

and the requirements set forth in the NMS Adopting Release, which require FINRA to submit a proposed rule change upon the addition of a new ADF participant. This rule change is also consistent with the Act in that it sets forth the fees, policies and procedures governing access to protected quotations FLOW may display on the ADF, which were identified by the Commission as central concerns surrounding the adoption of Rule 610.

As set forth above, FINRA believes that the policies, procedures and standards governing access to protected quotations displayed on the ADF by FLOW are reasonably designed to provide market participants with fair and efficient access, and are not unfairly discriminatory such that they would prevent a market participant from obtaining efficient access to such quotations. FINRA also believes, as set forth above, that the proposed level and cost of access is, in relative terms, substantially equivalent to the level and cost of access provided by SRO trading facilities.

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

FINRA 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. FINRA notes that the purpose of this filing is to provide for the opportunity for public notice and comment on the addition of a new ADF entrant as required by SEC Rule 610 and the NMS Adopting Release, along with that new entrant's proposed fees and policies and procedures for accessing protected quotations that it may display on the ADF. As such, FINRA believes that this filing may in fact promote competition by providing information about the level of access provided, and fees assessed, by a new ADF entrant.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-052 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-FINRA-2013-052. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-

2013-052 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71035; File No. SR-BX-2013-058]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Under Rule 7030(d) for Use of the Carteret Testing Facility Test Environment**

December 11, 2013.

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 November 27, 2013, NASDAQ OMX BX, Inc. ("BX" 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 the Substance of the Proposed Rule Change**

The Exchange proposes to establish fees under Rule 7030(d) for use of the Testing Facility ("NTF") test environment located in Carteret, New Jersey, which will provide a virtual trading environment for testing. The Exchange will begin assessing the fees immediately; however, the installation fee will be waived for subscriptions ordered through March 31, 2014.

The text of the proposed rule change is below. Proposed new language is italicized.

\* \* \* \* \*

#### **7030. Other Services**

- (a)-(c) No change.  
(d) Testing Facilit[y]ies

*The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise*

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

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

noted, reference to the "Testing Facility" applies to both environments.

(1)–(3) No change.

(4) *Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of \$1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.*

*The connectivity provided under this rule also provides connectivity to the other testing environments of The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC.*

\* \* \* \* \*

## 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

The Exchange is proposing to amend Rule 7030(d) to establish fees for connection to a test environment. Specifically, the Exchange proposes a one-time, per hand-off installation fee and a per hand-off monthly fee assessed for direct connectivity to the Testing Facility<sup>3</sup> test environment located in Carteret, New Jersey ("Carteret"), which is also the location of the Exchange's primary trading System.<sup>4</sup> The Testing Facility provides subscribers with a virtual Exchange System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. For example, the Testing Facility provides subscribers a virtual System environment for testing

<sup>3</sup> See <http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility> for a description of the Testing Facility.

<sup>4</sup> As defined by Rule 4751(a). The Exchange's System is mirrored at other locations as well.

upcoming Exchange releases and product enhancements, as well as testing firm software prior to implementation.

The Testing Facility is currently housed solely in the Exchange's Ashburn, Virginia facility ("Ashburn"). In addition to housing the Testing Facility, Ashburn is also an Exchange disaster recovery facility and, as such, some member firms connect to Ashburn for disaster recovery purposes in addition to trading system testing. The Exchange currently assesses fees on members for physical connectivity to Ashburn.<sup>5</sup> In addition, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn. The relatively large distance to between the Ashburn Testing Facility and the majority of NASDAQ OMX firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for Testing Facility connectivity. In an effort to improve the utility of the Testing Facility, the Exchange is developing a test environment located in Carteret that will provide the same functionality as the trading testing functionality of Ashburn, yet more closely approximate the live trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades the Exchange is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.<sup>6</sup> This connectivity will also provide connectivity to the trading testing environments of BX's sister exchanges, The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC, also located in Carteret, New Jersey.<sup>7</sup> The Exchange will ultimately sunset the trading testing functionality at Ashburn, yet retain post trade reporting and ACES functionality at that location.<sup>8</sup>

<sup>5</sup> The Exchange assesses fees for direct connection to Ashburn and fees for co-location connectivity. See Rules 7051 and 7034(b), respectively.

<sup>6</sup> Member firms currently use their connectivity to the Ashburn test environment for both testing and disaster recovery purposes.

<sup>7</sup> Similar to colocation connectivity under Rule 7034(b), firm that is a member of multiple NASDAQ OMX exchanges may access the testing environments of the exchanges of which it is a member through a single connectivity subscription.

<sup>8</sup> The Exchange is not upgrading the hardware used for post trade reporting and ACES testing at

The Exchange notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn if the sole purpose for connecting to Ashburn is for trading testing. Such member firms may use an existing connection to Carteret to access the Testing Facility through the use of a dedicated switch port and cross connect within the facility. The Exchange is proposing to assess a fee for connection to the test environment within the Carteret facility. Specifically, the Exchange proposes assessing a \$1,000 per hand-off, per month fee assessed for connectivity to the Carteret test environment for either 1Gb or 10Gb, and a one-time per hand-off installation fee of \$1,000, which will cover the Exchange's costs incurred in setting up a subscriber in the Carteret facility. The Exchange is proposing to waive the installation fee through March 31, 2014, after which the Exchange will begin phasing out trading testing at the Ashburn test environment.

