

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69271; File No. SR-NASDAQ-2013-056)

April 2, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 28, 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, 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 Substance of the Proposed Rule Change

NASDAQ proposes to eliminate fees under Rules 7015(b) and (g), which are effective but not yet implemented, for subscription to FIX Trading Ports and OUCH Ports used for testing.

The text of the proposed rule change is below. Proposed deletions are in brackets.

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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

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

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

Options Market LLC. For related options fees for Access Services refer to Chapter XV, Section 3 of the Options Rules.

(a) No change.

(b) Financial Information Exchange (FIX)

<b>Ports</b>	<b>Price</b>
FIX Trading Port	\$500/port/month*
FIX Port for Services Other than Trading	\$500/port/month
[FIX Trading Port for Testing Nasdaq will assess the following fee for each FIX Trading Port assigned to an MPID that is in test mode in excess of one.]	[\$300/port/month]

(c) - (f) No change.

(g) Other Port Fees

Remote Multi-cast ITCH Wave Ports

<b>Description</b>	<b>Installation Fee</b>	<b>Recurring Monthly Fee</b>
MITCH Wave Port at Secaucus, NJ	\$2,500	\$7,500

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MITCH Wave Port at Weehawken, NJ	\$2,500	\$7,500
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MITCH Wave Port at Newark, NJ	\$2,500	\$7,500
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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 eliminate the recently-effective,<sup>3</sup> but not yet implemented, fees for member firm use of FIX Trading Ports and OUCH Ports, respectively, maintained in test mode. The fees were to be implemented on April 1, 2013 and this filing eliminates those fees prior to their implementation. As discussed in greater detail in the rule change adopting the fees,<sup>4</sup> a FIX Trading Port and an OUCH Port are both connections to the NASDAQ trading system (collectively, "Trading Ports"). Historically, a member firm was not charged a fee for any of its subscribed Trading Ports designated as in "test mode."<sup>5</sup> NASDAQ determined to assess a fee for a member firm's Trading Ports in test mode in excess of one for each of a member firm's MPIDs in order to recoup costs associated with maintaining such ports. These costs include costs incurred maintaining servers and their physical location, monitoring order activity, and other support.

Upon further consideration, NASDAQ determined not to assess fees for Trading Ports in test mode at this time based on business considerations. NASDAQ considered the potential impact on its business as compared to the anticipated revenue generated from such fees, and determined that not assessing the fees is a better decision at this juncture. Instead, NASDAQ is considering other means to encourage member firms to either use their Trading Ports in test

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<sup>3</sup> Securities Exchange Act Release No. 69211 (March 22, 2013) (SR-NASDAQ-2013-050).

<sup>4</sup> Id.

<sup>5</sup> When a member firm designates a Trading Port's status as in 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.

mode or cancel them, such as contacting member firms with idle Trading Ports. Accordingly, NASDAQ is eliminating the fees, which became effective on March 22, 2013 and were to be implemented on April 1, 2013. Should NASDAQ determine once again that assessing fees for Trading Ports in test mode is appropriate, it will file a rule change to assess such fees.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and with Section 6(b)(4)<sup>7</sup> 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 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 rule change eliminates fees that recently became effective, but have not yet been implemented. NASDAQ believes that the not-yet-implemented fees for Trading Ports in test mode are consistent with the Act for all the reasons stated in the filing with the Commission adopting such fees.<sup>8</sup> Nonetheless, NASDAQ assessed the potential impact of the new fees on its member firms compared to the affect [sic] the fee might potentially have on the Exchange's business, and determined that assessing the fee at this juncture does not make sense from a business perspective. As noted, NASDAQ is exploring other means of encouraging the efficient use of Trading Ports in test mode, which will not involve assessing fees. Accordingly, NASDAQ will revert Rules 7015(b) and (g) back to their status prior to the fee change, so that all member firms with Trading Ports in test mode will not

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Supra note 3.

be assessed any fee whatsoever and NASDAQ will continue to incur the costs associated with supporting such ports.

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 at all. The proposed change merely eliminates fees that are effective, yet not yet implemented. Accordingly, the Exchange does not believe any analysis of burden on competition is necessary.

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 change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>9</sup> and paragraph (f)<sup>10</sup> of Rule 19b-4, thereunder.

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.

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:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

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

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-2013-056 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-2013-056. 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 NASDAQ. 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-2013-056, 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).