

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70693; File No. SR-NASDAQ-2013-131)

October 16, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay Implementation of the Dedicated OUCH Port Infrastructure Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to delay implementation of the Dedicated OUCH Port Infrastructure service under Rule 7015(g). NASDAQ will begin offering the service in mid-first quarter of 2014, and will provide public notice thereof at least five days prior to the implementation date.

The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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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 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

On July 23, 2013, the Exchange filed a proposal with the Commission to adopt a new Dedicated OUCH Port Infrastructure connectivity option and related fee.<sup>3</sup> At the time of filing, the Exchange anticipated offering the service in October 2013, concurrent with certain hardware upgrades occurring at NASDAQ, including upgrades to the OUCH port infrastructure. NASDAQ is delaying implementation of the updates to the OUCH port infrastructure, which consequently affects the rollout of the Dedicated OUCH Port Infrastructure service making it impossible to implement the service in October 2013.<sup>4</sup> Accordingly, NASDAQ is proposing to postpone the roll out of the service until mid-first quarter 2014, by which time the Exchange believes the upgrades to the OUCH port infrastructure will be completed. NASDAQ will not begin assessing the subscription fee until the date the service is offered, which NASDAQ will announce at least five days prior to the implementation date. NASDAQ will continue to assess

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<sup>3</sup> Securities Exchange Act Release No. 70036 (July 25, 2013), 78 FR 45993 (July 30, 2013) (SR-NASDAQ-2013-097).

<sup>4</sup> See <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETU2013-29>.

the installation fee for any subscriptions to the service upon installation of the dedicated hardware.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires the rules of an exchange 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 delay of service promotes just and equitable principals of trade in that it postpones implementation of the service until such a time that all users of OUCH port infrastructure would have the same, upgraded hardware. The proposed delay in offering the service is based on a delay to an underlying technical upgrade to certain systems of the Exchange. As a consequence, delaying implementation of the service until a time that such upgraded hardware is available will further the goal of perfecting fair and orderly markets, protecting investors and the public interest.

### 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. NASDAQ believes that the delay will not impact competition whatsoever as it will maintain the status quo until such time that the OUCH port infrastructure is upgraded, at which time the new service and associated monthly fee will be implemented. In this regard, existing subscribers to shared OUCH port infrastructure will continue to receive the same service,

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<sup>5</sup> NASDAQ has not received any subscription to the service outside the expired installation fee waiver period.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

unaffected by the delay in upgrading the OUCH port infrastructure. Once upgraded, both subscribers to the shared infrastructure and Dedicated OUCH Port Infrastructure subscribers will operate on the same type of underlying hardware.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. If the 30-day operative delay were not to be

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

waived, then the Dedicated OUCH Port Infrastructure service would go live and require payments of fees even though the underlying hardware to support such a system would not be operational. Without a waiver, fees would be collected from subscribers of the Dedicated OUCH Port Infrastructure service before the service would actually be useable. Thus, waiver of the operative delay provides benefits to NASDAQ and to member firms subscribing to the service. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>11</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-131 on the subject line.

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<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2013-131. 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 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-2013-131, 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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