

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**  
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sean	Last Name * Bennett
Title * Associate General Counsel	
E-mail * sean.bennett@nasdaqomx.com	
Telephone * (301) 978-8499	Fax (301) 978-8472

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
(Title \*)

Date 07/23/2013	Executive Vice President and General Counsel
By Edward S. Knight	<input style="width: 90%; height: 30px;" type="text"/>
(Name *)	<input style="width: 100%; height: 20px;" type="text" value="Edward S Knight"/>

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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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 \***

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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**

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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**

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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.

**Exhibit 3 - Form, Report, or Questionnaire**

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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 Copies**

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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.

**Exhibit 5 - Proposed Rule Text**

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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**

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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. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to offer a new Dedicated OUCH Port Infrastructure connectivity option and adopt related fees. The Exchange will implement the new service in October 2013, and will provide public notice thereof at least five days prior to the implementation date. NASDAQ seeks waiver of the preoperative delay to allow it to assess the installation fee, and waiver thereof, effective immediately;<sup>3</sup> NASDAQ is proposing to assess the monthly subscription fee beginning with the rollout of the service in October 2013.

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

\* \* \* \* \*

**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) – (f) No change.

(g) Other Port Fees

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

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

<sup>3</sup> The Exchange notes that the planned implementation timeframe is designed to provide it with adequate time to purchase and install new hardware, and to program and test the system.

## 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 \$1000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.
- An additional \$200 per month for each port used for entering orders or quotes over the Internet.
- An additional \$600 per month for each port used for market data delivery over the Internet.

Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of \$5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of \$5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription. NASDAQ is waiving the \$5,000 installation fee for all subscriptions received through August 15, 2013.

(h) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

Questions regarding this rule filing may be directed to T. Sean Bennett, Associate General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8499.

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

a. Purpose

NASDAQ is proposing to offer a new connectivity option, and adopt related installation and subscription fees, which will provide member firms with remote access to dedicated server hardware for OUCH port connectivity<sup>4</sup> to the NASDAQ System. Currently, NASDAQ distributes a member firm's OUCH ports among shared servers in order to facilitate all member firms' connectivity to NASDAQ. These servers act as switches, channeling the message traffic member firms send through their ports to the System. NASDAQ is proposing to provide individual member firms with access to a dedicated OUCH port server from NASDAQ. This service is optional and is available to all NASDAQ member firms.

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<sup>4</sup> An "OUCH port" is a connectivity port designated to accept only OUCH protocol messaging. See <http://www.nasdaqtrader.com/Trader.aspx?id=OUCH> for a description of the OUCH protocol. Ports are available to member firms for the purpose of transacting on the Exchange system. Unlike other protocols, the OUCH protocol only provides a method for subscribers to send orders and receive status updates on those orders (see, e.g. <http://www.nasdaqtrader.com/Trader.aspx?id=RASH>).

NASDAQ is proposing to offer the service for a one-time installation fee of \$5,000 per subscription and a monthly subscription fee of \$5,000. The monthly subscription fee is in addition to the standard per port fee assessed a member firm for the OUCH ports assigned to the Dedicated OUCH subscription<sup>5</sup> and any other connectivity costs currently assessed member firms.<sup>6</sup> The proposed fees are associated with the additional capital expenditures (hardware) and operating expenditures (personnel) associated with offering, supporting and maintaining this service. NASDAQ notes that the dedicated server assigned to a member firm for each subscription is limited to a maximum of 30 OUCH ports. As a consequence, a member firm with an excess of 30 OUCH ports that it would like assigned to dedicated infrastructure must have more than one Dedicated OUCH subscription.<sup>7</sup> NASDAQ is proposing to assess the monthly subscription fee beginning with the rollout of the service in October 2013. NASDAQ is proposing to assess the installation fee effective immediately, but waive the fee for subscriptions received by August 15, 2013.

NASDAQ notes that member firms will not have physical access to their dedicated server within the NASDAQ data center and thus cannot make any modifications to the server. All port servers (including servers used for this service) are owned and operated by NASDAQ. NASDAQ will assign the same type of server to Dedicated OUCH subscribers as is provided to existing OUCH port users on shared

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<sup>5</sup> The OUCH ports assigned to the service may be currently subscribed ports, newly-subscribed, or a combination thereof.

<sup>6</sup> All the fees a member firm is currently assessed will continue, unaffected by a subscription to the Dedicated OUCH service.