The Exchange is also making a minor clarifying change to the rule in light of the operation of dual Testing Facility test environments.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular. The Exchange believes that proposal is with Section 6(b)(4) of the Act<sup>11</sup> 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 new fees are equitably allocated because all member firms receive connectivity to the Carteret test environment for the same fee. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live trading environment for participants, including matching the capacity of each participant's live environment switch

this time, but may do so in the future. As noted, the new hardware implemented in the Carteret test environment is part of the larger technology upgrade to the System's hardware also located in Carteret.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. The Exchange believes that charging a uniform fee rather than mirroring the fees for the live trading environment<sup>12</sup> will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment. The Exchange also believes that waiver of the installation fee for all installations ordered prior to March 31, 2014 is an equitable allocation as it is available to all member firms during the time frame; thus any member firm may avail itself of the free period if it so chooses.

The new fees are reasonable because they are designed to cover the costs the Exchange has incurred in developing and offering the new test environment. The proposed fee should allow the Exchange to recoup these costs and make a profit, while providing member firms with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. The Exchange believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Carteret participants use hardware identical to what they use in the live trading environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment. Waiver of the installation fee for a limited period is reasonable because the Exchange believes such a waiver will attract new users to the test environment, thus ensuring a certain minimum level of monthly revenue to support the facility initially.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in that it is designed 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The Exchange does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb

live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to the Exchange may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. The Exchange does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all member firms that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, member firms are able to subscribe to Carteret without regard to the cost of their switch port capacity election. The Exchange believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live test environment, as discussed above. Providing a more useful and accurate test environment will serve to improve live trading on the Exchange and the national market system by permitting member firms the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. Last, the Exchange does not believe that waiver of the installation fee is unfairly discriminatory as it is uniformly applied for a limited time, during which any member firm may subscribe.

#### *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. Because the new test environment more closely approximates the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment.

#### *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>14</sup> and paragraph (f)<sup>15</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:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2013-058 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-BX-2013-058. This file number should be included on the subject line if email 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 Web site (<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 Web site 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

<sup>12</sup> Members are assessed a monthly fee of \$5,000 for 10 Gb and \$1,000 for 1 Gb direct connectivity to BX. See Rule 7051.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

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-BX-2013-058, and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71044; File No. SR-NASDAQ-2013-150]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Modifications to Fees and Credits Under Rules 7014 and 7018

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 29, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “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 NASDAQ. 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 make changes to its schedule of fees and credits applicable to execution of orders under Rule 7018, and related changes in Rule 7014. NASDAQ proposes to implement the proposed rule change on December 2, 2013. The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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, 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In November 2013, NASDAQ introduced a rebate tier under which it provides a credit of \$0.0029 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) adds Total NASDAQ Options Market (“NOM”) Market Maker Volume, as defined in Chapter XV, Section 2 of the NOM rules, of 90,000 or more contracts per day executed during the month through one or more of its NOM MPIDs.<sup>3</sup> NASDAQ is amending the tier by reducing the requirement for Total NOM Market Maker Volume to 80,000 or more contracts per day. Pricing tiers that require participation in both the NASDAQ Market Center and NOM recognize the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, NASDAQ believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the NASDAQ Market Center. The change enhances these incentives by reducing the requirement for participation in this tier.

Second, NASDAQ is amending Rule 7018(e), which governs fees for orders that execute in the NASDAQ Opening Cross (the “Cross”), to eliminate an

erroneous reference to a potential \$0.0005 per share executed charge for “Day” orders (*i.e.*, orders designated to have a time-in-force under which they remain in effect until executed or the end of either regular market hours at 4:00 p.m. or the end of the System hours at 8:00 p.m.) that execute in the Cross. Charging Day orders that participate in the Cross would mean that virtually all orders in the Cross would be subject to a fee, which is not consistent with NASDAQ’s intention or past practice. Rather, the reference appears to have been included in the rule in error. Accordingly, NASDAQ is deleting the reference to make it clear that Day orders executing in the Cross are not to be charged.

Finally, NASDAQ is amending the definition of “Consolidated Volume” in Rules 7018 and 7014 to exclude executed orders with a size of less than one round lot. In addition, NASDAQ is modifying some of the words used in both definitions to make them use consistent terminology (but is not thereby changing their meanings). The amended definitions refer to “the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot.” The exclusion for executed orders of less than a round lot is necessitated by recent amendments to the Consolidated Tape Association and NASDAQ UTP Plans<sup>4</sup> under which odd lots must be reported to the consolidated tape. These amendments are taking effect in December 2013. When calculating a member’s percentage, NASDAQ has historically included odd lots in the member’s own total volume, but excluded them from Consolidated Volume, since they have not historically been included in the trades reported to consolidated transaction reporting plans. Accordingly, including odd lots in the calculation of a member’s percentage of Consolidated Volume would make it more difficult for members to achieve certain percentages, and thus could constitute an unintended de facto price increase. To avoid this result, odd lots will be excluded from the definitions of Consolidated Volume for pricing purposes, but would continue to be included in the member’s own total volume.

<sup>4</sup> Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05); Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7-24-89).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 70860 (November 13, 2013), 78 FR 69512 (November 19, 2013) (SR-NASDAQ-2013-138).