

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77765; File No. SR-NASDAQ-2016-033]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Exchange's Offering of Remote ITCH to Trade Options Wave Ports

May 4, 2016.

I. Introduction

On March 2, 2016, The Nasdaq Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to offer Remote ITCH to Trade Options ("ITTO") Wave Ports and to establish fees for this new optional wireless connectivity service. The proposed rule change was published for comment in the **Federal Register** on March 22, 2016.³ On April 25, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on this proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange currently provides Nasdaq ITTO market data through fiber optic networks.⁵ The Exchange now proposes to also provide this data through wireless networks, which experience lower latency than fiber

optic networks. Specifically, the Exchange proposes to offer Remote ITTO Wave Ports⁶ for clients co-located at third-party data centers in Mahwah, NJ and Secaucus, NJ, through which Nasdaq ITTO market data will be distributed after delivery to those data centers via a wireless network, and to establish fees for these Remote ITTO Wave Ports.⁷

The Exchange proposes a \$5,000 installation fee for a Remote ITTO Wave Port in Mahwah and a \$2,500 installation fee for a Remote ITTO Wave Port in Secaucus.⁸ The Exchange also proposes a \$10,000 recurring monthly fee for a Remote ITTO Wave Port in Mahwah and a \$7,500 recurring monthly fee for a Remote ITTO Wave Port in Secaucus.⁹ Clients who choose to subscribe to a Remote ITTO Wave Port will continue to be liable for the Nasdaq ITTO market data fees set forth in NOM Rule Chapter XV, Section 4(a).

In addition, the Exchange proposes to provide new clients of this service a 30-day testing period during which the Exchange will waive the recurring monthly fees.¹⁰ During the 30-day testing period, a client may cancel its subscription, but will forfeit the installation fee.¹¹ If a client does not cancel its subscription prior to the end of the 30-day testing period, a one-year minimum purchase period will begin.¹²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the

⁶ According to the Exchange, a Remote Wave Port is a physical port located in Nasdaq's space within a third-party's data center that receives market data delivered by Nasdaq via its wireless network, which is then simultaneously distributed to Wave Ports within that location.

⁷ The Exchange notes that it currently offers a similar service for TotalView ITCH equities market data through Remote MITCH Wave Ports located in Mahwah and Secaucus. See Nasdaq Rule 7015(g)(1). According to the Exchange, it recently increased the capacity of its wireless networks connecting Nasdaq's Carteret data center to these third-party data centers, so they may now support the delivery of ITTO market data.

⁸ See proposed NOM Rule Chapter VX, Section 3(c).

⁹ See *id.*

¹⁰ See *id.* The Exchange will not waive the installation fee or the Nasdaq ITTO market data fees during this testing period. See Amendment No. 1, *supra* note 4.

¹¹ See Amendment No. 1, *supra* note 4.

¹² See proposed NOM Rule Chapter VX, Section 3(c) and Amendment No. 1, *supra* note 4.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(4) of the Act,¹⁴ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹⁶ which requires that the rules of the exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act.¹⁷ Under the proposal, all clients that voluntarily select the wireless connectivity service will be charged the same amount for the same services.¹⁸ The Commission also notes that, according to the Exchange, the proposed fees are reasonable because they are based on costs to cover hardware, installation, testing, and connection, as well as expenses involved in maintaining and managing the connection. The Exchange states that these fees would allow it to recoup costs and make a profit, and would reflect the value provided to clients as a result of the lower latency. The Exchange states that the costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation, and testing. The Exchange also states that the differences between the fees for Mahwah and Secaucus reflect the higher cost of connecting to Mahwah because of the longer distance to Mahwah, as well as the higher cost for co-locating and

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ The Commission notes that the proposed fees are identical to the fees for Remote MITCH Wave Ports located in the same third-party data centers in Mahwah and Secaucus. See Nasdaq Rule 7015(g)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77381 (March 16, 2016), 81 FR 15394.

