Page 1 of * 15 SECURITIES AND EXCHANGE COMMISSION WASHINGTON D.C. 20649 Form 190-4 File No.* SR - (2013) - 002 Amendment No. (reg. for Amendments 1) Filing by INASDAQ Stock Market Pursuant to Rule 190-4 under the Securities Exchange Act of 1934 Initial * Amendment * Withdrawal Commission Action * Commission Action * Commission Action * Commission pursuant to Rule 190-40(10) 190-40(1	Required	l fields are shown with yellow	v backgrounds and as	terisks.				OMB Number: 3235-0045 Estimated average burden hours per response
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Initial Amendment Withdrawal Pliat Extension of Time Period Date Expires Pliat Extension Action Date Expires Provide of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 300(e)(1) Section 300(e)(2) Section 300(e)(2) Section 30(e)(2) Section 30(e)(2)<	Filing	by NASDAQ Stock Market						
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OMB APPROVAL

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549				
For complete Form 19b-4 i	nstructions please refer to the EFFS website.			
Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.			
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)			
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)			
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.			
Add Remove View Exhibit Sent As Paper Document	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.			
Exhibit 4 - Marked CopiesAddRemoveView	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.			
Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.			
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.			

1. <u>Text of Proposed Rule Change</u>

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to reduce the fees assessed under NASDAQ Rule 7034 for certain co-location services.

A notice of the proposed rule change for publication in the <u>Federal Register</u> is attached hereto as <u>Exhibit 1</u> and a copy of the applicable portion Rule 7034 is attached hereto as <u>Exhibit 5</u>.

(b) Not applicable.

(c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

The proposed rule change was approved by senior management of NASDAQ pursuant to authority delegated by the Board of Directors of the Exchange on July 10, 2012. NASDAQ staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

The proposed fee reductions are effective upon filing, and they shall become operative on January 2, 2013. Questions regarding this rule filing may be directed to Jeffrey S. Davis, Vice President and Deputy General Counsel, The NASDAQ OMX Group, Inc. at (301) 978-8484.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> for, the Proposed Rule Change

a. <u>Purpose</u>

The Exchange proposes to amend NASDAQ Rule 7034 to reduce the monthly recurring cabinet ("MRC") fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by customers using the CoLo Console³ during the months of January and February of 2013, provided that such cabinets are fully operational by May 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that customer as of December 31, 2012 ("Baseline Number"), for so long as the total number of dedicated cabinets exceeds that customer's Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes fully operational under NASDAQ rules, provided that the customer's total number of cabinets continues to exceed the Baseline Number.

Cabinet Type **Current Ongoing Reduced Ongoing Monthly Fee Monthly Fee** Low Density \$4,000 \$2,000 Medium Density \$5,000 \$2,500 Medium-High Density \$6,000 \$3,500 High Density \$4,500 \$7,000 Super High Density \$13,000 \$8,000

The Exchange proposes to reduce the applicable fees as follows:

New cabinets shall be assessed standard installation fees.

³ The "CoLo Console" is NASDAQ's web-based ordering tool, and it is the exclusive means for ordering colocation services.

SR-NASDAQ-2013-002

Page 5 of 18

NASDAQ proposes to reduce colocation cabinet fees by different amounts to maintain a sliding scale of lower fees for higher density cabinets on a per kilowatt basis. The chart below reflects this scale:

Cabinet Type	Max kW	Reduced MRC Fee	Discount %	Fee per KW
Low Density	2.88	\$2,000	50.00%	\$694.44
Medium Density	5	\$2,500	50.00%	\$500.00
Medium-High Density	7	\$3,500	41.67%	\$500.00
High Density	10	\$4,500	35.71%	\$450.00
Super High Density	17	\$8,000	38.46%	\$470.59

b. <u>Statutory Basis</u>

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)(4) of the Act,⁵ 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 proposed reduced fee will be assessed equally on all customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

Page 6 of 18

NASDAQ's proposal to reduce fees by differing amounts is fair and equitable because it reflects the economic efficiency of higher density colocation cabinets. First, the underlying costs for co-location cabinets consists of certain fixed costs for the data center facility (space, amortization, etc.) and certain variable costs (electrical power utilized and cooling required). The variable costs are in total higher for the higher power density cabinets, as reflected in their higher current prices. Second, the higher density cabinets were introduced later than the lower density cabinets (High Density cabinet was introduced in 2009 and the Super High Density cabinet was introduced in 2011). Due to the competitive pressures that existed in 2011 and 2012, the fees for Super High Density cabinets were further reduced in 2012 to be more comparable with the lower fee per kilowatt of the High Density cabinet. As a result of these already-reduced rates on higher density cabinets, NASDAQ has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

