

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70269; File No. SR-NASDAQ-2013-106)

August 27, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 7026

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 August 16, 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, 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 a rule change to NASDAQ Rule 7026 (Distribution Models) regarding Managed Data Solutions (“MDS”), to indicate that this option is available for non-display use only. This would conform non-display MDS in Rule 7026(b) with non-display MDS on PSX, the equity market of NASDAQ OMX PHLX LLC (“Phlx”), and on NASDAQ OMX BX, Inc. (“BX”).

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.

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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

The purpose of this proposal is to amend Rule 7026(b) to indicate that NASDAQ MDS is available for non-display use only. This would conform non-display MDS on NASDAQ with recent immediately effective proposals establishing non-display MDS on PSX and on BX.<sup>3</sup>

No other changes to Rule 7026 are proposed or made by this filing.

MDS has been available on NASDAQ since 2010,<sup>4</sup> and is, in all material respects, similar to MDS on PSX and on BX, except that MDS is currently available for display on NASDAQ. This proposal aligns and conforms the non-display nature of MDS for all three Self-Regulatory Organization (“SRO”) exchanges under the umbrella of the NASDAQ OMX Group

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<sup>3</sup> See Securities Exchange Release Nos. 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013)(SR-Phlx-2013-28)(notice of filing and immediate effectiveness implementing MDS on PSX)(the “PSX MDS filing”); and 69041 (March 5, 2013), 78 FR 15791 (March 12, 2013)(SR-BX-2013-018)(notice of filing and immediate effectiveness implementing MDS on BX)(the “BX MDS filing”).

<sup>4</sup> See Securities Exchange Release No. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010)(SR-NASDAQ-2010-138)(notice of filing and immediate effectiveness implementing MDS on NASDAQ)(the “NASDAQ MDS filing”). Other markets have also implemented a managed data solution. See, for example, Securities Exchange Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011)(SR-ISE-2011-67)(notice of filing and immediate effectiveness implementing a managed data solution on ISE).

Inc., (“NASDAQ OMX Group”), namely NASDAQ, PSX, and BX.

MDS is a pricing and administrative option available on NASDAQ to firms seeking simplified market data administration for MDS products containing TotalView, Level 2, and Open View (known as “Depth Data”).<sup>5</sup> The MDS pricing and administrative option is reflected in the established NASDAQ fee schedule in Rule 7026(b) for Distributors, non-professional, and professional subscribers<sup>6</sup> of NASDAQ Depth Data that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with limited entitlement controls (e.g., usernames and/or passwords) (“Managed Data Recipients”). A Distributor must, however, first agree to reformat, redisplay and/or alter the NASDAQ Depth Data prior to retransmission, but not to affect the integrity of the NASDAQ Depth Data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. MDS is an optional distribution model for any retransmission datafeed product containing NASDAQ Depth Data offered by a Distributor where the Distributor manages and monitors, but does not necessarily control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients. The Managed Data Recipients may not distribute the information outside of their organization and may only use the information for internal, non-display use.

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<sup>5</sup> MDS on PSX and on BX includes TotalView only, and as such, MDS on NASDAQ is priced higher than on PSX and on BX. As noted in this proposal, there is no change to the fee structure, or any other aspect of MDS, on NASDAQ.

<sup>6</sup> The term "Distributor" shall have the same meaning as set forth in NASDAQ Rule 7019(c). The term "non-professional" shall have the same meaning as set forth in NASDAQ Rule 7011(b). MDS fees do not change, and remain the same: an administrative fee of \$1500/month per Distributor; a professional subscriber fee of \$300/month per subscriber; and a non-professional fee of \$60/month per subscriber.

The Exchange believes that this proposal is reasonable, proper, and desirable. First, it aligns and conforms the equities exchanges market data products on NASDAQ, PSX, and BX. Second, NASDAQ is not aware of Managed Data Recipients using MDS in display; rather they use the Enhanced Display Solution (“EDS”) for the ability to display data. Separation of MDS and EDS makes it easier for users to understand and control the use of these functionalities. Third, MDS continues to give Managed Data Recipients a reduction in fees for a specific non-display use scenario. And fourth, MDS provides Distributors and Subscribers a new unit of count option; smaller firms receive a value added service at a reduced cost to help lower even further the potential barriers to entry.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>8</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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<sup>7</sup> Moreover, MDS may ease the administrative burden on Subscribers by refocusing administrative costs from smaller recipients to larger Distributors that are better able to absorb the cost through economies of scale.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that, in addition to being consistent with the Act, this proposal is beneficial for market participants. First, the proposal aligns and conforms Market Data Recipients on NASDAQ with recipients of similar data on PSX and BX, so that Recipients of MDS on all three exchanges are treated similarly. Second, NASDAQ is not aware of Managed Data Recipients using MDS in display; rather they use EDS for the ability to display data. Separation of MDS and EDS makes it easier for users to understand and control the use of these functionalities. Third, MDS continues to give Managed Data Recipients a reduction in fees for a specific non-display use scenario. And fourth, MDS provides Distributors and Subscribers a new unit of count option; smaller firms receive a value added service at a reduced cost to help lower even further the potential barriers to entry.

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. To the contrary, MDS has been available on NASDAQ for more than two years as a display option, and has, as proposed herein, been available on PSX and BX as a non-display option. Thus, combined with the very limited scope of this proposal, the Exchange believes that there is no burden on inter- or intra-exchange 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 Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6)(iii)

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

thereunder<sup>11</sup> 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.

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, 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-106 on the subject line.

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<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2013-106. 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-2013-106, 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).