQ-2013-124. 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 NASDAQ-2013-124, 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).