

### Proposed Changes to Rule Text

NSCC proposes to amend Procedure II of its Rules to provide for the creation of receive and deliver instructions that reflect the net offset of aggregated Special Trade positions, as described above.<sup>12</sup> In addition, regarding Net Balance Orders, NSCC proposes to revise Procedure V of its Rules to delete the rounding methodology and add the current market price methodology, as described above.

### Statutory Basis

NSCC believes the proposed rule change, as described above, is consistent with the requirements of the Act, specifically Section 17A(b)(3)(F),<sup>13</sup> and the rules and regulations thereunder applicable to NSCC, because the change provides for operational efficiencies for Members in the settlement of transactions by reducing the number of obligations requiring settlement for Special Trades, and promoting accuracy with respect to the pricing of Net Balance Orders; therefore, facilitating the prompt and accurate clearance and settlement of securities transactions.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(4)<sup>15</sup> 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,

<sup>12</sup> As with any Special Trade, NSCC will not guaranty settlement of receive and deliver orders of transactions aggregated and/or net pursuant to the proposed Rule change.

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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

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 No. SR-NSCC-2013-01 on the subject line.

#### Paper Comments

• Send 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-NSCC-2013-01. 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 such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at [http://dtcc.com/downloads/legal/rule\\_filings/2013/nscc/SR-NSCC-2013-01.pdf](http://dtcc.com/downloads/legal/rule_filings/2013/nscc/SR-NSCC-2013-01.pdf).

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-NSCC-2013-01 and should be submitted on or before April 18, 2013.

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. 34-69211; File No. SR-NASDAQ-2013-050]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess a Fee for Use of FIX and OUCH Trading Ports for Testing

March 22, 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 March 18, 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 and II 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 establish fees under Rules 7015(b) and (g) for use of FIX Trading Ports and OUCH Trading Ports, respectively, that are used for testing. NASDAQ will begin assessing the proposed fee on April 1, 2013.

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

\* \* \* \* \*

#### 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 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)

<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.

Ports	Price	Ports	Price
FIX Trading Port .....	\$500/port/month *.	<i>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.</i>	300/port/month.
FIX Port for Services Other than Trading.	500/port/month.		

(c)–(f) No change.  
 (g) Other Port Fees  
 Remote Multi-cast ITCH Wave Ports

Description	Installation fee	Recurring monthly fee
MITCH Wave Port at Secaucus, NJ .....	\$2,500	\$7,500
MITCH Wave Port at Weehawken, NJ .....	2,500	7,500
MITCH Wave Port at Newark, NJ .....	2,500	7,500

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 \$1,000 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.

\* \* \* \* \*

**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 establish fees for the member firm use of FIX Trading Ports and OUCH Ports, respectively, maintained in test mode. A FIX Trading Port and an OUCH Port are both connections to the NASDAQ trading system (collectively, "Trading Ports"). Currently, a member firm may elect to designate a subscribed Trading Port as either in "production mode" or in "test mode." A Trading Port that is in production mode allows a member firm to send orders for execution on the Exchange system in the normal course. When a member firm changes a Trading Port's status to 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.<sup>3</sup> Member firms are assessed a monthly fee of \$500 per port for each Trading Port subscribed in production mode.<sup>4</sup> Member firms are not currently assessed a fee for a Trading Port that is in test mode.

NASDAQ has audited the use of Trading Ports in test mode and found that a substantial number are not used

for testing, but rather remain idle. NASDAQ incurs costs associated with maintaining such ports, including costs incurred maintaining servers and their physical location, monitoring order activity, and other support. Accordingly, NASDAQ is proposing to allow a member firm to designate for each of its MPIDs a single Trading Port in test mode at any given time at no cost, and will assess a member firm a fee of \$300 per port/per month for each additional Trading Port assigned to an MPID that is in test mode.<sup>5</sup> NASDAQ is proposing to assess the fee beginning April 1, 2013.

NASDAQ is proposing to allow member firms to either cancel Trading Ports in test mode or put such ports into production at any time up to close of business April 30, 2013 without incurring the proposed fee. This will allow member firms to adjust to the new fee and encourage them to either place idle test mode ports into production or cancel them. Any Trading Ports a member firm has assigned to an MPID that are in test mode in excess of one on May 1, 2013 will be assessed the full \$300 per port monthly fee for the month of April, and each month thereafter unless canceled or placed into production. A member firm that subscribes a new Trading Port with an initial status of test mode for an MPID with an existing Trading Port in test mode will not be assessed the test mode fee for that additional Trading Port if it

<sup>3</sup> NASDAQ also provides member firms with access to a dedicated test environment that closely approximates the production environment and on which they may test their automated systems that integrate with NASDAQ. Subscribers typically use this test environment to test upcoming NASDAQ releases and product enhancements, as well as test software prior to implementation. See Rule 7030(d).

<sup>4</sup> Rules 7015(b) and (g).