<sup>7</sup> In such a case, a member firm may assign its OUCH ports to its multiple dedicated servers in any ratio it wishes, so long as no one server has more than 30 OUCH ports assigned to it.

servers.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The Exchange notes that the servers under the proposed new service are owned and operated by the Exchange. A subscribing member firm will not have the ability to modify the infrastructure in any way. In addition, the proposed dedicated infrastructure will not change the process by which order message traffic reaches the System. Rather, it merely provides certainty to a subscribing member firm that its OUCH ports are not on shared infrastructure.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>10</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, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

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

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

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

The Exchange determined that the proposed fees are reasonable based on market demand as well as the costs associated with purchasing hardware (capital expenditures) and supporting and maintaining the infrastructure (operating expenditures) for this Dedicated OUCH connectivity option for member firms. To the extent such costs are covered, the proposed fees may provide NASDAQ with a profit. Member firms are not obligated to subscribe to this service and may continue to access the NASDAQ System through shared servers at no additional cost. As such, the Exchange believes that if a member firm determines that the installation and subscription fees are not cost-efficient for its needs or does not provide sufficient value to the firm, it may elect not to subscribe to the service and continue to access the System, unchanged. NASDAQ notes that member firms may subscribe to OUCH ports at any time, in addition to or in replacement of, existing means of accessing NASDAQ. NASDAQ also believes that waiver of the installation fee is reasonable as it promotes member firms' subscription to the connectivity option, thus providing NASDAQ with a successful launch of the new service option while also promoting a wider use of the connectivity among member firms that might not be initially realized without the waiver.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because member firms that voluntarily elect to subscribe to this service will be charged the same fees. Furthermore, this service is optional and is available to all NASDAQ member firms. With Dedicated OUCH, member firms can develop a tailored trading solution by controlling their message traffic in order to optimize their trading strategies. In this regard, some member firms may find little benefit in having dedicated server, and may continue their use of the shared servers, unchanged. The Exchange has no plans to eliminate shared servers and require subscription to the dedicated

infrastructure. NASDAQ also believes that the waiver of the installation fee is equitable and not unfairly discriminatory because it is offered to all member firms and it is applied equally to all member firms that subscribe by a date certain.

4. 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. NASDAQ notes that the connectivity option is wholly optional and therefore member firms are not compelled to subscribe. Moreover, NASDAQ believes that the proposed rule change is pro-competitive as it adds an additional connectivity option available to NASDAQ members.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange requests that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing. The Exchange is proposing to offer the new connectivity option and related monthly fee in October 2013; however, NASDAQ requests waiver of the preoperative delay so that it may begin installations and waive the installation fee immediately, which would be assessed upon the subscription of the service. The Exchange's proposal provides the members a connectivity option that some member firms may prefer. Waiver of the operative delay would allow the Exchange to waive the installation fee, thus providing incentive to member firms to subscribe to the service immediately, which will in turn allow the Exchange to begin the process of procuring hardware and installation for such subscriptions so that member firms may use the service beginning with its roll out in October 2013.

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

**EXHIBIT 1**

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASDAQ-2013-097)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer a New Dedicated OUCH Port Infrastructure Connectivity Option and Adopt Related Fees

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 July 23, 2013 The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to offer a new Dedicated OUCH Port Infrastructure connectivity option and adopt related fees under Rule 7015(g). The Exchange will implement the new service in October 2013, and will provide public notice thereof at least five days prior to the implementation date. NASDAQ will accept subscriptions to the service immediately; however, it will not assess the monthly subscription fee until the

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

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

service is offered in October 2013. NASDAQ will begin assessing the installation fee immediately, but waive the fee for all subscriptions received by August 15, 2013.<sup>3</sup>

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

### **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) – (f) No change.

(g) Other Port Fees

Remote Multi-cast ITCH Wave Ports

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

<sup>3</sup> The Exchange notes that the planned implementation timeframe is designed to provide it with adequate time to purchase and install new hardware, and to program and test the system.

Weehawken, NJ

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MITCH Wave Port at \$2,500                      \$7,500

Newark, NJ

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The following port fees shall apply in connection with the use of other trading telecommunication protocols:

- \$500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.
- An additional \$200 per month for each port used for entering orders or quotes over the Internet.
- An additional \$600 per month for each port used for market data delivery over the Internet.

#### Dedicated OUCH Port Infrastructure

The Dedicated OUCH Port Infrastructure subscription allows a member firm to assign up to 30 of its OUCH ports to a dedicated server infrastructure for its exclusive use. A Dedicated OUCH Port Infrastructure subscription is available to a member firm for a fee of \$5,000 per month, which is in addition to the standard fees assessed for each OUCH port. A one-time installation fee of \$5,000 is assessed subscribers for each Dedicated OUCH Port Server subscription. NASDAQ is waiving the \$5,000 installation fee for all subscriptions received through August 15, 2013.

(h) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to offer a new connectivity option, and adopt related installation and subscription fees, which will provide member firms with remote access to dedicated server hardware for OUCH port connectivity<sup>4</sup> to the NASDAQ System. Currently, NASDAQ distributes a member firm's OUCH ports among shared servers in order to facilitate all member firms' connectivity to NASDAQ. These servers act as switches, channeling the message traffic member firms send through their ports to the System. NASDAQ is proposing to provide individual member firms with access to a dedicated OUCH port server from NASDAQ. This service is optional and is available to all NASDAQ member firms.