⁴ In Amendment No. 1, which amended and replaced the original filing in its entirety, the Exchange: (i) clarified that there will be a one-year minimum purchase period for Remote ITTO Wave Ports, which will begin at the conclusion of the 30-day testing period; (ii) clarified that the Exchange will only waive the recurring monthly fee during the 30-day testing period; and (iii) made other technical changes to the proposed rule change. Amendment No. 1 is available at: <http://www.sec.gov/comments/sr-nasdaq-2016-033/nasdaq2016033-1.pdf>.

⁵ Nasdaq ITTO is a data feed that provides quotation information for individual orders on the Nasdaq Options Market ("NOM") book, last sale information for trades executed on NOM, and order imbalance information. See NOM Rule Chapter VI, Section 1(a)(3)(A).

connecting within Mahwah. As noted above, the Remote ITTO Wave Port fees are subject to a 30-day testing period during which the recurring monthly fees are waived, and a one-year minimum purchase period that begins at the conclusion of the 30-day testing period.¹⁹ The Exchange notes that the proposed waiver process is the same as the existing waiver process for Remote MITCH Wave Ports under Nasdaq Rule 7015(g)(1) and is intended as an incentive to clients, and that the one-year minimum purchase period is common practice for co-location offerings that allows the Exchange to recoup the substantial investment required to establish the wireless system.²⁰

The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.²¹ As noted above, the proposal would make available an optional, low latency method to receive Nasdaq ITTO market data at third-party data centers. Also as noted above, the Exchange already offers TotalView ITCH equities market data through Remote MITCH Wave Ports for clients co-located at third-party data centers in Mahwah and Secaucus. Moreover, the Commission believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because all co-located clients will have the option to voluntarily select the wireless connectivity service, there is no differentiation among clients with respect to the fees charged for the service, and the latency reduction will be the same for all clients who choose this service.

The Commission also believes that the proposed rule change is consistent with Section 6(b)(8) of the Act.²² According to the Exchange, if it charges excessive fees for co-location or connectivity services, affected members could opt to terminate their co-location and/or connectivity services and adopt a possible range of alternative strategies, including, for example, using another vendor for connectivity services or pursuing trading strategies not dependent upon co-location, and this would negatively impact the Exchange's co-location, connectivity, and trading revenues. The Exchange also notes that

wireless technology has been in use for decades, is available from multiple providers, and has been adopted by other exchanges to offer wireless connectivity for delivery of market data. Moreover, Nasdaq ITTO market data will continue to be available through fiber optic networks.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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. Please include File No. SR-NASDAQ-2016-033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-NASDAQ-2016-033. 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 filing will also 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 No. SR-NASDAQ-2016-033 and should be submitted on or before May 31, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the **Federal Register**. Amendment No. 1 provided clarification and additional information to the proposed rule change, and did not raise any novel regulatory issues. In particular, Amendment No. 1 stated that there will be a one-year minimum purchase period for Remote ITTO Wave Ports, which will begin at the conclusion of the 30-day testing period, and stated that the Exchange will only waive the recurring monthly fee during the 30-day testing period.²³ As noted above, the Exchange states that the proposed waiver process is the same as the existing waiver process for Remote MITCH Wave Ports under Nasdaq Rule 7015(g)(1), and that the one-year minimum purchase period is common practice for co-location offerings.²⁴ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2016-033), as modified by Amendment No.1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Robert W. Errett,
Deputy Secretary.

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¹⁹ See *supra* notes 10-12 and accompanying text.

²⁰ See Amendment No.1, *supra* note 4. See also BX Rule 7015 (stating that Remote MITCH Wave Port fees are subject to a 30-day testing period during which the otherwise applicable fees are waived, and a one-year minimum purchase period).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(8).

²³ See Amendment No. 1, *supra* note 4.

²⁴ See *supra* note 20 and accompanying text.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ See *id.*

²⁷ 17 CFR 200.30-3(a)(12).