

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77495; File No. SR-NASDAQ-2016-046)

April 1, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees under Rules 7015(b) and (g)

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 29, 2016, The NASDAQ Stock Market LLC (“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 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 the Exchange’s access services fees at Rules 7015(b) and (g) to increase the port fees charged to members and non-members for ports used to enter orders into Exchange systems, in connection with the use of the FIX, RASH and OUCH trading telecommunication protocols. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 1, 2016.

The text of the proposed rule change is available on the Exchange’s Website at <http://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 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

The Exchange is proposing to amend Rules 7015(b) and (g) to increase the monthly fees it charges for ports used to enter orders in the Nasdaq Market Center for the trading of equities, in connection with the use of the FIX, RASH, and OUCH trading telecommunication protocols. Specifically, the Exchange is proposing to increase the fee assessed for a FIX Trading Port from \$550/port/month to \$575/port/month, to increase the fee assessed for a RASH port from \$550/port/month to \$575/port/month, and to increase the fee assessed for an OUCH port from \$550/port/month to \$575/port/month.

The Exchange is proposing to increase charges assessed for these connectivity options in light of a recent upgrade to the hardware supporting the ports to FPGA technology.³ FPGA

³ The Exchange has previously implemented FPGA hardware and increased the fees proposed in this filing in connection with the use of the FIX, RASH, and OUCH trading ports; however, due to technical issues with the implementation the Exchange determined to roll back the FPGA implementation and associated increased fees. See Securities Exchange Act Release No. 75882 (September 10, 2015), 80 FR 55698 (September 16, 2015) (SR-NASDAQ-2015-110); see also Securities Exchange Act Release No. 77077 (February 8, 2016), 81 FR 7597 (February 12, 2016) (SR-NASDAQ-2016-014). The Exchange has resolved prior issues with the technology and implemented the FPGA hardware on FIX, RASH, and OUCH trading ports beginning

technology is a hardware-delivery mechanism and an upgrade to the software and software-and-hardware based mechanisms previously used for FIX, RASH, and OUCH trading ports. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency. In other words, upgrading to FPGA technology improves the predictability of the telecommunications ports and thereby adds value to the user experience. In terms of messaging, the data content and sequencing on the new FPGA technology hardware of the upgraded trading ports is the same as on the legacy software-based versions of the Exchange's ports that were replaced.

The Exchange is offering new technology in order to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. The Exchange is increasing the subscription fees for the upgraded ports to offset the costs associated with offering the new hardware, which include procuring, shipping, installing, and maintaining the new equipment and codebase.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act,⁵ in particular, in that the proposal is designed 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

February 8, 2016. Since implementation, the Exchange has not encountered any issues with the new hardware, and has observed improvements to the predictability of the telecommunications ports, as was anticipated.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

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.

The Exchange continuously strives to offer members state of the art technology to enhance their trading experience and thereby enhance the national market system. Incremental enhancements such as the advent of FPGA technology has [sic] helped make the U.S. markets the deepest, most liquid markets in the world. The FPGA hardware applied to the trading ports improves their predictability. Thus, the new hardware further perfects the mechanism of a free and open market and a national market system.

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁶ 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 it does not unfairly discriminate between customers, issuers, brokers or dealers.

Specifically, the Exchange believes that the proposed increased fees are reasonable because they are based on the costs associated with purchasing hardware (capital expenditures) and supporting and maintaining the infrastructure (operating expenditures) for the FPGA enhancement. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees apply equally to all users of the FPGA-enhanced ports and the fees applied in direct proportion to the number of ports used by each member.

⁶ 15 U.S.C. 78f(b)(4).

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

The Exchange 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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, 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. To the contrary, the Exchange believes that the proposed rule change is pro-competitive in that the enhancements improve the competitiveness of the Exchange and the overall quality of the national market system. If, as the Exchange believes, the FPGA enhancement provides the Exchange a competitive advantage, other exchanges will quickly respond by enhancing their own markets in the same way. Such innovation and imitation is the very essence of the competition the Exchange Act is designed to promote.⁷

⁷ The Chicago Mercantile Exchange is currently using FPGA technology in order entry ports for the trading of futures. See <https://www.cmegroup.com/globex/files/NewiLinkArchitecture2014.pdf>.

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.⁸

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2016-046 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.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-NASDAQ-2016-046. 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-2016-046, 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.⁹

Brent J. Fields
Secretary

⁹ 17 CFR 200.30-3(a)(12).