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<sup>4</sup> An "OUCH port" is a connectivity port designated to accept only OUCH protocol messaging. See <http://www.nasdaqtrader.com/Trader.aspx?id=OUCH> for a description of the OUCH protocol. Ports are available to member firms for the purpose of transacting on the Exchange system. Unlike other protocols, the OUCH protocol only provides a method for subscribers to send orders and receive status updates on those orders (see, e.g., <http://www.nasdaqtrader.com/Trader.aspx?id=RASH>).

NASDAQ is proposing to offer the service for a one-time installation fee of \$5,000 per subscription and a monthly subscription fee of \$5,000. The monthly subscription fee is in addition to the standard per port fee assessed a member firm for the OUCH ports assigned to the Dedicated OUCH subscription<sup>5</sup> and any other connectivity costs currently assessed member firms.<sup>6</sup> The proposed fees are associated with the additional capital expenditures (hardware) and operating expenditures (personnel) associated with offering, supporting and maintaining this service. NASDAQ notes that the dedicated server assigned to a member firm for each subscription is limited to a maximum of 30 OUCH ports. As a consequence, a member firm with an excess of 30 OUCH ports that it would like assigned to dedicated infrastructure must have more than one Dedicated OUCH subscription.<sup>7</sup> NASDAQ is proposing to assess the monthly subscription fee beginning with the rollout of the service in October 2013. NASDAQ is proposing to assess the installation fee effective immediately, but waive the fee for subscriptions received by August 15, 2013.

NASDAQ notes that member firms will not have physical access to their dedicated server within the NASDAQ data center and thus cannot make any modifications to the server. All port servers (including servers used for this service) are owned and operated by NASDAQ. NASDAQ will assign the same type of server to

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<sup>5</sup> The OUCH ports assigned to the service may be currently subscribed ports, newly-subscribed, or a combination thereof.

<sup>6</sup> All the fees a member firm is currently assessed will continue, unaffected by a subscription to the Dedicated OUCH service.

<sup>7</sup> In such a case, a member firm may assign its OUCH ports to its multiple dedicated servers in any ratio it wishes, so long as no one server has more than 30 OUCH ports assigned to it.

Dedicated OUCH subscribers as is provided to existing OUCH port users on shared servers.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The Exchange notes that the servers under the proposed new service are owned and operated by the Exchange. A subscribing member firm will not have the ability to modify the infrastructure in any way. In addition, the proposed dedicated infrastructure will not change the process by which order message traffic reaches the System. Rather, it merely provides certainty to a subscribing member firm that its OUCH ports are not on shared infrastructure.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>10</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, and it does not unfairly discriminate

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

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

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

between customers, issuers, brokers or dealers.

The Exchange determined that the proposed fees are reasonable based on market demand as well as the costs associated with purchasing hardware (capital expenditures) and supporting and maintaining the infrastructure (operating expenditures) for this Dedicated OUCH connectivity option for member firms. To the extent such costs are covered, the proposed fees may provide NASDAQ with a profit. Member firms are not obligated to subscribe to this service and may continue to access the NASDAQ System through shared servers at no additional cost. As such, the Exchange believes that if a member firm determines that the installation and subscription fees are not cost-efficient for its needs or does not provide sufficient value to the firm, it may elect not to subscribe to the service and continue to access the System, unchanged. NASDAQ notes that member firms may subscribe to OUCH ports at any time, in addition to or in replacement of, existing means of accessing NASDAQ. NASDAQ also believes that waiver of the installation fee is reasonable as it promotes member firms' subscription to the connectivity option, thus providing NASDAQ with a successful launch of the new service option while also promoting a wider use of the connectivity among member firms that might not be initially realized without the waiver.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because member firms that voluntarily elect to subscribe to this service will be charged the same fees. Furthermore, this service is optional and is available to all NASDAQ member firms. With Dedicated OUCH, member firms can develop a tailored trading solution by controlling their message traffic in order to optimize their trading strategies. In this regard, some member firms may find little benefit in having dedicated

server, and may continue their use of the shared servers, unchanged. The Exchange has no plans to eliminate shared servers and require subscription to the dedicated infrastructure. NASDAQ also believes that the waiver of the installation fee is equitable and not unfairly discriminatory because it is offered to all member firms and it is applied equally to all member firms that subscribe by a date certain.

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. NASDAQ notes that the connectivity option is wholly optional and therefore member firms are not compelled to subscribe. Moreover, NASDAQ believes that the proposed rule change is pro-competitive as it adds an additional connectivity option available to NASDAQ members.

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

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, it has become effective pursuant

to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

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 (<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-2013-097 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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-NASDAQ-2013-097. 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>). 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-2013-097, 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).