

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64060; File No. SR-NASDAQ-2011-035)

March 8, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Co-Location Services

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 March 1, 2011, 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 modify pricing for co-location services. The Exchange will implement the proposed change on March 1, 2011. The text of 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its co-location fee schedule to: 1) institute a monthly fee of \$300 for telecommunications and inter-cabinet cross connections; and 2) fees for additional patch and power cords.

Under the proposal, co-location customers having telecommunications cross-connections to approved telecommunication carriers in the datacenter will be assessed a monthly fee of \$300 per connection. For the convenience of its customers, the Exchange allows telecommunications carriers to maintain a presence in the data center free of charge. In addition, inter-cabinet connections to other customers in the datacenter will be likewise assessed a \$300 per-month, per-connection fee. These fees will only be assessed on the customer that requested the initiation of the connection, and cross-connections between cabinets being used by the same customer will not be assessed the fee.

The Exchange is also proposing to introduce fees for patch and power cords. Under the proposal, the Exchange will maintain an inventory of patch cords (ethernet and fiber optic cables) and power cords at the datacenter and make them available to customers should they desire to purchase them. The proposed fees for patch cords vary with their capabilities and length, with copper patch cord being charged at \$4.50 + \$.50 per foot; multi-mode fiber patch cord being priced at \$20 + \$1.50 per-meter, and single-mode fiber patch cord priced at \$24 + \$.75 per-meter. For power cords, the Exchange proposes to charge \$5 for 5-15P – C13 cords of two to four feet in length, and \$10 for C14 – C19 cords also of two to four feet in length.<sup>3</sup> The

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<sup>3</sup> The P, C, and number designations reflect differences in the shape of a cord's plug as well as a cord's power throughput capability.

Exchange is making the cords available as a convenience to customers, and notes that use of Exchange-provided patch and power cords is completely voluntary, and that such cords may be freely obtained by [sic] other vendors for use by customers in the datacenter.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> 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.

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 competitive [sic] 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. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services. Moreover, all of the Exchange's fees for co-location services are equitably allocated

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<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

and non-discriminatory, in that all co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and earning a return on its investment. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and earn a return on investment.

In the case of inter-cabinet connection fees, the proposed fee of \$300 per month covers the marginal costs of establishing and maintaining such connections, and also allows customers maintaining such connections to contribute to the fixed costs of data center operation. Notably, because telecommunications providers are provided with free data center space as a convenience to co-located customers, the Exchange believes that it is reasonable to impose charges on persons connecting to such providers as a means of defraying the fixed rental cost incurred in making such space available to the telecommunications providers. The Exchange further believes that the number of data center cross connections correlates to the extent and complexity of a customer's operations within the data center. Accordingly, the Exchange believes that it is

reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs and earn a return on investment.

The Exchange also notes that the New York Stock Exchange (“NYSE”) imposes charges for connections within the data center that include a \$500 per month charge for connections between cabinets of the same customer, and charges for connectivity bundles that include a limited number of connections to telecommunications providers and connections within the data center for monthly fees ranging from \$13,000 to \$61,000 per month, depending on the number of connections and the bandwidth. NYSEArca charges \$600 per month for all connections within its data center. See [http://www.nyse.com/pdfs/nyse\\_equities\\_pricelist.pdf](http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf) at page 14 and <http://www.nyse.com/pdfs/nysearcaMarketplaceFees112011-Clean.pdf> at p. 10. Accordingly, the Exchange believes that its proposed fee of \$300 per month is reasonable in comparison with fees already charged for comparable services of other exchanges offering co-location.

With respect to the Exchange’s proposed fees for power cords, the Exchange believes that its fees are a reasonable reflection of its costs to obtain and resell such cords as a convenience to its customers. Notably, the fees charged by the Exchange are generally comparable to prices charged by unregulated vendors for similar products. See <http://www.comegacity.com/cables-computer/power-cables/tripp-lite-p047-002-2ft-ac-power-cord-c19-c14-10>; and [http://www.cables.com/Products/NEMA-5-15P-TO-IEC320-C13---13a---4-Fee\\_PCRD-4-13A.aspx](http://www.cables.com/Products/NEMA-5-15P-TO-IEC320-C13---13a---4-Fee_PCRD-4-13A.aspx) . The same is true for the proposed patch cord pricing. See [http://www.cablestogo.com/product\\_list.asp?cat\\_id=3525](http://www.cablestogo.com/product_list.asp?cat_id=3525); and [http://www.cablestogo.com/product.asp?cat\\_id=2323&sku=33027](http://www.cablestogo.com/product.asp?cat_id=2323&sku=33027) .

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

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. As discussed above, the Exchange believes that fees for co-location services are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition, and excessive fees for co-location services 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>6</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 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, as amended, 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

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-035 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-2011-035. 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-2011-035, 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>7</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).