<sup>5</sup> The proposed fees are specific to the type of Trading Port. Therefore for purposes of calculating the proposed fee, only an existing FIX Port in test mode assigned to a particular MPID would count as a free Trading Port in test mode under Rule 7015(b). Likewise, only an existing OUCH Port in test mode assigned to a particular MPID would count as a free Trading Port in test mode under Rule 7015(g). FIX ports not used for trading do not have a test mode, and therefore NASDAQ is not proposing any test mode fee for such ports.

is placed into production mode in the same calendar month. Any Trading Port that is not exempted from the proposed fee and whose status is changed from test mode to production mode during any month will be assessed the proposed \$300 fee, prorated for the days of the month that the port was in test mode, and assessed the applicable Trading Port fee of \$500 for the days of the month that the port is in production mode.<sup>6</sup> If a port that is in production mode is changed to test mode, the member firm will be assessed the full month's fee for production mode, even if there are no other Trading Ports assigned to the MPID in Test Mode. If an existing Trading Port in test mode is canceled by a member firm at any point in a given month, the firm will be assessed the full test mode fee for that month.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and with Section 6(b)(4)<sup>8</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 proposed fee is based on the cost to NASDAQ of developing and maintaining multiple port connections to the Exchange, which are not used in the production environment and are designated as in test mode. As noted, NASDAQ invests time and capital in initiating, monitoring and maintaining port connections to its system. Currently, NASDAQ does not have a means to recoup its investment and costs associated with providing member firms with Trading Ports that are in test mode and NASDAQ believes that the proposed fee is reasonable because the fee is intended to cover the Exchange's costs incurred in maintaining test mode ports and is less than what is charged for a Trading Port in production mode. The proposed fee may also allow NASDAQ to make a profit to the extent the costs associated with developing and maintaining Trading Ports in test mode are covered. Moreover, the Exchange believes that the proposed fee does not discriminate unfairly as it will promote efficiency in the market by incentivizing member firms to either place into production idle ports or cancel them. As a consequence, only a

member firm that is inefficient in its use of Trading Ports in test mode will be assessed the fee. The Exchange believes the proposed fee is equitably allocated because all Exchange member firms that voluntarily elect to subscribe to Trading Ports, yet maintain them in test mode, will be charged the [sic] equally on a per-port basis. NASDAQ notes that a member firm is afforded a single Trading Port in test mode for each of its MPIDs at any given time at no cost, and therefore may avoid the proposed fee altogether to the extent it is able to bring efficiency to its testing operations and port utilization. Moreover, NASDAQ believes that providing a free test mode Trading Port for each of a member firm's MPIDs is an equitable allocation because it avoids penalizing member firms that may have multiple MPIDs for different lines of business, and as such would only be afforded a single free Trading Port in test mode for all lines of business.

### *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 that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed fee merely allows NASDAQ to recapture the costs associated with maintaining member ports that are in test mode, and may provide NASDAQ with a profit to the extent its costs are covered. The fee is applied uniformly, so that only a member firm that is unable to use its Trading Ports in test mode efficiently will pay more than a similarly situated member firm, and a member firm may avoid any burden if it is efficient in such use. In this way, the proposed fee will promote efficient use of Trading Ports for testing. Any burden arising from the fee is necessary in the interest of promoting a more efficient market.

### *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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due,

fee, or other charge imposed by NASDAQ.

At any time within 60 days of the filing of such 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 should institute proceedings to determine whether the proposed rule change 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 (<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-NASDAQ-2013-050 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-2013-050. 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

<sup>6</sup> Pursuant to Rules 7015(b) or (g).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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–2013–050 and should be submitted on or before April 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2013–07178 Filed 3–27–13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69219; File No. SR–BX–2013–025]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 4120

March 22, 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 March 11, 2013, NASDAQ OMX BX, Inc. (“Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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

The Exchange proposes to amend Exchange Rule 4120 to establish rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, at the Commission’s Public Reference Room, and on the Commission’s Web site at <http://www.sec.gov>.

#### 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 Exchange proposes to amend Exchange Rule 4120 to establish rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act (the “Plan”).<sup>3</sup>

###### Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.*, the “flash crash,” the equities exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses<sup>4</sup> and related changes to the equities market clearly erroneous execution rules<sup>5</sup> and more stringent equities market maker quoting requirements.<sup>6</sup> On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.<sup>7</sup> In addition, the Commission approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.<sup>8</sup>

<sup>3</sup> See Securities Exchange Act Release No. 68953 (Feb. 20, 2013) (Notice of Filing and Immediate Effectiveness of the Second Amendment to the National Market System Plan to Address Extraordinary Market Volatility, File No. 4–631).

<sup>4</sup> See, *e.g.*, BX Rule 4120.

<sup>5</sup> See, *e.g.*, BX Rule 11890.

<sup>6</sup> See, *e.g.*, BX Rule 4613(a).

<sup>7</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

<sup>8</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.<sup>9</sup> As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.<sup>10</sup> As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.<sup>11</sup> When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.<sup>12</sup> All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.<sup>13</sup>

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.<sup>14</sup> Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading

2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

<sup>9</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>10</sup> The Exchange is a Participant in the Plan.

<sup>11</sup> See Section (V)(A) of the Plan.

<sup>12</sup> See Section VI(A) of the Plan.

<sup>13</sup> See Section VI(A)(3) of the Plan.

<sup>14</sup> See Section VI(B)(1) of the Plan.

<sup>11</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.