NASDAQ 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. In such an environment, NASDAQ 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. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ colocation facility remain competitive.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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's voluntary fee reduction is a response to increased competition for colocation services by other exchanges and trading venues. As more venues offer colocation services, competition drives costs lower. The Exchange, in order to retain existing orders and to attract new orders, is forced to offer a lower effective rate for aggregate cabinet demand. This competition benefits users, members. and investors by lowering the average aggregate cost of trading on the Exchange.

5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule</u> <u>Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

- <u>Extension of Time Period for Commission Action</u> Not applicable.
- 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁶, the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the selfregulatory organization on any person, whether or not the person is a member of the selfregulatory organization, which renders the proposed rule change effective upon filing.

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

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission takes such action, the Commission shall institute proceedings to determine

whether the proposed rule should be approved or disapproved.

8. <u>Proposed Rule Change Based on Rules of Another Self-Regulatory Organization</u> <u>or of the Commission</u>

The proposed rule change is not based on the rules of another self-regulatory

organization or of the Commission.

- Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act Not applicable.
- 10. <u>Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and</u> <u>Settlement Supervision Act</u>

Not applicable.

- 11. <u>Exhibits</u>
 - 1. Completed notice of proposed rule change for publication in the <u>Federal</u>

Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION (Release No. ; File No. SR-NASDAQ-2013-002)

January _____ 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Colocation Services

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on January 2, 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 the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the</u> <u>Proposed Rule Change</u>

The NASDAQ Stock Market LLC proposes to reduce the fees assessed under NASDAQ Rule 7034 for certain co-location services. While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2013.

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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> 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. 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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory</u> <u>Basis for, the Proposed Rule Change</u>

1. <u>Purpose</u>

The Exchange proposes to amend NASDAQ Rule 7034 to reduce the monthly recurring cabinet ("MRC") fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by customers using the CoLo Console³ during the months of January and February of 2013, provided that such cabinets are fully operational by May 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that customer as of December 31, 2012 ("Baseline Number"), for so long as the total number of dedicated cabinets exceeds that customer's Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes fully operational under NASDAQ rules, provided that the customer's total number of cabinets continues to exceed the Baseline Number.

The Exchange proposes to reduce the applicable fees as follows:

³ The "CoLo Console" is NASDAQ's web-based ordering tool, and it is the exclusive means for ordering colocation services.

Cabinet Type	Current Ongoing Monthly Fee	Reduced Ongoing Monthly Fee
Low Density	\$4,000	\$2,000
Medium Density	\$5,000	\$2,500
Medium-High Density	\$6,000	\$3,500
High Density	\$7,000	\$4,500
Super High Density	\$13,000	\$8,000

New cabinets shall be assessed standard installation fees.

NASDAQ proposes to reduce colocation cabinet fees by different amounts to maintain a sliding scale of lower fees for higher density cabinets on a per kilowatt basis. The chart below reflects this scale:

Cabinet Type	Max kW	Reduced MRC Fee	Discount %	Fee per KW
Low Density	2.88	\$2,000	50.00%	\$694.44
Medium Density	5	\$2,500	50.00%	\$500.00
Medium-High Density	7	\$3,500	41.67%	\$500.00
High Density	10	\$4,500	35.71%	\$450.00
Super High Density	17	\$8,000	38.46%	\$470.59

2. <u>Statutory Basis</u>

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)(4) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

Page 12 of 18

other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed reduced fee will be assessed equally on all customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services.

NASDAQ's proposal to reduce fees by differing amounts is fair and equitable because it reflects the economic efficiency of higher density colocation cabinets. First, the underlying costs for co-location cabinets consists of certain fixed costs for the data center facility (space, amortization, etc.) and certain variable costs (electrical power utilized and cooling required). The variable costs are in total higher for the higher power density cabinets, as reflected in their higher current prices. Second, the higher density cabinets were introduced later than the lower density cabinets (High Density cabinet was introduced in 2009 and the Super High Density cabinet was introduced in 2011). Due to the competitive pressures that existed in 2011 and 2012, the fees for Super High Density cabinets were further reduced in 2012 to be more comparable with the lower fee per kilowatt of the High Density cabinet. As a result of these already-reduced rates on higher density cabinets, NASDAQ has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

NASDAQ 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. In such an environment, NASDAQ 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.

Page 13 of 18

NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ colocation facility remain competitive.

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. To the contrary, the Exchange's voluntary fee reduction is a response to increased competition for colocation services by other exchanges and trading venues. As more venues offer colocation services, competition drives costs lower. The Exchange, in order to retain existing orders and to attract new orders, is forced to offer a lower effective rate for aggregate cabinet demand. This competition benefits users, members. and investors by lowering the average aggregate cost of trading on the Exchange.

C. <u>Self-Regulatory Organization's Statement on Comments on the Proposed</u> <u>Rule Change Received from Members, Participants, or Others</u>

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁶ NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the selfregulatory organization on any person, whether or not the person is a member of the selfregulatory organization, which renders the proposed rule change effective upon filing.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

Page 14 of 18

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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<u>http://www.sec.gov/rules/sro.shtml</u>); or
- Send an e-mail to <u>rule-comments@sec.gov</u>. Please include File Number SR-NASDAQ-2013-002 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-2013-002. 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 Web site (http://www.sec.gov/rules/sro.shtml).

Page 15 of 18

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 the filing also will be available for inspection and copying at the principal office 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-2013-002 and should be submitted on or before [insert date 21 days from publication in the <u>Federal Register</u>].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new text is <u>underlined</u>; Deleted text is [bracketed].

NASDAQ Stock Market Rules

Equity Rules

* * * * *

7034. Co-Location Services

The following charges are assessed by NASDAQ for co-location services: 1

(a) Cabinets

Cabinet with Power

Description	Installation Fee	Ongoing Monthly Fee
Super High Density Cabinet (>10kW - <=17.3kW)	\$7,000***	\$13,000**
High Density Cabinet (>7kW - <10kW)	\$3,500	\$7,000**
Medium-High Density Cabinet (>5kW - <=7kW)	\$3,500	\$6,000**
Medium Density Cabinet (>2.88kW - <=5kW)	\$3,500	\$5,000**
Low Density Cabinet (<=2.88kW)	\$3,500	\$4,000**
Half Cabinet*		\$3,000

* Not available to new subscribers.

** Discount of 15% of fee available to users of 25 or more full cabinets who commit to a 3 year term; Discount of 10% of fee available to users of 25 or more full cabinets who commit to a 2 year term.

*** Includes larger cabinet (30" W x 48" D x 96" H). Standard installation fee of \$3,500 would apply if smaller cabinet (24"W x 42"D x 84"H) is requested.

Note: Cabinet power cap is based on the available power at 80% of the breakered capacity of all circuit pairs within a cabinet (where a primary/redundant circuit pair is considered a single circuit).

Temporary Fee Reduction for Cabinets with Power.

New cabinets ordered during January and February of 2013 will be assessed standard installation fees and reduced Ongoing Monthly Fees as set forth below. Reduced fees shall apply only to the new cabinets, for a period of 24 months, and only for so long as the total number of cabinets controlled by a given customer exceeds the total of cabinets controlled by that customer as of December 31, 2012.

Super High Density	<u>\$8,000</u>
High Density	<u>\$4,500</u>
Medium-High Density	<u>\$3,500</u>
Medium Density	<u>\$2,500</u>
Low Density	<u>\$2,000</u>

Shared Cabinet Space

Description	Installation Fee	Ongoing Monthly Fee
4U Block of Cabinet Space including up to 500W of power*	\$150 per hour	\$600

*No more than 2 4U Blocks. Access restricted to Nasdaq personnel.

Specialty Cabinet Charge

Description	Ongoing Monthly Fee
Additional Charge per Cabinet for cabinet > 24"W for each 6"W increment greater than 24"W - 2x the ongoing cabinet fee if the cabinet is >=48"W	\$500 per 6" or 2x the Ongoing Cabinet fee

Multi-Firm Cabinet Charge

Description

Ongoing Monthly Fee

Additional Charge per Cabinet for each cabinet that supports a firm other than the firm contracted to receive the cabinet by Nasdaq Technology Services

¹Co-location services provided by NASDAQ Technology Services LLC.

(b) No change.

(c) No change.

(d) No change.

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